**BEFORE THE**
**GEORGIA PUBLIC SERVICE COMMISSION**

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| Sandersville Railroad Company<br><br>Hancock County, Georgia<br><br>**In re: Sandersville Railroad Company's Petition for Approval to Acquire Real Estate by Condemnation** | Docket No.: 45045 |

# OBJECTIONS TO AND MOTION TO STRIKE PRE-FILED DIRECT AND REBUTTAL TESTIMONY OF SCOTT DICKSON

on behalf of the Property Owner Respondents

October 16, 2023


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"In administrative hearings, the rules of evidence as applied in the trial of nonjury civil actions shall be followed, subject to special statutory rules or agency rules as authorized by law." O.C.G.A § 24-1-2(4). Pursuant to the Georgia Code of Evidence, O.C.G.A §§ 24-1-1 *et seq.*, Property Owner Respondents[1] hereby object to and move to strike the Pre-Filed Direct and Rebuttal Testimony of Scott Dickson, set forth below, for the reasons stated:

**Direct Testimony**

| Page Start | Line Start | Page End | Line End | Objection |
|---|---|---|---|---|
| 4 | 10 | 4 | 13 | Lack of Foundation |
| 5 | 14 | 5 | 17 | Lack of Foundation |
| 5 | 19 | 6 | 10 | Relevance, Form, Lack of Foundation, Non-Responsive |
| 6 | 12 | 9 | 18 | Lack of Foundation, Speculation, Relevance, Non-Responsive |
| 7 | 15 | 7 | 17 | Lack of Foundation |
| 9 | 6 | 9 | 18 | Lack of Foundation |
| 9 | 20 | 11 | 12 | Relevance |

**Rebuttal Testimony**

| Page Start | Line Start | Page End | Line End | Objection |
|---|---|---|---|---|
| 1 | 21 | 3 | 16 | Form, Speculation |

Mr. Dickson is the President of Heidelberg Materials ("HM") Southeast Region. Test. 2:2–5. Mr. Dickson's direct testimony discusses HM's business, Test. 3:14–5:2; purportedly answers why increasing production at the Sparta quarry is allegedly important, Test. 5:19–6:10, and how HM allegedly intends to use the Hanson Spur, Test. 6:12–9:18; and discusses the actions HM will

[1] Robert Donald Garrett, Sr., and Sarah Veazey Garrett; William Blaine Smith and Helen Diane Smith; Marvin Smith, Jr., and Patricia Smith; Leo John Briggs and Georgia Ann Briggs; Joel Bradford Reed and Kathy Lynn Reed; Donna N. Garrett; Herus Ellison Garrett; Sally G. Wells; Verne Kennedy Hollis; and Thomas Ahmad Lee.

allegedly take to minimize disturbance caused by the quarry and the railroad, Test. 9:20–11:12. Mr. Dickson's rebuttal testimony discusses why allegedly "a transload facility from truck to rail is a far less desirable long term, and likely unviable, transportation option for HM." Reb. Test. 1:21–3:16. Property Owner Respondents object to and move to strike Mr. Dickson's testimony on the bases of form, lack of foundation, speculation, relevance, and non-responsiveness.[2] Property Owner Respondents also object to Mr. Dickson testifying as part of any "panel," including one consisting of Jeff Custer, Arnie Pittman, and Cale Veal. Group testimony would violate Respondents' due process rights under the U.S. and Georgia constitutions, as well as O.C.G.A. § 24-6-602, because it would prevent fair and full cross examination into the witnesses' individual and personal knowledge, experience, and bases for their opinions. Finally, Property Owner Respondents object to and move to strike the entirety of Mr. Dickson's testimony on the grounds

[2] Much of Mr. Dickson's testimony consists of improper lay witness testimony under O.C.G.A. § 24-7-701(a) because it is not based on his own perception, is not helpful to a clear understanding of a fact at issue, and is based on specialized, technical knowledge that is properly the subject of expert witness testimony. *See, e.g.*, Test. 4:10–13, 7:3–5, 7:15–17 (specialized testimony not based on personal knowledge or perception regarding the environmental effects of railroads); Test. 5:14–17 (testimony not based on personal knowledge of other putative users of the Hanson Spur); Test. 8:13–21 (specialized testimony about "shortage[s]" experienced by localities or other companies). Had SRC wished to introduce expert testimony on these topics, it could have done so pursuant to O.C.G.A. § 24-7-702, which would have required SRC to provide the "facts or data" underlying this testimony and establish the "reliable principles and methods" used by the witness. O.C.G.A. § 24-7-702(b). Indeed, the purpose of the rule against lay witnesses providing specialized testimony was to eliminate the risk that parties would evade the reliability requirements for expert witnesses "through the simple expedient of proferring an expert in lay witness clothing." *United States v. Henderson*, 409 F.3d 1293, 1300 (11th Cir. 2005) (cleaned up) (discussing similar federal rule). In exactly the scenario the rule was designed to avoid, SRC sidesteps the reliability requirements for expert testimony by offering a lay witness who testifies to things he has not established he has seen, on several topics in which he has no expertise. As such, this testimony is inadmissible because it lacks foundation, and the Hearing Officer should strike it. *See Monroe v. Hyundai Motor Am., Inc.* 270 Ga. App. 477, 478, 606 S.E.2d 894, 896 (2004) (holding that, to have probative value, a lay opinion "must be based upon a foundation that the witness has some knowledge, experience or familiarity" on the topic on which the testimony is offered (cleaned up)). At the very least, even if the Hearing Officer does not strike this testimony, she should give it little weight.

that Property Owner Respondents were not allowed to depose him before the November 27, 2023 hearing in this matter. *See* O.C.G.A. § 50-13-13(a)(6) (providing for "the taking of testimony by deposition").

**Form**

Lay witness opinion testimony is admissible only if it is based on something the witness perceived, helpful for determining a fact at issue, and "not based on scientific, technical, or specialized knowledge within the scope of" O.C.G.A. § 24-7-702. The question "Why is increasing production at the Sparta Quarry important?", Test. 5:19–20, is not a question eliciting facts based on personal knowledge, but instead elicits improper lay opinion testimony. The question in Mr. Dickson's rebuttal testimony "What is the purpose of your rebuttal testimony?" asks for a narrative. Reb. Test. 1:21.

**Non-Responsive**

Even if the form of the question "Why is increasing production at the Sparta Quarry important?", Test. 5:19–20, is not a solicitation of an improper opinion, which it is, *see* "Form" *supra*, Mr. Dickson's answer to the question is not responsive, because it merely describes the location and method of transport of aggregates in Georgia. Test. 5:21–6:10. Additionally, much of Mr. Dickson's answer to the question "How do you intend to use the Hanson Spur?", Test 6:13-9:18, is nonresponsive to the question asked, veering into matters of economic impact of HM activity (Test. 9:6–18), speculation as to other companies' businesses (Test. 8:13–21) and the environmental impact of rail (Test. 8:22–9:2).

**Lack of Foundation**

"A witness may not testify to a matter unless evidence is introduced sufficient to support a finding that the witness has personal knowledge of such matter." O.C.G.A. § 24-6-602. Lay

witness opinion testimony is admissible only if it is based on something the witness perceived, helpful for determining a fact at issue, and "not based on scientific, technical, or specialized knowledge within the scope of" O.C.G.A. § 24-7-702. Additionally, expert opinion testimony is permissible only where the witness is qualified as an expert under the requirements of O.C.G.A. § 24-7-702 (expert testimony).

Mr. Dickson provides no evidence that he has personal knowledge of the "CO2 savings per year" created by moving aggregates over rail, nor has he established that he is an expert on the environmental effects of railroads. Test. 4:10–13, 7:3–5, 7:15–17. Mr. Dickson also provides no evidence that he has personal knowledge of "other customers" who would use the Hanson Spur. Test. 5:14–17. He is repeating what representatives of Sandersville Railroad have told him. Additionally, Mr. Dickson provides no evidence that he has personal knowledge of, or is qualified to provide an expert opinion regarding, "shortage[s]" experienced by localities or other companies such as Vulcan Materials and Martin Marietta, Test. 8:13–21, or the South Carolina Department of Transportation's "major investment plans," Test. 8:4–12. Finally, Mr. Dickson provides no evidence that he has personal knowledge, or is qualified to give an opinion, regarding economic benefits that accrue to the communities where HM operates (Test. 9:6–11), or that most of $4 million of annual expenditures by HM remain in Georgia annually (Test. 9:11–13), or that HM's investments will generate any tax revenue for Hancock County (Test. 9:14–18).

**Speculation**

A "witness's testimony in the form of opinions or inferences shall be limited to those opinions or inferences which are [r]ationally based on the perception of the witness." O.C.G.A. § 24-7-701. Mr. Dickson provides no evidence that his testimony about what the Hanson Spur will allegedly allow HM to do is based on anything except what representatives of Sandersville have

told him. Test. 6:12–9:18. Mr. Dickson's rebuttal testimony about why allegedly "a transload facility from truck to rail is a far less desirable long term, and likely unviable, transportation option for HM," Reb. Test. 1:21–3:16, is also unsupported speculation. Indeed, Mr. Dickson offers no evidence, such as contracts, that HM will even use the Hanson Spur at all.

**Relevance**

Evidence is relevant where it has "any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence." O.C.G.A. § 24-4-401. "Evidence which is not relevant shall not be admissible." O.C.G.A. § 24-4-402. Mr. Dickson's testimony regarding the actions HM will allegedly take "to minimize disturbance, if any, caused by the quarry and its new rail lines," Test. 9:20–11:12, is irrelevant to these proceedings. Mr. Dickson's testimony about why "increasing production at the Sparta quarry [is] important," Test. 5:19–6:10, is also irrelevant. Mr. Dickson's testimony about increased output from the Hanson Quarry (Test. 6:13–19), competitors' advantages over HM (Test. 6:20–7:3), future opportunities for HM (Test. 7:22–8:12), and cost effectiveness of rail for HM (Test. 7:3–5), are also irrelevant. None of these topics is relevant to whether the Hanson Spur is being built for a public purpose.

Property Owner Respondents respectfully request that the entirety of Mr. Dickson's testimony be stricken or, in the alternative, those portions described in the chart on page 2. If Mr. Dickson's testimony is not stricken, Property Owner Respondents respectfully request that the Hearing Officer give such testimony little weight. Property Owner Respondents reserve all other objections to Mr. Dickson's testimony pending the hearing and cross-examination.

Respectfully submitted, this 16th day of October, 2023.

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## CERTIFICATE OF SERVICE

I hereby certify that on this 16th day of October, 2023, a copy of the foregoing *Objections to and Motion to Strike Pre-Filed Direct and Rebuttal Testimony of Scott Dickson* has been served via electronic mail and U.S. First-Class Mail on the following pursuant to GA. COMP. R. & REGS. 515-16-16-.02; 515-2-1-.04(4)(b), (3):

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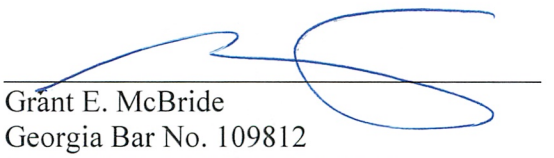
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DATED this 16th day of October, 2023.



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