

**BEFORE THE
GEORGIA PUBLIC SERVICE COMMISSION**

Sandersville Railroad Company

Hancock County, Georgia

**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 TESTIMONY OF CALE VEAL**

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 Respondents¹ hereby object to and move to strike the Pre-Filed Direct Testimony of Cale Veal, set forth below, for the reasons stated:

Page Start	Line Start	Page End	Line End	Objection
3	16	5	21	Lack of Foundation, Speculation
6	1	6	13	Form, Lack of Foundation, Speculation, Relevance

Mr. Veal is the sole managing partner of Veal Farms Transload, LLC, a managing member of Revive Milling, LLC, and “an interest holder in numerous other companies, including, but not limited to, Veal Farms Trucking, LLC and Veal Farms, LLC.” Test. 2:4–8. Mr. Veal testifies regarding “the business of Veal Farms Transload, LLC and Revive Milling,” Test. 3:3–14, and “how [Veal Farms Transload, LLC and Revive Milling] intend to use the Hanson Spur.” Test. 3:16–5:21. Mr. Veal also opines about whether “the Hanson Spur will benefit the local economy, environment, and infrastructure.” Test. 6:1–13. Property Owner Respondents object to and move to strike Mr. Veal’s testimony on the bases of form, lack of foundation and speculation.² Property

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.

² Portions of Mr. Veal’s testimony consist 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. 6:1–13 (specialized testimony not based on personal knowledge or perception regarding “reduce[d] truck volume,” “increase[d] demand for Georgia-grown crops,” “positive environmental change,” “decrease[d] cost to produce biodegradable plastics,” and “clean economic growth and prosperity”); Test. 6:10–11 (specialized testimony not based on personal knowledge that SRC is the “only company” that can provide services, benefits, and prosperity to Hancock County or Georgia). Had SRC wished to introduce expert testimony on these topics, it

Owner Respondents also object to Mr. Veal testifying as part of any “panel,” including one consisting of Scott Dickson, Arnie Pittman, and Jeff Custer. 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. Veal’s testimony on the grounds 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 “Will the Hanson Spur benefit the local economy, environment, and infrastructure?”, Test. 6:1–2, is not a question eliciting facts based on personal knowledge, but instead elicits improper lay opinion testimony.

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 proffering 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.

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. The alleged benefits of the Hanson Spur—“reduce[d] truck volume,” “increase[d] demand for Georgia-grown crops,” “positive environmental change,” “decrease[d] cost to produce biodegradable plastics,” and “clean economic growth and prosperity,” Test. 6:1–13—are not relevant to the question of public use.

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.

Mr. Veal offers no evidence for why he is personally qualified to opine about the alleged benefits of the Hanson Spur, such as “reduce[d] truck volume,” “increase[d] demand for Georgia-grown crops,” “positive environmental change,” “decrease[d] cost to produce biodegradable plastics,” and “clean economic growth and prosperity.” Test. 6:1–13. Mr. Veal has not established that he is an expert on any of the topics about which he testifies. Neither does he offer any evidence of personal knowledge that SRC is the “only company” that can provide services, benefits, and prosperity to Hancock County or Georgia. Test. 6:10–11. Furthermore, Mr. Veal offers no evidence, such as contracts or memoranda, to support his discussion of how his companies will

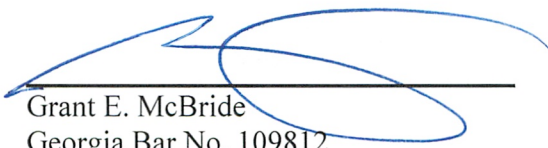
use the Hanson Spur. Test. 3:16–5:21. Indeed, he offers no proof that his companies will even use the Hanson Spur at all.

Speculation

Additionally, 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. The alleged benefits of the Hanson Spur—“reduce[d] truck volume,” “increase[d] demand for Georgia-grown crops,” “positive environmental change,” “decrease[d] cost to produce biodegradable plastics,” and “clean economic growth and prosperity,” Test. 6:1–13—are purely speculative. Mr. Veal has not established that he is an expert on any of those topics.

Property Owner Respondents respectfully request that the entirety of Mr. Veal’s testimony be stricken or, in the alternative, those portions described in the chart on page 2. If Mr. Veal’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. Veal’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 Testimony of Cale Veal* 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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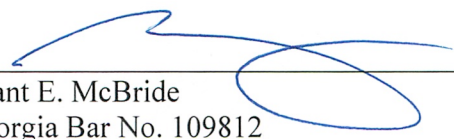
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DATED this 16th day of October, 2023.



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