BEFORE THE
GEORGIA PUBLIC SERVICE COMMISSION

In Re: Sandersville Railroad Company's Petition for Approval to Acquire Real Estate by Condemnation	**Docket No.: 45045**

BRIEF
OF SANDERSVILLE RAILROAD COMPANY IN OPPOSITION TO APPLICATIONS FOR FULL COMMISSION REVIEW, REQUESTS FOR ORAL ARGUMENT, AND MOTION FOR STAY OF ORDER

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This Brief in Opposition (this "Brief") responds to both the Applications for Full Commission Review filed by the Respondents and Intervenors. It shows that the Public Service Commission should affirm and adopt the Initial Decision. When considering the Applications, this Brief, and any permitted oral argument, the Public Service Commission should recognize that the Hearing Officer exercised his trusted legal acumen and regulatory experience in this proceeding and that his resulting Initial Decision is thorough and well-reasoned. The Public Service Commission can and should rely on the weight the Hearing Officer assigned to the evidence and reject the Respondents and Intervenors' demand for a second bite at the evidentiary apple.

I. Introduction

In this docket, Sandersville Railroad Company ("Sandersville Railroad" or "Petitioner"), a corporation owning and operating a Class III[1] railroad in the State of Georgia, seeks authority from the Georgia Public Service Commission (the "Commission") to acquire by condemnation certain strips of undeveloped real property (the "Project Parcels")[2] in Hancock County, Georgia, necessary for the construction and operation of an industrial spur line (the "Hanson Spur" or the "Spur")

[1] The U.S. Surface Transportation Board ("STB") classifies railroads by revenue. Post-Hearing Brief at 5. Class I railroads are major trunk lines that haul freight across the country with annual revenues of $447,621,226 or more. *Id.* at 5–6. Class II railroads, which move freight from large shippers along their branch lines and spurs, consist of railroads, earn revenues less than $447,621,226 but equal to or greater than $35,809,698. *Id.* at 6. Class III railroads are those earning less than $35,809,698 and principally provide a vital service to small shippers by connecting them to the Class I and Class II railroads. *Id.* at 6–7.

[2] The Project Parcels are described and shown in the Amended Petition for Approval to Acquire Real Estate by Condemnation (as amended, the "Petition") of Sandersville Railroad. *In re: Sandersville Railroad Company's Petition for Approval to Acquire Real Estate by Condemnation*, Docket 45045, Document 205194 (July 20, 2023).

between CSX Transportation's ("CSXT") Camak subdivision line and a quarry known as the "Hanson" Quarry (the "Quarry").

Farmers, companies, and industries in East middle Georgia currently do not have direct access to the Class I CSXT rail network because they do not individually have enough volume to be efficiently served directly by CSXT, which has no shipment aggregation capacity at Sparta. As a result, they cannot trade by rail with the many domestic markets exclusively or best served by the CSXT rail network ("CSXT-Served Markets").[3] Sandersville Railroad's Hanson Spur will solve that problem by aggregating and otherwise managing its customers' shipments and establishing a viable method of trade between the East middle Georgia region and those markets. In this way, the Spur will accommodate Sandersville Railroad's rail transportation business.[4] Even before a cross tie or rail has been laid, the businesses that want to be the Spur's customers include the following (collectively, the "Spur Users"):[5]

(1) Heidelberg Materials (which operates the rock quarry to produce construction aggregates used, among other places, in the construction of roads and highway and will use the Spur to transport those aggregates to CSXT-served Markets);[6]
(2) Pittman Construction (which produces asphalt at the Hanson Quarry and will use the Spur to transport liquid asphalt to the Quarry);[7]
(3) Revive Milling (which buys and processes grain into food ingredients and will use the Spur to reach CSXT-served Markets, which it could not otherwise viably reach by rail);[8]

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[3] T. 34:19–21, 38:17–21 (Tarbutton Testimony).
[4] T. 35:2–4; 45:18–23 (Tarbutton Testimony).
[5] Three of the companies, Revive Milling, Veal Farms, and Southern Chips approached Sandersville Railroad about establishing direct access to CSXT before the Spur project was begun. T. 108:4–15 (Tarbutton Testimony).
[6] T. 200:17–19; 203:2–5 (Dickson Testimony).
[7] T. 222:7–8; 223:11–13 (Pittman Testimony)
[8] T. 1466:6–8; 1466:17–22 (Veal Testimony).

(4) Veal Farms (which buys, stores, and loads grains and other agricultural products to rail and will use the Spur to reach CSXT-served Markets);[9] and
(5) Southern Chips (which provides wood chips to paper mills via rail and will use the spur to reach CSXT-served Markets).[10]

The Spur would also be available to serve East middle Georgia farmers, companies, and industries that may wish to locate on or otherwise utilize the Spur to send goods to and from CSXT-served Markets.[11]

The Hearing Officer, Thomas K. Bond, esq. (the "Hearing Officer")—a distinguished, career Commission attorney and the Commission's Director of Utilities—was tasked with digesting the record and determining whether the Spur serves a legitimate public purpose as defined by the Georgia General Assembly (the "General Assembly").[12] Neither the Hearing Officer nor the Commission is tasked with determining whether the Spur "best serves" the public interest.[13]

The parties to this docket pre-filed testimony and the Hearing Officer heard testimony summations, cross-examination, and redirect-examination of Sandersville Railroad's president, the Spur Users, the president of the Georgia civil engineering firm that designed the Spur, the owners of the Project Parcels ("Respondents"), various individuals that are part of the ad-hoc "No Railroad in Our Community Coalition"

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[9] T. 1466:5–6; 1466:17–22 (Veal Testimony)
[10] T. 247:20–22; 248:7–11 (Custer Testimony).
[11] T. 149:5–11 (Tarbutton Testimony).
[12] *Cent. of Georgia R.R. v. Georgia Pub. Serv. Comm'n*, 257 Ga. 217, 218, 356 S.E.2d 865, 866 (1987) ("The Commission, in ruling on the propriety of a condemnation of property by a railroad for the purpose of expansion and improvement, should seek to determine whether the condemnation serves a public purpose, not whether the condemnation 'best serves' the public interest."); Ga. Comp. R. & Regs. 515-16-16-.02.
[13] *Id.*

("Intervenors," and collectively with Respondents, the "Opponents"), and the Opponents' purported experts.

After presiding over and hearing 4 days of live testimony and considering the pre-filed direct testimony and post-hearing briefs of the parties, the Hearing Officer, on April 1, 2024, distilled the evidence and the law into his Initial Decision.[14] He granted Sandersville Railroad's Petition, as amended, and concluded as a matter of law that:

(1) "The 'business of the [Sandersville Railroad]' is providing the transportation service of connecting industries by rail and connecting rail traffic with larger rail networks."[15]

(2) "The Commission's authority to review [railroad] condemnation is limited. That authority is limited to determining whether the purpose of the condemnation 'serves a public purpose, not whether the condemnation 'best serves' the public interest.'"[16]

(3) The Spur "is reasonably expected to have cash flow sufficient to continue as an ongoing concern providing rail transportation services."[17]

(4) The land required for the Spur, once utilized for rail operations, "would be [used] for the functioning of a 'public utility' as that term is used in O.C.G.A. § 22-1-1(9)(A)(ii)" and, therefore, the Spur would be a public use.[18]

(5) "[T]he Hanson Spur would provide a channel of trade," which is a "public use" under O.C.G.A. § 22-1-1(9)(A)(iii), and "channels of trade [are not required to] . . . be new, exclusive or novel to serve a 'public use.'"[19]

(6) "[T]he proposed condemnation by Sandersville Railroad serves a legitimate public purpose and is necessary for the proper accommodation of the business of the company."[20]

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[14] *In re: Sandersville Railroad Company's Petition for Approval to Acquire Real Estate by Condemnation*, Docket 45045, Document 218204 (April 1, 2024).
[15] Initial Decision at 13.
[16] *Id.* at 17 (quoting *Cent. of Ga. RR Co. v. Ga. Pub. Serv. Comm'n.*, 257 Ga. 217, 218, 356 S.E.2d. 865, 866 (1987)).
[17] *Id.* at 13.
[18] *Id.* at 15.
[19] *Id.* at 16.
[20] *Id.* at 18.

On April 30, 2024, Respondents filed their Application for Full Commission Review of Hearing Officer's Initial Decision, Request for Oral Argument, and Motion for Stay of Order[21] (the "Respondents' Application"). The Respondents' Application is premised on the Respondents' belief that the Hearing Officer's judgment and findings were flawed and that he failed to appropriately weigh the evidence in the record.

On May 1, 2024, the Intervenors filed their Application for Review of Initial Decision and Request for Oral Argument[22] ("Intervenors' Application," and collectively with the Respondents' Application, the "Applications").

Opponents' assessments of the Initial Decision, in the Applications, are disdainful and unwarranted. The Applications mischaracterize and lambaste the Hearing Officer's determinations of relevance, credibility, and the weight of the evidence. Respondents question the Hearing Officer's ability and impartiality to make such determinations stating, for instance, that the Hearing Officer in his "Initial Decision accept[ed] at face value the assertions of the railroad and its . . . customers that the Hanson Spur will provide access to new markets . . . ."[23] Similarly, Respondents describe the Hearing Officer's reading of the relevant statutes as "illogical."[24] None of these claims have merit. Likewise, none of Opponent's legal and factual claims warrant review by the Commission.

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[21] *In re: Sandersville Railroad Company's Petition for Approval to Acquire Real Estate by Condemnation*, Docket 45045, Document 218527 (April 30, 2024).
[22] *In re: Sandersville Railroad Company's Petition for Approval to Acquire Real Estate by Condemnation*, Docket 45045, Document 218538 (May 1, 2024).
[23] Respondents' Application at 14.
[24] *Id.* at 16.

The Applications rehash the arguments made in the Opponents' post-hearing briefs but also make new arguments which, because they were not previously raised, have been waived. Section 17(a) of Georgia's Administrative Procedures Act ("APA")[25] grants the Commission—**when reviewing the Hearing Officer's Initial Decision**—"all the powers it would have in making the initial decision," including "[taking] additional testimony." Under Georgia law, however, **when the Commission is deciding whether to review** a hearing officer's initial decision, it does so based on the record considered by that hearing officer.[26] Unless and until the Commission decides to conduct a *de novo* review of the Initial Decision, Opponents are barred from presenting novel arguments.[27]

II. The Hearing Officer's Initial Decision was correct; Sandersville Railroad met its burden of proof.

As noted in the Initial Decision and Sandersville Railroad's Briefs,[28] Petitioner presented substantial evidence that the Spur will serve a public purpose, as defined by the General Assembly and is necessary for the proper accommodation of Petitioner's business. The Initial Decision applied the law governing railroad condemnations in

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[25] O.C.G.A § 50-13-17(a).

[26] *Cf.* O.C.G.A. § 50-13-17(a) (stating that the agency can "take additional testimony" or remand for that purpose once the agency is reviewing the initial decision of the representative); *Ga. Peace Officer Standards and Training Council v. Hodges*, 330 Ga. App. 145, 767 S.E.2d 286 (2014) (reversing and remanding Superior Court of Bulloch County's order reversing decision of a Georgia agency because such order relied on arguments not presented to agency).

[27] Accordingly, Opponents' 42 U.S.C. § 1982 claims are not properly raised at this time. *See* Intervenors' Application at 38–40. And Intervenors have not produced any evidence of "purposeful discrimination" by Sandersville Railroad. *See infra* pp. 12–13.

[28] Petitioner notes that Respondents did not, and Intervenors only twice, *see* Intervenors' Application at 21, 37, cite Petitioner's Reply Brief in their Applications. Opponents instead pretend the Initial Decision was made without consideration of the arguments set forth in the Reply Brief which responded to and rebutted the arguments in the Applications, except for those new and novel arguments raised for the first time in the Applications.

Georgia to the robust evidence in this docket and found that Petitioner met its burden of proof.

The Opponents argue that Sandersville Railroad failed to meet its burden of proof[29] by misconstruing that burden, dismissing Sandersville Railroad's unrebutted evidence, and relying on evidence with no bearing on the statutory requirements. As acknowledged by Opponents,[30] the Petitioner's burden of proof in a railroad condemnation proceeding before the Commission is preponderance of the evidence: the evidence need only be sufficient to incline the finder of fact toward granting the Petition.[31] Sandersville Railroad's evidence was more than sufficient for the Hearing Officer to be "inclined by the evidence" in its favor.[32]

Sandersville Railroad provided **unrebutted** testimony about the future and prospective customers of the Hanson Spur.[33] Opponents argue that because Sandersville Railroad did not produce "signed binding contracts" with the Spur Users

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[29] *See, e.g.*, Intervenors' Application at 10 ("[T]he Initial Decision relied on some evidence while ignoring contrary evidence in the record and accepted many of the Sandersville Railroad Company's unsubstantiated arguments at face value."); and Respondents' Application at 9 ("[T]he Initial Decision accepts Sandersville's unproven and unsubstantiated assertions as true and does so in the face of the substantial evidence produced by both Respondents and NROCC that the railroad's proposed condemnation benefits only private interests (and thus is not a public use), is not economically viable (and thus cannot be necessary to accommodate Sandersville's business), and is not in the public interest and would harm the public (and thus would not serve a legitimate public purpose).").

[30] Respondents' Application at 10. Respondents seem to allege—incorrectly—that the Spur Users, who are not parties in this docket, had a separate burden of proof as witnesses supporting the Petition. They state that "the [railroad's] customers did nothing to demonstrate by preponderance of the evidence that" the Spur would provide a new channel of trade. *Id.* at 17. But the question before the Hearing Officer was whether the sum of the evidence offered by Petitioner and its supporting witnesses was sufficient to incline the Hearing Officer to grant the Petition. *See* Reply Brief at 12 n.37.

[31] *Hart v. Walker*, 347 Ga. App. 582, 583, 820 S.E.2d 206, 208 (2018) (discussing the preponderance of the evidence standard in a civil lawsuit).

[32] *Hart v. Walker*, 347 Ga. App. 582, 583, 820 S.E.2d 206, 208 (2018).

[33] T. 48:3-9; 100:12–15 (Tarbutton Testimony); Post-Hearing Brief at 21–27.

nor a "survey" of potential customers, their evidence is "not substantial."[34] But this misconstrues the burden of proof; Opponents cite no Georgia precedent that says a railroad must produce contracts or market surveys to show it has customers committed to using a new spur.

Sandersville Railroad also presented **unrebutted** evidence that its business is to provide rail transportation.[35] This evidence was confirmed by Opponents' own expert.[36] Mr. Hunter, who also offered evidence that short line railroads "provide last-mile service" that "connect[s] Georgia businesses to the rail transportation network."[37]

Intervenors further assert that the Hearing Officer "ignored other alternatives that were put forth in the record," namely a transload facility that Mr. Hunter asserted could be built adjacent to the CSXT line.[38] However, the Spur Users all testified the Spur was required to meet their business needs and denied that such a transload facility—the only alternative Opponents presented other than a status quo scenario—would meet their business needs,[39] and Opponents did not rebut that testimony.[40]

Finally, Respondents suggest that Sandersville Railroad had an obligation to rebut the evidence they and Intervenors proffered to meet tests for condemnation that

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[34] Respondents' Application at 5–6.
[35] T. 31:16–20 (Tarbutton Testimony).
[36] "Railroads are in the business of providing transportation." Initial Decision at 4 (citing T. 1216:12–17 (Hunter Testimony)).
[37] T. 1276:11–14; 1279:2–6 (Hunter Testimony).
[38] Intervenors' Application at 23.
[39] Post-Hearing Brief at 45–46.
[40] For example, Intervenors cite Mr. Pittman's testimony regarding the inadequacy of the transload alternative for Pittman Construction to claim that the Hearing Officer accepted the testimony of a company representative "at face value." Intervenors' Application at 24. But the Hearing Officer accepted this testimony based on his determinations of credibility and because Opponents did not produce or elicit in cross-examination any evidence contrary to Mr. Pittman's assertions.

have no support in the law.[41] Based on the Hearing Officer's decision to disregard their desired, but unsupported, tests, Respondents critique his determinations of credibility, weight, and relevancy stating that "[t]he evidence [Sandersville Railroad] produced was both insufficient to overcome the amount of evidence produced by [the Opponents] and the quality of the railroad's evidence . . . was far less convincing than the evidence offered by [the Opponents]."[42] On this basis, Respondents, again spinning Georgia law from whole cloth, state that the Hearing Officer's determinations of credibility, weight, and relevancy constitute "reversible error" and that the Commission should apply the correct [legal] standards."[43] There is no need for this Commission to review whether Sandersville Railroad met a burden of proof that exists only in Respondents' parallel universe.

A. Opponents misrepresent the evidence presented to the Hearing Officer.

The Applications distort the evidence weighed by the Hearing Officer in making his Initial Decision. This Brief clarifies many of these misrepresentations for the Commission, though this list is far from exhaustive.

Opponents mischaracterize the nature of Sandersville Railroad's service on its mainline. Contrary to Opponents' assertions,[44] Sandersville Railroad operates on its mainline between Sandersville and Tennille, GA, as a common carrier in interchange

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[41] Those unsupported tests are discussed in more detail *infra* Section III.
[42] Respondents' Application at 11.
[43] *Id.*
[44] *See, e.g., id.* at 3 ("Sandersville currently provides contract switching services connecting industries to the Norfolk Southern ("NS") rail system . . . .); Intervenors' Application at 27–28 ("Sandersville Railroad Company is not a common carrier . . . .").

with Norfolk Southern Railroad ("NS"). It provides mainline and switching service to customers under "joint" contract rates negotiated with NS.[45] On the Spur, it will operate in a more limited role as a contract switching carrier.[46] It will negotiate contract rates for switching services with the Spur Users and those customers will negotiate rates separately with CSXT for common carrier services.[47]

Intervenors contend that the evidence demonstrates that Sandersville Railroad "arbitrarily chose the Hanson Quarry as the end of its spur over other areas."[48] But there is no support in the record for this assertion. Rather, Intervenors overlook that the proposed route was the only route that met the rail service requirements of Spur Users at the Quarry.[49] A route between the Quarry and the nearby CSXT line was designed to best account for the environmental impacts, elevation requirements, engineering standards, existing public utility structures, and resident feedback, while minimizing the amount of land that would need to be acquired from property owners.[50] Sandersville Railroad worked extensively with an engineering consulting company to meet those constraints, which, as the president of that company testified, "really

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[45] Mr. Tarbutton statement that Sandersville Railroad provides contract switching services on its mainline only partially captured the common carrier services provided by Sandersville Railroad in interchange with NS. *See* T. 30:21–31:2 (Tarbutton Testimony).

[46] Post-Hearing Brief at 12. Additionally, Intervenors unfairly fault Sandersville Railroad for being a private railroad, Intervenors' Application at 4 ("The privately owned Sandersville Railroad Company . . ."), when nearly all railroads operated in Georgia are private companies, *see* Post-Hearing Brief at 5, and private entities may wield the power of condemnation under the Georgia and U.S. Constitutions, Initial Decision at 14.

[47] T. 0166:4–10 (Tarbutton Testimony).

[48] Intervenors' Application at 21.

[49] Post-Hearing Brief at 43.

[50] *Id.* at 11–12, 44–45. When presented with public comments on the proposed route, Sandersville Railroad did its best to accommodate those requests to the extent feasible within the engineering and environmental constraints. *Id.* at 11.

narrowed things."[51] The proposed route was not arbitrarily chosen, and Intervenors' bare assertions that this route was "intentionally select[ed] . . . [to] discriminatorily divide[] a Black community and extract[] its wealth . . ." are inflammatory red herrings without factual basis.[52]

III. The Applications should be denied because Opponents misconstrue the governing law.

The Applications should be denied because they argue that the Hearing Officer should have applied legal standards they created and that have no support in Georgia law (including Commission precedent).[53] Despite Opponents' repeated citations to the statutes and constitutional provisions governing the Hearing Officer's evaluation of the evidence here, they distort the plain meaning of Georgia law to argue the Hearing Officer improperly determined that the Project Parcels are "necessary for the proper accommodation of the business of the company" as required by O.C.G.A § 46-8-120 and will not serve a public purpose. They claim the Hearing Officer should have considered

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[51] *Id.* at 45.

[52] Intervenors' Application at 22. Moreover, Sandersville Railroad has expressed that it "welcomes the opportunity to ensure that the owners of the rights of way required for the Hanson Spur are compensated fully in compliance with the constitutional mandate for just and adequate compensation." Post-Hearing Brief at 28 n.45; *see also* T. 141:14–21 (Tarbutton Testimony).

[53] Opponents also argue that Sandersville Railroad initially asserted that its proposed condemnation would serve a public purpose by providing economic development (which is not a public use in Georgia) rather than providing channels of trade or being the use of land for the functioning of a public utility. Respondents' Application at 16; Intervenors' Application at 11 & n.6. Opponents' argument does not withstand scrutiny. The Petition is clear that Sandersville Railroad sought to construct the Spur to create a connection to the CSXT line at Sparta for East middle Georgia shippers. Reply Brief at 23 n.72. Even though the Petition did not cite O.C.G.A. § 22-1-1, there is no question that a railroad must comply with that section. *Id.* at 23; Initial Decision at 18. Regarding economic development, Sandersville Railroad has been clear that any economic development will be incidental to the Spur's transportation related public purposes. Reply Brief at 25. Moreover, since Sandersville Railroad is a "public utility," see *infra* pp. 26–27, and as such it is excepted from the prohibition on economic development being a public purpose. O.C.G.A. § 22-1-1(4)(B).

several extra-statutory factors, including (1) the Opponents' opinions on Sandersville Railroad's acquisition and negotiations procedures (which followed those of the Georgia Department of Transportation ("GDOT")),[54] (2) the importance of the land to the Respondents,[55] (3) the opinions of the few local opponents of the project,[56] (4) the race, age, and socioeconomic status of landowners,[57] (5) whether the Spur is necessary for the business of each and every customer that will use it,[58] (6) whether the businesses of the railroad's customers are "sufficiently associated with the public interest,"[59] (7) whether the railroad has shown that it can acquire every parcel of land needed for a

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[54] Respondents decry the way Sandersville Railroad sought to acquire the Parcels required for the Spur. Respondents' Application at 17 n.10. But those claims are puzzling. As outlined in the Reply Brief, Opponents (1) proffered no evidence that Sandersville Railroad's policies and procedures employed to contact and negotiate with landowners deviated from those of GDOT or otherwise acted in a way that is not customary for condemnors, (2) ignore the fact that Sandersville Railroad attempted to negotiate with Respondents and it was *Respondents* who chose not to negotiate with Sandersville Railroad, and (3) claim that Sandersville Railroad's offer to purchase a portion of Mr. Smith's parcel was made in bad faith even though that portion was not subject to this (or any) condemnation proceeding. Reply Brief at 23–24.

[55] Intervenors' Application at 4–5.

[56] *See, e.g.,* Respondents' Application at 8.

[57] Intervenors' Application at 4–6; Respondents' Application at 8–9.

[58] Opponents argue this consideration should be read into the statutory term "necessary" but have no applicable caselaw to support their argument as discussed *infra* Part III, Section A. Intervenors' Application at 15–21. They also argue that this consideration should be read into statutory test for the "proper accommodation" of Petitioner's business, because if it is not, the "real-life impact" of the condemnations will not be considered in the test that Petitioner clearly meets. *Id*. at 24–25; 38–39. But it is not the job of the Hearing Officer, nor the Commission, to change statutory standards to obtain a specific outcome when such considerations are not included in the governing statutory language. *See* O.C.G.A. § 46-8-120(a)(4); 22-l-1(9)(A)(ii–iii). Additionally, Respondents make this argument, but incorporated by reference Intervenors' Post-Hearing Brief, which acknowledges that "the authority to condemn only extends to tracks that are 'necessary for the proper accommodation of the business of the [railroad] company . . . and not the business of the other companies.'" Post-Hearing Brief of Respondents ("Respondents' Brief"), *In re: Sandersville Railroad Company's Petition for Approval to Acquire Real Estate by Condemnation*, Docket 45045, Document 217359, at 3 n.6 (Feb. 6, 2024); Post-Hearing Brief of No Railroad in Our Community Coalition ("Intervenors' Brief"), *In re: Sandersville Railroad Company's Petition for Approval to Acquire Real Estate by Condemnation*, Docket 45045, Document 217358, at 21, n.18 (Feb. 6, 2024). Thus, Opponents show that the test the Commission applies in railroad condemnation cases does not consider whether the Spur is necessary for the businesses of the customers of the Spur.

[59] Respondents' Application at 19. The Respondents' proposed test has been explicitly rejected by the Georgia Supreme Court. *Supra* p. 5 note 12.

project,[60] and (8) the salary and hometown of employees of the railroad and its customers.[61] Yet, while Opponents are eager to alter federal and Georgia constitutional law,[62] they offer no valid argument—only mere *ipse dixit*—for why the Commission should consider these factors.[63]

Even as Opponents seek the application of law that does not exist, Intervenors incorrectly assert that the Hearing Officer erred by making an "expansive reading of the statutes," "failed to construe th[ose statutes] in favor of private landowners," and based his conclusions on "selective evidence."[64] Intervenors are correct that eminent

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[60] Respondents' Application at 12. Respondents' argument that Sandersville Railroad must prove it can acquire all parcels required for the Spur is circular: If the Spur serves a public use/public purpose, then it can acquire all the real estate necessary for the Spur by condemnation, if it is unable to do so through gift or negotiated sale. Respondents cite no law in support of their proposition because there is none.

[61] Intervenors' Brief at 34.

[62] Respondents cite *Kelo v. City of New London*, 545 U.S. 369 (2005), for the proposition that Sandersville Railroad must have an "extensive detailed plan." Respondents' Application at 18–19. However, *Kelo* contains no such requirement, and, if it does, Sandersville Railroad has sufficiently demonstrated how the condemned land will be used. Reply Brief at 3 n.7; Initial Decision at 17. Respondents also allege that the condemnation is a private taking done under the "mere pretext" of a public use. Respondents' Application at 6–7, 18–19. However, Sandersville Railroad has shown that the Spur will provide channels of trade which the General Assembly has determined is a public use in law, and that will in fact be accessible for public use. *See* Post-Hearing Brief at 12, 21–26.

[63] Respondents allege that Sandersville Railroad did not comply with the Subpoena to Testify and Duces Tecum issued by the Hearing Officer. Respondents' Application at 4. However, Respondents waived this argument by failing to file a motion to compel for consideration with the Hearing Officer or the Fulton County Superior Court. O.C.G.A. § 46-2-57(a). Those issues are subject to issue preclusion because the Hearing Officer ruled on those discovery disputes at the conclusion of the hearing in this docket, *see* Joint Status Report Pursuant to Hearing Officer's August 14, 2023 Order, *In re: Sandersville Railroad Company; Hancock County, Georgia Acquisition*, Docket 45045, Document 205561 (Aug. 28, 2023) (listing remaining discovery disputes); T. 1413:1–1415:20 (Hearing Officer) (ruling on those disputes), and Respondents failed to appeal or preserve the right to appeal that issue.

Moreover, Respondents try to relitigate and mischaracterize the resolution of those discovery disputes. They do not actually seek production of documents; instead, they seek to highlight that Sandersville Railroad did not create or commission documents which they (in their factually and legally unsubstantiated opinion) believe Sandersville Railroad should have to produce to show that the Spur is "necessary for the proper accommodation of the business" of the railroad and that the Spur (1) will provide channels of trade; and/or (2) be a use of land for the functioning of the railroad. However, these phantom documents are not required by Georgia law or Commission precedent.

[64] Intervenors' Application at 29.

domain statutes "must be strictly construed, and will not be extended beyond the express words or the necessary implications of the statute conferring power."[65] But a "strict construction" of a statute cannot prevent the Hearing Officer (or any other administrative or judicial entity) from following the plain meaning of a statute. As discussed more fully *infra*, Sandersville Railroad's exercise of the right of eminent domain is within the bounds of the General Assembly's statutory scheme for railroad condemnations,[66] and Opponents' accusations to the contrary are baseless.

A. Opponents' arguments regarding the necessity of the Spur for the proper accommodation of Sandersville Railroad's business are contrary to governing law.

Opponents make the unexceptional observation that the Commission must "read a requirement of reasonableness into" O.C.G.A. § 46-8-120(a)(4).[67] Then Opponents advance a novel and strained interpretation of "reasonableness" that has no basis in law. They argue that the Hearing Officer should not have determined whether Petitioner met the statutory requirement of seeking "to build and maintain such additional depots, tracks, and terminal facilities" as are "necessary . . . for the proper accommodation of the business of the company." Instead, Opponents argue the Commission should determine whether the condemnation is "reasonably necessary considering the facts and circumstances of the matter" even though such language or language of similar import appears nowhere in the statutory test or binding

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[65] *Id*. at 18 (citing *Hopkins v. Fla. Cent. & P.R. Co.*, 97 Ga. 107, 25 S.E. 452, 453 (1896)).
[66] *See* O.C.G.A. §§ 46-8-120(a)(4), 22-1-1(9)(A)(ii–iii).
[67] Intervenors' Application at 15–20.

interpretations thereof.[68] The Commission should reject their effort to amend Georgia law.

Opponents cite to *Banks v. Georgia Power Company*,[69] to argue that the Commission should consider factors irrelevant to railroad condemnations. The Opponents fail to divulge to the Commission that *Banks* involved a condemnation under O.C.G.A. § 22-3-20, which applies only to power companies.[70] Sandersville Railroad is a railroad company and is not seeking to condemn any property under O.C.G.A. § 22-3-20.[71] And even if case law interpreting a different code section from those applicable here were relevant, *Banks* states, "[w]ith regard to the determination of whether property is 'necessary,' much discretion is vested in the condemnor to determine the necessity for the taking and to select the particular property to be condemned."[72] Opponents also rely on a discussion of "necessary" in *Banks* that is about the *amount* of land necessary to a project that qualified for condemnation, *not* about whether the project itself qualified for condemnation.[73]

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[68] *Id*. at 16.
[69] 267 Ga. 602, 604, 481 S.E.2d 200, 203 (1997).
[70] *See* O.C.G.A. § 22-3-20 ("Any person operating or constructing or preparing to construct a plant for generating electricity shall have the right to purchase, lease, or condemn rights of way or other easements over the lands of others in order to run power lines, maintain dams, flow backwater, or carry on other activities necessary for constructing and operating such a plant, provided that the person first pays just compensation to the owner of the land to be affected.").
[71] *See* Amended Petition for Approval to Acquire Real Estate by Condemnation, *In re: Sandersville Railroad Company; Hancock County, Georgia Acquisition,* Docket 45045, Document 205194 (July 20, 2023) ("Sandersville Railroad Company, a corporation owning and operating a railroad in the State of Georgia, files this Petition for Approval to Acquire Real Estate by Condemnation under O.C.G.A. §§ 46-8-120 and 46-8-121.") (internal parentheticals omitted).
[72] *Banks v. Georgia Power Co.*, 267 Ga. 602, 604, 481 S.E.2d 200, 203 (1997).
[73] *See Banks v. Georgia Power Co.*, 267 Ga. 602, 604, 481 S.E.2d 200, 203 (1997) ("The [condemnor] has the authority in the first instance to judge of the matter as to how much land should be taken, but if it should appear that the land sought to be condemned is more than is necessary for public purposes, then

Opponents seek to further distort the Initial Decision and the governing law by arguing the Commission's decision in *In re: Great Walton*[74] inserted an amorphous "reasonableness" requirement into the statutory test for railroad condemnations.[75] But, the Commission in *In re: Great Walton* did not, second guess the General Assembly. *In re: Great Walton* did not implement a "reasonable necessity" test (whatever that means); instead, the Commission rejected the railroad's petition in that docket because there were four "reasonable alternative" railroad routes for the runaround the railroad sought to build.[76] Opponents' erroneous argument regarding "reasonable alternatives" to the Spur's route is described in more detail *supra*, section II.

The Opponents here, unlike the objecting parties in *Banks*, are not seeking to limit the amount of land Petitioner seeks to condemn; they are challenging Petitioner's right to condemn any property. Under the statute applicable here, whether Petitioner has the authority to condemn depends on whether the condemnation is "necessary to

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the amount should be reduced by the courts to such amount as is necessary for public purposes. **We do not mean to say that the [condemnor] is limited to the amount that is absolutely necessary, but it is limited to the amount that is reasonably necessary under all the facts and circumstances regarding the particular matter under consideration . . . .**") (emphasis added). The other case Opponents cite—*Hopkins v. Fla. Cent. & P.R. Co.*, 97 Ga. 107, 25 S.E. 452, 453 (1896)—also discusses only the **quantity of land** to be condemned for a project, not whether a project meets the standard for condemnation. The governing standard in that case was different from the test appliable to Sandersville Railroad's Petitioner. There, the question was whether the project was "necessary for the purpose of securing gravel, sand, ballast, and other material necessary for the construction, operation, and security of its line of railroad situated in this state." *Hopkins v. Fla. Cent. & P.R. Co.*, 97 Ga. 107, 25 S.E. 452, 453 (1896).

[74] *In re: The Great Walton Railroad Co., Inc. d/b/a The Hartwell Railroad Co.'s Petition for Approval to Acquire Real Estate by Condemnation*, Docket 41607, No. 173807, 2018 WL 4154017 (Ga. Pub. Serv. Comm'n, Aug. 24, 2018).

[75] Intervenors' Application at 17.

[76] *In re: The Great Walton Railroad Co., Inc. d/b/a The Hartwell Railroad Co.'s Petition for Approval to Acquire Real Estate by Condemnation*, Docket 41607, No. 173807, 2018 WL 4154017, at *3 (Ga. Pub. Serv. Comm'n Aug. 24, 2018).

properly accommodate [Petitioner's] business."[77] Sandersville Railroad has proven that the Spur is "necessary for the proper accommodation" of its business of "[p]roviding services so industries can ship on larger railroad lines, such as NS's rail system."[78] Without the Spur, Sandersville Railroad cannot accommodate its business in East middle Georgia by connecting industries, companies, and farmers with access to CSXT's system.[79]

Opponents argue that the meaning of the term "necessary" must be understood in the context of the General Assembly's post-*Kelo* Landowner's Bill of Rights and Private Property Protection Act (the "Landowner's Bill of Rights"),[80] the history of which Petitioner explored at length in its Post-Hearing Brief.[81] But if the General Assembly intended railroads to only condemn land when it is "reasonably necessary considering the facts and the circumstances,"[82] it would have written or rewritten the applicable statutes that way.[83] After *Kelo* and the passage of the Landowner's Bill of Rights, the General Assembly did not alter O.C.G.A. § 46-8-120 or O.C.G.A. § 46-8-121. Instead, it affirmed that a railroad may exercise its condemnation powers "[t]o build and maintain such additional depots, tracks, and terminal facilities" that are

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[77] O.C.G.A. § 46-8-120 (a)(4) ("Any railroad company owning or operating a railroad in this state, whether such company is chartered under the laws of this state or under the laws of any other state, is authorized and empowered: To build and maintain such additional depots, tracks, and terminal facilities as may be necessary for the proper accommodation of the business of the company.")
[78] Initial Decision at 6; *see also supra* p. 6 note 15.
[79] *Id.* at 13.
[80] Landowner's Bill of Rights And Private Property Protection Act, 2006 Georgia Laws Act 444 (H.B. 1313).
[81] Post-Hearing Brief at 35–36.
[82] Intervenors' Brief at 16.
[83] In Georgia, "[w]hen we consider the meaning of a statute, we must presume that the General Assembly meant what it said and said what it meant." *Deal v. Coleman*, 294 Ga. 170, 172, 751 S.E.2d 337, 341 (2013) (internal quotations omitted).

"necessary for the proper accommodation of the business of the company."[84] Neither the Opponents, nor the Commission, have purview to second guess the plain statutory meaning of the term "necessary."[85]

Opponents further argue that the Hearing Officer and Sandersville Railroad's interpretation of the words "proper" and "accommodation" in O.C.G.A. § 46-8-120(a)(4) is so broad that it would allow any company to "undertake virtually limitless expansion and to take private property without restraint."[86] In their view, the statute must be strictly construed to require a railroad to provide common carriage and only accommodate existing infrastructure and business.[87] Yet, neither Georgia courts nor the Commission have held that those conditions are required for a railroad to condemn property.[88] Instead, the statute provides the proper guard to prevent "limitless expansion"—a condemnation (and the amount of land condemned) must be "necessary" for the proper accommodation of a railroad's business. The statute, contrary to

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[84] O.C.G.A. § 46-8-120(a)(4), 121 ("Authority and power are granted to railroad companies to acquire by purchase or gift and to hold such real estate as may be necessary for all of the purposes mentioned in Code Section 46-8-120."). Intervenors seek to make much of the fact that the term "necessary" is present in both statutes and therefore applies when a railroad company acquires private land through gift or purchase, not just condemnation. Intervenors Application at 17. But they provide no basis for their assertion that the presence of this term requires consideration of factors not relevant to the statutory test for condemnation.

[85] Intervenors' Application at 16–17.

[86] *Id.* at 25.

[87] *Id.* at 26-29. Opponents cite *City of Doraville v. S. Ry. Co.*, 227 Ga. 504, 181 S.E.2d 346 (1971), *Harrold Bros. v. Mayor & Council of Americus*, 142 Ga. 686, 83 S.E.2d 534 (1914), and *Tift v. Atl. Coast Line R.R. Co.*, 161 Ga 432, 131 S.E. 46 (1925) for this proposition.

[88] Reply Brief at 5 n.12, 7 n.19. Intervenors argue that Sandersville Railroad has not satisfied O.C.G.A. § 46-8-120(a)(4) because Mr. Tarbutton testified that the Spur does not accommodate Sandersville Railroad's existing business – obviously referring to the existing traffic between Sandersville and Tenille. *See* Intervenors' Application at 3, 13, 29. However, under Georgia law, a railroad condemnation need not be for a railroads' existing services, as the word "business" has at least two meanings under the statute– its current set of customers and the nature of the services a company offers. *See* Reply Brief at 6–7. Mr. Tarbutton spoke of the former, rather than the latter. *Id.* at 7 n.18.

Opponents' piecemeal analysis, must be read as a whole.[89]

Opponents also assert that the Hearing Officer's interpretation of "proper accommodation" is too broad because "it would render other provisions of the statute meaningless."[90] They contend that O.C.G.A. § 46-8-120(a)(5), which allows a railroad to connect "two or more lines of railroad operated by the same company not more than ten miles apart,"[91] need not exist if the Hearing Officer's interpretation of O.C.G.A. § 46-8-120(a)(4) is correct. But this presumes that Sandersville Railroad's reading of that subsection would in fact give "companies blanket permission to construct any kind of track . . . anywhere it would like."[92] As explained, O.C.G.A. § 46-8-120(a)(4) does not do this; Sandersville Railroad satisfied the test in that subsection by showing the Spur is *necessary* to accommodate its business.[93] In contrast, a railroad seeking to condemn under O.C.G.A. § 46-8-120(a)(5)—which provides an ability to railroads to connect nearby lines—need not prove its condemnation is "necessary for the proper accommodation of the business of the company."[94]

Opponents also assert that Sandersville Railroad's only evidence offered to show that the Spur is necessary for the proper accommodation of its business was

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[89] **Despite recognizing that "necessary" is "modified" by "proper accommodation," Opponents fail to recognize that the converse is true as well. *See* Intervenors' Application at 18.**
[90] *Id*. at 26.
[91] O.C.G.A. § 46-8-120(a)(5).
[92] Intervenors' Application at 26.
[93] For example, Sandersville Railroad, by showing there are no reasonable alternatives to the Spur, Post-Hearing Brief at 43, has shown that the Spur is necessary to properly accommodate its business.
[94] A railroad connecting its lines that are no more than ten miles may not always be both "necessary" and a "proper accommodation," so the General Assembly expressly provided railroads this power, so long as it is in furtherance of a public purpose.

Mr. Tarbutton's testimony and this testimony was insufficient.[95] Even if this was Sandersville Railroad's only evidence (and it was not),[96] Opponents offer no authority supporting the notion that the sworn, unrebutted testimony of Sandersville Railroad's President (i.e., the person who would best know what is necessary to accommodate the company), which was subject to cross-examination and rebuttal, is insufficient. Opponents also cite no authority supporting their suggestion that "expert testimony," "objective perspectives," or "internal studies" must be offered to demonstrate that the Spur is necessary for the proper accommodation of Sandersville Railroad.[97]

Opponents also argue that Petitioner could not prove the Spur is necessary for the proper accommodation of its business without meeting a "feasibility" test conjured by their railroad consultant, Mr. Hunter.[98] Opponents (1) again cite no authority for this purported requirement, and (2) ignore the authority cited by Sandersville Railroad demonstrating the law's explicit and implicit rejection of this requirement.[99] In the Initial Decision, however, the Hearing Officer recognized that a "project that is not possible or is doomed to fail may not be a legitimate public use or necessary to accommodate a business."[100] He then determined that, from that perspective, the Spur

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[95] Respondents' Application at 13; Intervenors' Application at 13.
[96] Respondents argue that Sandersville Railroad "produced nothing but [a] tautology" that the Spur is necessary for the proper accommodation of its rail transportation business. Respondents' Application at 13. But the statement could only be a tautology if the evidence showed it was true. And that is exactly what the Hearing Officer determined.
[97] Respondents' Application at 13.
[98] *Id*. at 13–14.
[99] Post-Hearing Brief at 48–49; Reply Brief at 18.
[100] Initial Decision at 13. While Sandersville Railroad questions whether—even for the purposes identified by the Hearing Officer—the feasibility of the Spur is relevant to this proceeding, the Hearing Officer's finding that the Spur is feasible is well supported by the record.

is feasible.[101]

Opponents, relying on the musings of Mr. Hunter, contend that Sandersville Railroad cannot recoup its capital costs within an unsupported "industry standard" period of 5 to 10 years and the Spur is thus not economically feasible.[102] The Hearing Officer correctly rejected this argument, relying on Sandersville Railroad's ability to cover its variable costs of operations and noting, "the Legislature gave railroads the power of condemnation not for the end result that a railroad company be more profitable as a business, but for the end result that a railroad provide rail services."[103] There is no dispute that Sandersville Railroad could cover its variable costs of operating the Spur.[104] Moreover, Opponents' cross-examination of Mr. Tarbutton did not challenge his testimony that, even if the Spur were not as successful as he expects, Sandersville Railroad could absorb the capital costs of building the Spur and still cover its variable costs of operation.[105]

Respondents also argue that Sandersville Railroad had to demonstrate that the Spur has been licensed by the U.S. Surface Transportation Board before it could prove the Spur is "necessary for the proper accommodation of the business of the company."[106]

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[101] *See id.*
[102] T. 1188:17–1189:24 (Hunter Testimony); *see also* Respondents' Brief at 24–25.
[103] Initial Decision at 14.
[104] Opponents state that they "proffered considerable, substantive evidence" that the Spur is an "unviable venture" that "cannot be an accommodation of Sandersville's business." Respondents' Application at 14. Opponents' argument here mischaracterizes the record. As explained in Sandersville Railroad's Briefs, the analysis of Respondents' witness Mr. Hunter, and the unrefuted testimony of the Spur Users like Mr. Dickson, demonstrated the Spur's feasibility. Post-Hearing Brief at 49–51; Reply Brief at 18–19. **Even Mr. Hunter, the Respondents' purported expert, stated that Sandersville Railroad will manage to cover the variable costs required to operate the Spur.** T. 1349:9–18 (Hunter Testimony).
[105] *See* Post-Hearing Brief at 49 n.110.
[106] Respondents' Application at 12.

In its briefs, Sandersville Railroad showed why such proof of licensing is not required by Georgia law, and also why it believed such licensing was not required by U.S. law.[107] The Hearing Officer found proof of STB licensing is not a requirement for Commission approval of Sandersville Railroad's Petition.[108] Nonetheless, the Respondents again attempt to substitute their legal judgment for that of the Hearing Officer and their law for that of the General Assembly in arguing it is a relevant factor in this docket.

Respondents also contend that Petitioner "did not address whether it will need to obtain approval from the federal STB before it can operate the Hanson Spur" and "offered no evidence that it has sought the STB's approval or clarified that it is exempt."[109] In so arguing, Respondents ignore Sandersville Railroad's argument in its Reply Brief that dispelled these concerns.[110] And Respondents ignore that their assertions have no basis in law.

Even if STB approval were required, the STB's test for construction authorization is not whether the construction is necessary for the railroad's business but whether it is consistent with the public interest.[111] As the Hearing Officer correctly recognized, this test differs from the public purpose test contemplated under

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[107] Post-Hearing Brief at 5 n.8; Reply Brief at 19–22.
[108] Initial Decision at 13.
[109] Respondents' Application at 12. Respondents claim the only support Petitioner offered, and thereby that the Hearing Officer could have considered, was the testimony of Mr. Tarbutton, who answered "I don't know" to whether STB licensing was required for the Spur. T. 93:15–20 (Tarbutton Testimony). However, Mr. Tarbutton is not a lawyer, T. 66:22–23 (Tarbutton Testimony), and the determination of whether a particular track requires STB construction licensing is a legal question, Reply Brief at 22 n.69.
[110] *Id.* at 19–22.
[111] 49 U.S.C. § 10901(c); *see also* Reply Brief at 20 n.62.

O.C.G.A § 46-8-120 and is not relevant to the Commission's decision.[112]

Respondents also failed to demonstrate that their STB concerns are plausible. Respondents argued that the Spur, instead of being a "spur" excepted from STB authority,[113] is a new "railroad line" subject to that authority because the Spur will extend Sandersville Railroad's lines "into new territory not served by the carrier."[114] As Petitioner explained and as is obvious from the record, the Spur will extend neither Sandersville Railroad's lines, which are nonexistent near Sparta,[115] nor CSXT's mainline, which has existed for over 150 years,[116] into new territory. Similarly, Respondents' purported requirement that CSXT must build the Spur for it to be excepted from STB licensing has no legal basis.[117] Even though it is not relevant to the Commission's analysis here, Petitioner has no reason to doubt that the Spur is a "spur track" excepted from the STB's construction licensing requirements.

B. Opponents' arguments regarding "public purpose" are contrary to governing law.

Respondents contend that the Hearing Officer was presented with "novel,"

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[112] Initial Decision at 13 (citing Reply Brief at 19). Respondents cite to *Gilmore v. Sandersville R.R. Co.*, 149 F.Supp. 725 (M.D. Ga. 1955) to argue that "the probability of federal involvement should be something Sandersville proactively addresses with this Commission." Respondents' Application at 13 n.8. However, in *Gilmore* "[t]he [Georgia Public Service] Commission held a hearing [before the proceedings in federal court] and on December 20, 1954, granted the [condemnation] permission requested." *Gilmore*, 149 F.Supp. at 727. This Commission should apply its past practice and adopt the Hearing Officer's conclusion that "the potential of a future STB proceeding is not determinant here." Initial Decision at 13.

[113] 49 U.S.C. § 10906 ("The [STB] does not have authority under this chapter over construction, acquisition, operation, abandonment, or discontinuance of *spur*, industrial, team, switching, or side tracks.") (emphasis added); *see also* Post-Hearing Brief at 5 n.8.

[114] Respondents' Brief at 46 (quoting *United Transp. Union-Ill. Leg. Bd. v. STB*, 183 F.3d 606, 613 (7th Cir. 1999)).

[115] *See, e.g.,* Reply Brief at 21 & n.67

[116] *Id.* at 21.

[117] *Id.* at 21–22.

"complex and unique" issues of interpretation of the Takings Clauses of the U.S. and Georgia Constitutions.[118] This contention mischaracterizes the record and the role of the Commission.[119] The Hearing Officer's only task—other than to determine whether the Spur is necessary for the proper accommodation of Sandersville Railroad's business—was to determine whether the Spur would serve a "legitimate public purpose."[120] He did so by determining that the Spur would serve two "public uses" defined by the General Assembly.

Neither the Hearing Officer nor this Commission is required or permitted to second guess the General Assembly's interpretation of governing Constitutional law.[121] That means the legal issues here only involve application of facts to the relevant law. Nothing in Opponents' fulminations over the Hearing Officer's correct legal interpretations justify review of the Initial Decision.

The Hearing Officer found that the Spur will be a "public use" because it will be a "use of land for the functioning . . . of a public utility."[122] Opponents seek to assail the Initial Decision for determining that Sandersville Railroad is a "public utility" under O.C.G.A. § 22-1-1(10),[123] but they err by mischaracterizing the statute. The General

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[118] Respondents' Application at 2.
[119] The only "new" constitutional issues the Hearing Officer faced in this docket were the sometimes asserted and sometimes preserved constitutional challenges that the Opponents have not presented to the Commission for consideration in their Applications and, to the extent they make an as-applied constitutional challenge of any statute or regulation, have therefore waived before the Commission and further tribunals. *Cobb Hosp., Inc. v. Dep't. of Cmty. Health*, 35 Ga. App. 358, 364, 850 S.E.2d 831, 836-837 (2020).
[120] Ga. Comp. R. & Regs. 515-16-16-.02.
[121] Reply Brief at 2 n.2.
[122] O.C.G.A. § 22-1-1(9)(A)(ii).
[123] Respondents' Application at 17 n.9; Intervenors' Application at 29–33.

Assembly determined without qualification[124] that the term "'public utility' . . . include[s] common carriers and railroads."[125] Thus, all railroads—regardless of whether they are common carriers—are public utilities for the purposes of Georgia's condemnation statutes.[126] To overcome this hurdle, Opponents try to read a nonexistent ambiguity into the statute.[127] That effort also fails.[128] The statute—enacted in the wake of Respondents' oft-cited *Kelo decision*—is clear: Petitioner is a railroad and therefore a public utility. Its Spur will be "the use of land for the . . . functioning of [a] public utilit[y],"[129] and Sandersville Railroad therefore demonstrated that the Spur will serve a public use as defined in O.C.G.A. § 22-1-1(9)(A)(ii).

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[124] As the Georgia courts often emphasize, "[w]hen we consider the meaning of a statute, we must presume that the General Assembly meant what it said and said what it meant." *Supra* p. 19 note 83. The Hearing Officer, therefore, was correct to note that the General Assembly did not include the qualifying language "which directly or indirectly serve the public" found in the first sentence of § 22-1-1(10) into the third sentence. Initial Decision at 14. As such, Intervenors' argument that Sandersville Railroad must provide certain types of goods, or be a common carrier, on the Spur has no basis in Georgia law. Intervenors' Application at 30–33. Contrary to Intervenors assertion, the definition of "public utility" in Black's Law Dictionary, which is not the definition the General Assembly enacted, does not change this fact. *Id.* at 30.

[124] O.C.G.A. § 22-1-1(9)(A)(ii).

[125] O.C.G.A § 22-1-1(10).

[126] If Opponents are correct in their assertions that Sandersville Railroad is not a "public utility," then Sandersville Railroad need not prove that its condemnation serves a "public use" and need only satisfy the "necessary for the proper accommodation of the business of the company" test. Reply Brief at 14 n.48.

[127] Opponents reading of O.C.G.A. § 22-1-1(10) violates a cardinal rule of statutory interpretation in Georgia: Courts and the Commission "'should give a sensible and intelligent effect to every part of a statute and not render any language superfluous.'" *E.g.*, *GeorgiaCarry.Org, Inc. v. Atlanta Botanical Garden, Inc.*, 306 Ga. 829, 841, 834 S.E.2d 27, 37 (quoting *Berryhill v. Ga. community Support and Solutions*, 281 Ga. 437, 441, 638 S.E.2d 278, 281 (2006)).

Respondents also assert that if Sandersville Railroad's interpretation of "public utility" is correct, then the Commission's *Great Walton* decision was incorrect. Respondents' Application at 17 n.9. But as Sandersville Railroad identified, the railroad in *Great Walton* alleged a different public purpose than the public purposes asserted in the Petition. Reply Brief at 16 n.51; *see also* Initial Decision at 15. Therefore, Respondents' argument, as the Initial Decision noted, is hollow and ineffective.

[128] Reply Brief at 15–17.

[129] O.C.G.A. § 22-1-1(9)(A)(ii).

The Spur will also serve a public use because it will provide channels of trade.[130] Opponents seek review by mischaracterizing what it means to "provide" channels of trade under O.C.G.A. § 22-1-1(9)(A)(iii). Intervenors contend that the Initial Decision was incorrect in concluding that a channel of trade need not "be new, exclusive, or novel to serve a 'public use.'" They say the Spur fails their supposed test because the Spur Users "can already ship their goods . . . to reach CSXT by truck."[131] As identified in the Reply Brief, the statute contains no "novelty" requirement in its text, and the history of the inception of railroads in Georgia confirms the Hearing Officer's reading is what the General Assembly intended.[132]

Intervenors' misreading of the term "channels of trade" also overlooks that Sandersville Railroad proposes to provide a transportation service to the Spur Users that trucks cannot provide economically and that neither CSXT nor its predecessors have ever offered.[133] The Spur will provide a channel of trade by creating new, more economic means of trade between shippers and receivers—that allows East middle Georgia shippers and receivers to connect to CSXT's network and expand their trade into previously inaccessible CSXT-served Markets.[134]

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[130] O.C.G.A. § 22-1-1(9)(A)(iii); Post-Hearing Brief at 39–40.
[131] Intervenors' Application at 35–36.
[132] Reply Brief at 12–14.
[133] Intervenors ignore the benefits of short line railroads (and rail transportation generally) that GDOT identified in the Georgia State Rail Plan and Mr. Hunter confirmed in his testimony. *See generally* T. 1274:12–1295:11 (Hunter Testimony) (discussing relevant provisions of the Georgia State Rail Plan).
[134] Post-Hearing Brief at 39. Respondents argue that the Initial Decision could not have found by a preponderance of the evidence that the Spur Users will have receiving markets for their goods. Respondents' Application at 17. As discussed *supra* p. 10, Opponents failed to rebut the Spur Users' testimony regarding those markets and instead attack the Hearing Officer's determinations of credibility and weight assigned to that testimony.

Opponents also assert that the Hearing Officer's "interpretation of the term 'channels of trade' was so broad that it would permit any condemnation that permitted goods to travel from one place to another,[135] regardless of whether the beneficiary of the condemnation was a private entity."[136] This argument also fails. A railroad seeking to condemn for the purpose of establishing a channel of trade must still show that it is necessary for the proper accommodation of the railroad's business. And Opponents conflate the terms travel and trade. A channel of trade must permit trade as well as transport. So, to meet the statutory test, Sandersville Railroad was required to and did show that the Hanson Spur will provide a channel of *trade* that will enable the Spur Users—and any other future user of the Spur—to trade with the CSXT-served Markets and customers in those markets.

In short, Opponents ignore (1) that a railroad must prove both that the condemnation will serve a public purpose as defined by the General Assembly *and* that it is exercising one of its statutory powers and (2) that the Hearing Officer found Petitioner met those tests.[137] Opponents' desire to write a new statute is baseless and warrants no further review.

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[135] When the Georgia Supreme Court interpreted another eminent domain statute, it determined that if "the legislative purpose [had] been to limit the right of appropriation [under O.C.G.A. § 46-8-100] . . . it would not have employed the general terms appearing in the statute . . . ." *See Hopkins v. Fla. Cent. & P.R. Co.*, 97 Ga. 107, 25 S.E. 452, 453 (1896). That logic applies to O.C.G.A. § 22-1-1(9)(A)(iii), which does not limit the provision of channels of trade to those that are novel, new, or exclusive. Reply Brief at 12–13.

[136] Respondents' Application at 16. Respondents bemoan the fact that Sandersville Railroad is a private railroad seeking to exercise its condemnation powers, but it is allowed to do so under the U.S. and Georgia Constitutions. *Supra* p. 12 note 46. Respondents should address their grievances with the General Assembly and not the Commission.

[137] O.C.G.A. § 46-8-120, 121.

IV. The Commission should deny Opponents' motion for a stay of the Initial Decision.

Opponents' contingent motion for a stay of the Commissioner's decision affirming the Hearing Officer's decision until full judicial review of the Commission decision is concluded (the "Motion") should be denied.[138] "Judicial review of an administrative ruling by [this Commission] is governed by the [APA]."[139] Under the APA, "[t]he filing of the petition for judicial review in superior court does not itself stay enforcement of the agency decision. Except as otherwise provided in . . . subsection [19(d) of the APA], the agency may grant, or the reviewing court may order, a stay upon appropriate terms for good cause shown."[140] And "in analyzing and interpreting the procedural requirements imposed by the APA, [Georgia courts and the Commission] look to 'cases involving appellate rather than trial procedure [for] applicable authority.'"[141]

If the Commission affirms the Initial Decision, there will be no "good cause" for a stay. The Commission would only affirm a decision if it agreed with the Hearing Officer's decision that the Spur will serve a public purpose and is necessary for the proper accommodation of the business of the railroad. This Commission rarely grants stays,[142] and Opponents do not cite a single case where the Commission granted a stay

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[138] Respondents' Application at 22–26.
[139] *Atmos Energy Corp. v. Georgia Pub. Serv. Comm'n*, 290 Ga. App. 243, 245, 659 S.E.2d 385, 388 (2008), *aff'd*, 285 Ga. 133, 674 S.E.2d 312 (2009)
[140] O.C.G.A. § 50-13-19(d)(1).
[141] *Atmos Energy Corp. v. Georgia Pub. Serv. Comm'n*, 290 Ga. App. 243, 246, 659 S.E.2d 385, 388 (2008), *aff'd*, 285 Ga. 133, 674 S.E.2d 312 (2009)
[142] *See, e.g., In Re: Compsouths Petition for A Ruling Regarding the Need for Pub. Rev. & Approval by the Comm'n of the Telecommunications Serv. Agreements Between Bellsouth Telecommunications, Inc. &*

of a final Commission Order. Opponents' Motion must fail where, as here as in their case for injunctive relief, (1) Opponents cannot demonstrate they are likely to succeed on the merits, (2) Opponents will not suffer irreparable harm absent a stay or injunction, (3) the stay would cause irreparable harm to Sandersville Railroad, and (4) the public interest favors a denial of the stay.[143]

Opponents are unlikely to succeed on the merits because the Spur meets the requirements for railroad condemnations in Georgia.[144] Additionally, Opponents fail to demonstrate they will suffer irreparable harm because Georgia law provides for a remedy if the property is not put to public use. According to O.C.G.A. § 22-1-2(c)(1), "if property acquired through the power of eminent domain from an owner fails to be put to a public use within five years, the former property owner may apply to the condemnor or its successor or assign for reconveyance or quitclaim of the property to the former property owner or for additional compensation for such property."

In contrast, Sandersville Railroad will suffer irreparable harm from a stay. If the Hearing Officer and the Commission determine that Sandersville Railroad has met the test for condemnation, Sandersville Railroad is empowered by the General Assembly to begin eminent domain proceedings in the Hancock County Superior Court.

Dialogica Commc'ns, Inc., Ci2, & ABC Telecom, No. 18948-U, 2004 WL 6395892, at *3 (Nov. 18, 2004) (denying motion to stay and noting that such a motion is "an extraordinary form of relief").

[143] In Georgia more generally: "When a court [or the Commission] considers an application for a stay or injunction pending appeal, it must weigh all of the pertinent equities, including the likelihood that the appellant will prevail on the merits of his appeal, the extent to which the applicant will suffer irreparable harm in the absence of a stay or injunction, the extent to which a stay or injunction would harm the other parties with an interest in the proceedings, and the public interest." *Green Bull Georgia Partners, LLC v. Reg.*, 301 Ga. 472, 473, 801 S.E.2d 843, 845–46 (2017).

[144] *Supra* p. 6; *see also* Post-Hearing Brief at 32–41; Reply Brief at 4–17.

Any delay in moving forward with the proceedings would be a usurpation of the General Assembly's intent and would harm the Sandersville Railroad in its ability to complete the project quickly and affordably. Sandersville Railroad could also lose its committed customers, who are relying on it to begin building the Hanson Spur as soon as possible.[145] Opponents have not made a showing that they have the means to compensate for such losses.

The public interest would be most benefitted by denying a stay of the Commission's decision. Sandersville Railroad has the power to condemn land because the General Assembly has determined that the establishment of channels of trade and public utilities serves the public interest.[146] And these channels of trade and access to rail line would benefit the industries, businesses, and farmers of East middle Georgia that do not have access to the CSXT rail network.[147] Any indefinite delay in effecting the decision of the Commission would prolong economic inefficiencies in East middle Georgia, and indefinitely postpone the public benefits of the development of the Spur.[148]

V. Conclusion

The Sandersville Railroad respectfully requests that the Commission affirm and adopt in its entirety the Initial Decision of the Hearing Officer and deny the Requests for Oral Arguments and the Motion for Stay of the Commission's forthcoming order.

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[145] *See*, *e.g.*, T. 0325:8–0327:3 (Dickson Testimony) (describing Heidelberg Materials' reliance on the Spur being built as quickly as possible).
[146] *See* Post-Hearing Brief at 32–36.
[147] T. 1467:8–9 (Veal Testimony).
[148] Post-Hearing Brief at 9–10.

This 22nd day of May 2024.



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BEFORE THE

GEORGIA PUBLIC SERVICE COMMISSION

In re: Sandersville Railroad Company; Hancock County, Georgia Acquisition	**Docket No.: 45045**

CERTIFICATE OF SERVICE

I certify that I have this day served a copy of the foregoing **Brief of Sandersville Railroad Company in Opposition to Applications for Full Commission Review, Requests for Oral Argument, and Motion for stay of Order** upon the following persons by causing electronic copies of the same to be transmitted to each party that has supplied a valid email address and upon all other parties via first class mail with adequate postage affixed thereon and deposited in the United States Mail addressed as follows:

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