

**BEFORE THE
GEORGIA PUBLIC SERVICE COMMISSION**

**In Re: Sandersville Railroad Company's
Petition for Approval to Acquire Real
Estate by Condemnation**

Docket No.: 45045

**INTERVENOR'S REPLY BRIEF IN SUPPORT OF ITS APPLICATION FOR REVIEW
OF INITIAL DECISION AND REQUEST FOR ORAL ARGUMENT**

on behalf of No Railroad in Our Community Coalition ("NROCC")

June 20, 2024

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COMES NOW Intervenor No Railroad in Our Community Coalition (“NROCC”) and respectfully submits this Reply Brief in Support of its Application for Review of Initial Decision and Request for Oral Argument. NROCC hereby adopts the June 20, 2024 Reply Brief of Respondents to Sandersville Railroad Company’s Opposition to Applications for Full Commission Review, Requests for Oral Argument, and Motion for Stay of Order of Property Owner Respondents (“Respondents”) *in toto* and realleges all arguments established therein as if the same were set forth herein. In addition, NROCC respectfully shows the following.

On April 30, 2024, Respondents filed an Application for Full Commission Review of Hearing Officer’s Initial Decision, Request for Oral Argument, and Motion for Stay of Order of Property Owner Respondents. In compliance with O.C.G.A. § 50-13-17(a), on May 1, 2024, NROCC filed an Application for Review of the Initial Decision by the Hearing Officer and Request for Oral Argument. On May 22, 2024, Sandersville Railroad Company filed their brief in opposition of both applications for full commission review. In their opposition brief, Sandersville Railroad Company blurs the standard of review and the scope of the Commission’s review. NROCC seeks to reiterate the proper standard of review and clarify that the presentation of a claim to preserve said claim is not a new argument.

First, the Commission is not bound by the initial decision of the Hearing Officer and can reverse its recommended action without deference to the initial findings. O.C.G.A. § 50-13-17(a). It is not a personal attack on the qualifications of the Hearing Officer to request review of his initial decision. Instead, it is an appeal to the Commission to review the decision, and “on review from the initial decision of the representative, the agency shall have all the powers it would have in making the initial decision and, if deemed advisable, the agency may take additional testimony or remand the case to the hearing representative for such purpose.” O.C.G.A. § 50-13-17(a).

To clarify, NROCC is not required to present evidence of purposeful discrimination by Sandersville Railroad at this time, partially because NROCC is not raising claims under 42 U.S.C. § 1982 at this time. Instead, in compliance with Georgia law, NROCC intends to preserve any future claims and acknowledges that before the Commission is not the appropriate venue, nor does the Commission have jurisdiction for such claims. *See* O.C.G.A. § 50-13-19; O.C.G.A. § 46-2-20; *see also Cobb Hosp., Inc. v. Dep't of Cmty. Health*, 307 Ga. 578 (2019). Although the Commission does not have jurisdiction to hear and decide federal statutory claims, race is not a new argument in these proceedings. As noted in the Hearing Officer's Initial Decision, the impacts of the spur and its intersection with race have been raised by NROCC throughout these proceedings.¹ NROCC has continuously highlighted that the privately owned Sandersville Railroad Company intends to condemn and take land in a predominantly Black county. And, while not raising Section 1982 claims at this time, NROCC is requesting the Commission to review the Hearing Officer's decision because it is substantively incorrect for several other reasons. Specifically, NROCC asserts that the railroad company did not meet its burden of proof, that the Hearing Officer shifted the required burden of proof, that the Hanson Spur is not a necessary accommodation of the railroad company's business, and that the spur is not a permissible public use under Georgia's eminent domain statutes.²

For these reasons, the Commission should reverse the Hearing Officer's Initial Decision and find that the Sandersville Railroad Company has demonstrated neither the authority nor the

¹ *See Initial Decision of Hearing Officer*, Doc. No. 218204; *Post Hearing Brief of No Railroad in Our Community Coalition*, Doc. No. 217358; *Verified Application for Leave to Intervene of the No Railroad in Our Community Coalition*, Doc. No. 204880.

² *See Application for Review of Initial Decision and Request for Oral Argument of No Railroad in Our Community Coalition*, Doc. No. 218538.

cover of “public use” to exercise the extraordinary power of eminent domain to take private land in this historic Black community for profit.

This 20th day of June, 2024.

Respectfully submitted,

/s/ **Jamie B. Rush**

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CERTIFICATE OF SERVICE

I hereby certify that I have served a true and correct copy of the foregoing this *Reply Brief in Support of its Application for Review of Initial Decision and Request for Oral Argument on behalf of No Railroad in Our Community Coalition* via electronic mail and United States Mail with sufficient postage thereon to the following, pursuant to Ga. Comp. R. & Regs. 515-16-16-.02 and 515-2-1-.04(4)(b), (3), addressed as follows:

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This 20th day of June, 2024.

Respectfully submitted,

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