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FEB 06 2024

EXECUTIVE SECRETARY
G.P.S.C.

BEFORE THE
GEORGIA PUBLIC SERVICE COMMISSION

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

Docket No.: 45045

DOCKET #
DOCUMENT # 217358

POST-HEARING BRIEF

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

February 6, 2024

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The No Railroad in Our Community Coalition ("NROCC") now files with the Georgia Public Service Commission (the "Commission") this Post-Hearing Brief and respectfully requests that the Commission deny Sandersville Railroad Company's Amended Petition for Approval to Acquire Real Estate by Condemnation (the "Amended Petition"). NROCC hereby adopts the February 6, 2024, post-hearing brief of Property Owner Respondents ("Respondents") *in toto* and realleges all arguments established therein as if the same were set forth herein. In addition, NROCC submits the following in opposition to the Sandersville Railroad Company's Amended Petition and respectfully requests that the Commission deny the Amended Petition.

I. BACKGROUND

This dispute was initiated by a private railroad company seeking to benefit from a statute that should only be used to justify the taking of private property of others in extraordinary circumstances. In a nutshell, the Sandersville Railroad Company asks the Commission to trust its business acumen and to grant it the power to take land for private gain without scrutiny and without the input of the community members who will be most affected, most of whom are Black. However, in considering whether the Sandersville Railroad Company has met its legal burden, the Commission should consider the full context and landscape of this case, including the history of Black land loss in this country, particularly through eminent domain; the legal precedents affirming the importance of private property rights in Hancock County and in the State of Georgia; and the property and other interests of residents who will be affected by the proposed Spur, both directly and indirectly. For the reasons below, the NROCC respectfully requests that the Commission find that the railroad has not met its burden of proving that the industrial Spur (the "Hanson Spur") it seeks to build on Respondents' land (and to the detriment of Intervenors) serves a permissible public use.

A. Hancock County, Georgia, is a predominantly Black county with a vibrant community and a rich history anchored in the significance of Black landownership.

In 1887, the Supreme Court of Georgia affirmed that Georgia protects private property rights when it held that David Dixon, a white landowner from Hancock County, could pass his extensive plantation property on to his Black daughter, Amanda Dixon, for support in her lifetime and for the lifetime of her successors. *Smith v. DuBose*, 78 Ga. 413, 428, 441 (1887). Nearly a century and a half later, this proceeding before the Commission again asks whether private property owners have the right to maintain ownership of their hard-earned property and pass it on to their children. And yet again, the private property owners who stand to lose their land and the ability to create and maintain generational wealth are located in this predominantly Black county. This is no accident.

According to the United States Census, Hancock County, Georgia, has an estimated population of 8,387 people, 67.5% of whom are Black or African American. Resp't Ex. 4. Community members describe the area surrounding the proposed Spur as a community with a mostly older and retired population. R. Clayton Test., Tr. 587. Indeed, 25.4% of the population is 65 years and older. Resp't Ex. 4. Land and homeownership are important to Hancock County residents. While the median household income is $33,946, the homeownership rate is 74.4%. Resp't Ex. 4. Families in Hancock County have wealth tied up in assets—they have land, rich in history, ancestral ties, and community.

Many of the Respondents and Intervenors, including the Smith family, have long histories in Hancock County dating from Emancipation, when their newly freed ancestors were able to purchase their land at significant cost and despite great odds. The Smith family's ancestor, James Blaine Smith, was a Black farmer and descendant of enslaved people who traded his harvest to buy almost 600 acres of land in the 1920s. D.M. Smith Test., Tr. 553. James Blaine Smith founded

Smith Produce and sold cotton, peas, butter beans, corn, and other crops. D.M. Smith Test., Tr. 553. His grandchildren remember him as a generous man who allowed the community to benefit from his land. D.M. Smith Test., Tr. 543. There is currently a tenant house on the Smith property, a reminder of the five or six houses that were previously on the property for Black farmworkers who worked on the farm. W.B. Smith Test., Tr. 762. Community members could purchase fresh produce that was grown on Smith land. D.M. Smith Test., Tr. 553.

The Smith family property is illustrative of Black landownership in communities throughout rural Georgia. *See* W.B. Smith Test., Tr. 762. The descendants of James Blaine Smith have kept the land in their family with hopes of passing it down to future generations. D.M. Smith Test., Tr. 559. Almost 100 years after James Blaine Smith purchased the land, his family continues to maintain and enjoy the land, celebrating holidays, hiking, fishing, farming, and generally benefiting from their ancestor's gift. W.B. Smith Test., Tr. 806. The Smith family's concerns about land loss and increased industry, which are shared by the community at large, are well founded. Today, Black farmers own less than five million acres compared to 16 million acres in 1920. *See* Bailey Test., Tr. 65. This history and the community's concerns about the threats to preserving their ancestral lands fostered the creation of NROCC. J. Smith Test., Tr. at 565.

B. NROCC is an unincorporated association with a diverse membership whose mission is to stop the Hanson Spur and to prevent new environmental burdens in Hancock County.

NROCC is an unincorporated association that was created by the community in response to the Sandersville Railroad Company's threats to take private land from community members for the proposed Hanson Spur. *See* J. Smith Test., Tr. at 565. NROCC founders Janet and David "Mark" Smith received a letter from Sandersville Railroad Company in April 2022 that indicated the company's intent to use some of their property for the Hanson Spur. *Id.* at 574. Currently, Janet

and Mark Smith's property is no longer on the proposed route, but the Smiths continue to lead NROCC on behalf of their community. *Id*. at 575.

Since its founding in July 2022, NROCC and its members have galvanized and mobilized the community by organizing monthly rallies to inform the community about the proposed railroad, recruiting new members who also oppose the rail Spur, spearheading media campaigns, attending Hancock County Commission meetings, and creating and distributing NROCC-branded yard signs. *See id.* at 566. NROCC also works to prevent new environmental burdens from plaguing the community in addition to the noise, dust, debris, and vibrations from the mining operations at the Hanson Quarry that already burden the community. *Id*.

NROCC members live near or along the proposed railroad route.[1] Many NROCC members have lived in the community for decades.[2] For example, Bennie and Eloise Clayton are NROCC members who have lived on Clayton Boulevard, the street named after them, since 1970.[3] NROCC's membership extends beyond the members who testified in the current proceedings and includes all community members who support its mission to stop the Hanson Spur.

C. Procedural History.

On March 8, 2023, Sandersville Railroad Company filed the Petition that is the subject of this proceeding, requesting, among other things, that the Commission approve the acquisition by condemnation of a tract of land owned by Robert Donald Garrett Sr. and his wife, Sarah Veazey Garrett ("the Garretts") to build the Hanson Spur between a CSX rail line near Sparta, Georgia,

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[1] *See Verified Application for Leave to Intervene of the No Railroad in Our Community Coalition*, Doc. No. 204880.
[2] *Id.*
[3] *Id.*

and the Hanson Quarry, acquired by North American gravel supplier Heidelberg Materials.[4] In its Petition, Sandersville Railroad Company stated the alleged public purpose of the Spur was to provide a "service much more efficiently than can be provided by trucks" and have a positive economic impact in Hancock County. *Id.* The Petition did not cite any other alleged public uses or purposes for the Spur. *Id.*

On April 5, 2023, the Garretts timely filed a verified application for leave to intervene as owners of the property subject to this proceeding.[5]

Marvin Smith, Jr., Patricia Smith, William Smith, and Helen Smith timely filed verified applications for leave to intervene as owners of parcels that were targeted for future acquisition by Sandersville Railroad Company for the Hanson Spur project on May 2, 2023.[6]

On June 20, 2023, Verne Kennedy Hollis, Thomas Ahmad Lee, Leo John Briggs, Georgia Ann Briggs, Sally G. Wells, Joel Bradford Reed, Kathy Lynn Reed, Herus Ellison Garrett, and Donna N. Garrett timely filed verified applications for leave to intervene as owners of parcels that were targeted for future acquisition by Sandersville Railroad Company for the Hanson Spur project.[7]

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[4] *See Sandersville Railroad Petion for Approval to Acquire Real Estate by Condemnation*, Doc. No. 193527.

[5] *Verified Application for Leave to Intervene of Robert Donald Garrett Sr. and Sarah Veazey Garrett*, Doc. No. 193944.

[6] *See Verified Application for Leave to Intervene of William Smith and Helen Smith*, Doc. No. 194317; *see also Verified Application for Leave to Intervene of Marvin Smith, Jr. and Patricia Smith*, Doc. No. 194318.

[7] *Verified Application for Leave to Intervene of Donna N. Garrett,* Doc. No. 204858; *Verified Application for Leave to Intervene of Herus Ellison Garrett,* Doc. No. 204859; V*erified Application for Leave to Intervene of Joel Bradford Reed and Kathy Lynn Reed*, Doc. No. 204860; *Verified Application for Leave to Intervene of Thomas Ahmad Lee*, Doc. No. 204863; *Verified Application for Leave to Intervene of Sally G. Wells*, Doc. No. 204861; *Verified Application for Leave to Intervene of Leo John Briggs and Georgia Ann Briggs*, Doc. No. 204862; *Verified Application for Leave to Intervene of Verne Kennedy Hollis*, Doc. No. 204864.

On May 18, 2023, the assigned Hearing Officer issued a Procedural and Scheduling Order and Notice of Hearing, setting the hearing before a Hearing Officer to make findings of fact and conclusions of law related to the Sandersville Railroad Company's Petition.

NROCC timely filed a Verified Application for Leave to Intervene on June 21, 2023. *See* Doc. No. 204880. Although NROCC broadly shares the Respondents' interests in preventing the construction of the Hanson Spur, NROCC members intervened in the proceedings because they have distinct legal interests.[8] *Id*.

On July 20, 2023, the Sandersville Railroad Company filed an Amended Petition, which sought to acquire by condemnation additional parcels of land owned by the Respondents and reiterated that the alleged public purposes of the proposed Spur were the economic impacts it would have in Hancock County and that it would move goods more efficiently than by trucks.[9] The Amended Petition did not allege or reference any other public use or public purpose. *Id.*

The Sandersville Railroad Company, Respondents, and NROCC pre-filed testimony, rebuttal testimony, and objections. Overruling all objections, the Hearing Officer admitted all pre-filed testimony and presided over an evidentiary hearing from November 27–30, 2023.

On the final day of the hearing, the parties were ordered to submit post-hearing briefing.

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[8] Although NROCC members do not own property that is subject to condemnation through Sandersville Railroad Company's Petition, NROCC's membership includes landowners with smaller properties who would be significantly impacted by the Hanson Spur, which will come close to their homes and cause increased noise, vibrations, and pollution, among other disturbances. *See id.*

[9] *See Amended Petition for Approval to Acquire Real Estate by Condemnation*, Doc. No. 205194.

D. Facts Established at the Hearing.

From November 27–30, 2023, fact and expert witnesses for the Sandersville Railroad Company, the Respondents, and NROCC adopted their pre-filed testimony, testified before the Hearing Officer, and were subject to cross examination.

Benjamin Tarbutton, III, President of the Sandersville Railroad Company, testified that the Spur "does not accommodate [the Sandersville Railroad Company's] existing business," *see* Tarbutton Test., Tr. at 147, but rather that it would "allow Sandersville to expand its rail service offerings," Tarbutton Test., Tr. 45. The Sandersville Railroad Company currently operates 10 miles of main line track in Washington County, Georgia, but does not operate any railroad lines in Hancock County. *Id.* at 43. Tarbutton stated that the company has been in business for 130 years and has the capital to self-fund the Spur project. *Id.* at 119–20. He repeated that the Spur would generate economic development and result in job creation but stated that the 20–25 jobs created during the construction of the Spur would be short-term and would cease to exist after the construction of the Spur. *Id.* at 173–74. Tarbutton also stated that the Sandersville Railroad Company "would not hire any new operating employees." *Id.* at 110. Tarbutton stated that the Spur would create benefits for five private companies "to grow their business through these increased channels of trade and access a completely different market . . . than they have access to now, and you know, hopefully grow their business." *Id.* at 189. Tarbutton testified that he had "verbal deals with these guys" to use the Spur but did not have binding contracts with the companies. *Id*. at 120. He also testified that the Sandersville Railroad Company is the sole LLC member of one of the companies that would allegedly use the Spur, Southern Chips LLC. *See* Tarbutton Test., Tr. at 178–79.

The putative customers of the Hanson Spur who testified at the hearing were Scott Dickson, President of Heidelberg Materials Southeast, which operates the Hanson Quarry; Arnie Pittman, President of Pittman Construction; Jeffrey Custer, Wood Procurement and Fiber Sales Manager for Southern Chips LLC; and Cale Veal, Sole Managing Member of Veal Farms Transload and Managing Member of Revive Milling. During cross-examination, Dickson, Pittman, and Custer testified that the Spur was not necessary for the functioning of their businesses. *See* Dickson Test., Tr. 365–366; Pitman Test., Tr. 373; Custer Test., Tr. 377. Veal testified that his use of the Spur would be somewhat dependent on the traffic from another company. Veal Test., Tr. 381.

The Sandersville Railroad Company did not submit any testimony or evidence to corroborate its claims that the Spur would generate economic development benefits. The Mayor of Sparta testified in support of the Spur and acknowledged that he was incorrect about anticipated tax revenue. Haywood Test., Tr. 419, 436. Additionally, neither the Sandersville Railroad Company nor any of the companies that stated that they plan to use the Spur would guarantee that they would hire Hancock County residents to fill any jobs created by the Spur. *See, e.g.,* Tarbutton Test., Tr. at 174–76.

NROCC founders Janet and Mark Smith testified about the creation of NROCC and the organization's activities in opposition to the Hanson Spur. *See* J. Smith Test., Tr. at 566; *see also* D.M. Smith Test., Tr. at 554. Hancock County Commissioner Randolph Clayton testified about the elderly, retired community that would be negatively impacted by the proposed Spur. R. Clayton Test., Tr. 587. Many NROCC members testified that their homes would be close to the Spur and that they had concerns about the noise and the negative environmental impacts of a rail spur.[10]

[10] *See, e.g.,* Elizabeth Scott Test., Tr. 603–604. Melanie Benson Test., Tr. 615–617; Kenneth Clayton Test., Tr. 616–627; Bennie Clayton Test., Tr. 636–637.

Dr. Erica Walker, NROCC's expert witness from the Community Noise Lab at the Brown University School of Public Health, confirmed NROCC's noise concerns in a study that measured sound levels at several NROCC members' homes along the proposed Spur. Walker Test., Tr. 697. Dr. Conner Bailey testified about how powers like eminent domain have historically been abused and have led to significant loss of land in Black communities. Bailey, Test., Tr. 664–665. In discussing the Sandersville Railroad Company's proposed use of eminent domain to construct the Hanson Spur, Dr. Bailey highlighted the minimal tax benefits to Hancock County, the devaluation of Respondents' and Intervenors' properties, and the few jobs that were promised to Sparta residents compared to the large benefits that a small number of companies stood to gain. *Id*. at 666.

Respondents testified about their deep cultural ties to their land and their desire to keep their property intact for the benefit of their children and their children's children. James Blaine Smith's grandchildren, William Blaine Smith and Marvin Smith, Jr., testified about how owning land "anchors you" and how, "as Black people, our history is tied to having property." M. Smith, Jr. Test. Tr. 850; W.B. Smith Test., Tr. 809. The Smiths' neighbor, Robert Donald Garrett, similarly testified about the value he finds in gathering with family, gardening, hunting, and fishing on his land. Garrett Test., Tr. 955. Joel Reed and Leo Briggs testified that they had owned their properties for decades, and plan to maintain its character and beauty for future generations. *See* Reed Test., Tr. 1045; *see also* Briggs Test., Tr. 878, 880.

On behalf of Respondents, expert witness Professor Donald Kochan testified about the history of eminent domain, its vulnerability to abuse, and the extreme limits intended to be placed upon its use. Kochan Test., Tr. 1068. Respondents' other expert, Gary Hunter, testified that the Spur project is not feasible "based on the risk and the fact that there are no revenues associated with the CSX for traffic moving off this line" and that the petition "should be denied simply

because there's no revenues in traffic solid associated with this particular project." Hunter Test., Tr. 1204– 1205.

II. STANDARD OF REVIEW

The Georgia Public Service Commission is tasked with "the general supervision of all common carriers, . . . [and] railroad or street railroad companies," O.C.G.A. § 46-2-20(a), including the power to "prescribe rules with reference to the use, construction, removal, or change of spurtracks and sidetracks," O.C.G.A. § 46-8-21(2). Pursuant to these authorities, the Commission must approve a railroad company's use of eminent domain before it can acquire the private property of another.[11] "[T]he hearing officer will set the matter down for hearing to determine if there is a legitimate public purpose for the proposed condemnation." Ga. Comp. R. & Regs. 515-16-16-.02. The Commission's "review is intended to provide scrutiny as to the public or private nature of the use of the land involved." *Cent. of Georgia R.R. v. Georgia Public Service Comm'n*, 257 Ga. 217, 218 (1987).[12] "If the Commission ultimately determines such

[11] *See* O.C.G.A. § 46-8-121 (If a railroad company cannot acquire real estate "by purchase or gift, then it may be acquired by condemnation in the manner provided in Title 22, provided that the right of condemnation under this Code section shall not be exercised until the commission, under such rules of procedure as it may provide, first approves the taking of the property."); *see also* Ga. Comp. R. & Regs. 515-16-16-.01 ("O.C.G.A. §§ 46-8-120 through 46-8-124 requires Commission approval before any railroad company can file any action in the Superior Court to condemn real property for rail right-of-way or for erection of rail facilities.").

[12] Sandersville Railroad Company argues that the Commission's review does not extend to the property of Intervenors because their properties are not being condemned for the creation of the Hanson Spur. *See* Sandersville Br. at 34. However, the case they rely on for this proposition does not support their argument: "[t]he application of the review process to land acquired through condemnation and not to land acquired through gift or purchase, thus supports the position that the review is intended to provide scrutiny as to the public or private nature of the use of the land involved." *Cent. of Georgia R.R.*, 257 Ga. at 218. Intervenors' property is "involved" in this case, and the Commission's review therefore extends to it, because the Hanson Spur will have detrimental impacts on the property and on the town that must factor into the inquiry. Sandersville Railroad Company's Petition to the Commission effectively waives the argument that Intervenors'

condemnation to serve a public purpose, it shall issue a final order approving any condemnation petition by a railroad company . . . [.]" Ga. Comp. R. & Regs. 515-16-16-.03. Sandersville Railroad Company "shall bear the burden of proof by the evidence presented that the condemnation is for a public use as defined in Code Section 22-1-1." O.C.G.A. § 22-1-11; *see also* O.C.G.A. § 22-1-2(a) ("Public use is a matter of law to be determined by the court and the condemner bears the burden of proof.").

III. ARGUMENT

In this case before the Commission, a private railroad company seeks to exercise the extraordinary power of eminent domain to expand its business and the business of a handful of friendly companies at the expense of private landowners, most of whom are Black. The Sandersville Railroad Company dismisses clear legal precedent showing that it does not have the authority to exercise eminent domain for this purpose. Nor would the alleged secondary economic benefits the Sandersville Railroad Company claims it will bestow upon Sparta residents be sufficient to constitute public use—indeed, the Hanson Spur would primarily perpetuate unjust land dispossession, which has plagued southern rural Black landowners for centuries.

A. The Sandersville Railroad Company's Petition should be denied because it failed to provide adequate notice of the legal bases through which it seeks to take property to build the Hanson Spur in violation of the due process rights of Respondents and NROCC.

As an initial matter, the Sandersville Railroad Company did not provide sufficient notice of the bases under which it seeks authority to condemn. The Sandersville Railroad Company's Initial and Amended Petitions, filed on March 8, 2023, and on July 23, 2023, respectively, argued

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property is not involved by citing numerous purported economic development "benefits" to the residents of Sparta and the county.

only that the Hanson Spur would bring economic benefits to Hancock County. That was the legal basis proffered by the Company to NROCC members and to the Commission for at least six months—most of the time the proceedings were pending before the Commission. However, after Respondents and Intervenors pre-filed testimony and pointed out that economic development is not a legitimate public use under Georgia law, the Sandersville Railroad Company asserted that the Hanson Spur would provide channels of trade for the first time in Benjamin Tarbutton's rebuttal testimony, filed on September 28, 2023—a mere two months prior to the hearing before the Commission. In that filing, Tarbutton did not invoke O.C.G.A. § 22-1-1(9)(A)(iii) and indeed stated that he was a "layman" and not a lawyer positioned to make legal conclusions. *See* Tarbutton Rebuttal Test., Tr. at 20. Additionally, the Sandersville Railroad Company only discussed the public use of the "creation or functioning of public utility," set forth in O.C.G.A. § 22-1-1(9)(A)(ii), for the first time at the hearing.

The Sandersville Railroad Company's abrupt shifts in the legal authorities put forth in support of its ability to exercise eminent domain did not provide adequate notice to Respondents and Intervenors about what they should prepare for ahead of the hearing as required by basic due process principles. *See, generally,* U.S. Const. amend. XIV, Sec. 1. This lack of notice limited their opportunity to be heard and compromised the Commission's ability "to ascertain the facts bearing upon the right and justice of the matters before it." O.C.G.A. § 46-2-51. The Commission should decline to consider the Sandersville Railroad Company's late justifications and should find that the Sandersville Railroad Company's Initial and Amended Petitions, which allege only economic development as a public use, are insufficient under Georgia law. Nevertheless, should the Commission consider the Sandersville Railroad Company's newly proffered public uses, the Sandersville Railroad Company does not have authority to condemn for the following reasons.

B. **The Sandersville Railroad Company's Petition should be denied because eminent domain is an extraordinary power, and the Georgia legislature has intentionally limited that power to enumerated public uses, which must be strictly construed under the statutes.**

The taking of property through eminent domain is an exceptional power that the government may wield "in only the most extraordinary circumstances." *See* Kochan Test., Tr. at 1068. "Its grant is in derogation of common right and is the exercise of one of the highest of the powers of sovereignty." *Chestatee Pyrites Co. v. Cavenders Creek Gold Min. Co.*, 46 S.E. 422, 423 (1904). By contrast, the protection of private property has been enshrined in this country as a fundamental and default principle for centuries. *See* Kochan Test., Tr. at 1067.

Under the Georgia Constitution, eminent domain may be exercised "for any [] public purposes as determined by the General Assembly." Ga. Const. art. I, § 3, ¶ I; *see also* O.C.G.A. § 22-1-3. The Georgia legislature has prohibited the use of "eminent domain unless it is for public use." O.C.G.A. § 22-1-2(a). "Private use of land acquired by a railroad through condemnation is not allowed." *Cent. of Georgia R.R.*, 257 Ga. at 218. Given the Georgia legislature's express restrictions, courts must strictly construe statutes conferring the power of eminent domain, and "clear legislative authority must be shown to authorize the taking." *See State Highway Dept. v. Hatcher,* 218 Ga. 299, 302 (1962); *see also City of Marietta v. Summerour*, 302 Ga. 645, 659 (2017) ("Georgia law has always required governments to comply strictly with condemnation procedures when exercising the power of eminent domain."). The Supreme Court of Georgia has long recognized that "[t]he taking or injuring of private property for the public benefit is the exercise of a high power, and all the conditions and limitations provided by law, under which it may be done, should be closely followed. Too much caution in this respect cannot be observed to prevent abuse and oppression." *Dep't of Transp. v. City of Atlanta*, 255 Ga. 124, 132 (1985) (quoting *Frank v. City of Atlanta*, 72 Ga. 428, 432 (1884)).

These limitations exist because the power to condemn is vulnerable to abuse, especially where the condemning entity seeks "to line its own coffers with the lands of its citizens against their will" or to use "eminent domain to take land from less favored citizens in order to give it to the [condemning entity's] friends." Kochan Test., Tr. at 1068. Indeed, eminent domain is such an extraordinary power that the legislature of Georgia has even limited its own ability to condemn private property, instructing the courts to declare any law inoperative that the General Assembly may pass "under pretext of such necessity . . . authorizing the taking of property for private use rather than for public use . . . [.]" O.C.G.A. § 22-1-3. The limits on this power are even more necessary with respect to private parties, to whom the state must delegate condemnation authority. *See* O.C.G.A. § 46-8-121; *see also* Kochan Test., Tr. at 1066; *Chestatee Pyrites Co. v. Cavenders Creek Gold Min. Co.*, 46 S.E. 422, 423 (1904) ("Where, therefore, a private individual or corporation seeks to take the property of another under the power of eminent domain, affirmative authority for the exercise of the power must be shown."). "The point of the Takings Clauses in our constitutions is to make forced transfers hard, costly, and rare, not to make them easy, cheap, and common." Kochan Test., Tr. at 1064.

The Georgia legislature further defined "public use" to include certain enumerated uses and to exclude economic development following the U.S. Supreme Court's decision in *Kelo*. In *Kelo v. City of New London, Conn.*, the U.S. Supreme Court held that a city's use of eminent domain in furtherance of an economic development plan was a constitutional "public use" within the meaning of the Fifth Amendment Takings Clause. 545 U.S. 469 (2005). However, the court emphasized that its opinion did not "preclude[] any State from placing further restrictions on its exercise of the takings power" and acknowledged that "many States already impose 'public use' requirements that are stricter than the federal baseline." *Id*. at 489. The court also discussed the

need to defer to the state legislatures and courts "in discerning local public needs" with respect to eminent domain, noting that, "[f]or more than a century, our public use jurisprudence has wisely eschewed rigid formulas and intrusive scrutiny in favor of affording legislatures broad latitude in determining what public needs justify the use of the takings power." *Id*. at 482–83.

Although "the necessity and wisdom of using eminent domain to promote economic development are certainly matters of legitimate public debate," *see id.* at 489, the Georgia legislature swiftly moved to pass the Landowner's Bill of Rights and Private Property Protection Act in the wake of the *Kelo* decision, codifying protections for the rights of individual property owners and expressly prohibiting economic development as a basis for exercising eminent domain, except "as a secondary or ancillary public benefit of condemnation" to remedy blight. O.C.G.A. § 22-1-15. "[T]he text, structure, and history of the 2006 Act as a whole reveals a remedial purpose of protecting property owners against abuse of the power of eminent domain at every stage of the condemnation process and thereby promoting public confidence in the exercise of that power." *City of Marietta v. Summerour*, 302 Ga. 645, 654 (2017).

The Commission must interpret Georgia's eminent domain statutes strictly and with this legislative intent in mind in determining whether the Sandersville Railroad Company has met its burden of demonstrating that it has the authority to exercise the extraordinary power of eminent domain for a public use under the facts of this case, which paint a picture of a powerful private company seeking to expand its business, to line its own pockets, and to line the pockets of its corporate friends at the expense of a predominantly Black community. The Commission should deny Sandersville Railroad Company's Petition for the following reasons.

C. The Sandersville Railroad Company has not demonstrated that it has the authority to exercise eminent domain.

Given that eminent domain is a departure from the default aim of protecting private

property, its exercise must be justified by "a sense of necessity." *See* Kochan Test., Tr. at 1074. Railroad companies in Georgia are "authorized and empowered . . . [t]o build and maintain such additional . . . tracks . . . as may be necessary for the proper accommodation of the business of the company." O.C.G.A. § 46-8-120(a)(4). However, the Sandersville Railroad Company has not met its burden of proving that it is authorized or empowered to build the Hanson Spur as an additional track necessary for the proper accommodation of its business. *See id.*; O.C.G.A. § 22-1-11.

As required under Georgia law when interpreting eminent domain statutes, *see Hatcher,* 218 Ga. at 302, courts have strictly construed what is "necessary for the proper accommodation of the business." In *Francis Jones & Co. v. Venable*, 47 S.E. 549, 550 (1904), for example, the Supreme Court of Georgia found necessity where a granite quarry sought a right of way over private land to build a private railroad to ship its goods to market. The statute at issue in that case provided that, "[i]n cases of necessity, private ways may be granted upon just compensation being first paid by the applicant." *Id.* The court found that "the enterprise of quarrying stone and marketing the same is purely private, and one in which the public has no interest," and that the company seemed "to show a case of necessity" where the quarry could not otherwise ship its goods unless it transported them over private land. *Id.* at 550, 552. By contrast, the Supreme Court of Georgia found no necessity where a private lumber company sought to build a tramway over private property to haul timber to its mill. *Normandale Lumber Co. v. Knight*, 89 Ga. 111, 14 S.E. 882, 883 (1892). In finding that the evidence failed to show necessity, the court noted that the company "could build the tramway from the point of starting to said terminal point over their own land, but it would be more expensive." *Id.* at 883. Even the railroad company in *Great Walton* understood that "necessary" must be construed strictly, arguing that condemnation was necessary to accommodate its business by providing a run-around for the safety of its employees, as well as

rail and vehicular traffic.[13] Still, the Commission in that case found that the condemnation was not necessary to the accommodation of the railroad company's business.[14]

Unlike *Francis Jones & Co.*, the Sandersville Railroad Company has not demonstrated necessity here. In seeking approval to construct the Hanson Spur, the Sandersville Railroad Company cannot show that the Spur would be a necessary accommodation of its business because the Railroad Company does not currently operate or conduct business in or around Sparta. Instead, the Sandersville Railroad Company seeks to build a brand-new rail line to expand its operations[15] and generate new business for itself[16] in and around Hancock County. The Hanson Spur would connect several companies to a larger rail line and would be a cheaper shipping option for these companies than their current method of shipping their goods to market via truck. Tarbutton Test., Tr. at 104. However, although it may be economically desirable for the Sandersville Railroad Company to take private land for this Spur so that it can make money for itself and for a handful of friendly companies—one of which Sandersville Railroad Company itself is the sole LLC member[17]—neither the expansion of business for profit nor the desire to provide a less expensive option constitute "necessity." *See Normandale Lumber Co.*, 14 S.E. at 883; *Great Walton* at 2–3,

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[13] Order by Commission Reversing the Hearing Officer's Initial Decision and Denying the Petition for Condemnation, *In re: The Great Walton Railroad Company, Inc., d/b/a The Hartwell Railroad Company's Petition for Approval to Acquire Real Estate by Condemnation, Docket 41607*, Document 173807 (Aug. 24, 2018) at 1, 3.
[14] *Id.* at 5.

[15] As the Sandersville Railroad Company has readily acknowledged, "Sandersville Railroad is not seeking to construct an extension or branch road and is instead building a brand-new spur track." Sandersville Br. at 33 n.68; *see also* Tarbutton Test., Tr. at 45 ("The spur is necessary for the proper accommodation of Sandersville Railroad's business because it will allow Sandersville to expand its rail service offerings.").
[16] Tarbutton testified that "we make a lick because we're able to see an opportunity and go after it. And that's how we make money is get to the markets quicker." Tarbutton Test., Tr. at 105.

[17] Southern Chips is a single-member LLC with Sandersville Railroad Company as the single member. *See* Tarbutton Test., Tr. at 178–79.

5.

The lack of necessity is underscored by the testimony of Tarbutton, the owner of the Sandersville Railroad Company, who stated that the company had been in business for 130 years, that the company had enough capital for the Spur project, and that he did not have the problem of losing money and "hadn't really given that much thought." *See* Tarbutton Test., Tr. at 105, 139–40; *see also id.* at 159–61. Indeed, Sandersville Railroad Company is "prepared to build this railroad and . . . even if things go poorly" it will be fine and is "still going to be able to . . . cover our variable costs" and operate its current business. Tarbutton Test., Tr. at 157. Instead, "the Hanson Spur is going to be an entirely new economic effort" for Sandersville Railroad Company. Tarbutton Test., Tr. at 102.

The Sandersville Railroad Company argues that "[b]ecause Sandersville Railroad is in the business of connecting industries to larger rail networks and has new business opportunities requiring the Hanson Spur, constructing that track to connect industries, businesses, and farmers to a larger rail network is 'necessary' for the 'proper accommodations' of its business." Sandersville Br. at 38.[18] This interpretation of when "an additional track is necessary for a

[18] In its original Petition and at the hearing, the Sandersville Railroad Company also stated that the Hanson Spur is necessary for the accommodation of the industry and all the companies the new spur will serve. *See* Ex. A to Pet. at 2 ("In short, the Hanson Spur is necessary to serve the public interest because it will allow companies operating at or near the Hanson Quarry and future companies that may operate along the Hanson Spur to transport products and materials, increase production and job opportunities for residents, and eliminate or reduce truck traffic on Hancock County roads."); *see also* Tarbutton Test., Tr. at 189 ("The construction of the Hanson Spur will allow the three existing customers I have, and the two new customers, to grow their business through these increased channels of trade and access a completely different market than they have access to now, and, you know, hopefully grow their business.").

However, the authority to condemn only extends to tracks that are "necessary for the proper accommodation of the business <u>of the [railroad] company</u>," O.C.G.A. § 46-8-120(a)(4) (emphasis added), and not the business of other companies. Regardless, the Hanson Spur is not necessary for the business of these companies either. *See, e.g.,* Custer Test., Tr. at 287 ("We [Southern Chip

company's business" is so broad that it would swallow the rule, permitting companies to undertake virtually limitless expansion and to take private property for that purported purpose without restraint.

Indeed, the case law cited by Sandersville Railroad Company does not support this overly broad reading of the statute. *See* Sandersville Br. at 37–38. In *City of Doraville v. Southern Railway Co.*, the Supreme Court of Georgia held that the taking of private property "for the use intended was necessary and essential for the purpose of construction of" a proposed railroad switching yard facility "and that such construction is required for the safe and essential conduct of the applicants' business as a public carrier and for public purposes." 227 Ga. 504, 505 (1971). In that case, the railroad company seeking to exercise eminent domain already had an operational switching yard, but the Commission found that the yard was inadequate. *Id.* at 506. *City of Doraville* is distinguishable from the present case for several reasons. First, Sandersville Railroad Company is not a common carrier[19] and, for reasons stated below, it would not operate the Hanson Spur for a public use. Second, the railroad company in *City of Doraville* sought to expand its existing operations and the court, finding that its existing infrastructure was inadequate, determined that condemnation for a new railroad switching yard facility was necessary for the railroad company's business. By contrast, Sandersville Railroad Company does not currently operate a rail line or spur through Sparta and therefore does not seek to replace an existing spur that has become inadequate

LLC] don't have a problem with the business. We are trying to get more business."); *id.* at 377 (spur is not necessary "for the current operation" of Southern Chips); Dickson Test., Tr. at 365–66 (without the spur, Heidelberg Materials "would stay in the current status"); Pittman Test., Tr. at 373 (spur is not necessary "for the current operation" of Pittman Construction Company).

[19] A "common carrier" is defined as "any carrier required by law to convey passengers or freight without refusal if the approved fare or charge is paid." O.C.G.A. § 22-1-1. The Sandersville Railroad Company does not argue that it is a common carrier, and indeed, it can refuse to convey the freight of those it declines to contract with. *See e.g.,* Tarbutton Test., Tr. at 100.

to accommodate its existing business. Instead, the Sandersville Railroad Company desires to build a brand-new spur to generate new business.

Sandersville Railroad Company's reliance on *Tift v. Atl. Coast Line R. Co.*, 161 Ga. 432 (1925), to argue that the Commission has permitted the extension of transportation facilities of the railroad company so as to meet the demands of trade, is similarly misplaced. *See* Sandersville Br. at 37–38. In *Tift*, the Public Service Commission approved a railroad company's condemnation of a public alley for "the <u>extension of one of its spur or industrial tracks which was already built and operated</u> upon a portion of said alley." *Tift*, 161 Ga. at 432 (emphasis added). Because Sandersville Railroad Company does not currently operate a spur track in or around Sparta, the Hanson Spur cannot and will not extend and/or accommodate anything. Instead, Sandersville Railroad Company seeks to take private property to build a spur that runs from the Hanson Quarry in Sparta, owned by Heidelberg Materials, to the Class 1 CSX Transportation line east of Sparta. *See* Tarbutton Direct Test., Tr. at 33, 38. When asked how the Hanson Spur would "accommodate Sandersville's existing business," Tarbutton answered that "[i]t does not accommodate our existing business." Tarbutton Test., Tr. at 147. The Commission should take him at his word and find that the Hanson Spur is not necessary for the accommodation of the Sandersville Railroad Company's business.

D. Even if the Commission finds that the Sandersville Railroad Company has demonstrated that the Hanson Spur is necessary for the accommodation of its business, Sandersville Railroad Company has not shown that it intends to exercise the power of eminent domain for the public use.

As stated, the Commission's review "is intended to provide scrutiny as to the public or private nature of the use of the land involved," and it "should seek to determine whether the condemnation serves a public purpose." *Cent. of Georgia R.R.*, 257 Ga. at 218. Even if the Sandersville Railroad Company had demonstrated that the Hanson Spur is necessary to the accommodation of its business—it has not—it also has the burden of demonstrating that its

"exercise of the power of eminent domain is for a public use." O.C.G.A. § 22-1-11. The Georgia legislature has enumerated limited uses that constitute "public use" for the purposes of eminent domain. *See* O.C.G.A. § 22-1-1(9). Relevant here, "public use" includes "[t]he use of land for the creation or functioning of public utilities," *see* O.C.G.A. § 22-1-1(9)(A)(ii), and "the providing of channels of trade," *see* O.C.G.A. § 22-1-1(9)(A)(iii).

The Sandersville Railroad Company initially petitioned the Commission for authority to condemn Respondents' property, citing "direct economic benefits" to Hancock County[20] and a reduction in truck traffic[21] as the public purposes served by the Hanson Spur. Then, realizing that its stated public use for seeking authority to build the Spur constitutes, at best, economic development activity that is not a cognizable public use under Georgia law, the Sandersville Railroad Company sought to fashion a legitimate public use for the first time in Tarbutton's filed rebuttal testimony and then at the hearing before the Commission.[22] The Railroad Company argued then and continues to argue now that it meets the public use requirement because the spur provides a channel of trade for business in southeast Georgia and that it intends to use the land for the functioning of a public utility by constructing a railroad.[23] Sandersville Br. at 35. The Sandersville

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[20] *See* Amended Pet. at ¶ 5: "The spur will also serve a public purpose by creating at least one and a half million dollars ($1,500,000.00) in annual direct economic benefits in Hancock County."

[21] *See* Amended Pet. at ¶ 3: "Each such movement by rail will reduce the number of trucks that would otherwise be required to move these products on Hancock County, state, and interstate roads and highways."; *see also* Amended Pet. at ¶ 4: "...the spur and this one (1) round trip serve a public purpose by providing . . . a service much more environmentally and economically efficient than can be provided by trucks, thereby eliminating one hundred and fifty (150) additional trucks per day traveling to and from the quarry . . . [.]"

[22] *See Pre-Filed Rebuttal Testimony of Benjamin J. Tarbutton III*, Doc. No. 205820

[23] To the extent the Sandersville Railroad Company seeks to invoke O.C.G.A. § 44-9-70 as a basis for exercising eminent domain, *see* Sandersville Br. at 35, that section does not apply. Sandersville Railroad Company is not a "corporation . . . who is actually engaged in the business of quarrying . . .granite . . . and who needs a right of way for a railroad . . . to operate his business successfully may obtain a right of way . . . [.]" O.C.G.A. § 44-9-70.

Railroad Company has not carried its burden of demonstrating that the Hanson Spur serves a legitimate public use under either provision.

1. <u>The Hanson Spur will not provide a channel of trade.</u>

Among the permissible public uses enumerated by the Georgia legislature is ". . . the providing of channels of trade . . . [.]" O.C.G.A. § 22-1-1(9)(iii). Citing no legal authority and only the opinions of the Sandersville Railroad Company and a handful of corporations who stand to benefit from the Hanson Spur, the Sandersville Railroad argues that "there is no factual dispute that" the Hanson Spur will provide a new "channel of trade" for businesses in Hancock County and East Middle Georgia. Sandersville Br. at 39–40. This is incorrect, and the Commission should decline the invitation to simply take the Company's word for it, as expressed through the testimony of a few financially interested corporations. Although the eminent domain statutes do not define "channels of trade," the plain language of the statute and its legislative history make clear that the Hanson Spur would not provide a channel of trade within the meaning of O.C.G.A. § 22-1-1(9)(iii).

In interpreting statutes, courts "must presume that the General Assembly meant what it said and said what it meant." *Deal v. Coleman*, 294 Ga. 170, 172 (2013). The statutory text should be read "in its most natural and reasonable way, as an ordinary speaker of the English language would" read it. *FDIC v. Loudermilk*, 295 Ga. 579, 588 (2014). The context of the words is important, and courts "may look to other provisions of the same statute, the structure and history of the whole statute, and the other law—constitutional, statutory, and common law alike—that forms the legal background of the statutory provision in question," *Zaldivar v. Prickett*, 297 Ga. 589, 591 (2015) (internal citations omitted); *see also Tibbles v. Teachers Ret. Sys. of Ga.*, 297 Ga. 557, 558 (2015).

A plain reading of the statute demonstrates that the Hanson Spur would not "provid[e]

channels of trade" within the meaning of O.C.G.A. § 22-1-1(9)(iii). The Merriam-Webster Dictionary defines "provide" as "to supply or make available (something wanted or needed)" or "to make something available to."[24] The Oxford English Dictionary defines "provide" as "[t]o supply (something) for use" or "to make available."[25] Read within the context of the eminent domain statutes as a whole and strictly construed, *see Hatcher,* 218 Ga. at 302, "provide" must be construed as the supplying of something needed or not already available. Thus, the Sandersville Railroad Company is not providing a channel of trade to companies in East Middle Georgia for purposes of establishing a public use under the statute because these companies are already served by the trucking industry. Although a rail line may be cheaper for these businesses to ship their goods than trucking is, the creation of the Hanson Spur would not provide a necessary channel of trade justifying the taking of private land.

The legislative history of the Landowner's Bill of Rights, enacted by the legislature to "fix" the negative impacts of the *Kelo* decision, *see* Georgia House News Release, 3/8/2006, supports this plain reading and demonstrates that the statute was meant to protect personal property rights against expanded "abuses of eminent domain." *Summerour*, 302 Ga. 645, 649. The Act was intended to "create[] stricter definitions of blight, public use and economic development," Georgia Senate Weekly Report, 2006 Final, and was heralded as a "bold step forward" to "prohibit the taking of private property for private economic development in Georgia," Georgia House News Release, 3/8/2006; *see also* Georgia House News Release, 3/10/2006. On the day he signed it into law, then Governor Sonny Perdue stated that "[t]his legislation and constitutional amendment changes the whole presumption of eminent domain from the power of government to the power of

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[24] *See* https://www.merriam-webster.com/dictionary/provide.
[25] *See* https://www.oed.com/search/dictionary/?scope=Entries&q=provide.

the people" and reaffirmed that "[i]t is wrong for your house, your land and your property to be held in jeopardy at the sway of a powerful government." Georgia Governor's Message, 4/4/2006. The Governor's words ring even more true where, as here, it is a private company seeking to take the property of others for private business ventures.

The Commission must construe "the providing of channels of trade" strictly and in accordance with its plain meaning, legislative history, and broader statutory and legal context. Given that "the text, structure, and history of the [Landowner's Bill of Rights] as a whole reveals a remedial purpose of protecting property owners against abuse of the power of eminent domain" and of "promoting public confidence in the exercise of that power," *see Summerour*, 302 Ga. at 654, the only proper reading of the statute requires a finding that this basis for public use does not exist here. Any ambiguity should be resolved in favor of the private landowners, as the Sandersville Railroad Company has not met its burden to demonstrate a public use under O.C.G.A. § 22-1-1(9)(iii), or that there is "clear legislative authority . . . to authorize the taking." *See Hatcher,* 218 Ga. at 302.

2. <u>The Hanson Spur would not serve a public use simply because the Sandersville Railroad Company seeks to take land for the creation of a railroad.</u>

As stated, "public use" includes "the use of land for the creation or functioning of public utilities, including railroads." O.C.G.A. § 22-1-1(9)(A)(ii). "Public utilities" can include "common carriers and railroads." O.C.G.A. § 22-1-1(10). But not all railroad lines are public utilities. The statute goes on to define "public utility" to include privately owned lines that transmit "communications, power, electricity, light, heat, gas, oil products, water, steam, clay, waste, storm water not connected with highway drainage, and other similar services and commodities, including publicly owned fire and police and traffic signals and street lighting systems, which directly or

indirectly serve the public." O.C.G.A. § 22-1-1(10). The Sandersville Railroad Company ignores this broader definition and argues that the Hanson Spur, simply by virtue of being a railroad, will be a public utility that serves a public use. Sandersville Br. at 40–41. In effect, Sandersville Railroad Company asks the Commission to establish a "bright line test" that would ignore the statutory definition of public utility, swallow the rule, and render the Commission's review unnecessary, as any railroad company could simply take land for any purpose just by building a railroad. *See id.* at 41.

Georgia courts have declined to establish such a bright-line test and instead analyze whether a particular railroad track is for public utility. *See Dep't of Transp. v. Livaditis*, 129 Ga. App. 358, 362 (1973) ("A commercial railroad company . . . may ordinarily condemn private property for the purpose of . . . constructing a spur-track from its main line where the purpose of the spur-track is for public utility."). Even if a given railroad company operates a main rail line that is "engaged in serving the public as a common carrier, the construction of a spur track from its main line for the purpose of serving an individual enterprise only is not a public purpose, and will not suffice as a basis for taking private property under condemnation proceedings." *See Bradley v. Lithonia & A.M.R. Co.*, 82 S.E. 138, 138-39 (1914); *see also Hightower v. Chattahoochee Indus. R.R.*, 218 Ga. 122, 125 (1962) (noting that a main line presented a "stronger situation" for finding public use than a spur track).

Like common carriers,[26] which are "required by law to convey passengers or freight without refusal if the approved fare or charge is paid," O.C.G.A. § 22-1-1(2), the railroads

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[26] When interpreting the meaning of "common carriers and railroads" under O.C.G.A. § 22-1-1(10), the Commission should construe these nouns together. *See Crowe v. Scissom*, 365 Ga. App. 124, 131 (2022) (noting that coordinating conjunctions like "and" join nouns or phrases and are "usually treated as a single, compounded unit"); *AFLAC Inc. v. Chubb & Sons, Inc.*, 260 Ga. App. 306, 308 n.2 (2003) ("and" is a conjunction).

contemplated as "public utilities" transmit essential services to the public, such as "communications, power, electricity, light, heat, gas, oil products, water, steam, clay, [and] waste." O.C.G.A. § 22-1-1(10); *see also* UTILITY, Black's Law Dictionary (11th ed. 2019) (defining "public utility" as "[a] business enterprise that performs an essential public service and that is subject to governmental regulation" and as "[a] company that provides necessary services to the public, such as telephone lines and service, electricity, and water. "). Sandersville Railroad Company has not demonstrated that it will transmit any of these essential services.

By contrast, the Hanson Spur is a "condemnation[] designed to principally benefit particular private interests" and does "not satisfy the public use requirement even if [it] could indirectly serve the public interest." Kochan Test., Tr. at 1068. The provision of a cheaper rail line for companies that transport goods such as granite, wood chips, liquid asphalt, and agricultural products,[27] does not make the Sandersville Railroad Company a public utility. *See, e.g., Francis Jones & Co.*, 47 S. E. at 549-550 ("the enterprise of quarrying stone and marketing the same is purely private, and one in which the public has no interest); *Normandale Lumber Co.*, 14 S. E. 882 (tramway to be constructed by lumber company for the transportation of lumber, naval stores, and timber, and to run from its own land, across the lands of others, to the line of a railway, is a private way); *Mayor of Macon v. Harris*, 73 Ga. 428, 437 (1884) (municipality's contract with a street railway company for an industrial company to use the street railway to ship coal and other material was determined to be used for the exclusive benefit of a private corporation, and not a public use).

In sum, the Sandersville Railroad Company has shifted its alleged public use as stated in its Initial and Amended Petitions and is now attempting to shoehorn its plans for the expansion of its own business and the expansion of the private industry of friendly corporations into a designated

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[27] Tarbutton Test., Tr. at 181.

public use enumerated in the Georgia statutes. The Georgia legislature does not permit pretextual condemnations to stand, even when it is the condemning authority. *See* O.C.G.A. § 22-1-3. Nor should the Commission allow such condemnations by a private company. The Commission should not "countenance an exercise of the power of eminent domain, which the evidence establishes was undertaken with the improper intent to benefit one private, powerful entity, merely because [the Railroad Company] proclaimed it exercised that power for a 'public purpose.'" *See Brannen v. Bulloch Cnty.*, 193 Ga. App. 151, 155 (1989). Instead, the Commission should find that "the inescapable conclusion is that although a public" railroad can be a legitimate public use for condemning private property, "the appropriation of this land for that purpose was not the true reason for the institution of the condemnation proceeding here." *Id.*

3. *Great Walton* is instructive here, and the Commission should look to its reasoning in that case to deny Sandersville Railroad Company's Petition.

The Sandersville Railroad Company argues that this Commission's decision in *Great Walton*,[28] when "properly construed," does not support the Respondents' and NROCC's opposition to its proposed condemnation. *See, generally*, Sandersville Br. at 41–47. However, the Railroad Company misconstrues both the facts and the ruling of *Great Walton*, and the Commission should look to *Great Walton* in making its decision here.

In *Great Walton*, the Commission declined to authorize a railroad company to exercise eminent domain upon a finding that the project would benefit a single private company and was not a public use.

[28] Order by Commission Reversing the Hearing Officer's Initial Decision and Denying the Petition for Condemnation, *In re: The Great Walton Railroad Company, Inc., d/b/a The Hartwell Railroad Company's Petition for Approval to Acquire Real Estate by Condemnation, Docket 41607*, Document 173807 (Aug. 24, 2018).

> The Commission concludes that the GWRR's proposed request for condemnation serves no public purpose and thereby fails to satisfy the requirements of O.C.G.A. § 46-2-58. The Commission finds and concludes that since the proposed rail line will only serve a single customer, the proposed runaround, and its concomitant disruption of the status quo, serves no legitimate public purpose and is not necessary.[29]

Contrary to the Sandersville Railroad Company's claim, there was no need for the Commission in *Great Walton* to consider a "best served" standard when the Commission found that the condemnation served "no public purpose." *See id.* The same is true here; there is no legitimate public use behind the Hanson Spur, for the reasons stated above. As in *Great Walton*, the Hanson Spur would benefit only a handful of private companies, including the Hanson Quarry, from which the Hanson Spur takes its name, and Southern Chips LLC, in which Sandersville Railroad Company is the sole LLC member. *See* Tarbutton Test., Tr. at 179. Indeed, Heidelberg Materials could conceivably be the only customer if the Hanson Spur is constructed, since one end of the Spur will be located at the Hanson Quarry, and since the other companies who would allegedly use the Spur have declined to sign a binding contract with the Sandersville Railroad Company to date. *See* Tarbutton Test., Tr. at 100. Nevertheless, even if all five private companies who testified at the hearing ultimately do use the Spur, that still does not transform the private nature of this venture into a legitimate public use.

Furthermore, construction of the Hanson Spur would be severely disruptive to the property owners and is not necessary for the accommodation of the Sandersville Railroad Company's business, a finding that the Commission also made regarding the railroad's proposed condemnation in *Great Walton*.[30] In considering the necessity of the condemnation, the Commission looked at

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[29] *Id*. at 5.
[30] *Id*.

the availability of alternative routes[31] and the destruction of historically significant landmarks, among other facts. While the Railroad attempts to minimize and dismiss the historic preservation issues identified by the private property owners in *Great Walton*, those considerations were integral to the Commission's decision in that case and should also be taken into consideration here, as the Commission considers whether a rail line for the expansion of the Sandersville Railroad Company's business and for the benefit of a handful of companies is necessary. Respondents and Intervenors testified at length about the historic character of their land and how many parcels are located on the site of a former plantation on which their ancestors were enslaved. *See, e.g.,* W.B. Smith Test., Tr. at 804. In sum, the Commission should look to *Great Walton*, its most recent decision involving a railroad company, in determining whether the Sandersville Railroad Company has met its burden of proof to exercise the power of eminent domain.

E. The Hanson Spur's purported provision of "secondary benefits" of economic development to the Sparta community is not a permissible public use and, even if it was, the Sandersville Railroad Company and its putative customers refuse to guarantee the alleged benefits, which are outweighed by the harms the Spur will create.

In its Petition, the Sandersville Railroad Company first cited economic development as the purported public purpose of the Hanson Spur[32] but then later conceded during its written and oral testimony that economic development is not a public use enumerated under the Georgia statutes, except as a secondary benefit in the case of blight. *See, e.g.,* Sandersville Br. at 62; *see also*

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[31] The Commission found that the existence of four viable alternative routes was sufficient to "avoid the unnecessary condemnation of" the property. *Great Walton* at 5. Nevertheless, the consideration of alternative routes was ancillary to the Commission's decision in *Great Walton*: "The Commission ***also*** finds and concludes that with the existence of several reasonable alternatives, the condemnation is not 'necessary for the property accommodation of the business of the company.'" *Id.* (emphasis added). Thus, the Sandersville Railroad Company's claim that no alternative routes exist for the Hanson Spur is not dispositive.

[32] Pet. at ¶ 5: "The spur will also serve a public purpose by creating at least one and a half million dollars ($1,500,000.00) in annual direct economic benefits in Hancock County."

O.C.G.A. § 22-1-1; O.C.G.A. § 22-1-15. "Economic development" is defined in O.C.G.A. § 22-1-1(4) as "any economic activity to increase tax revenue, tax base, or employment or improve general economic health" when such activity does not yield certain results. Still, the Sandersville Railroad Company urges that the Hanson Spur will generate secondary economic benefits that will somehow justify or lessen the impacts of its plan to take Respondents' land and run a train through this majority-Black Sparta community for the benefit of private enterprise. *See* Sandersville Br. at 30, 62.

Yet the Sandersville Railroad Company has not shown, and indeed has refused to guarantee, that even the insufficient secondary economic benefits that it promises will come to pass. The Sandersville Railroad Company's claims about alleged economic development are purely speculative, and it has failed to provide any supporting evidence. For example, Tarbutton claimed the Spur will "inevitably" drive economic development, Tarbutton Test., Tr. at 48, and will attract other businesses, *id.* at 34, 98, but never backed up those general claims with expert testimony or specific evidence. The Sandersville Railroad Company also claims the Spur will produce other benefits, including reduced truck traffic, Pet. at ¶ 3, and related environmental benefits, Pet. at ¶ 4. However, all the testimony offered at the hearing about these benefits was purely speculative and failed to provide the full picture of the project the railroad is proposing. Tarbutton made sweeping general conclusions about the alleged benefits of his proposal, *see, e.g.,* Tarbutton Test., Tr. at 33 ("...trains are much more efficient than trucks..."), but admitted that his calculations do not take into account any environmental impact of the construction of the Spur, Tarbutton Test., Tr. at 115, or the day-to-day use of the Spur, including expanded business operations, Tarbutton Test., Tr. at 183, and he has not studied environmental impacts or general costs of train derailments, Tarbutton Test., Tr. at 182.

Other alleged benefits were contradicted by evidence in the record, including the Sandersville Railroad Company's own testimony. The Mayor of Sparta claimed that employment opportunities would come from the Spur's construction. Haywood Test., Tr. at 421. But Tarbutton himself claimed that the railroad will "not hire any new operating employees." Tarbutton Test., Tr. at 110. When pressed for details, Tarbutton admitted that most of the Sandersville railroad jobs he anticipated would be temporary and come with low salaries; that there would be no guarantee that local residents would be hired; and that he was unaware if anyone in Sparta wanted the job or had the necessary qualifications. Tarbutton Test., Tr. at 174– 76.

Tarbutton further testified that most of the job opportunities would come from the other businesses that planned to use the Spur. However, these businesses also refused to make any guarantees, offering only hypothetical benefits to this majority Black community. Dickerson testified that his company might hire up to 10 people, but that would only happen if the quarry reached maximum capacity and he only expects the quarry to operate at half capacity, even after the Spur is created. Dickerson Test., Tr. at 329-330, 369. His own testimony contradicted his previous claims that these jobs would carry a salary of $90,000, Dickerson Test., Tr. at 215, when he claimed these jobs would pay about $24–28 an hour. Dickerson Test., Tr. at 371. Pittman testified that his company would only need to hire up to two additional employees and they would only be paid $20 an hour. Pittman Test., Tr. at 375–376.

The Sandersville Railroad Company also failed to demonstrate that the tax revenue from the Hanson Spur would be significant. Even though Mr. Pittman claimed ad valorem tax revenue would increase, Pittman Test., Tr. at 230, the Mayor admitted that the local government would only see tax revenue from some purchases by non-government customers when purchased in Hancock County, Haywood Test., Tr. at 436. If a customer bought a good transported on the Spur

for delivery in any other county, Hancock County would not receive the tax revenue. *Id*. Indeed, the Spur could even cost the County money in the long run if there are accidents or spills, which the Mayor stated he did not consider. *Id*. Nor did the Mayor consider that a decline in homeownership related to the undesired Spur is an expensive cost. Haywood Test., Tr. at 439.

Compounding the Sandersville Railroad Company's lack of evidence of material economic benefits to Sparta and Hancock County, every community member who testified stated they would not benefit from the Sandersville Railroad Company's promise of new jobs or related economic benefits. Most of the community members in Sparta and in the neighborhood are retired and would not benefit from the alleged jobs created by the Spur. D.M. Smith Test., Tr. at 543. The community members of working age work in other industries and would not be qualified for the positions that would allegedly be created by the Hanson Spur.[33] David Mark Smith also testified that he does not expect any hypothetical increase in tax revenue to be substantial. D.M. Smith Test., Tr. at 558. Many community members testified that they believe this construction would lower their property values.[34] The community members also testified about their fear of costly potential rail accidents.[35]

On top of the community's concerns, Dr. Walker's testimony described how unwanted noise disturbs communities and leads to negative health impacts. Dr. Walker Test., Tr. at 720-722. Dr. Bailey testified about the long history of discriminatory practices in similar situations, Dr. Bailey Test., Tr.. at 651–654, 664–665, and expressed skepticism and concern over the proposed benefits of job creation and increased tax revenue, *id.* at 655, 656, 666. He also expressed concern over the devaluing of affected property owners' land. *Id.* at 664.

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[33] D.M. Smith Test., Tr. at 542, 552, 556; J. Smith Test., Tr. at 563, 573; K. Clayton Test., Tr. at 581–582, 587; Scott Test., Tr. At 597, 603; Benson Test., Tr. at 608, 615; B. Clayton Test, Tr. at 630–631, 636–637.

[34] D.M. Smith Test., Tr. at 546, 557; J. Smith Test., Tr. At 567; K. Clayton Test., Tr. at 632, 637.

[35] D. Smith test., Tr. at 547, 558; J. Smith test., Tr. at 567, 576.

In sum, on top of the Sandersville Railroad Company's failure and/or refusal to provide guarantees or even sufficient support for its general claims of economic development, there was an abundance of testimony about the economic harm the Hanson Spur would create. Contrary to the Sandersville Railroad Company's arguments, all this testimony is relevant and should be considered by the Commission for the comprehensive picture it provides of the Hanson Spur's impact, which "will facilitate the [Commission's] efforts to ascertain the facts bearing upon the right and justice of the matters before it." *See* O.C.G.A. § 46-2-51.

IV. CONCLUSION

For these reasons, the Commission should find that the Sandersville Railroad Company has not met its burden of demonstrating that it is authorized to exercise the extraordinary power of eminent domain, or that its intended project is not a legitimate public use as set forth by Georgia statute and deny the Sandersville Railroad Company's Petition. The Commission should recognize this action for what it is—a naked land grab by a private company hoping to enrich itself and a handful of its friends at the expense of a predominantly Black community of landowners, many of whom inherited the land from ancestors who bought it shortly after Emancipation. The Sandersville Railroad Company should not be permitted to perpetuate the deprivation of Black landownership in this country and in Hancock County on little more than its assurances, without proof, that the Hanson Spur would serve a public use.

This 6th day of February, 2024.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that I have served a true and correct copy of the foregoing *Post-Hearing Brief 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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