Fulton County Superior Court
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**IN THE SUPERIOR COURT OF FULTON COUNTY
STATE OF GEORGIA**

ROBERT DONALD GARRETT, SR., SARAH V. GARRETT, WILLIAM BLAINE SMITH, HELEN DIANE SMITH, MARVIN SMITH, JR., PATRICIA SMITH, JOEL BRADFORD REED, KATHY LYNN REED, LEO JOHN BRIGGS, GEORGIA ANN BRIGGS, SALLY G. WELLS, DONNA N. GARRETT, VERNE G. HOLLIS, HERUS ELLISON GARRETT, THOMAS AHMAD LEE, and NO RAILROAD IN OUR COMMUNITY COALITION, Petitioners v. SANDERSVILLE RAILROAD COMPANY, and the GEORGIA PUBLIC SERVICE COMMISSION, Respondents.	)	Civil Action File No. 24CV012125 On Appeal from the Georgia Public Service Commission, Docket No. 45045

<u>FINAL ORDER</u>

This matter came before the Court for oral argument on January 28, 2025, upon the Petitions for Review filed by Petitioners Robert Donald Garrett, Sr., Sarah V. Garrett, William Blaine Smith, Helen Diane Smith, Marvin Smith, Jr., Patricia Smith, Joel Bradford Reed, Kathy Lynn Reed, Leo John Briggs, Georgia Ann Briggs, Sally G. Wells, Donna N. Garrett, Verne G. Hollis, Herus Ellison Garrett, Thomas Ahmad Lee ("Property Owners") and Petitioner No Railroad in Our Community Coalition ("NROCC") (together, "Petitioners"). Petitioners sought review of the Commission's September 12, 2024, Order granting Sandersville's Amended Petition for Approval to Acquire Real Estate by Condemnation. (the "Order"). Respondents Sandersville Railroad Company ("Sandersville") and the Georgia Public Service Commission (the "Commission") opposed such review and asked this Court to affirm the Commission's Order and

dismiss Property Owners' and NROCC's Petitions for Review. After briefing and oral argument, the Court makes the following findings of fact and conclusions of law regarding its review of the Commission's Order.

BACKGROUND

The Georgia legislature has empowered railroads, such as Sandersville, to acquire land for condemnation to build and maintain tracks that are necessary to "proper[ly] accommodat[e]" their business. O.C.G.A. §§ 46-8-120,-121. The condemnation must be for a public purpose or use, which is defined by Georgia statute to include, *inter alia*, the use of land for the "functioning of public utilities," including all railroads, and separately "the providing of channels of trade" O.C.G.A. §§ 22-1-1(9)(A)(ii-iii), 22-1-1(10). Before the railroad can proceed with a condemnation, the Commission must approve the taking.

Sandersville sought and obtained from the Commission authority to condemn 200-foot-wide strips of railroad right of way from the much larger tracts of Petitioner Property Owners necessary to build the Hanson Spur (the "Spur"). Before the Commission, Property Owners and Intervenors No Railroad in Our Community Coalition opposed Sandersville's Amended Petition for Approval to Acquire Real Estate by Condemnation (the "Petition"), arguing that Sandersville failed to meet the statutory test for takings by a railroad under Georgia law.

The Hearing Officer granted the Petition after a four-day hearing and post-hearing briefing, as explained in the Hearing Officer's thoroughly detailed nineteen-page Initial Decision (the "Decision"). The Hearing Officer—who is the Commission's lead in-house counsel and its director of utilities—found that the proposed condemnation to build the Hanson Spur was necessary for the proper accommodation of Sandersville's business and that it served a public purpose because it would serve the functioning of the railroad, a public utility, and, separately, because it would

provide a channel of trade.

Petitioners sought full Commission review of the Decision and filed a motion to stay the Commission's Order should the Commission uphold the Decision. After briefing, the requests for review were granted. The full Commission heard oral argument and unanimously adopted the Decision in its entirety and declined to grant the motion to stay.

The Order held that Sandersville has authority under Georgia law to condemn land for the Spur and that the Spur is necessary for the proper accommodation of Sandersville's business: providing transportation services. The Order further determined that the Spur will serve two separate public purposes, each of which alone is sufficient to authorize condemnation: first, for purposes of condemnation by statutory definition, railroads are public utilities and the Spur will provide for the functioning of such a public utility. Second, the Spur will open a channel of trade because it will allow farmers and industries in East middle Georgia to access markets that they cannot viably reach without the Hanson Spur.

The Commission also denied Property Owners' request for a stay of the Commission's Order, declining to find that Property Owners are likely to prevail in this appeal or that they will be irreparably harmed absent a stay.

On September 23, 2024, Property Owners filed a Petition to Superior Court for Judicial Review and Stay. On October 2, 2024, NROCC filed its own Petition to Superior Court for Judicial Review. Petitioner Property Owners and NROCC allege that the Order was "in violation of constitutional or statutory provisions . . . , made upon unlawful procedure . . . , clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record, and arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion." O.C.G.A. §§ 50-13-19(h)(1), (h)(3), (h)(5), (h)(6). Petitioners' stay was granted in part and denied

in part by this Court's January 3, 2025, scheduling order.

FINDINGS OF FACT

Sandersville is a state-chartered, short line railroad that connects farmers and industries in East middle Georgia to larger railroads like Norfolk Southern Railway Company ("Norfolk Southern") so Georgia businesses can reach markets beyond the state. Unlike Norfolk Southern Railway Company and CSXT Transportation ("CSXT"), which are Class I railroads because of their massive revenues, Sandersville is a family-owned, Class III (also known as short-line) railroad. It operates ten miles of mainline track and an additional 25 miles of spurs, all within the state of Georgia, and connects only with the Norfolk Southern rail network. Despite its relatively small size, Sandersville plays an important role in Georgia's economy by providing transportation for raw materials, reducing the volume of trucks on the roads, and introducing Georgia's goods to new markets and customers. Sandersville's business is to "connect industries by rail" and "interconnect rail traffic with larger railroad networks."

Sandersville seeks to serve the underserved industries in East middle Georgia by building the Spur, a proposed industrial spur line that will provide the East middle Georgia region a way to reach new markets. Presently, most industries and farmers in the East middle Georgia region do not have viable access to the CSXT rail network because most users do not have sufficient volume to justify a stop by CSXT, a Class I railroad. The Spur will provide these industries and farmers a way to aggregate shipments of sufficient volume so they may efficiently enter the CSXT rail network and reach markets only or best served by that rail network. The Spur will be a 4.5-mile industrial spur and will connect a rock quarry known as the "Hanson Quarry," located on Shoals Road, Southeast of Sparta, Georgia, and owned by Heidelberg Materials ("HM"), to CSXT's Camak subdivision, which runs between Camak, Georgia, near Interstate 20 and Milledgeville,

Georgia, while generally paralleling Georgia State Route (i.e., Highway) 16.

The proposed Spur requires a 200-foot-wide railroad rights of way from eighteen large, undeveloped acreage parcels ("Project Parcels"). Nine of these Project Parcels are owned by the Petitioner Property Owners and are the rights of way Sandersville seeks to acquire through condemnation. Sandersville laid out the route of the Spur after extensive consultation with Croy Engineering.

Although the route for rights of way are generally left to the best judgment of the condemning authority, Sandersville nonetheless presented evidence that the Spur is the best route considering numerous constraints such as the surrounding watercourses, regulated wetlands and floodplains, a neighboring environmental conservation area, resident feedback, existing residential structures, Georgia Power Company transmission lines, a Verizon Wireless cell tower, and American Railway Engineering and Maintenance-of-Way Association design guidelines. Croy Engineering consulted an environmental expert to minimize impact on regulated wetlands resources, potential archeological resource sites, and potential habitats for threatened and endangered species. Croy Engineering obtained Sandersville's required Wetlands Permit and submitted the required historical and archaeological data along the route to the U.S. Army Corps of Engineers. The route was presented at a public meeting in Sparta, and Sandersville and Croy Engineering adjusted the route based on public comments received at the meeting. As acknowledged by the Hearing Officer, "no serious alternatives, other than simply not building the Hanson Spur, were presented in this case."

The 200-foot-wide strips of railroad right of way make up 7.02% at most of any one Property Owners' total property. The Project Parcels are mostly used for outdoor recreational activities, like hiking, fishing, gardening, and farming produce. Although some of the Project

Parcels have living structures on them, the distance between the proposed Spur and any structure (whether residential or just a storage building) on the parcels that contain a right-of-way required for the Spur varies from 1,141 feet to 2,048 feet (i.e., the length of approximately four to seven football fields. Additionally, most of the parent tracts through which the railroad right of way will run "d[o] not have an existing residential structure located on them. The ones that d[o] [were] not listed as a primary residence[s] [with the County Tax Assessor subject to a real estate ad valorem] . . . homestead exemption." If the railway will bisect a Project Parcel, Sandersville Railroad has agreed to construct and maintain, at the railroad's expense, an at-grade crossing for any landowner that retains land on both sides of the Spur's right of way.

The Spur will initially serve five customers at the Hanson Quarry. Those five customers testified before the Commission about their desire to be served by the Spur. Sandersville has a memorandum of understanding with each of those five businesses to provide them rail services on the Hanson Spur. These customers testified that the Hanson Spur will provide them with a new method to transport their products to reach markets they could not otherwise reach. In fact, Cale Veal, sole managing member of Veal Farms Transload and a managing member of Revive Millings, testified that southern farmers "need every supply line made available" due to the "logistical hurdles" and "underserved nature" of southern agriculture. Additional prospective customers have expressed to Sandersville a desire to be served by the Spur as well.

To acquire the property needed for the Spur, Sandersville reached out to Property Owners and the Sparta community through community and personal meetings. Through those discussions and negotiations, it has acquired written or verbal agreement to acquire several of the parcels of required railroad right of way. After months of attempting to acquire the necessary right of way by negotiated sale or good faith negotiations, on March 8, 2023, Sandersville Railroad filed with

the Commission a Petition for Approval to Acquire Real Estate by Condemnation for one of the parcels of right of way needed to complete the Spur (the "Initial Petition"). On June 20, 2023, other property owners who owned land that Sandersville sought for the Hanson Spur intervened in the Commission docket. Sandersville then amended its Initial Petition to include all the intervening property owners and requested that the Commission approve Sandersville's petition to acquire the strips of right of way on the property of those intervenors by condemnation. On June 21, 2023, Petitioner NROCC intervened to oppose the amended Petition. The members of the coalition do not own any property sought to be condemned. On September 12, 2024, the Commission approved Sandersville's Petition. This appeal followed.

LEGAL STANDARD

"The superior court is authorized to reverse or modify [a] final . . . decision [of the Commission] only in certain limited circumstances." *Carolina Tobacco Co. v. Baker*, 295 Ga. App. 115, 118 (2008). O.C.G.A. § 50-13-19(h) defines those circumstances as when:

> [T]he substantial rights of the appellant have been prejudiced because the administrative findings, inferences, conclusions, or decisions are:
>
> (1) In violation of constitutional or statutory provisions;
> (2) In excess of the statutory authority of the agency;
> (3) Made upon unlawful procedure;
> (4) Affected by other error of law;
> (5) Clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record; or
> (6) Arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion.

O.C.G.A. § 50-13-19(h).

This Court's review is confined to the administrative record. O.C.G.A. § 50-13-19(g). "A review under OCGA 50–13–19 by the superior court is appellate in nature and is not . . . a pretrial, trial, or post trial procedure." *Georgia Pub. Serv. Comm'n v. S. Bell*, 254 Ga. 244, 246 (1985)

(internal quotations omitted). "Under the APA, the Commission is the finder of fact and weighs the credibility of the evidence" and "[t]he scope of judicial review is limited to those objections which were presented to the agency." *Id.* "'The court in reviewing administrative decisions shall not substitute its judgment for that of the board if there is any evidence to support its findings.'" *Id.* (quoting *Lasseter v. Ga. Public Service Comm.*, 253 Ga. 227, 231 (1984)).

Additionally, "an agency's interpretations of the statute it administers are entitled to great weight." *Mun. Elec. Auth. of Ga.*, 241 Ga. App. 237, 239 (1999). An administrative agency, nonetheless, "may not 'change a statute by interpretation, or establish different standards with a statute that are not established by a legislative body.'" *Palmyra Park Hosp., Inc. v. Phoebe Sumter Med. Ctr.*, 310 Ga. App. 487, 491 (2011) (quoting *North Fulton Med. Center v. Stephenson*, 269 Ga. 540, 543–44 (1998)). "The judicial branch determines independently whether the agency's interpretation 'correctly reflects the plain language of the statute and comports with the legislative intent.'" *Id.* (quoting *Handel v. Powell*, 284 Ga. 550, 553 (2008)). The Commission administers the statutes regarding whether a railroad's proposed use is a public use for the purposes of condemnation. O.C.G.A. § 46-8-121 (A railroad's "right of condemnation . . . shall not be exercised until the [C]omission, under such rules of procedure as it may provide, first approves the taking of the property."); *See, e.g.*, *Cent. of Ga. R.R. v. Ga. Pub. Serv. Comm'n.*, 257 Ga. 217, 219 (1987).

The Commission's proceeding required under O.C.G.A. § 46-8-121 is defined by Georgia statute, regulation, and caselaw. Under Georgia law,

> 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.

O.C.G.A. § 46-8-120(a)(4). To facilitate its exercise of these enumerated statutory purposes, the General Assembly also granted railroads the "right of condemnation" if "real estate cannot be acquired by purchase or gift" and if "the [C]omission, under such rules of procedure as it may provide, . . . approves the taking of the property." O.C.G.A. § 46-8-121; Ga. Comp. R. & Regs. 515-16-16-.01. All condemnations must be for a public use. Ga. Const. 1983 Art. I, Sec. III, Para. I; O.C.G.A. § 22-1-2(a). "Public use is a matter of law to be determined by the court and the condemnor bears the burden of proof." *Id.* The Commission's inquiry was limited to a determination of whether the "condemnation . . . serve[s] a legitimate public purpose" or use. Ga. Comp. R. & Regs. 515-16-16-.02. As explained by the Supreme Court of Georgia,

> [i]f the purpose of the Commission's review was to determine the best site for railroad expansion, then the review should logically cover expansion on land acquired by the railroad through gift and purchase as well as condemnation. The review does not extend to such expansion . . . [T]he review is intended to provide scrutiny as to the public or private nature of the use of the land involved.

Id. at 219, 356 S.E.2d at 866 (emphasis added).

The General Assembly and Georgia courts have defined public purpose and public use for eminent domain actions. Under O.C.G.A. § 22-1-1(9)-(10), "[p]ublic use" means, among other things, "(i) [t]he possession, occupation, or use of the land by the general public or by state or local governmental entities; (ii) [t]he use of land for the creation or functioning of public utilities," which for this definition includes railroads; and *separately* "(iii) [t]he opening of roads, the construction of defenses, or the providing of channels of trade or travel . . . ." O.C.G.A. § 22-1-1(9)(A), (10). "Public utility" is defined to include "common carriers and railroads." *Id.* § 22-1-1(10). Thus, to obtain Commission permission to condemn property, a railroad must show that the railroad is (1) acting within its enumerated powers outlined in O.C.G.A. § 46-8-120; and (2) the condemnation serves one of the public purposes outlined in O.C.G.A. § 22-1-1(9).

CONCLUSIONS OF LAW

I. The Commission Correctly Found that the Spur is Necessary for the Proper Accommodation of the Business of the Company.

The Commission's finding that the business of Sandersville is "providing the transportation service of connecting industries by rail and connecting rail traffic with the larger rail networks" must be upheld under the applicable "substantial evidence" standard of review, which requires this Court to uphold the Commission's factual findings if there is "any evidence" to support them. *Georgia Pub. Serv. Comm'n v. S. Bell*, 254 Ga. at 246. This finding of fact is supported not only by the testimony Mr. Benjamin Tarbutton, President of Sandersville, but also the testimony of Petitioner Property Owners' expert witness, Mr. Gary Hunter. Mr. Tarbutton testified that "[s]hort line railroads generally perform one or more of the following functions: (1) connect industries by rail; (2) interconnect rail traffic with larger railroad networks; and/or (3) carry passengers. Sandersville Railroad performs the first two functions."

This Court also affirms the Commission's finding that the Spur is a necessary accommodation of Sandersville's business connecting industries to rail. The Spur will connect industries by rail by offering industries and farmers in East middle Georgia access to markets that are exclusively served by CSXT. Currently, access to CSXT is not feasible for those businesses because they must pay switching costs that render such access uneconomical and their goods uncompetitive in certain markets with goods from industries and farmers that are directly served by the CSXT rail network. Without the Spur, Sandersville cannot offer these industries connection to the larger CSXT rail network. Therefore, the Commission did not err in finding that the Spur is a necessary accommodation of Sandersville business connecting industries to rail.

Petitioners have argued that the development of the Spur is not "necessary for the proper accommodation of the business of" Sandersville because the Spur is a new track that will not serve

Sandersville's existing customers or rail lines, the line could be subject to federal regulation, and the Spur project is not economically viable. This Court rejects these arguments as contrary to the plain meaning and requirements of O.C.G.A. § 46-8-120(a)(4).

Sandersville's railroad "business" is not limited to serving current customers; rather, its business necessarily involves "connecting rail traffic with larger rail networks," including by expanding its routes and rail lines. The plain meaning of the phrase "proper accommodation of the business of the company" is the "proper accommodation" of the railroad's "commercial enterprise," not just its current services.[1] If the Georgia legislature intended the meaning of "the business of the company" to be more constrained, it could have done so through the plain text of the statute—such as by inserting the word "current" —however, it did not. This Court will not go beyond the plain text of an unambiguous statute in interpreting its meaning. *Patrick v. Floyd Med. Ctr.*, 255 Ga. App. 435, 443 (2002) (Courts "interpret statutory language for its plain meaning so long as doing so does not result in the absurd or impractical.")

The Hearing Officer found 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," but found that the Commission need not decide whether an infeasible project is necessary to accommodate a business because the Spur is economically feasible. As the feasibility of the Spur is a factual finding, this Court will affirm the Commission's decision if it is support by "any evidence." *Georgia Pub. Serv. Comm'n v. S. Bell*, 254 Ga. at 246. Sandersville proffered evidence that the Spur will be funded

[1] *See* BUSINESS, Black's Law Dictionary (12th ed. 2024) ("A commercial enterprise carried on for profit . . . Commercial enterprises <business and academia often have congruent aims>. 3. Commercial transactions <the company has never done business in Louisiana>. See DOING BUSINESS."); *Larson v. Georgia Farm Bureau Mut. Ins. Co.*, 238 Ga. App. 674, 675 (1999) ("Although the policy does not define 'business pursuits,' it does define 'business' to include 'trade, profession or occupation.'").

by Sandersville out of pocket, so capital costs to build the Spur are not a concern for its long-term viability. Additionally, both the President of Sandersville and Property Owners' expert testified that a railroad will be operated if its revenues will cover its variable costs, and Sandersville offered a panel of customers committed to using the Spur once it is built, thereby generating sufficient revenues for Sandersville to operate. Mr. Tarbutton also testified that Sandersville Railroad has been working with CSXT on the Spur, and that CSXT supports the project. Based on the evidence in the record, this Court will uphold the Commission's factual finding of feasibility. This Court also affirms the Commission's finding of fact that no alternatives exist based on the evidence Sandersville presented that it has no rail lines it could extend to serve those customers in East middle Georgia and no other viable alternative routes exist. [2]

II. The Commission Correctly Found that the Spur Serves a Public Purpose.

This Court affirms the Commission's finding that the Spur serves a public purpose because it will provide for the functioning of a public utility and *separately* because it will open a channel of trade under O.C.G.A. § 22-1-1(9)(A)(iii), (10). There is no dispute that Sandersville is a railroad, and that the definition of "public utility" includes "common carriers and railroads" without any qualification or condition. O.C.G.A. § 22-1-1(10). Additionally, under O.C.G.A. § 22-1-1(9)-(10), "[p]ublic use" means, among other things, "[t]he use of land for the creation or functioning of public utilities." O.C.G.A. § 22-1-1(9)(A)(ii). Because the Spur will be used for the "creation" of a railroad track, and will serve the "functioning" of Sandersville, it serves a public use under

[2] The *Great Walton* case relied upon by Petitioners where the Commission denied a petition for condemnation is distinguishable because alternative routes existed in that case, whereas none exist here. 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 at *3 (Aug. 24, 2018).

O.C.G.A. § 22-1-1(9)(A)(iii).

Petitioners have argued that Sandersville should be excluded from the term "railroad" in O.C.G.A. § 22-1-1(10) because the phrase "which directly, or indirectly serve[s] the public" from the first sentence in the definition is grafted onto the third sentence of the definition. O.C.G.A. § 22-1-1(10) defines "public utility" to mean,

> [A]ny publicly, privately, or cooperatively owned line, facility, or system for producing, transmitting, or distributing 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. This term also means a person, municipal corporation, county, state agency, or public authority which owns or manages a utility as defined in this paragraph. This term shall also include common carriers and railroads.

O.C.G.A. § 22-1-1(10). But "the fundamental principle of statutory construction [requires the Court] to follow the literal language of the statute unless it produces contradiction, absurdity or such an inconvenience as to [e]nsure that the legislature meant something else." *Fid. & Deposit Co. of Maryland v. Lafarge Bldg. Materials, Inc.*, 312 Ga. App. 821, 823 (2011). And "[u]nder the statutory interpretation doctrine of *expressio unius est exclusio alterius*, where the General Assembly includes particular language in one section of a statute but omits it in another section of the same Act, it is generally presumed that the General Assembly acts intentionally and purposely in the disparate inclusion or exclusion." *Barnes v. State Farm Fire & Cas. Co.*, 373 Ga. App. 331, 339 (2024) (internal quotations omitted). Therefore, this Court will not graft a qualifier from a different sentence onto the term "railroads."[3]

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[3] This Court does not find Property Owners' arguments regarding the Pennsylvania Supreme Court *Wolfe* decision convincing because that decision was based on Pennsylvania law. *See Wolfe v. Reading Blue Mountain*, 320 A.3d 1164, 1175 (Pa. 2024), *reconsideration and reargument denied* (Oct. 9, 2024). In contrast to the Pennsylvania legislature, the Georgia General Assembly recently affirmed that "the providing of channels of trade or travel" and "the functioning of" railroads are

The Spur also serves a public purpose because it will provide a channel of trade in East middle Georgia. O.C.G.A. § 22-1-1 (9)(A)(iii) (defining public use to include "[t]he opening of roads, the construction of defenses, or the providing of channels of trade or travel.") Sandersville provided undisputed testimony that neither Sandersville nor any other short line railroad in East middle Georgia has direct access to the CSXT rail system, which serves points and regions that Norfolk Southern does not, including parts of New York and New England. Therefore, without the Hanson Spur, customers in East middle Georgia will not be able to reach the markets accessible solely through connection to CSXT. Therefore, the Spur will "provid[e a] channel of trade" to East middle Georgia. There is no requirement that the channel of trade be a "new" or "exclusive" channel of trade, such that if any other shipping route exists, the new route will not serve a public purpose. Accordingly, the finding of the Commission that the Spur will serve a public use should be affirmed.[4]

III. Whether the U.S. Surface Transportation Board has jurisdiction to license the construction of the Spur is not relevant to whether the Order is consistent with Georgia law or the U. S. Constitution.

Contrary to Petitioners' arguments, the Commission correctly found whether the Spur's construction is subject to federal licensing is not relevant to whether the Spur is "necessary for the

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separate and independent a "public use[s]," even after the Supreme Court's controversial *Kelo* decision. *Compare* O.C.G.A. § 36-101 (1933) *with* O.C.G.A. § 22-1-1(9)(A)(ii)–(iii).

[4] Property Owners argue that this Court should disregard the fact that the Spur will open "channels of trade" because that asserted public use is a pretext for economic development, which is not a public use under O.C.G.A. § 22-1-1(9)(B). Property Owners make this claim because they allege that Sandersville has promoted the positive economic effects of the Spur throughout the condemnation process. But, as noted by the Hearing Officer, "[n]othing in the statutes suggest that a proposed condemnation that anticipates the public accruing incidental economic benefits must be denied." And 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.

proper accommodation of the business of the company." O.C.G.A. § 46-8-120(a)(4) or serves a public purpose. If the construction were subject to STB authorization (which the parties here dispute), the standard for STB construction certification is whether the construction is contrary to "public convenience and necessity." *See* 49 U.S.C. § 10901(c) ("The Board shall issue a certificate authorizing activities for which such [construction] authority is requested in an application filed under subsection (b) unless the Board finds that such activities are inconsistent with the public convenience and necessity.") Therefore, whether an STB certificate is required, and, if so, whether it would be granted, is not relevant to Georgia's requirements for condemnation.[5]

IV. The Commission's Decision Does Not Violate Georgia Law or the U.S. Constitution.

The U.S. and Georgia Constitutions each authorize condemnations. But the language of the two constitutions differs: the U.S. Constitution authorizes condemnation for a public use, whereas the Georgia Constitution authorizes it for a public purpose. U.S. CONST., Amend. V; GA. CONST. Art. I, Sec. III, Para. I (1983). Though the Fifth Amendment and the Georgia Constitution use different language, the Supreme Court of the United States of America (the "U.S. Supreme Court") has clarified that these terms are synonymous: "when this Court began applying the Fifth Amendment to the States at the close of the 19th century, it embraced the broader and more natural

[5] Petitioners have argued the Commission's Order is made upon unlawful procedure because Sandersville Railroad did not comply with the Subpoena to Testify and Duces Tecum issued by the Hearing Officer. But Sandersville did comply, and when Property Owners objected to its responses, Sandersville complied with the Commission order to meet and confer, to submit a joint statement to the Hearing Officer after the meet and confer, and the Hearing Officer's order at the hearing requiring Sandersville to provide additional discovery. Property Owners could have filed a motion to compel with the Hearing Officer or the Fulton County Superior Court under O.C.G.A. § 46-2-57(a), but they did not. Property Owners have also argued the Commission's decision is made upon unlawful procedure because Sandersville's procedures for contacting and negotiating with landowners were "heavy handed" and "misleading." This Court finds that, even if that were true (which Sandersville denies), those communications are not "unlawful" as required to reverse the Commission's decision under O.C.G.A. § 50-13-19(h)(3).

interpretation of public use as 'public purpose.'" *Kelo v. City of New London, Conn.*, 545 U.S. 469, 480 (2005).

In *Kelo*, Connecticut, the U.S. Supreme Court affirmed that "public purpose" for the purposes of eminent domain should be construed broadly, reflecting the Court's "longstanding policy of deference to legislative judgments in this field." 545 U.S. 469, 480 (2005). This policy of deference also applies to state legislators, empowering them to determine what serves the public they are elected to represent. *Hawaii Hous. Auth. v. Midkiff*, 467 U.S. 229, 244 (1984) ("[T]he fact that a state legislature, and not the Congress, made the public use determination does not mean that judicial deference is less appropriate."). The Georgia legislature is therefore empowered to determine that providing for the "functioning of public utilities" and *separately* the "opening of channels of trade" are public purposes. O.C.G.A. § 22-1-1(9)(A), (10).

The Georgia legislature is authorized to determine that economic development is not a public purpose in Georgia, even when the U.S. Supreme Court affirmed the constitutionality of eminent domain for economic development under the U.S. Constitution in *Kelo*. O.C.G.A. § 22-1-1(9)(B). *Kelo*, 545 U.S. 469, 469. In fact, it was the *Kelo* decision that spurred the Georgia General Assembly to pass the Landowner's Bill of Rights "to provide for the comprehensive revision of provisions regarding the power of eminent domain" and "to provide for a public use requirement for exercising the power of eminent domain." Landowner's Bill of Rights And Private Property Protection Act, 2006 Georgia Laws Act 444 (H.B. 1313). This Act created the framework that governs condemnations today. Indeed, the Act affirmed that "the providing of channels of trade or travel" and "the functioning of" railroads are "public use[s]." O.C.G.A. § 22-1-1 (9)(A)(ii), (9)(A)(iii), (10).

Property Owners have tried to distinguish this case from *Kelo* by arguing that

Sandersville's taking is not for a public use because it will benefit named private beneficiaries. (Reply at 27). In their Reply, Property Owners cite to a footnote and concurrence in *Kelo* to argue that the redevelopment authority that was using the state's eminent domain power in *Kelo* did not know who would receive the land that it was condemning. (Reply at 27). But this is an oversimplification of the facts in *Kelo*. First, the Court in *Kelo* recognized that at least one private entity was sure to benefit from the condemnation—"New London Development Corporation (development corporation), a private nonprofit economic development corporation" that sought to acquire the property and Corcoran Jennison, a developer that would market the property and find tenants. *Kelo v. City of New London*, 268 Conn. 1, 5, 843 A.2d 500, 508 (2004), *aff'd sub nom. Kelo v. City of New London, Conn.*, 545 U.S. 469 (2005). Therefore, there were both named and unnamed private beneficiaries to the taking in *Kelo*, just as there are named beneficiaries (the five customers with memorandum of understanding with Sandersville), and unnamed private beneficiaries in Sandersville (future customers of the Spur). *See Kelo*, 545 U.S. at 478 n.6 ("[T]he City intends to transfer certain of the parcels to a private developer in a long-term lease—which developer, in turn, is expected to lease the office space and so forth to other private tenants—the identities of those private parties were not known when the plan was adopted.")

Property Owners have argued that *Kelo* created an additional requirement that Sandersville must have an "extensive detailed plan." (Reply at 28-29). However, this requirement is found nowhere in *Kelo*'s text and the citations provided by Property Owners related to the Court's decision to resolve the challenges by the landowners all together, rather than individually. *See Kelo*, 545 U.S. at 484 ("Given the plan's comprehensive character, the thorough deliberation that preceded its adoption, and the limited scope of this Court's review in such cases, it is appropriate here, as it was in Berman, to resolve the challenges of the individual owners, not on a piecemeal

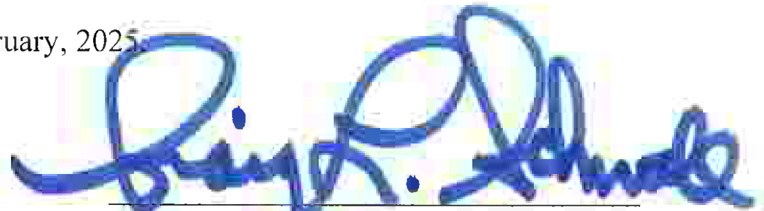
basis, but rather in light of the entire plan."). The language does not create a new requirement for a constitutional taking. Instead, where a public entity asserts it is condemning for an authorized public purpose, a plan may be required to demonstrate that the use asserted will be the use to which the land is put. But that need for a plan is not relevant here where there is no question that the Spur will be used for the public purposes asserted by Petitioner. However, if the need for a detailed plan was relevant, the record before the Commission contained evidence that Sandersville has a detailed plan for construction and operation of the Spur.

CONCLUSION

For the reasons set forth above and based on careful consideration of the record and proceedings before the Court, it is hereby **ORDERED AND ADJUDGED** that the Commission's Order granting Sandersville's Amended Petition for Approval to Acquire Real Estate by Condemnation is **AFFIRMED** and Property Owners' and NROCC's Petitions for Review are **DENIED**.

Furthermore, out of an abundance of caution and with the belief that this Order likely will be appealed given the great impact upon Petitioners and their homesteads, this Court hereby CONTINUES the partial stay granted on January 3, 2025 pending appellate review.

SO ORDERED, this 4TH day of February, 2025.



Honorable Craig L. Schwall, Sr.
Judge, Fulton County Superior Court

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(EDITS BY COURT)