The No Railroad in Our Community Coalition (“NROCC”) now files with the Georgia Public Service

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,

[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

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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 Garood t3 0 TdTd[(r)

because there’s no revenues in traffic solid associated with

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;

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 railroads.

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 consti-4 (ath.11 Tw 0.33 0 Td Tc Tw [)4 (nc)4 c

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

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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

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,

[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 c-2 (i)- 4 (om)-2 (pa)4 (n*1 (y f)3 (ori)-2 (nnf)3 (i)-2i)-2ianson S[-2 (nnf)3 . produc au-1

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 condun ttrtes to undea afnsf26

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 extension of one of its spur or industrial tracks which was already built and

"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)(H), which

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

1. The Hanson Spur will not provide a channel of trade.

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

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 brightecourts hsh s02pbi15 re31 (br)2.9[n0 (c)4-

> 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. publimem Tc -at (a)4 (dot)8 (t)-2 (3)6 (ic o a)4 ( )]00Sic o a

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*

[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*: n 210.641.15 Td[(e8.04 28dy08 Tc 0.008 136 144 ns)-1 (i)-2 (de(o)2(l)-2 (e)4na)4 (taAN(c)4 (i)-2)2 (

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

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

for delivery in any other county,

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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