

Before the
SURFACE TRANSPORTATION BOARD

STB Docket No. AB 1242

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Hartwell First United Methodist Church—Adverse Abandonment and
Discontinuance—
The Great Walton Railroad Company, Inc.,
in Hart County, GA

January 2019 Status Report and Request
For Clarification and Intervention in State Proceeding

By its decision served January 31, 2018, the Board denied the application filed by the Hartwell First United Methodist Church (HFUMC) requesting that the Board authorize the adverse abandonment of approximately 0.25 miles of rail line and associated right-of-way (the Line) owned by The Great Walton Railroad Company, Inc. (GWRC). The Line, which is located between Athens Street and the end of end of the line at South Forest Avenue, crosses over three other streets in Hartwell, Georgia, namely Bank Street, South Webb Street and South Jackson Street. Although the Board found that “the present and future PC&N do not support the requested adverse abandonment,”¹ it directed GWRC “to submit a status report once every six months, starting on July 31, 2018, describing its progress with respect to rehabilitation and utilization of the Line.”

¹ Slip op. at 4.

In its July 2018 Status Report, GWRC reported that its mainline track has been completely refurbished from Jackson Street to Athens Street in Hartwell, Georgia. However, it also advised the Board that it had not been able to complete the reconstruction of the runaround track that had long been used to move its locomotives from the front of an inbound train to the front end of the outbound trip. The runaround track extends in an easterly direction from a point on the mainline that is located to the east of Bank Street and extends across South Webb Street to a point on the mainline that is a few feet to the west of South Jackson Street. As GWRC further noted, the Georgia Department of Transportation (GDOT) worked with GWRC to reconstruct both the mainline and runaround tracks that cross over South Webb Street, which is a state road. That work, including the installation of crossbucks, was completed by March 15, 2018.

As reflected by previously submitted photographs,² a short gap exists on the runaround track, which runs parallel with the reconstructed main line. The gap is located between the rails that end at the western edge of the sidewalk along South Webb Street and the end of the reconstructed track a few feet to the west. To close this gap, one rail that is 33 feet and 5 inches must be placed on the northern side of the track, while a rail of less than 13 feet is needed on the southern side of the track. After this gap is closed, GWRC will complete the reconstruction of the runaround track from the west side of South Webb Street

² See Photographs 12, 13, and 14 attached to July 2018 Status Report.

to the point where it curves back to join the existing portion of the runaround at the north side of the mainline right of way approximately 40 feet to the east of Bank Street. GWRC emphasizes that both ends of the runaround track were left in place and were not removed when a segment of the runaround track was temporarily removed, but not abandoned, in 2008.

In its prior Status Report, GWRC also noted that HFUMC had not sought judicial review of the Board's decision before a United States Court of Appeals. However, it had intervened in the condemnation proceeding before the Georgia Public Service Commission (PSC or Commission) in which GWRC is attempting to clear title to the narrow strip of real property adjacent to the church on which a segment of the runaround track had been constructed in 1913.³

In its response to GWRC's initial status report, HFUMC took the position that "[t]he adverse abandonment application did not reference or include the north spur track that had previously been removed, or the Clinkscapes industrial track that had previously been connected to the north spur (and which together GWRC contends constituted a "runaround track") because at the time of the filing there was no north spur or runaround track, and GWRC does not have any property interest outside of the main line right of way."⁴

³ Although its Hearing Officer ruled in favor of GWRC, the PSC, by decision dated August 24, 2018, refused to allow GWRC to reconstruct the segment of the runaround track behind the church.³ By further order served January 3, 2019, the PSC denied GWRC's application seeking rehearing. Copies of the PSC's decision are attached hereto.

⁴ Reply of Hartwell First United Methodist Church to Status Report of the Great Walton Railroad Company, Inc. at 2-3.

According to HFUMC, “[t]he Board did not find that the proposed new track to be connected with a new crossing of Webb Street to the remaining Clinkscapes industrial track, was anything other than excepted track under 49 USC 10906, or that such tracks were or would be part of ‘the Line.’”⁵ However, HFUMC had properly acknowledged that GWRC has taken the position before the PSC that the runaround track is part of the Line and is subject the Board’s exclusive jurisdiction.

Although the PSC has accepted HFUMC’s arguments and assumed that it has jurisdiction to prevent GWRC from reconstructing its track, it is GWRC’s position that this Board has *exclusive* jurisdiction over the track, whether it is viewed as a spur track or as part of a runaround track. Moreover, because the Board has exclusive jurisdiction over GWRC’s tracks, even though they are located solely in the State of Georgia, the Georgia State law and regulations that the PSC has relied upon to prevent GWRC from reconstructing its track were preempted by Congress when it enacted the ICC Termination Act of 1995.⁶ Because GWRC needs the runaround track to safely and efficiently operate its trains, the PSC’s decision, by pitting Georgia State law against the provisions of 49 U.S.C. 10501(b), unduly impacts and interferes with GWRC’s interstate railroad operations and must be preempted.

It is respectfully submitted that HFUMC is motivated by the thought that if it can use PSC procedures and Georgia State law to prevent and slow down

⁵ *Id.* at 3.

⁶ Pub. L. No. 104-88, 109 Stat. 803, Dec. 29, 1995, effective Jan. 1, 1996.

the reconstruction of the full runaround track, it can convince the Board to approve a renewed application for adverse abandonment. GWRC's foregoing comments are not based on idle speculation. They are based on arguments made by HFUMC's Georgia counsel to the PSC. Claiming that GWRC was not using the "spur" track, HFUMC's counsel, in the course of a November 1, 2018, Committee hearing before the PSC, argued that "if y'all stand by your four-to-one decision, the STB case will go the other way. We are very confident in that. The whole point is, if that area is not to be used, then the abandonment claim, we go forward in the Surface Transportation Board case."⁷ Given HFUMC's position before the Board that its adverse abandonment application did not cover the "spur" track, it appears that HFUMC is intent upon destroying GWRC's ability to operate over its main line, as well as the runaround track that encompasses the so-called "spur" track.

In order to support its request for clarification, GWRC has attached copies of the PSC's decisions, dated August 24, 2018 and January 3, 2019. In addition, a copy of its Petition for Review that has been filed with the Superior Court of Fulton County, Georgia, as required by Title 50 of the Georgia Code, O.C.G.A. § 50-13-19, is also attached and incorporated herein.

GWRC will, however, respond to the PSC's finding and conclusion that because "the proposed rail line will only serve a single customer, the proposed runaround, and its concomitant disruption of the status quo, serves no

⁷ Counsel's argument can be viewed at <https://www.youtube.com/watch?v=iz-6RwZ8BF0>.

legitimate public purpose and is not necessary.”⁸ While it holds out rail service to Quality Holdings, LLC, GWRC is currently utilizing its mainline track located behind the church to store rail cars for TTX.⁹ Furthermore, in order to increase its ability to provide service for TTX, GWRC will reconnect an unused track on the east side of South Webb street to store railcars while continuing to hold out other rail services for other future shippers that may require its services. In order to do so in an efficient manner, GWRC must be able to utilize the entire runaround track.

While HFUMC complains bitterly about the track’s existence, it must be stressed that the church co-existed in close proximity with the railroad for over a century before it initiated its attempt to force the abandonment of the tracks so it could acquire the real property that underlies the tracks. Moreover, it is patently obvious that HFUMC was aware of the tracks and the railroad’s operations when it chose to expand its operations. The same is true when, in 2007 and 2008, it entered into license agreements with the railroad that specifically alerted HFUMC that the railroad reserved the right to resume rail operations over its tracks.

GWRC has invoked the PSC’s jurisdiction pursuant to O.C.G.A. § 22-1-1(9)(iv) to resolve the cloud on title attributed to the inability to identify the

⁸ Order Reversing Hearing Officer’s Initial Decision at 5.

⁹ The attached photos, which were taken during the past seven days, confirm that GWRC is utilizing its tracks to provide service for TTX. The photos also show that the runaround track is connected at both ends to GWRC’s mainline track. The western connection has existed since 1913, while the eastern connection was likely made in the 1940s.

actual owner of the narrow strip of real property on which a portion of GWRR's track was originally constructed in 1913. As of this date, that issue has not been resolved by the PSC. In this regard, GWRC once again invites the Board's attention to the series of warranty deeds, duly filed with the Superior Court of Hart County, that conclusively demonstrate that HFUMC never acquired title to the parcel of real estate behind the church on which the track was constructed in 1913. In particular, the 1937 warranty deed that conveyed the Perfect Pea Picker lot to Hartwell Mills clearly shows that the lot extended only 90 feet from its northern boundary to its southern boundary along Webb Street.¹⁰ Because the quitclaim deed that conveyed the lot from Hartwell Mills' successors-in-interest to HFUMC could not have lawfully conveyed more than 90 feet of real property, HFUMC cannot establish any legitimate claim of ownership of the 10-foot gap of real property between its property and the right of way of GWRC's mainline.

To resolve the jurisdictional issues underlying this proceeding and the related PSC and state court proceedings, GWRC respectfully requests the Board to enter an Order in an expedited fashion that would declare that the PSC's conclusions, which are based on the superseded provisions of O.C.G.A. § 46-8-120(a)(4), are preempted. In addition, because this matter presents an issue of law that is of general transportation importance, not only for GWRC, but for all railroads that operate in the State of Georgia, the Board is requested

¹⁰ GWRC Exhibit 30, filed July 3.

to intervene in the proceeding before the Fulton County Superior Court on GWRC's behalf.

Respectfully submitted,

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Dated: January 31, 2019

CERTIFICATE OF SERVICE

I, Richard H. Streeter, do hereby certify that I, this 31st day of January, 2019, have served true copies of all documents filed on this date in STB Docket AB-1242 on all parties of record by email or by first-class mail, postage prepaid.

/s/ Richard H. Streeter

Richard H. Streeter

Jan. 31. 2019 12:06PM

RECEIVED 01/31/2019 02:10AM

No. 8380 P. 1

VERIFICATION

I, Bennie Ray Anderson, hereby declare under penalty of perjury that the foregoing is true and correct. Executed on January 31, 2019.

Bennie Ray Anderson
Bennie Ray Anderson

**IN THE SUPERIOR COURT OF FULTON COUNTY
STATE OF GEORGIA**

**THE GREAT WALTON RAILROAD
COMPANY, INC. D/B/A THE
HARTWELL RAILROAD COMPANY,**

Petitioner,

v.

**GEORGIA PUBLIC SERVICE
COMMISSION,**

Respondent.

CIVIL ACTION NO. _____

PETITION FOR JUDICIAL REVIEW

COMES NOW The Great Walton Railroad Company Inc. d/b/a The Hartwell Railroad Company (collectively hereinafter “GWRR”) and petitions the Court, pursuant to O.C.G.A. § 50-13-19, to set aside the decision of the Georgia Public Service Commission (“Commission”), filed August 24, 2018,¹ in its Docket No. 41607, *The Great Walton Railroad Company, Inc. d/b/a The Hartwell Railroad Company, Hart County, Georgia, Petition for Approval to Acquire Real Estate by Condemnation*. By its decision, the Commission denied

¹ On September 4, 2018, GWRR timely filed an Application for Rehearing, Reconsideration and Oral Argument and Request to Modify Description of Real Property Sought to be Acquired by Condemnation. Thereafter, on September 27, 2018, GWRR filed its Brief in Opposition to Hartwell First United Methodist Church’s Motion to Strike and submitted certified copies of warranty deeds that conclusively prove that HFUMC does not hold title to the parcel of land on which GWRR’s track was constructed in 1913. By Order dated January 3, 2019, the Commission denied GWRR’s Application for Rehearing and refused to consider the tendered deeds and other information that GWRR sought to introduce in the course of seeking rehearing and reconsideration.

GWRC's right to reconstruct its track. In reaching its decision, the Commission erroneously ignored the explicit language of O.C.G.A. § 46-8-120(a)(1) which, as herein relevant, provides that "[a]ny railroad company owning or operating a railroad in this state ... is authorized and empowered (1) [t]o reconstruct its lines or tracks, to build one or more additional main tracks, to relocate any line or portions of a line".

Without considering the foregoing statutory provision, the Commission determined that "[i]n considering powers of Hartwell Railroad under O.C.G.A. § 46-8-120, only § 46-8-120(4) applies here, the power to build and maintain such additional depots, tracks, terminal facilities as may be **necessary** for the proper accommodation of the business of the company [(emphasis in original)]." Because the Commission's conclusion plainly deprives GWRR of a statutory right granted to every railroad company that operates a railroad in Georgia, it is in violation of a statutory provision and must be reversed. See O.C.G.A. § 50-13-19(h)(1) and (2):

The court may reverse or modify the decision if 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.

In addition, the Commission ran afoul of the Supremacy Clause of the United States Constitution by ignoring the provisions of 49 U.S.C. § 10501(b), which read as follows:

(b) The jurisdiction of the [Surface Transportation] Board over –

(1) transportation by rail carriers, and the remedies provided in this part with respect to ... routes, services, and facilities of such carriers; and

(2) the construction, acquisition, operation, abandonment, or discontinuance of spur, industrial, team, switching, or side tracks, or facilities, even if the tracks are located, or intended to be located, entirely in one State,

is exclusive. Except as otherwise provided in this part, the remedies provided under this part with respect to regulation of rail transportation are exclusive and preempt the remedies provided under Federal or State law.

Even if it is assumed for the purpose of argument that the track that GWRR is seeking to reconstruct is a mere spur, and not a runaround track that is part of a Line of railroad, Congress stripped the Commission of any jurisdiction over the reconstruction of the track when it enacted the ICC Termination Act of 1995.² Simply stated, to the extent that the Commission purports to deny GWRR of the right to reconstruct a track, the Commission's decision is preempted by federal law.

As has been recognized by every U.S. Court of Appeals that has been asked to interpret the provisions of 49 U.S.C. § 10501(b), when a state or local action "would have the effect of preventing or unreasonably interfering with railroad transportation," it is preempted on its face or "as applied." In short, there is no avoiding the conclusion that Section 10501(b) preempts state and local regulations that would unreasonably interfere with railroad operations

² Pub. L. No. 104-88, 109 Stat. 803, December 29, 1995, effective January 1, 1996.

that come within the Board's jurisdiction. This is true regardless of whether the Board actively regulates the particular activity involved.

Given the Surface Transportation Board's previous decision that denied the adverse abandonment application filed by Hartwell First United Methodist Church ("HFUMC"),³ the Commission may not force an unauthorized abandonment by denying GWRR the right to reconstruct one of its tracks. Only a United States Court of Appeals is authorized to set aside a decision of the Surface Transportation Board. See 28 U.S.C. §§ 2321 and 2342(5). In this instance, HFUMC did not seek judicial review of the Board's decision and, therefore, is precluded from collaterally attacking the Board's decision before the Georgia Public Service Commission.

Although HFUMC has argued that its adverse abandonment application did not involve what it has called the "north spur track," which it insists is an excepted track under 49 U.S.C. §10906, the Board has unquestionable, exclusive jurisdiction over the track, whether it is described as a spur track or, more appropriately, as a runaround track. In any event, even though the track was initially constructed as a storage track (or a spur) in 1913, it was subsequently transformed into an integral segment of the runaround track that GWRR and its predecessors actively used to move the locomotive of an inbound train to the back end of the train for the return trip to Bowersville.⁴ By denying

³ *Hartwell First United Methodist Church—Adverse Abandonment and Discontinuance—The Great Walton Railroad Company, Inc., in Hart County*, AB 1242 (STB served January 31, 2018).

⁴ GWRR's mainline extends from Bowersville and dead ends in downtown Hartwell. In order for the locomotive to be positioned at the front of the train for

GWRR the right to use the track for the identical purpose, the Commission's decision is preventing and unreasonably interfering with GWRR's interstate railroad operations.

The Commission has jurisdiction under O.C.G.A. § 22-1-1(9)(iv) to determine whether GWRR, in its capacity as a public utility, may acquire property through condemnation "where title is clouded due to the inability to identify or locate all owners of the property." However, because the Commission focused on the irrelevant and immaterial issues of whether GWRR would be authorized to construct a "new" track and whether alternative sites would be better locations for the runaround track, the Commission never resolved the only relevant condemnation issue. Moreover, it did so even though GWRR provided the Commission with certified copies of warranty deeds that show that the quit claim deed upon which Hartwell First United Methodist Church (HFUMC) relies, could not have conveyed title to the narrow strip of real property on which GWRR's track was initially constructed in 1913.

In summary, the Commission committed reversible error when it reversed the Hearing Officer's conclusions, which are based on substantial and compelling evidence of record, that (1) "GWRR has shown that a public interest resides in the safety of railroad employees, rail traffic and vehicular traffic through the addition of the proposed runaround; and (2) the proposed condemnation by Great Walton Railroad Company, Inc. serves a legitimate and

return movements to Bowersville, it must utilize the runaround track to reposition the locomotive.

necessary public purpose.”⁵ Given that GWRR’s rights have been substantially prejudiced by the Commission’s decisions, this Court should summarily reverse or modify them.

Statement of the Case

This case involves GWRR’s attempt to invoke the provisions of O.C.G.A. § 22-1-1(9)(iv) to resolve the cloud on title attributed to the inability to identify the actual owner of the narrow strip of real property on which a portion of GWRR’s track was originally constructed. Although the property was openly used for railroad purposes since 1913, no one ever questioned the railroads’ ownership of the property until 2016. It was only then that HFUMC first claimed ownership of the property through a quit claim deed. However, relevant warranty deeds show that its predecessors in interest did not acquire title to the involved property. Hence, a legitimate issue is involved regarding the actual owner.

As the Hearing Officer recognized, “[t]here is no dispute that this piece of land has been occupied by a section of railroad track that has been utilized by GWRR and its predecessors as a ‘runaround’ track.”⁶ As he also recognized, “[i]n recent times, the rail in the runaround track had become obsolete and had been removed by GWRR until such time as there was a need to put the track

⁵ Initial Decision at 13. Although the Hearing Officer reached a decision that can be reconciled with the Board’s decision that denied HFUMC’s adverse abandonment application, he too failed to consider the applicable language of O.C.G.A. § 46-8-120(a)(1).

⁶ Initial Decision at 4.

back in service.”⁷ The Hearing Officer also observed that “[b]ecause of conflicting surveys, there is no clear evidence that establishes the exact location of the boundary line between the properties of the two parties.”⁸

In order to address this issue, GWRR has submitted a new survey and certified deeds that prove that HFUMC never obtained any title to the contested parcel of real property on which the track was constructed in 1913. However, rather than reopen the proceeding to receive this evidence, the Commission has arbitrarily and capriciously refused to grant GWRR’s Application for rehearing, reconsideration and oral argument. By taking that approach and refusing to resolve the ownership issue, the Commission has needlessly prolonged the controversy. Because further delay is unduly impacting and interfering with GWRR’s interstate railroad operations, HFUMC should not be allowed to interfere with GWRR’s operations when it lacks a legitimate claim to the property.

The Court should note that in 2007 and 2008, GWRR granted multiple crossing licenses to HFUMC. In accepting the crossing licenses, HFUMC agreed that it “shall not at any time own or claim any right, title or interest in or to railroad’s property occupied by Licensee’s crossing, nor shall the exercise of this Agreement for any length of time give rise to any title to said property or any right of interest in Licensee other than the license created hereby.”⁹ Although HFUMC has abruptly disavowed its contractual commitments by

⁷ *Id.*

⁸ *Id.* at 7.

⁹ See GWRR Exhibit 34, Tr. 134.

claiming that its quit claim deed supports its claim of title, there is no rational reason for the Commission to prolong the litigation when it is in receipt of certified deeds that disprove HFUMC's fallacious claim that it holds title to the contested property. Good cause exists to compel the Commission to accept GWRR's evidence and resolve the ownership issue.

GWRR's Requests for Relief

GWRR respectfully requests this Court to find that the Commission erred in the following respects:

1. As a matter of law, the Surface Transportation Board has exclusive jurisdiction over the abandonment of a line of railroad, as well as spur tracks and side tracks located entirely in one State.¹⁰ Specifically, the remedies provided by the Interstate Commerce Act "with respect to regulation of rail transportation are exclusive and preempt the remedies provided under Federal or State law." Hence, the remedy provided by O.C.G.A. § 46-8-120(4) is preempted.

When it denied HFUMC's adverse abandonment application on January 31, 2018, the Board accepted GWRR's testimony that it "intends to use the Line as part of a runaround track."¹¹ By finding that "the present and future [public convenience and necessity] do not support the requested adverse abandonment," the Board treated the runaround track as being a part of

¹⁰ 49 U.S.C. § 10501(b)(1) & (2).

¹¹ *Hartwell First United Methodist Church—Adverse Abandonment and Discontinuance—The Great Walton Railroad Company, Inc., in Hart County, GA*, AB 1242, slip op. at 2 (STB served Jan. 31, 2018).

GWRR's Line of railroad and the National Rail System of Transportation. In short, even though the tracks had not been actively used for several years and had been temporarily removed, that did not remove them from the Board's exclusive jurisdiction or the national rail transportation system. Because the Board's decision was not appealed to a United States Court of Appeals, it is binding on HFUMC and the Commission.

Not only is the Commission's reliance on 46-8-120(a)(4) preempted, its decision violates the explicit statutory provision of O.C.G.A. 46-8-120(a)(1) that authorizes and empowers any railroad company owning or operating a railroad in the State of Georgia to *reconstruct* its lines or track. Given the foregoing, the Public Service Commission may not defy the Georgia legislature by barring GWRR's reconstruction of its runaround track. Even if the Commission could somehow overlook O.C.G.A. § 46-8-120(a)(1), the Commission's authority to prevent the reconstruction of the runaround track by applying § 120(a)(4) is preempted by 49 U.S.C. § 10501(b).¹² Plainly, the Commission's refusal to authorize the reconstruction of the segment of the runaround track that is the

¹² For an extensive discussion of the preemptive nature of the ICC Termination Act of 1995, see *CSX Transportation, Inc. v. Georgia Public Service Commission*, 944 F. Supp. 1581-1585. In particular, attention is invited to the statement at 1581 that "[t]he most natural reading of section 10501(b)(2) is that the federal remedies provided by the ICC Termination Act are the only remedies available as to the regulation of rail transportation, and that the federal remedies are exclusive of state remedies except where the ICC Act has expressly provided otherwise. See S.Rep. No. 176, 104th Cong., 1st Sess. 14 (1995) (explaining that ICC Termination Act "should not be construed to authorize states to regulate railroads in areas where federal regulation has been repealed by the bill").

focus of this matter has prevented and unduly interfered with GWRR's railroad operations. As such, its misapplication of state regulations is preempted.

2. The Commission committed reversible error when it arbitrarily and capriciously failed to adhere to controlling precedent of the Supreme Court of Georgia when it reversed the Initial Decision of the Hearing Officer based on the Commission's finding and conclusion that "with the existence of several reasonable alternatives, the condemnation is not 'necessary for the proper accommodation of the business of the company.'"

3. The Commission's findings and conclusions 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 public purpose and is not necessary" are irrelevant and immaterial. Furthermore, they are arbitrary and capricious and unsupported by substantial evidence of record in that they ignore evidence of record that demonstrates that (1) the reconstruction of the runaround track is not the functional equivalent of "new construction" and (2) that GWRR intends to make future use of the runaround in servicing other shippers than Quality Holdings.

4. The Commission erred by refusing to consider probative evidence that demonstrates that Hartwell First United Methodist Church does not hold a legitimate interest in the parcel of real estate upon which the track in question was constructed in 1913, without any objection by the prior owners of the property.

Argument

- I. Given the exclusive jurisdiction of the Surface Transportation Board over abandonments, the Public Service Commission has no jurisdiction to directly or indirectly force the abandonment of the runaround track.

There is no avoiding the preemptive implications of the Surface Transportation Board's recent denial of HFUMC's adverse abandonment application. Even though the tracks had not been used for several years and rails had been removed from segments of both the mainline and the runaround track, the Board, pursuant to 49 U.S.C. § 10501(b), exercised its exclusive jurisdiction to deny the adverse abandonment. In short, as a matter of law, both the mainline and the runaround track have at all times remained part of the national system of rail transportation despite the fact that segments were temporarily removed from both of them in late 2008.¹³

As the Supreme Court of the United States has explained, the Interstate Commerce Act is "among the most pervasive and comprehensive of federal regulatory schemes." *Chi. & N.W. Transp. Co. v. Kalo Brick & Tile Co.*, 450 U.S.

¹³ As the Supreme Court of Georgia has long recognized, intent to abandon is a key factor. *Gaston v. Gainesville & D. Electric Ry. Co.*, 48 S.E. 188, 120 Ga. 616 (Ga., 1904). The record in this case unquestionably confirms there has never been any intent on the part of Mr. Anderson to abandon the tracks. Indeed, Mr. Whittemore, HFUMC's witness, testified regarding Mr. Anderson's refusal to succumb to Mr. Whittemore's repeated requests that he abandon the tracks and turn over the underlying real property to the church. Tr. 166-67.

Furthermore, the three license agreements that HFUMC signed before the tracks were temporarily removed contain explicit language that reflects the railroad's intent to resume service if needed. In particular, paragraphs 3, 8, 9, and 11 of the licenses, recognize that the railroad right-of-way was part of an operating railroad and that the Railroad reserved the "paramount right to continue to occupy, possess and use the area of the crossing for any and all railroad purposes." GWRR Ex. 34, Tr. 134.

311, 318 (1981). For more than a century, the Supreme Court has made it clear that under the U.S. Constitution’s Supremacy Clause (Art. VI, cl. 2), state laws or regulations that are inconsistent with the agency’s plenary authority or with the Congressional policy reflected in the Interstate Commerce Act are preempted. *See id.*

By enacting ICCTA, Congress further broadened the express preemption contained in the Interstate Commerce Act. See e.g., *Union Pac. R.R. v. Chi. Transit Auth.*, 647 F.3d 675, 678 & n.1 (7th Cir. 2011) (*Chicago Transit*); *Green Mountain R.R. v. Vermont*, 404 F.3d 638, 643 (2d Cir. 2005); *City of Auburn v. STB*, 154 F.3d 1025, 1029-31 (9th Cir. 1998). Section 10501(b) states that “the remedies provided under [49 U.S.C. §§ 10101-11908] with respect to regulation of rail transportation are exclusive and preempt the remedies provided under Federal or State Law.” As noted above, every U.S. Court of Appeals that has been asked to interpret the provisions of 49 U.S.C. § 10501(b), has concluded that when a state or local action “would have the effect of preventing or unreasonably interfering with railroad transportation,” it is preempted on its face or “as applied.” Plainly, Section 10501(b) preempts other regulation that would unreasonably interfere with railroad operations that come within the Board’s jurisdiction, without regard to whether or not the Board actively regulates the particular activity involved.

The Interstate Commerce Act defines rail transportation expansively to encompass any property, facility, structure or equipment “related to the movement of passengers or property, or both, by rail, regardless of ownership

or an agreement concerning use.” 49 U.S.C. § 10102(9). Moreover, 49 U.S.C. § 10102(6) defines “railroad” broadly to include track, terminal facility, ground, etc., “used or necessary for transportation.”

The Board has interpreted state or local regulation to include state property law claims brought by non-governmental entities, where such claims would have the effect of interfering with railroad operations. *Mid-America Locomotive and Car Repair, Inc.—Petition for Declaratory Order*, FD 34599 (STB served June 6, 2005). As the Board explained in detail in *Jie Ao and Xin Zhou—Petition for Declaratory Order*, F.D. 35539 (STB served June 6, 2012)(slip op at 5):

The agency’s broad and exclusive jurisdiction over railroad operations and activities prevents application of state laws that would otherwise be available, including condemnation to take rail property for another use that would conflict with the rail use.* *City of Lincoln v. STB*, 414 F.3d 858, 861 (8th Cir. 2005) (city’s proposed use of eminent domain to acquire 20-foot strip of railroad ROW that might interfere with storage of materials by railroad on remainder of ROW preempted); *Chi. Transit Authority* (proposed state condemnation establishing perpetual easement over railroad ROW preempted by § 10501(b) even if the City’s proposed use of the property would have been entirely coextensive with prior lease); *Wis. Cent. Ltd. v. City of Marshfield*, 160 F. Supp. 1009, 1014 (W.D. Wis. 2000) (condemnation of railroad property that unreasonably interferes with railroad operations and facilities constitutes “regulation” of railroads and runs afoul of § 10501(b)); *Dakota, Minn. & E.R.R. v. State of South Dakota*, 236 F. Supp.2d 989, 1005-08 (D. S.D. 2002), *aff’d on other grounds*, 362 F.3d 512 (8th Cir. 2004) (aspects of state’s amended eminent domain statute that imposed new, burdensome requirements that would prevent or unreasonably interfere with a federally authorized rail project constituted

“regulation” of the railroad that was preempted); *Norfolk S. Ry.—Pet. for Decl. Order*, FD 35196 (STB served Feb. 26, 2010) (even if property is not currently being used by a railroad, condemnation can be a form of regulation, and using state eminent domain law to condemn railroad property or facilities for another use that would conflict with potential future rail use is exercising the most extreme type of control over railroad transportation as it is defined in 49 U.S.C. § 10102(9)). Of course, after railroad property has been lawfully abandoned, state condemnation or property laws can be applied, since the agency’s regulatory mission has come to an end. *Hayfield N. R.R. v. Chi. & N.W. Transp. Co.*, 467 U.S. 622, 632-33 (1984).

*Adverse possession has the same legal effect on the property as condemnation—elimination of the prior ownership interest in the property

HFUMC, in opposing GWRR’s attempt to have the Commission grant it condemnation authority to clear title to the century-old right-of-way associated with the runaround track so as to acquire the real property, is preventing and unreasonably interfering with GWRR’s railroad operations.¹⁴ As HFUMC’s attorney acknowledged during the November 2, 2018 Administrative hearing, the church is intent upon depriving GWRR of its statutory right to reconstruct its track so that the church can go forward in the STB case and seek to force the abandonment of GWRR’s track. The Commission should be barred from aiding and abetting HFUMC’s attempt to force the abandonment of the runaround track by utilizing what is indisputably an impermissible collateral attack on the Board’s denial of HFUMC’s adverse abandonment. The

¹⁴ Although GWRR originally sought to condemn additional real property, it has offered to reduce the amount of real property that is to be condemned to the narrow strip of real property for which neither it nor HFUMC can prove ownership.

Commission, by its ruling, should not be allowed to avoid the preemptive authority of the Surface Transportation Board and the powers it is granted by statute. In addition, the Commission, at the urging of HFUMC, by its ruling, attempts to accomplish a result which exceeds its authority. Its ruling effectively eliminates and forces the abandonment of the runaround track that was removed by GWRR as an accommodation to the church when it expanded its facilities.¹⁵

Whether the runaround track is described as a line of railroad, or as a spur or side track, its abandonment is subject to the exclusive jurisdiction of the Surface Transportation Board. Plainly, as a result of the Board's denial of HFUMC's adverse abandonment, GWRR has an unquestioned legal right to reactivate freight service over its tracks consistent with both Federal and Georgia law. GWRR, as is the case with all rail carriers operating in Georgia, is authorized and empowered to reconstruct its lines or tracks pursuant to O.C.G.A. 46-8-120(a)(1), which the Commission ignored.¹⁶

Given the foregoing, HFUMC's claim that GWRR "has no demonstrable property interest in the property that would allow the tracks to be

¹⁵ Naturally, the record reflects at least 1,335 letters were submitted by citizens on behalf of the church to the Commission attempting to influence the decision of the elected commissioners of the Public Service Commission.

¹⁶ Note is taken of the provisions set forth in O.C.G.A. § 46-8-122, which explicitly provide that the "powers and authority conferred by Code Sections 46-8-120 and 46-8-121 are in addition to the powers and authority which railroad companies may have by virtue of their charters or by virtue of the general laws of this state." Because GWRR is merely seeking to reconstruct an existing line, it is crystal clear that no further authority is required from the Commission to do so.

‘reconstructed’ under Section 46-8-120(1)”¹⁷ must be rejected. That claim disregards the fact that GWRR deliberately left the ballast and crossties in place in anticipation of the possibility of restoring the tracks where the steel rails were temporarily removed. Simply stated, there is no avoiding the fact that GWRR has a vital property interest in retaining the ability to operate in a safe and efficient manner, which, as the Hearing Officer concluded, is not currently possible. The Hearing Officer conducted a day-long hearing and expressly determined that the condemnation served a public purpose by allowing GWRR to operate in a safer and more efficient manner.

The current status quo, as the Hearing Officer correctly recognized, is not in the public interest. In order that GWRR can immediately clear the alleged cloud on its title to the narrow strip of land on which the storage track was constructed in 1913, years before it was converted into a runaround track, the Commission’s decision should be reversed.

- II. The Commission committed reversible error as a matter of law when, in defiance of the Georgia Supreme Court’s decision in *Central of Georgia R.R. Co. v. Georgia Public Service Commission*, 257 Ga. 217 (1987), it rejected the Hearing Officer’s reasoning that “the purpose of the condemnation serves a public purpose, not whether the condemnation ‘best serves’ the public interest” and instead concluded that “with the existence of several reasonable alternatives, the condemnation is not “necessary for the proper accommodation of the business of the company.”

Wholly apart from federal preemption, GWRR respectfully submits that the Commission’s refusal to comply with a precedent of the Georgia Supreme Court requires this Court to reverse the Commission’s decision consistent with

¹⁷ HFUMC Motion to Strike at 12.

Article VI. Section VI, Paragraph VI of the Georgia Constitution. This section proclaims that “[t]he decisions of the Supreme Court shall bind all other courts as precedents.” *Ga. Const.* 1983, Art. VI, Sec. VI, Par. VI. In *Central of Georgia Railroad v. Georgia Public Service Commission*, 257 Ga. 217, 218-219 (1987), the Georgia Supreme Court held that the Commission’s review of a railroad’s petition for condemnation is limited to determining whether the condemnation serves a public purpose, not whether the condemnation best serves the public interest.

As the Hearing Officer recognized, the explicit holding of the Supreme Court in *Central of Georgia* is not open to debate. Furthermore, the principle that the scope of the Commission’s review is “limited to determining whether ‘the purpose of the condemnation serves a public purpose, not whether the condemnation ‘best serves’ the public interest” is rooted in a Commission precedent that was confirmed by the Supreme Court in *City of Doraville v. Southern Railway Co.*, 227 Ga. 504, 181 S.E.2d 346 (Ga., 1987). Rather ironically, HFUMC’s claims regarding the alleged heavily trafficked nature of its property are in many respects virtually identical to the claims unsuccessfully raised by Doraville in opposing Southern Railway. The Commission clearly acted in contravention of the Georgia Supreme Court’s decision in *Central of Georgia* when it relied upon the existence of alternative locations for the runaround track in determining that the condemnation is not necessary for the proper accommodation of the business of the company.

- III. Not only is the Commission's reliance on the ruling in *City of Atlanta v. Atlanta Gas Light Co.*, 144 Ga. App. 157 (1977), to support its conclusion that the proposed rail line will only serve a single customer clearly erroneous in view of the reliable, probative, and substantial evidence in the record that contradicts that conclusion, it is irrelevant and immaterial in light of Federal preemption.

The Commission has attempted to bolster its position by claiming that “the proposed rail line will only serve a single customer.”¹⁸ That finding is specious and unsupported by any competent evidence of record.¹⁹ Simply stated, the track can be used to provide service to all shippers, including shippers such as TTX and Quality Holdings that are not physically located to the east of Athens Street.

While the Commission was “persuaded” by the ruling in *City of Atlanta v. Atlanta Gas Light Co.*, 144 Ga. App. 157 (1977), a review of that case reveals a flaw in the Commission's reasoning. As the court therein determined, although the taking was ostensibly done so that MARTA could construct a *new railroad spur track* for its own use on behalf the public, the taking had nothing to do with MARTA and was unnecessary to the actual running of the MARTA transportation lines. *Id.* at 144 Ga. App. at 158, 240 S.E.2d at 158. Instead, the land condemned would then be transferred by the condemnor to MARTA and from MARTA to the Georgia Railroad, which would then lease the land to the railroad's customer. In turn, the general public would have no right to use the new spur. Here, of course, GWRR is not constructing a new track, rather it

¹⁸ Order reversing Hearing Officer, at 5.

¹⁹ *Id.* at 13.

is reconstructing a track that is over 100 years old, that is part of the national rail transportation system, and that is subject to the exclusive jurisdiction of the Surface Transportation Board.

Most importantly, the court in *City of Atlanta* emphasized at page 159:

The use by one customer alone does not prove same is not for public use for if other members of the public may use it and are not excluded from its use this “does not negative the public character of the use.” See *Harrold Brothers v. Mayor & c of Americus*, 142 Ga. 686, 688, (83 S.E. 534); *Department of Transportation v. Livaditis*, 129 Ga.App. 358, 362, (199 S.E.2d 573).

There is nothing that can prevent GWRR from using the runaround to provide rail service for the general public consistent with its statutory common-carrier obligations. Indeed, it would be unlawful for GWRR to refuse to provide needed rail service over the runaround track. In this regard, it must be stressed that the Board’s denial of HFUMC’s adverse abandonment application was not predicated on the maintenance of the status quo. Instead, the Board properly considered the possibility of future needs for service. Indeed, the Board relied upon GWRR’s testimony that “it intends to use the Line as part of a runaround track.”²⁰ In denying HFUMC’s application, the Board found that

²⁰ *Hartwell First United Methodist Church—Adverse Abandonment and Discontinuance—The Great Walton Railroad Company, Inc., in Hart County, GA*, AB 1242, slip op. at 2 (STB served Jan. 31, 2018). As the Board has recently explained, even if the runaround track were somehow to be considered to be ancillary track subject to 49 U.S.C. § 10906, ancillary “track is part of the national rail system. Accordingly, while excepted from the Board’s licensing requirements, § 10906 is nevertheless subject to the Board’s jurisdiction.” *Allied Industrial Development Corporation-Petition for Declaratory Order*, FD 35477, (STB served September 17, 2015), slip op. at 3, n.6, *aff’d sub nom. Allied Erecting & Dismantling co. v. Surface Transp. Bd.*, 835 F.3d 548 (6th Cir.

“the present and future PC&N do not support the requested adverse abandonment.”²¹

The assumption that no other shipper would be entitled to receive service from GWRR over the runaround track must be rejected in light of GWRR’s statutory common carrier obligation to render service upon reasonable demand. In any event, there is not a shred of credible evidence of record that indicates, much less proves, that GWRR has any intent to use the runaround track to provide service only to Quality Holdings. While Quality Holdings is currently utilizing GWRR’s services, it is not the only shipper that is currently served by GWRR.

As GWRR’s Joey Dorsey testified, the railroad is a key economic catalyst for the community. “We’re seeing a lot of opportunities, constant inquiries from potential businesses.”²² Also, as GWRR’s owner Mr. Anderson testified, the dual interchange that has evolved that encourages competing freight rates from Norfolk Southern as well as CSX may well provide the impetus for other shippers to locate near to Quality Holdings.²³ And as GWRR’s former General Manager Mr. Bishop testified, “I cannot sit here and say with certainty what will be in downtown Hartwell and what the activity on the Hartwell Railroad

2016), *cert. denied sub nom. Allied Indus. Dev. Corp. v. Surface Transp. Bd.*, 137 S. Ct. 1582 (2017).

²¹ Id. at 4.

²² Tr. 93.

²³ Tr. 64.

corridor will be. So to preserve them, the railroad takes extreme effort to ensure that there are no encroachments and no clouds on their title.”²⁴

As Mr. Bishop also recognized, if the runaround track cannot be re-established, “it would preclude opportunity for development in between Hartwell and Bowersville should the opportunity present itself for another industry to locate.”²⁵ In other words, if the runaround track were to be taken from it, GWRR would be restricted on the operations that it “could do to facilitate the location of a customer.”

HFUMC’s and the Commission’s position is based on the unsustainable assumption that a potential shipper must be located on the extreme eastern end of the line in order for GWRR to make use of the runaround track to increase the efficiency of its operations. That assumption is squarely repudiated by the evidence of record regarding the use of the runaround to service Quality Holdings, which clearly is not located to the east of the runaround track.

As the record also shows, GWRR’s tracks are also utilized to provide service to TTX, which is a railroad pooling company that allows the nation’s railroad to avoid wasteful expenditures associated with the purchase of highly specialized railcars and switching out and returning empty railcars. Given GWRR’s contract with TTX, GWRR finds it necessary to store some of the TTX cars at a point on its mainline near to the eastern end. Because the storage of

²⁴ Tr. 144-145.

²⁵ Tr. 150.

TTX cars entails a substantial amount of flexibility for the rail industry, the public benefit of GWRR's storage service and its unquestioned right to use its rail facilities to the fullest extent possible cannot be ignored.

The record also shows that there is continuing interest in reestablishing a passenger train service that would restore the service previously offered by the Hartwell Scenic Railway. However, as Mr. Anderson confirmed, if it cannot reconstruct the runaround track, the possibility of restoring the Scenic Railway "would never exist."²⁶ Given the interest in creating a classic tourist railroad, GWRR "certainly [hasn't] ruled out looking at it from Hartwell to Bowersville."²⁷

IV. The Commission's Order reversing the Hearing Officer's Initial Decision should be reversed and remanded to the Commission with instructions to reopen the proceeding for further hearing and expeditiously resolve the contested title issue pursuant to O.C.G.A. § 22-1-1(9)(iv).

For all of the above-stated reasons, the Commission's Decision of August 24, 2018, which reversed the Initial Decision of the Hearing Officer, must itself be reversed. In addition, the Commission should be directed to reopen the proceeding for full consideration of new evidence that pertains to the sole issue of whether condemnation, pursuant to O.C.G.A. § 22-1-1(9)(iv), should be employed to remove the cloud on title due to the inability to identify or locate all owners of the property.

As the Hearing Officer noted, "[w]hile there is no question that both GWRR and HFUMC own land in the vicinity of the dispute, examination of the title to the property in question is murky for both GWRR and HFUMC. Because

²⁶ Tr. 71.

²⁷ Id.

of conflicting surveys, there is no clear evidence that establishes the exact location of the boundary line between the properties of the two parties.”²⁸ The need to clarify the ownership issue and the location of the boundary lines is directly attributable to the Hearing Officer’s comments and to the Commission’s erroneous reversal of his decision that had correctly found that GWRR was entitled to the condemnation relief it originally sought.

As noted in the Commission’s Order filed January 3, 2019, during its Administrative Session on November 20, 2018, it found and concluded that GWRC’s Application for Rehearing, Reconsideration and Oral Argument And Request to Modify Description of Real Property Sought To Be Acquired By Condemnation failed to provide the necessary showing of “good cause” in accordance with Commission Rule 515-2-1.08. GWRR respectfully submits that the Commission’s conclusion cannot withstand close scrutiny.

GWRR acted in good faith when it significantly reduced the area to be condemned to only the real property on which the runaround track had been constructed in 1913. With the exception of only 13 square feet, this allowed the Commission to narrow its focus to only the real property that exclusively lies within the 10-foot gap between the southern boundary of the former Pea Picker Lot that Hartwell Mills acquired in 1937 and the northern boundary of the right-of-way of GWRR’s mainline track. Although GWRR was unable to offer evidence of a deed to the gap property to its predecessors-in-interest, it did provide evidence in the form of the field notes of the Interstate Commerce

²⁸ Initial Decision at 7.

Commission dated in 1916, show that the original “storage track” that was constructed in 1913 by the Hartwell Railway Company was located well within 10 feet of the northern boundary of its mainline right-of-way. It is undisputed that the railroad occupied, possessed and utilized this property openly, continuously and notoriously for over one hundred years.

In response to the Hearing Officer’s candid comments that the two surveys submitted during the original proceeding conflicted with one another and that there was no clear evidence that establishes the exact location of the boundary line between the properties of the two parties, GWRR introduced a new survey. This survey, unlike the prior surveys of record, was based on all relevant deeds of record in the Superior Court of Hart County that pertain to the “gap” real property. The new survey, when combined with references to warranty deeds reflecting the chain-of-title, would have permitted the instant matter to be correctly resolved with a minimum of further, wasteful litigation.

Plainly, if HFUMC had a warranty deed to show that either Hartwell Mills or its successors in interest actually acquired fee simple ownership of the gap property, it had ample opportunity to produce it either before or following GWRR’s offer to reduce the scope of its condemnation request that was accompanied by its new survey. However, instead of taking the opportunity to produce an actual warranty deed to support its claim of ownership of the gap property, HFUMC focused its brief on inadvertent, erroneous references to the page and book numbers on which certain of the deeds were recorded.

When GWRR thereafter corrected the page references, it also took the opportunity to provide the Commission with certified copies of each of the referenced deeds.²⁹ Instead of advancing its own proof, HFUMC moved to strike the new evidence in order to prolong and drive up the cost of litigation. GWRR respectfully submits that “good cause” existed in this unique situation to accept the tendered evidence and, if deemed necessary, to reopen the proceeding to provide HFUMC another opportunity to respond to the new evidence.

As of this moment, HFUMC’s claims of ownership of the gap property are based on a quit claim deed that it was granted in 2003 by Hartwell Mills’ successors in interest. However, none of them ever acquired the 10-foot gap of real property that is the focus of this litigation. Therefore, because neither party can conclusively demonstrate that they have a clear title, condemnation is appropriate to clear title to the gap real property.

As noted above, a question remains regarding condemnation of a 13-square-foot piece of real property that is owned by HFUMC. This property is located near the point where the former storage track sprang from the main line right-of-way near what is now known as Bank Street. A quit claim deed, dated March 3, 1914, that was granted by C. I. Kidd to representatives of the Farmers’ Union Warehouse Corp., clearly evidences the creation of the narrow

²⁹ Certified copies of the deeds were attached to GWRR’s Brief in Opposition to HFUMC’s Motion to Strike, filed September 27, 2018. It is noteworthy that HFUMC moved to strike this relevant evidence (harmful to the Church’s arguments), which would have allowed the Commission to have a clear understanding of the parties’ respective property rights.

parcel of land on which the track had already been constructed. This parcel extended in a easterly direction along the northern boundary of the railroad's right-of-way from the point where the former storage track sprung beyond the railroad right-of-way. Because the storage track was also used to service the Farmers' Union, the legal conclusion drawn was that the quit claim deed was intended to rectify a prior, inadvertent intrusion on C. I. Kidd's real property that happened when the storage track was constructed a year earlier. Apparently, the parties did not accurately measure the distance to be conveyed, which has resulted in the need for GWRR to acquire 13 square feet of real property from HFUMC.

As is the case with the gap property, good cause exists that warranted the admission of GWRR's proffered evidence following the Board's reversal of the Hearing Officer's determination that GWRR has shown that a public interest resides in the safety of railroad employees, rail traffic and vehicular traffic through the reconstruction of the runaround track at its original location. The same is true of his finding that the proposed condemnation by GWRR serves a legitimate and necessary public purpose.

In the final analysis, the need to introduce the new evidence arose only after the close of the evidentiary hearing when members of the Commission ignored the decision of the Supreme Court of Georgia and concluded that "four viable alternatives ... serve sufficient options to avoid the unnecessary

condemnation of the heavily trafficked church property.”³⁰ Given the reduced scope of the property to be condemned, as well as the fact that HFUMC cannot prove title to the gap property, the Commission’s reasoning lacks a sound foundation.³¹

Finally, the Commission’s reliance on the alleged existence of operational alternatives clashes with the reasoning expressed by the Board in its decision denying HFUMC’s adverse abandonment application.³² Although HFUMC hired an alleged expert to support the claims of alternative sites, its witness did not support his claims with any railroad engineering studies. In the final analysis, his operational proposals are also speculative and unsupported by any significant evidence.

Conclusion and Prayer for Relief

In conclusion, it is respectfully submitted that the Commission’s decision cannot be reconciled with either the Surface Transportation Board’s denial of HFUMC’s adverse abandonment application or the literal wording of 49 U.S.C.

³⁰ Order Reversing Hearing Office’s Initial Decision at 5. While the Commission attempts to bolster its decision with the further comment that the “Church’s utilization of the area serves not only its membership and attendees but also the general public,” the record shows that the Church was motivated to pursue its adverse abandonment application in order to prevent the public from using the railroad’s property to pass behind the Church. Hearing Transcript at 175-78.

³¹ The court’s attention is also invited to the transcript of the Special Administration Session of June 14, 2018. Although the staff recommended that the Commission adopt the Hearing Officer’s Initial Decision (Tr. at 2), the members of the Board appear to have been driven by their personal feeling that moving “this run-around from the church is in the best interest of downtown Hartwell, [and] the best interest of the church.” Tr. at 4.

³² Slip. Op. at 4 - 5.

§ 10501(b), which preempts the Commission's ability to force the abandonment of the runaround track by denying GWRR's ability to reconstruct the track. Nor can the Commission's decision be reconciled with controlling precedent of the Supreme Court of Georgia. Therefore, the Commission's decision, which has erroneously denied all relief to GWRR, should be reversed and remanded with instructions for the Public Service Commission to adopt the recommendations of the Hearing Officer.

Because the Commission failed to reach the issue raised by GWRR that it is entitled, pursuant to O.C.G.A. § 22-1-1(9)(iv), to acquire the narrow strip of property on which it seeks to reconstruct its track, that sole issue should be remanded to the Commission. Because the warranty deeds that have been duly recorded in the Superior Court of Hart County show that "title is clouded due to the inability to identify or locate all owners of the property," good cause exists to resolve that issue immediately. Hence, the matter should be remanded to the Commission with instructions to accept the certified deeds that have been tendered by GWRR and resolve the issue of title. Plainly, because HFUMC does not hold title to the contested parcel of real property, there is no reason to continue this litigation.

For all the foregoing reasons, this court should otherwise modify the decision on the grounds that GWRR's rights have been prejudiced because the administrative findings, conclusions and decisions are (1) in violation of constitutional or statutory provisions, both federal and state; (2) in excess of the statutory authority of the agency and preempted by federal law; (3) affected

by other error of law; (4) clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record; and/or (5) arbitrary and capricious.

This 31st day of January, 2019.

/s/ Mark E. Toth

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CERTIFICATE OF SERVICE

This is to certify that I have this date served a copy of the foregoing **PETITION FOR JUDICIAL REVIEW** upon counsel of record by depositing a copy of same in the United States Mail with adequate postage thereon to ensure delivery as follows:

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This 31st day of January, 2019.

/s/Mark E. Toth
Mark E. Toth
J. Ellsworth Hall, IV
Amanda M. Morris

Petition of the Great Walton Railroad)
Company, Inc. d/b/a The Hartwell)
Railroad Company for Approval)
to Acquire Real Estate by Condemnation.)

Docket No. 41607

APPEARANCES:

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On behalf of Hartwell First United Methodist Church:

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-and-

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**ORDER BY COMMISSION REVERSING THE HEARING OFFICER'S
INITIAL DECISION AND DENYING THE PETITION FOR CONDEMNATION**

This proceeding was initiated on October 27, 2017 with the filing by the Great Walton Railroad Company, Inc., d/b/a the Hartwell Railroad Company ("Hartwell Railroad" or "GWRR")

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Order Reversing Hearing
Officer's Initial Decision

of a Petition for Approval to Acquire Real Estate by Condemnation, pursuant to O.C.G.A. §§ 46-8-120 and 46-8-121 ("Petition") with the Georgia Public Service Commission ("Commission"). The real estate parcel at issue is a certain strip of land, measuring twenty (20) feet by two hundred (260) feet, abutting the southern portion of the original property of the Hartwell First United Methodist Church ("HFUMC" or "Church") which is located at 200 East Howell Street, Hartwell, Georgia.

On November 20, 2017, HFUMC filed its intervention pursuant to O.C.G.A. §§ 46-2-59 and 50-13-14 and Rule 515-2-1-.06 of the Commission Rules. Subsequently, on December 13, 2017, the HFUMC filed its Response to the Petition of the Hartwell Railroad disputing a number of the allegations in the Petition and requesting that the Commission deny the Petition.

On November 27, 2017, the Commission issued its Order assigning this proceeding to Hearing Officer, Philip J. Smith, in accordance with Rules 515-16-16-.01 and 515-16-16-.02, along with O.C.G.A. § 46-2-58 and O.C.G.A. § 46-8-120 through § 46-8-124.

The Hearing occurred on January 23, 2018. As agreed to at the close of the proceedings, GWRR and HFUMC each filed Initial Briefs on February 28, 2018 and Reply Briefs on March 21, 2018. HFUMC filed a Proposed Initial Order, as well, on March 21, 2018.

Contentions of the Parties Before the Hearing Officer

Hartwell Railroad stated that the acquisition of real estate by condemnation and the rehabilitation is in furtherance of a public purpose and necessary to accommodate its business of providing railroad service. GWRR asserted that the condemnation of the parcel of land at issue, the twenty (20) feet by two hundred sixty (260) feet strip of land in downtown Hartwell beside the Hartwell Railroad main line serves a public purpose by accommodating the proposed run-around.

The Church, in opposition, stated that it does not serve a legitimate public purpose, nor is the proposed run-around necessary as required by Georgia neither law, nor would the proposed runaround serve a legitimate public interest or purpose.

The Hearing Officer's Initial Decision

At the conclusion of the hearings and consideration of Brief and Reply Briefs, the Hearing Officer rendered a decision in favor of Hartwell Railroad stating:

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GWRR has shown that a public interest resides in the safety of railroad employees, rail traffic and vehicular traffic through the addition of the proposed runaround. I therefore find that the proposed condemnation by Great Walton Railroad Company, Inc. serves a legitimate and necessary public purpose. The Petition of Great Walton Railroad Company, Inc. is granted.

The Application for Full Commission Review

The Church filed, on April 27, 2018, an Application for Full Commission Review of Hearing Officer's Initial Decision and Request for Oral Argument ("Application" or "Application for Review"). In it, HFUMC argued that it had shown that GWRC has the capability of utilizing its existing ROW that it already owns for a much safer runaround without condemnation. The Church argued that the basis of the Hearing Officer's Initial Decision, namely the practice of an employee hanging on the side of the lead car, was the method chosen by Hartwell Railroad and is permissible under federal regulation. HFUMC asserted that Hartwell Railroad failed to demonstrate that the proposed runaround location at one of the most active organizations in central Hartwell is safe, conforms to best practices for design of such track, and is in the public interest.

On May 30, 2018, GWRC filed a Reply to the Church's Application for Review. The Railroad stated that to succeed on the Petition, GWRC must show that the runaround is "for the safe and essential conduct of [GWRC's] business as a public carrier and for public purposes." *Central of Georgia Railroad v. GPSC*, 257 Ga. 217, 218, 356 S.E.2d 865, 866 (1987) (quoting *City of Doraville v. Southern Railway Co.*, 227 Ga. 504, 510, 181 S.E. 346 (1971)). GWRC argued that it has clearly demonstrated that rehabilitation of the runaround is the only viable option that will address all the railroad safety issues identified in these proceedings. Thus, GWRC contended that it has established the required "public purpose" and respectfully requested its Petition be granted in accordance with the Hearing Officer's Initial Decision.

On June 5, 2018, the Commission issued an Order Scheduling Oral Argument and Notice of Special Administrative Session, heard the arguments of the parties on June 14, 2018, followed by a Special Administrative Session for the sole purpose of deciding this matter.

The Commission Decision on Review

After reviewing the Hearing Officer's Initial Decision and hearing and considering the arguments of the parties, the Commission reverses the Hearing Officer's Initial Decision.

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Findings of Fact and Conclusions of Law

The Georgia Public Service Commission has jurisdiction over this proceeding pursuant to O.C.G.A. §§ 46-8-120 and 46-8-121. While railroad companies have the power of eminent domain, this power is limited. Railroads derive their power of eminent domain specifically under Georgia law at O.C.G.A. § 46-8-121 which provides, inter alia that railroad companies may exercise condemnation for all purposes given railroads in O.C.G.A. § 46-8-120. Commission Rule 515-16-16-.02 makes it clear that the proposed condemnation must have a legitimate public purpose. In considering powers of Hartwell Railroad under O.C.G.A. § 46-8-120, only § 46-8-120(4) applies here, the power to build and maintain such additional depots, tracks, terminal facilities as may be **necessary** for the proper accommodation of the business of the company(*emphasis added*). Again, O.C.G.A. § 46-8-121 states “acquisition of property by companies; approval by commission as prerequisite to exercise of power of eminent domain: Authority and power are granted to railroad companies to acquire by purchase or gift and to hold such real estate as may be **necessary** for all of the purposes mentioned in Code Section 46-8-120.” (*Emphasis added*).

The Commission notes that the Church property is located in the center of Hartwell and according to the City of Hartwell Historic Preservation Commission (“HPC”) for at least three (3) decades the Church has been listed as a historic property on the National Trust of Historic Places having been deeded with a purpose of building a church in 1859. (Exhibit C-8), a letter dated January 9, 2018, filed with the Commission, states, in part “... the city's HPC considers the requested condemnation of sites for a purpose that has not been approved for historic properties to be a severely negative impact on our efforts to preserve and maintain the integrity of all historic properties in our community for present citizens and future generations.” (*id*). There have been over 1,300 letters from congregants and the public submitted to the Commission in opposition to the proposed condemnation. (Exhibit C-6).

The Commission is compelled by the Report of the Church’s expert witness, Mr. John O'Brien, in which he identifies and reviews four (4) alternatives for development of a runaround other than rehabilitation of the rail line at the Hartwell First United Methodist Church. These substitutes include: 1. Continuation of operations that have been preferred by the Railroad for at least the past 10 years; 2. Development of a runaround at a site of a former spur rail line that is located about 2,000 feet west of the Quality Industries facility, within existing railroad right-of-way (ROW); 3. Development of a run around at a site of a former spur rail line that is located about 2,500 feet west of the Quality Industries facility, within existing Railroad ROW; and utilization of existing track at the Airline rail facility owned and operated by the Railroad. After review of the

Docket No. 41607
Order Reversing Hearing
Officer’s Initial Decision

record, the Commission finds and concludes that the four viable alternatives provided in the transcript and exhibits below serve sufficient options to avoid the unnecessary condemnation of the heavily trafficked church property.

It is clear from the record that the proposed runaround will not serve the public, but only a single private enterprise, Quality Industries. The Commission is persuaded by the ruling in *City of Atlanta v. Atlanta Gas Light Co.*, 144 Ga. App. 159 (1977) where the evidence reflected "that the purpose of condemning the property [was] for the construction of a railroad spur track for only one customer of the railroad, the public generally is not served and does not have a right to use the track limited to one customer." The Church's utilization of the area serves not only its membership and attendees but also the general public. 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. The Commission also finds and concludes that with the existence of several reasonable alternatives, the condemnation is not "necessary for the proper accommodation of the business of the company." O.C.G.A. §46-8-120(4).

Upon careful consideration and review of the evidence presented below, the Commission finds and concludes that the Hearing Officer's Initial Decision in the Great Walton Railroad Company, Inc., d/b/a Hartwell Railroad Company's Petition for Approval to Acquire Real Estate by Condemnation is reversed and the Petition to Condemn Real Property is denied.

Ordering Paragraphs

WHEREFORE IT IS ORDERED, that the Hearing Officer's Initial Decision is reversed and the petition to condemn real property is denied.

ORDERED FURTHER, that all findings, conclusions, statements, and directives made by the Commission and contained in the foregoing sections of this Order are hereby adopted as findings of fact, conclusions of law, statements of regulatory policy, and Orders of this Commission.

ORDERED FURTHER, that a motion for reconsideration, rehearing, or oral argument or any other motion shall not stay the effective date of this Order, unless otherwise ordered by the Commission.

ORDERED FURTHER, that jurisdiction over these matters is expressly retained for the purpose of entering such further Order or Orders as this Commission may deem just and proper.

Docket No. 41607
Order Reversing Hearing
Officer's Initial Decision

The above by action of the Commission in its Special Administrative Session on the 14th day of June, 2018.

Reece McAlister
Executive Secretary

Lauren “Bubba” McDonald
Chairman

Date

Date

COMMISSIONERS:

LAUREN "BUBBA" McDONALD, CHAIRMAN
TIM G. ECHOLS
CHUCK EATON
H. DOUG EVERETT
TRICIA PRIDEMORE



FILED

AUG 24 2018

EXECUTIVE SECRETARY
G.P.S.C.

DEBORAH K. FLANNAGAN
EXECUTIVE DIRECTOR

REECE McALISTER
EXECUTIVE SECRETARY

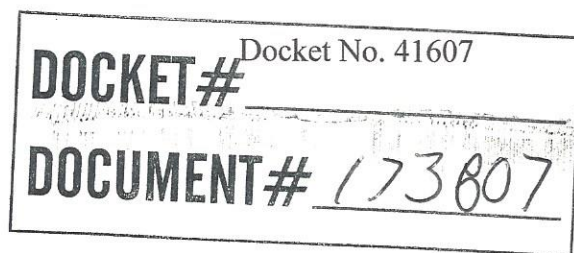
Georgia Public Service Commission

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Petition of the Great Walton Railroad
Company, Inc. d/b/a The Hartwell
Railroad Company for Approval
to Acquire Real Estate by Condemnation.)



APPEARANCES:

On behalf of The Hartwell Railroad Company:

MATTHEW D. WILLIAMS, Attorney
Matthew D. Williams & Associates, LLC

On behalf of Hartwell First United Methodist Church:

ROBERT J. MIDDLETON, JR., Attorney
Hall, Booth, Smith, P.C.

-and-

WALTER J. GORDON, SR., Attorney
The Gordon Law Firm

**ORDER BY COMMISSION REVERSING THE HEARING OFFICER'S
INITIAL DECISION AND DENYING THE PETITION FOR CONDEMNATION**

This proceeding was initiated on October 27, 2017 with the filing by the Great Walton Railroad Company, Inc., d/b/a the Hartwell Railroad Company ("Hartwell Railroad" or "GWRR")

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of a Petition for Approval to Acquire Real Estate by Condemnation, pursuant to O.C.G.A. §§ 46-8-120 and 46-8-121 ("Petition") with the Georgia Public Service Commission ("Commission"). The real estate parcel at issue is a certain strip of land, measuring twenty (20) feet by two hundred (260) feet, abutting the southern portion of the original property of the Hartwell First United Methodist Church ("HFUMC" or "Church") which is located at 200 East Howell Street, Hartwell, Georgia.

On November 20, 2017, HFUMC filed its intervention pursuant to O.C.G.A. §§ 46-2-59 and 50-13-14 and Rule 515-2-1-.06 of the Commission Rules. Subsequently, on December 13, 2017, the HFUMC filed its Response to the Petition of the Hartwell Railroad disputing a number of the allegations in the Petition and requesting that the Commission deny the Petition.

On November 27, 2017, the Commission issued its Order assigning this proceeding to Hearing Officer, Philip J. Smith, in accordance with Rules 515-16-16-.01 and 515-16-16-.02, along with O.C.G.A. § 46-2-58 and O.C.G.A. § 46-8-120 through § 46-8-124.

The Hearing occurred on January 23, 2018. As agreed to at the close of the proceedings, GWRR and HFUMC each filed Initial Briefs on February 28, 2018 and Reply Briefs on March 21, 2018. HFUMC filed a Proposed Initial Order, as well, on March 21, 2018.

Contentions of the Parties Before the Hearing Officer

Hartwell Railroad stated that the acquisition of real estate by condemnation and the rehabilitation is in furtherance of a public purpose and necessary to accommodate its business of providing railroad service. GWRR asserted that the condemnation of the parcel of land at issue, the twenty (20) feet by two hundred sixty (260) feet strip of land in downtown Hartwell beside the Hartwell Railroad main line serves a public purpose by accommodating the proposed run-around.

The Church, in opposition, stated that it does not serve a legitimate public purpose, nor is the proposed run-around necessary as required by Georgia neither law, nor would the proposed runaround serve a legitimate public interest or purpose.

The Hearing Officer's Initial Decision

At the conclusion of the hearings and consideration of Brief and Reply Briefs, the Hearing Officer rendered a decision in favor of Hartwell Railroad stating:

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GWRR has shown that a public interest resides in the safety of railroad employees, rail traffic and vehicular traffic through the addition of the proposed runaround. I therefore find that the proposed condemnation by Great Walton Railroad Company, Inc. serves a legitimate and necessary public purpose. The Petition of Great Walton Railroad Company, Inc. is granted.

The Application for Full Commission Review

The Church filed, on April 27, 2018, an Application for Full Commission Review of Hearing Officer's Initial Decision and Request for Oral Argument ("Application" or "Application for Review"). In it, HFUMC argued that it had shown that GWRC has the capability of utilizing its existing ROW that it already owns for a much safer runaround without condemnation. The Church argued that the basis of the Hearing Officer's Initial Decision, namely the practice of an employee hanging on the side of the lead car, was the method chosen by Hartwell Railroad and is permissible under federal regulation. HFUMC asserted that Hartwell Railroad failed to demonstrate that the proposed runaround location at one of the most active organizations in central Hartwell is safe, conforms to best practices for design of such track, and is in the public interest.

On May 30, 2018, GWRC filed a Reply to the Church's Application for Review. The Railroad stated that to succeed on the Petition, GWRC must show that the runaround is "for the safe and essential conduct of [GWRC's] business as a public carrier and for public purposes." *Central of Georgia Railroad v. GPSC*, 257 Ga. 217, 218, 356 S.E.2d 865, 866 (1987) (quoting *City of Doraville v. Southern Railway Co.*, 227 Ga. 504, 510, 181 S.E. 346 (1971)). GWRC argued that it has clearly demonstrated that rehabilitation of the runaround is the only viable option that will address all the railroad safety issues identified in these proceedings. Thus, GWRC contended that it has established the required "public purpose" and respectfully requested its Petition be granted in accordance with the Hearing Officer's Initial Decision.

On June 5, 2018, the Commission issued an Order Scheduling Oral Argument and Notice of Special Administrative Session, heard the arguments of the parties on June 14, 2018, followed by a Special Administrative Session for the sole purpose of deciding this matter.

The Commission Decision on Review

After reviewing the Hearing Officer's Initial Decision and hearing and considering the arguments of the parties, the Commission reverses the Hearing Officer's Initial Decision.

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Findings of Fact and Conclusions of Law

The Georgia Public Service Commission has jurisdiction over this proceeding pursuant to O.C.G.A. §§ 46-8-120 and 46-8-121. While railroad companies have the power of eminent domain, this power is limited. Railroads derive their power of eminent domain specifically under Georgia law at O.C.G.A. § 46-8-121 which provides, inter alia that railroad companies may exercise condemnation for all purposes given railroads in O.C.G.A. § 46-8-120. Commission Rule 515-16-16-.02 makes it clear that the proposed condemnation must have a legitimate public purpose. In considering powers of Hartwell Railroad under O.C.G.A. § 46-8-120, only § 46-8-120(4) applies here, the power to build and maintain such additional depots, tracks, terminal facilities as may be **necessary** for the proper accommodation of the business of the company(*emphasis added*). Again, O.C.G.A. § 46-8-121 states “acquisition of property by companies; approval by commission as prerequisite to exercise of power of eminent domain: Authority and power are granted to railroad companies to acquire by purchase or gift and to hold such real estate as may be **necessary** for all of the purposes mentioned in Code Section 46-8-120.” (*Emphasis added*).

The Commission notes that the Church property is located in the center of Hartwell and according to the City of Hartwell Historic Preservation Commission (“HPC”) for at least three (3) decades the Church has been listed as a historic property on the National Trust of Historic Places having been deeded with a purpose of building a church in 1859. (Exhibit C-8), a letter dated January 9, 2018, filed with the Commission, states, in part “... the city's HPC considers the requested condemnation of sites for a purpose that has not been approved for historic properties to be a severely negative impact on our efforts to preserve and maintain the integrity of all historic properties in our community for present citizens and future generations.” (*id*). There have been over 1,300 letters from congregants and the public submitted to the Commission in opposition to the proposed condemnation. (Exhibit C-6).

The Commission is compelled by the Report of the Church’s expert witness, Mr. John O'Brien, in which he identifies and reviews four (4) alternatives for development of a runaround other than rehabilitation of the rail line at the Hartwell First United Methodist Church. These substitutes include: 1. Continuation of operations that have been preferred by the Railroad for at least the past 10 years; 2. Development of a runaround at a site of a former spur rail line that is located about 2,000 feet west of the Quality Industries facility, within existing railroad right-of-way (ROW); 3. Development of a run around at a site of a former spur rail line that is located about 2,500 feet west of the Quality Industries facility, within existing Railroad ROW; and utilization of existing track at the Airline rail facility owned and operated by the Railroad. After review of the

Docket No. 41607
Order Reversing Hearing
Officer’s Initial Decision

record, the Commission finds and concludes that the four viable alternatives provided in the transcript and exhibits below serve sufficient options to avoid the unnecessary condemnation of the heavily trafficked church property.

It is clear from the record that the proposed runaround will not serve the public, but only a single private enterprise, Quality Industries. The Commission is persuaded by the ruling in *City of Atlanta v. Atlanta Gas Light Co.*, 144 Ga. App. 159 (1977) where the evidence reflected "that the purpose of condemning the property [was] for the construction of a railroad spur track for only one customer of the railroad, the public generally is not served and does not have a right to use the track limited to one customer." The Church's utilization of the area serves not only its membership and attendees but also the general public. 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. The Commission also finds and concludes that with the existence of several reasonable alternatives, the condemnation is not "necessary for the proper accommodation of the business of the company." O.C.G.A. §46-8-120(4).

Upon careful consideration and review of the evidence presented below, the Commission finds and concludes that the Hearing Officer's Initial Decision in the Great Walton Railroad Company, Inc., d/b/a Hartwell Railroad Company's Petition for Approval to Acquire Real Estate by Condemnation is reversed and the Petition to Condemn Real Property is denied.

Ordering Paragraphs

WHEREFORE IT IS ORDERED, that the Hearing Officer's Initial Decision is reversed and the petition to condemn real property is denied.

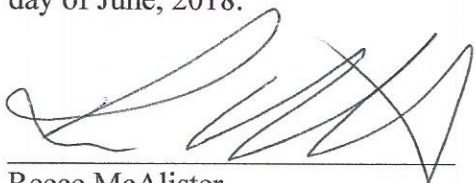
ORDERED FURTHER, that all findings, conclusions, statements, and directives made by the Commission and contained in the foregoing sections of this Order are hereby adopted as findings of fact, conclusions of law, statements of regulatory policy, and Orders of this Commission.

ORDERED FURTHER, that a motion for reconsideration, rehearing, or oral argument or any other motion shall not stay the effective date of this Order, unless otherwise ordered by the Commission.

ORDERED FURTHER, that jurisdiction over these matters is expressly retained for the purpose of entering such further Order or Orders as this Commission may deem just and proper.

Docket No. 41607
Order Reversing Hearing
Officer's Initial Decision

The above by action of the Commission in its Special Administrative Session on the 14th day of June, 2018.



Reece McAlister
Executive Secretary

8-24-18

Date



Lauren "Bubba" McDonald
Chairman

8/24/18

Date

Docket No. 41607
Order Reversing Hearing
Officer's Initial Decision

COMMISSIONERS:

LAUREN "BUBBA" McDONALD, CHAIRMAN
TIM G. ECHOLS
CHUCK EATON
TRICIA PRIDEMORE
JASON SHAW



FILED

JAN 03 2019

**EXECUTIVE SECRETARY
G.P.S.C.**

**DEBORAH K. FLANNAGAN
EXECUTIVE DIRECTOR**

**REECE McALISTER
EXECUTIVE SECRETARY**

Georgia Public Service Commission

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DOCKET #

41607
DOCUMENT # 174956

**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.**

**ORDER DENYING APPLICATION FOR REHEARING, RECONSIDERATION
AND ORAL ARGUMENT AND REQUEST TO MODIFY DESCRIPTION OF REAL
PROPERTY SOUGHT TO BE ACQUIRED**

On August 24, 2018, the Georgia Public Service Commission ("Commission") issued an Order reversing the Hearing Officer's Initial Decision and Denying the Petition For Condemnation. The Great Walton Railroad Company, Inc., d/b/a The Hartwell Railroad Company ("GWRC" or "Railroad") submitted an Application for Rehearing, Reconsideration and Oral Argument And Request to Modify Description of Real Property Sought To Be Acquired By Condemnation ("Application") on September 9, 2018.

The Railroad's submission prompted the opposing party, the First United Methodist Church of Hartwell ("HFUMC" or "Church"), to file a Motion to Strike and Reply Brief to the Application ("Motion") on September 14, 2018. In response, on September 27, 2018, the Railroad filed a Brief of the Great Walton Railroad Company, Inc. in Opposition to Hartwell First United Methodist Church's Motion to Strike ("Brief"). The final formal submission was HFUMC's Renewed Motion To Strike on October 25, 2018.

The parties orally presented their positions during the Commission's November 1, 2018 Administrative Affairs Committee.

During its Administrative Session on November 20, 2018, the Commission found and concluded that GWRC's Application for Rehearing, Reconsideration and Oral Argument And Request to Modify Description of Real Property Sought To Be Acquired By Condemnation failed to provide the necessary showing of "good cause" in accordance with

Commission Rule 515-2-1-.08 Rehearing, Reconsideration and Oral Argument and denied the Application. As the Railroad's Application is denied and since the additional information proffered by it has not been admitted into the evidentiary record in this matter, the Motion to Strike filed by the Church is moot.

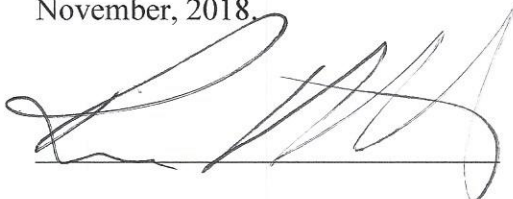
WHEREFORE IT IS ORDERED that the Great Walton Railroad Company, Inc., d/b/a The Hartwell Railroad Company's Application for Rehearing, Reconsideration and Oral Argument And Request to Modify Description of Real Property Sought To Be Acquired By Condemnation is denied.

ORDERED FURTHER, that all findings, conclusions, statements, and directives made by the Commission and contained in the foregoing sections of this Order are hereby adopted as findings of fact, conclusions of law, statements of regulatory policy, and Orders of this Commission.

ORDERED FURTHER, that a motion for reconsideration, rehearing, or oral argument or any other motion shall not stay the effective date of this Order, unless otherwise ordered by the Commission.

ORDERED FURTHER, that jurisdiction over these matters is expressly retained for the purpose of entering such further Order or Orders as this Commission may deem just and proper.

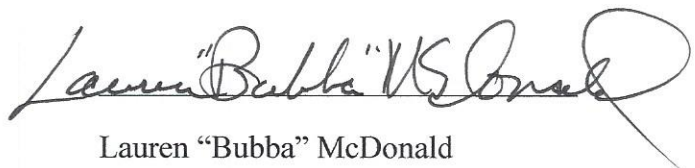
The above by action of the Commission in its Administrative Session on the 20th day of November, 2018.



Reece McAlister
Executive Secretary

1-3-19

Date



Lauren "Bubba" McDonald
Chairman

Jan. 3, 2019

Date

DOCKET NO. 41607

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.

**ORDER DENYING APPLICATION FOR REHEARING, RECONSIDERATION
AND ORAL ARGUMENT AND REQUEST TO MODIFY DESCRIPTION OF REAL
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Commission Rule 515-2-1-.08 Rehearing, Reconsideration and Oral Argument and denied the Application. As the Railroad's Application is denied and since the additional information proffered by it has not been admitted into the evidentiary record in this matter, the Motion to Strike filed by the Church is moot.

WHEREFORE IT IS ORDERED that the Great Walton Railroad Company, Inc., d/b/a The Hartwell Railroad Company's Application for Rehearing, Reconsideration and Oral Argument And Request to Modify Description of Real Property Sought To Be Acquired By Condemnation is denied.

ORDERED FURTHER, that all findings, conclusions, statements, and directives made by the Commission and contained in the foregoing sections of this Order are hereby adopted as findings of fact, conclusions of law, statements of regulatory policy, and Orders of this Commission.

ORDERED FURTHER, that a motion for reconsideration, rehearing, or oral argument or any other motion shall not stay the effective date of this Order, unless otherwise ordered by the Commission.

ORDERED FURTHER, that jurisdiction over these matters is expressly retained for the purpose of entering such further Order or Orders as this Commission may deem just and proper.

The above by action of the Commission in its Administrative Session on the 20th day of November, 2018.

Reece McAlister
Executive Secretary

Lauren "Bubba" McDonald
Chairman

Date

Date







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