

Before the
SURFACE TRANSPORTATION BOARD

AB 1242 (Sub-No. 1)

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HARTWELL FIRST UNITED METHODIST CHURCH—
ADVERSE ABANDONMENT AND DISCONTINUANCE--
THE GREAT WALTON RAILROAD COMPANY, INC.,
IN HART COUNTY, GA

THE GREAT WALTON RAILROAD COMPANY
PETITION FOR DECLARATORY ORDER

EXPEDITED HANDLING REQUESTED

Pursuant to 5 U.S.C. § 554(e) and 49 U.S.C. § 1321, The Great Walton Railroad Company (GWRC) requests the Board, based on the record in AB-1242, *Hartwell First United Methodist Church-Adverse Abandonment and Discontinuance-The Great Walton Railroad Company, Inc., in Hart County, GA.* as supplemented hereby, to issue a declaratory ruling to clarify that GWRC's runaround track is a line of railroad subject to the Board's exclusive jurisdiction under 49 U.S.C. § 10501(b). GWRC's request for a declaratory ruling is related to the Board's January 31, 2018 decision that denied the adverse abandonment application filed by the Hartwell First United Methodist Church (HFUMC) requesting that the Board authorize the "abandonment and discontinuance of approximately 0.25 miles of rail line and associated right-of-way (the Line) owned by GWRC.

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Throughout the previous proceeding before the Board, HFUMC advanced multiple claims that GWRC had abandoned what HFUMC calls the “north spur”¹ by removing the steel rails from the real property that HFUMC claimed to own that is located to the south of the church. HFUMC made these claims despite the fact that GWRC left the cross ties and ballast in place on the subject property. According to HFUMC, as a result of the abandonment, there “is currently no “runaround” track in Hartwell adjacent to the Line segment.”² Hence, GWRC must construct “a new spur track on the church’s property where the north spur used to be.”³

At page 1 of its January 31, 2018 decision, the Board fully considered HFUMC’s claims “that GWRC voluntarily removed parts of the track in 2008, and that several road crossings have also been removed.” In addition the Board noted GWRC’s arguments that “it intends to use the Line as part of a

¹ See, e.g., *Rebuttal of Hartwell First United Methodist Church*, filed June 13, 2017, at pp. 13 – 14; Variations of this argument were thereafter repeated in HFUMC’s *Reply to Motion Seeking Leave to File Sur-Rebuttal and Motion to Strike*, dated July 20, 2017, at p 5 (“GWRC cannot demonstrate that it has any title to the disputed property, and thus has no right to build a new spur track and no ability to recreate a runaround adjacent to the Line Segment.”); HFUMC’s *Reply to Response of GWRC to Decision of Board*, dated August 31, 2007, at p. 3 (GWRC does not have the property rights to establish and construct a runaround track in downtown Hartwell adjacent to the Subject Line, and there is no present or future need for GWRC to use the Line Segment for GWRC to meet its common carrier operations.”); HFUMC’s *Reply to Motion of GWRC for Expedited Handling*, dated November 20, 2017 at p. 5 (“the state court injunction still prevents GWRC from constructing a spur at the location of the former north spur, or from constructing and connecting the crossing on the west side of Webb Street.”)

² *Id.* at p. 9.

³ *Id.*

runaround track ... that the runaround track is needed to make service to a customer, Quality Holdings, LLC (Quality), safer and more economical.⁴ The Board further noted that because the line terminates at a point to the east of South Jackson Street in downtown Hartwell, GWRC advised the Board that “it would use the runaround to reposition locomotives for the return trip to Bowersville,” where the cars would be moved by a corporate affiliate to points of interchange with Norfolk Southern and CSXT.⁵ GWRC also asserted that “without the ability to reposition, it has to push empty cars back to Bowersville with the locomotive at the rear of the train.”⁶ As the Board further noted, GWRC also explained that if the locomotive is at the rear of the train, “Federal Railroad Administration (FRA) rules require GWRC to stop and flag each of the 45 crossing along the way, and the conductor must hang off the grab bar on the side of the car for most of the trip, a more cumbersome and less safe process.”⁷

In denying HFUMC’s adverse abandonment application, the Board did not accept HFUMC’s arguments that the runaround track was a mere spur track. Instead, it commented that “the Board will not second-guess GWRC’s judgment about *the need for, and usefulness of, the runaround track.*”⁸

⁴ *Id.* at 2.

⁵ *Id.*

⁶ *Id.*

⁷ *Id.*

⁸ *Id.* at 5.

GWRC also reminds the Board that contrary to HFUMC's false assertions that "GWRC would need to file for permits from the Georgia Department before a crossing of Webb Street could be reinstalled,"⁹ the tracks across South Webb Street were never removed. Instead, they were temporarily paved over by the Georgia Department of Transportation. As the record reflects, the pavement was removed from the tracks in March 2018, shortly after the Board denied HFUMC's adverse abandonment application.¹⁰ However, no permit was required. As a result, the only segment of the runaround track that has not been reconstructed is the track that is located directly south of the church.

By way of background, the record in this case demonstrates that following its construction as a storage track in 1913, the track was extended two times. The first extension across South Webb Street occurred in 1919. Following Southern Railway's sale of the railroad to local citizens in 1924, the track was extended further to the east and joined with the main line to create the runaround track. Thereafter, the runaround track was no longer used for loading, unloading, switching, or for other purposes than the facilitation of movements of full trains. Instead, the runaround track was used to enable the movement of full trains to Bowersville and points beyond with the locomotive at the front end of the track. *See, e.g., Nicholson v. ICC*, 711 F2d 364, 367-69

⁹ HFUMC's *Reply to Motion Seeking Leave to File Sur-Rebuttal and Motion to Strike*, filed July 20, 2017, at p. 6.

¹⁰ *See* GWRC's Status Report, filed July 26, 2018

(D.C. Cir. 1983).¹¹ Consistent with the principles identified in *Nicholson*, GWRC has never used the runaround track to provide ancillary services to any shipper. Today, the completion of the reconstruction of the runaround track is needed for the identical purpose.

As Mr. Anderson testified, GWRC never intended to abandon the runaround track when it temporarily removed some of the steel tracks to accommodate the church's construction project.¹² Its intent to resume service when required is demonstrated by multiple factors. First, all cross ties and ballast were left in place when GWRC temporarily removed the steel rails from behind the church to accommodate the church's construction project. Second, in the July 31, 2008 crossing license that gives HFUMC the ability to have a cross walk over the **two** tracks that together comprise the line of railroad, the right to resume rail service was explicitly reserved.¹³ Moreover, in agreeing to the terms of the license, HFUMC agreed that it shall not at any time own or claim any interest in or to the railroad's property which would underlie the pedestrian crossing that would be located between the Church and the parking lot to the south of the two tracks.¹⁴

¹¹ GWRC notes that the need to acquire the Board's authority to abandon a runaround is reflected by the Board's authorization of a dormant runaround track in *Norfolk Southern Railway Company-Abandonment Exemption—In the City of Cincinnati, Ohio and Hamilton County, Ohio*, AB 290 (Sub-No. 405X) (STB served Nov. 7, 2019).

¹² V.S. Anderson at ¶ 1; V.S. Dorsey at ¶ 4.

¹³ GWRC Ex. 8

¹⁴ *Id.* at ¶ 11.

Third, GWRC conditioned the *paving over* (not the removal) of the tracks across South Webb on GDOT's agreement that the paving material would be removed at any time that the tracks were required for rail service.¹⁵ As confirmed by photographs 1, and 12-17, submitted with GWRC's July 2018 Status Report, GDOT, unlike HFUMC, honored the agreement by assisting GWRC's effort to remove the pavement and restore the tracks across South Webb by March 15, 2018, a mere 45 days after the Board released its Decision denying HFUMC's adverse abandonment application.

In summary, these three factors, and countless others, as well as evidence placed before the Board including the chain of title that disproves HFUMC's claim to own the 10-foot gap of real property on which the runaround track was constructed, support GWRC's arguments that it always intended to resume use of its tracks located behind the church.

Equally as important, use of the runaround track will allow GWRC to avoid the need to place its employees in constant danger associated with having to hang on the front of a moving train while crossing multiple public and private crossings. A train's cross-country movement that involves at least 45 public and private crossings is far different than switching operations conducted in an enclosed freight yard.

To remove any doubt that may be fostered, either deliberately or inadvertently, by HFUMC in the future regarding the scope of the Board's

¹⁵ GWRC Ex. 11.

denial of HFUMC's adverse abandonment application, the Board should clarify that it would have been unlawful for GWRC to abandon either the original main line or the runaround track without the prior authorization by the Board. Most importantly, the Board should declare that it has exclusive jurisdiction over the abandonment and construction of all tracks, including auxiliary tracks located in a single State.

The Board Should Declare That Its Decision Denying HFUMC's Adverse Abandonment Application Applies To The Runaround Track As Well As the Mainline Track And, Therefore, GWRC Could Not Abandon The Runaround Track Without The Board's Prior Authorization Under 49 U.S.C. § 10903.

Quality Industries, LLC, which supported GWRC's opposition to HFUMC's application, has recently informed GWRC that it has resolved various internal issues and has resumed shipments by rail. Consistent with the Board's implicit requirement that GWRC must timely renew its rail service to avoid the filing of a new adverse abandonment application by HFUMC, it is GWRC's intent to pursue the immediate lifting of the emergency injunction issued by the Superior Court of Hart County.¹⁶ The court's emergency injunction was based on its finding that Hartwell Railroad Company, f/k/a Hartwell Railway, and Great Walton Railroad Company, posed a "substantial threat of irreparable injury to Plaintiff's property and of continuing trespass."¹⁷

¹⁶ As explained in detail *infra*, the Fulton County Superior Court, by Order filed November 1, 2019, affirmed the decision of the Georgia Public Service Commission that denied GWRC's *Petition for Approval to Acquire Real Estate by Condemnation*.

¹⁷ See Exhibit 1 hereto.

Because the Superior Court was not presented with an accurate survey or a thorough and accurate chain of title by either party at the emergency hearing, the finding of a “continuing trespass” is subject to further consideration by the court following the introduction of an accurate and fully developed chain of title and a recent survey that the Georgia Public Service Commission (PSC) refused to consider that demonstrates that the runaround track was constructed within a parcel of real property for which HFUMC lacks any title.

GWRC respectfully submits, that such submission will conclusively demonstrate that HFUMC has never acquired title to the narrow gap of real property that lies between the original railroad right-of-way and the property that HFUMC acquired in 2003 from the successors in interest to The Hartwell Mills. As the records before the Board in AB-1242 conclusively show, the narrow gap of real property was utilized between 1913 and 2016 without challenge from Hartwell Mills or any other party. It was only when HFUMC filed its complaint with the Hart County Superior Court on November 28, 2016 that any issue was raised.¹⁸ Indeed, the **three** Licenses signed in 2007 and 2008 show that HFUMC disclaimed any ownership of the property on which GWRC’s tracks are located. The Board should also note that when it returns to the Hart County Superior Court, GWRC will not need to condemn any property. Instead,

¹⁸ Indeed, in his letter addressed to Mr. Anderson, dated September 13, 2016, Mr. Whittemore, the Chair of HFUMC’s Land Use and Planning Task Force, acknowledged HFUMC’s “responsibilities under the license agreement,” but did not contest GWRC’s ownership of the real property on which the runaround track was located. See Exhibit 2 hereto.

it will rely on the new survey that the PSC refused to consider as well as the chain of title to establish that HFUMC does not hold title to the real property over which the runaround track has been located without objection for over a century. It will also rely on adverse possession and an implied easement that covers the 13-square feet of real property that HFUMC may own.

To assist the Hart County Superior Court, the Board is asked to clarify that the runaround track is not a mere “spur” or an “ancillary track,” *and*, that GWRC, as well as HFUMC, would be required to obtain the Board’s prior approval to abandon it. Given HFUMC’s argument in the removal case that the “voluntary abandonment or the taking up of the rails over eight years ago defeats any prescriptive claim or other adverse possession interest that they might have otherwise acquired because it is not continuous,” GWRC anticipates that HFUMC will deliberately continue to obfuscate and distort the impact of the Board’s denial of HFUMC’s adverse abandonment application by arguing that the Board’s decision did not apply to the “north spur.”

Moreover, GWRC anticipates that HFUMC will continue to argue, as it did before the PSC, that the court is not bound by the Board’s decision denying the adverse abandonment application. As HFUMC argued before the PSC:

The STB decision although presently denying the application, ultimately hinges on State law, in other words on this Commission’s finding of whether or not Hartwell Railroad will have the existing property rights across The Hartwell Church’s property to construct a new spur via condemnation. *Hartwell First United Methodist Church-Adverse Abandonment and Discontinuance-The Great Walton Railroad Company,*

*Inc., in Hart County, GA., Docket No. AB 1242, January 31, 2018. If this Commission looks after the public interest and denies the condemnation, it is reasonable to presume the STB will reconsider its decision and require the Railroad to remove those tracks which have been unused for 20 years.*¹⁹

In its *Application for Full Commission Review*, HFUMC conveniently failed to mention the Board's exclusive jurisdiction over the tracks pursuant to 49 U.S.C. § 10501(b). Instead, HFUMC noted that "The STB is an independent adjudicatory and economic-regulatory agency charged by Congress with resolving railroad rate and service disputes and reviewing proposed railroad mergers."²⁰

HFUMC's lack of respect for the Board's decision is further revealed by the following comments:

The purpose of the proposed runaround is to serve a single railroad customer, Quality Industries, LLC, to which the Railroad delivers plastic pellets from approximately 9.5 miles away in Bowersville, Georgia. ... In support of its petition, Hartwell Railroad states that it desires to build the runaround in order to deliver the empty cars back to Bowersville; however, it is important to note that Hartwell Railroad has been "pushing" the empty cars back to Bowersville for many years, a practice permissible under rules promulgated by the Federal Railroad Administration. 49 C.F.R. § 218.99.²¹

¹⁹ *Hartwell First United Methodist Church's Application for Full Commission Review of Hearing Officer's Initial Decision and Request for Oral Argument*, at pp. 3-4. The various pleadings referenced herein can be viewed on the website of the Georgia Public Service Commission by searching Docket # 41607.

²⁰ *Id.* at p. 3, n2.

²¹ *Id.* at p. 7.

In short, HFUMC, instead of seeking judicial review of the Board's decision in a United States Court of Appeals, chose to collaterally attack the Board's decision by repeating the same basic arguments that the Board had rejected. Given the approach taken by HFUMC before the PSC, GWRC anticipates that HFUMC will once again advance the argument that the "purported runaround track was physically removed 10 years ago *voluntarily by the Railroad* and was not open, visible or notorious *since* that time."²² This argument, of course, ignores the fact that the majority of the tracks behind the church were reinstalled three full years ago, and that the pavement covering the tracks that cross South Webb Street was removed nearly two years ago.

HFUMC also disregards the fact that the tracks were temporarily removed by GWRC to accommodate HFUMC's construction project with the understanding, reflected in the licensing agreements that had been previously reached with HFUMC, that HFUMC would not claim any ownership interest in the real property on which the crosswalk would be constructed for the Church's convenience over the ***two adjacent tracks that were constructed prior to 1913*** on real property that has never been acquired by HFUMC.

**Due To The Unique Circumstances Of This Case, The Board
Should Issue A Declaratory Order That Will Assist The Hart County
Superior Court As It Resolves The Issues Before It.**

In its February 12, 2019 decision in Docket No. AB 1242, the Board directed GWRC to address recent precedent regarding the issuance of

²² *Id.*

declaratory orders, including the decision of the United States District Court in *Hartwell First United Methodist Church v. Hartwell R.R.*, 3:16-CV-169, slip op. at 8 (M.D. Ga. Mar. 3, 2017).²³ Having reviewed the cited precedents, GWRC is mindful of the Board's reluctance to issue declaratory relief when matters are pending in a state court. *See, e.g., Adrian & Blissfield Railroad Company—Petition for Declaratory Order*, F.D. 36148 (STB served Jan. 31, 2018); *Ingredion Inc.-Pet. for Declaratory Order*, FD 36014 (STB served Sept. 30, 2016); *Norfolk S. Ry.-Pet. for Declaratory Order*, FD 35950 (STB served Feb. 29, 2016).

It is respectfully submitted that none of the foregoing cases involved a blatant collateral attack on a decision of the Board involving its exclusive jurisdiction to authorize the construction and/or abandonment of a line of railroad. The same is true even if the runaround track were to be viewed as an ancillary track, which it is not.

Here, however, the Board is faced with an unprecedented attack on a final decision that was never appealed. Moreover, in response to the entreaties of HFUMC, the PSC, based on unsubstantiated conclusions of an unqualified "expert witness," reached a conclusion that cannot be reconciled with the Board's January 31, 2018 decision. Because the PSC was fully aware of the Board's decision when it reversed its Hearing Officer's Initial Decision that granted GWRC's Petition for Approval to Acquire Real Estate by Condemnation, the expedited issuance of a declaratory order that confirms the Board's

²³ Exhibit 3.

exclusive jurisdiction over GWRC's tracks will facilitate resolution of the ongoing litigation that has otherwise prevented GWRC from reconstructing its runaround track.²⁴ The case before the Hart County Superior Court will not require the court to condemn any real property. Instead, the proceeding will focus on the issue of title, based on a complete record concerning the chain of title to the property on which the runaround track was initially constructed, and a recent survey that clearly proves HFUMC's title does not include the real property that the railroads have utilized for over a century.²⁵ It is duly noted that the survey, for which modern technology was used, is based in part on 1914 measurements set forth in a March 3, 1914 Quit Claim deed. By this deed, C. I. Kidd conveyed two parcels of real property, on which the original 259-foot-long segment of the runaround track had been constructed in 1913, to representatives of the Farmers' Union Warehouse Company. As the survey reflects, the runaround track springs from the right-of-way of the mainline a few feet to the east of the point where the survey indicates the termination of the conveyed property. In the 1914 deed,²⁶ the point of termination was said to be 67 feet from the point of beginning where the conveyance touched the right-of-way. As reflected by the I.C.C.'s Valuation Field Notes that were previously

²⁴ A true copy of the PSC's Order Denying Application for Rehearing, Reconsideration and Oral Argument and Request to Modify Description of Real Property South to be Acquired, dated January 3, 2019, is attached hereto as Exhibit 4.

²⁵ Exhibit 5.

²⁶ In AB-1242, the 1914 deed was accepted into the record as GWRC Exhibit 31. See GWRC's *Motion Seeking Leave to File Sur-Rebuttal and Motion to Strike*, filed July 3, 2017.

introduced as GWRC Exhibit 35,²⁷ the segment of runaround track that is in question has been in place since 1913. GWRC stresses that the Hart County Superior Court did not consider any the above evidence when it found that GWRC, in the process of reconstructing the runaround track, had trespassed on the church's property.

In its Order, the United States District Court in *Hartwell First United Methodist Church v. Hartwell R.R.*, 3:16-CV-169, slip op. at 8 (M.D. Ga. Mar. 3, 2017), cited at p. 2 of the Board's February 12, 2019 decision, the District Court noted that the "Defendants may have a strong argument that they obtained the right to traverse the Church's property through prescriptive adverse use."²⁸ In addition, the District Court specifically explained that "if the Church's trespass claim depends on whether the track has been properly and effectively abandoned under the procedures set out in the ICCTA, Defendants may have a stronger argument that the federal law preempts the state law trespass claim."²⁹ As the District Court also made clear, "this Court is not determining which party has what interest in the property. The Court is simply finding that federal law does not completely preempt a determination of the parties' relative state law property rights."³⁰

²⁷ GWRC's *Motion to Expedite Handling of Adverse Abandonment Application*, filed November 3, 2017.

²⁸ Slip op. at 5, n.2.

²⁹ *Id.* at 8.

³⁰ *Id.* To support its claim of ownership, HFUMC introduced a quit claim deed, dated June 6, 2002, from Spring Industries, Inc. However, as GWRC advised the Board in its Motion Seeking Leave to File Sur-Rebuttal and Motion to Strike, filed July 3, 2017, the quit claim deeds offered by HFUMC did not

Because the Board did not deny HFUMC's adverse abandonment case until January 31, 2018, the District Court could not have anticipated the Board's decision. Furthermore, because of the expedited requirements imposed by 28 U.S.C. § 1446, and the Federal Rules of Civil Procedure governing the removal of a case involving a federal question as asserted by GWRC, GWRC had not yet discovered that HFUMC has *no* legitimate claim to ownership of the parcel of real property on which the track was originally constructed.³¹ Because the Court was unable to determine the parties' relative state law property rights, the case was remanded back to the Hart County court to decide what appeared to the District Court at that time, with the limited facts then before it, to be a dispute about the relative state law property rights of the parties.

**The Recent Decision Of The Fulton County Superior Court
Affirming The PSC's Reversal Of The PSC's Hearing Officer
Reflects The Need For The Board To Clarify Its Holding
Denying HFUMC's Adverse Abandonment Application**

GWRC does not contest the need to show that HFUMC does not have title to the real property on which the runaround track was constructed and

convey title to the 10-foot wide parcel of land on which the runaround track was constructed in 1913. Pages 14 through 25 of GWRC's Motion, the Verified Statement of Joseph Dorsey, and certified copies of the deeds that comprise the chain of title are incorporated herein by reference.

³¹ GWRC was required by 28 U.S.C. § 1446 to file its notice of removal from the state court within 30 days after HFUMC served a copy of its initial pleading on GWRC. As a result, GWRC, which had no prior reason to question its ownership of the property on which its tracks are located, was unable to conduct a thorough search of all relevant deeds prior to the hearing in Federal Court. *See also*, Fed. R. Civ. P. 83.

operated. However, it respectfully submits that a brief review of the decisions of the Fulton County Superior Court and the Georgia Public Service Commission (PSC) that have run roughshod over the Board's expressed reasoning in its adverse abandonment decision and GWRC's rights under ICCTA supports the need for the Board to clarify its holding. As the Board noted in *Adrian & Blissfield*, "the Interstate Commerce Act, as amended by the ICC Termination Act of 1995, provides that the Board's jurisdiction over 'transportation by rail carriers' is 'exclusive' and 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.' 49 U.S.C. § 10501(b)." ³² As also noted, "[t]he purpose of this express federal preemption is to prevent a patchwork of local and state regulations from unreasonably interfering with interstate commerce." ³³

When it filed its Petition for Approval to Acquire Real Estate by Condemnation, ³⁴ GWRC invoked the provisions of O.C.G.A. §§ 46-8-120 and 46-8-121. As herein pertinent, there is no conflict between 49 U.S.C. § 10501(b) and O.C.G.A. § 46-8-120(a)(1), which reads as follows:

Any railroad company owning or operating a railroad in this state, whether such company is chartered under the law of this state or under the laws of any other state, is authorized and empowered:

³² Slip op. at 4.

³³ *Id.*

³⁴ The petition was filed October 27, 2017, prior to the release on January 31, 2018 of the Board's decision denying HFUMC's adverse abandonment application.

(1) To reconstruct its lines or tracks, to relocate any line or portions of a line, and to build, as a substitute for trestles, embankments upon which tracks may be laid or to widen cuts where necessary for proper construction or maintenance.

The same is not true with regard to O.C.G.A. § 46-8-120(a)(4), which authorizes and empowers a railroad “To build and maintain such additional depots, tracks, and terminal facilities as may be necessary for the proper accommodation of the business of the company.” As the PSC’s decision reflects, it used this provision to deny GWRC the right to rehabilitate and reconstruct a track that was first constructed in 1913 under the pretext that GWRC was attempting to construct a “proposed runaround track.”³⁵

Following HFUMC’s intervention, a hearing was held before a Hearing Officer appointed by the PSC. In responding to GWRC’s Petition for Approval to Acquire Real Estate by Condemnation, HFUMC advanced multiple arguments that the Board would reject in its January 31, 2018 Decision in AB-1242. HFUMC’s principal witness was John F. O’Brien, who purported to analyze “the Hartwell Railroad track from Bowersville to Hartwell and proposed four alternative sites for a runaround which would obviate the need for Hartwell Railroad to condemn Church property and accomplish the return of empty cars to Bowersville.”³⁶

³⁵ PSC Order Reversing Hearing Officer’s Initial Decision at p. 2, 5 (Exhibit 6 hereto).

³⁶ Hearing Officer’s Initial Decision, slip op. at 10 (Exhibit 7 hereto).

The PSC's Hearing Officer, however, while repeatedly stating that the proceeding involved a "proposed runaround track," nevertheless found that "[t]he proposed condemnation would allow GWRR to complete the rehabilitation of its existing runaround track that has been in place over 100 years."³⁷ He also found that the runaround track would allow GWRC's locomotive to "park empty cars from Quality on the main line, then pull around them using the runaround track.* Once on the west end of the cars, the locomotive could recouple to these cars and then pull them back to Bowersville, rather than having to shove them blind."³⁸

In ruling in favor of GWRC's proposed condemnation, the Hearing Officer, consistent with the Board's approach, rejected HFUMC's reliance on the availability of potential alternative locations for the "proposed runaround track." He ultimately found as a matter of law that:

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 run around. I therefore find that the proposed condemnation by Great Walton Railroad, Inc. serves a legitimate and necessary purpose.³⁹

Acting in its appellate capacity, the Fulton County Superior Court ruled that "[t]he question before the Commission is whether the proposed condemnation served 'a legitimate public purpose.'" ⁴⁰ As it also explained, in

³⁷ *Id.*

³⁸ *Id.* (*citations to the transcript are omitted).

³⁹ *Id.*

⁴⁰ Decision of the Fulton County Superior Court, slip op. at 11, dated November 1, 2019. (Exhibit 8 hereto).

reaching the conclusion that the condemnation did not serve a public purpose, “the Commission explained that the condemnation was not necessary and essential for the safe and essential conduct of Hartwell’s business.”⁴¹ This conclusion is contrary to the Board’s reasoning set forth at pages 4 through 5 of its January 31, 2018, where it rejected HFUMC’s request that the Board find that GWRC’s preferred operations are not necessary.

The Fulton County Superior Court further stated that:

The Commission’s decision is supported by ample record evidence. In particular, the testimony of Mr. O’Brien, the civil engineer sponsored by Hartwell Church, provides a basis for finding that the proposed condemnation is not necessary and essential.⁴²

The PSC also relied on Mr. O’Brien’s testimony that “supported the conclusion that the status quo was preferable to the proposed condemnation.”⁴³ As the Fulton County Superior Court also explained, Mr. O’Brien detailed the increased safety risks that would result from the proposed Condemnation,⁴⁴ which included the fact that:

The proposed runaround sits squarely in downtown and requires crossing a State Highway.* It also involves seven street or highway crossings.* Per CSX best practices, no rail cars should be uncoupled within 200 feet of a crossing which is what would occur with the implementation of the proposed runaround.⁴⁵

⁴¹ *Id.* at 12.

⁴² *Id.*

⁴³ *Id.*

⁴⁴ *Id.*

⁴⁵ *Id.* (* indicates omission of reference to transcript).

The foregoing conclusions upon which the PSC based its conclusions clash with the Board's ultimate finding in its January 31, 2018 decision in AB 1242 that "the present and future PC&N do not support the requested adverse abandonment."⁴⁶ Moreover, Mr. O'Brien's testimony largely repeats HFUMC's arguments regarding proposed alternative locations for repositioning that were rejected by the Board, thereby providing a prime example of the collateral attack on the Board's decision.

As the Board explained in rejecting HFUMC's alternative sites argument, "the Board typically is reluctant to substitute its operational judgment for the railroad's. *See, e.g., Salt Lake City Corp.—Adverse Aban.—in Salt Lake City Utah*, AB 33 (Sub-No. 183), slip op. at 8 (STB served Mar. 8, 2002) (rejecting applicant's argument that the Board should consider alternative routes that a carrier could use as 'it would be inappropriate to substitute our judgment for [the carrier's] business judgment.')."⁴⁷

Like the situation in the adverse abandonment proceeding, Mr. O'Brien, who candidly admitted that he had no experience with railroad operations and did not have any training in railroad operations, did not present any in depth railroad engineering studies to support his claims. Nevertheless, the PSC overruled the Hearing Officer's decision by relying on unsubstantiated speculation regarding alternative sites that could be used to fulfill the purpose served by the existing runaround track. The Board should also note that it

⁴⁶ Slip op. at 4.

⁴⁷ Slip op. at 4.

rejected HFUMC's identical arguments at page 4 of its January 31, 2018 Decision in AB 1242.

Furthermore, rather than recognizing the Board's exclusive jurisdiction over interstate railroad transportation, including the construction, operation and abandonment of spur, industrial, side tracks that are located entirely in one State,⁴⁸ the court focused on the TORCH lease and the baseless suggestion that implementation of GWRC's proposal to rehabilitate its line would "require the construction of a new north spur" rather than the reconstruction of an existing track.⁴⁹ It is undisputed that only the steel rails were removed from the runaround track, the ballast and track roadbed remained in place. In addition, because the segment of the runaround track that is at issue was initially constructed in 1913, it is crystal clear that GWRC is not seeking to build a new line or track behind the church.⁵⁰

⁴⁸ Plainly, even if the runaround track were to be viewed as being a spur track, there is no avoiding the Board's exclusive jurisdiction over its abandonment.

⁴⁹ Given the amendments to the TORCH Lease in early 2018, it is no longer an issue.

⁵⁰ Construction of the track is confirmed by field notes, dated January 12, 1916, prepared by the Interstate Commerce Commission's Division of Valuation while valuing the rail properties of the Hartwell Railroad (a predecessor owner of the line that is at issue herein). As reflected in the Field Notes, the track was initially constructed as a storage track on real property that has never been acquired by HFUMC. In subsequent years, the storage track was converted into an industrial spur and extended over South Webb Street. A few years later, the track was further extended to a point on the main line between South Webb and South Jackson Streets. For the next half century or more, it was used as a runaround track in the railroads' interstate operations to facilitate the movement of outbound trains from Hartwell to Bowersville. Because a true copy of the ICC Field Notes was previously filed as Ex. 35 on November 3, 2017 in AB-1242, HFUMC was aware of the notes when it requested the PSC to deny GWRC relief. At the same time, HFUMC has never

In any event, if the PSC had agreed to reopen the proceeding and reached an unbiased opinion regarding the merits that considered the foregoing evidence, the PSC would have been compelled to find that the real property on which the runaround track is located is not owned by HFUMC. It refused to reopen the proceeding to hear any additional evidence. However, while denying GWRC the right to present new evidence, the Commissioners openly relied on “extra-record evidence” to reject its staff’s recommendation that it adopt the Hearing Officer’s Initial Decision.

The PSC’s reliance on “extra-record evidence” is demonstrated by comments set forth in the transcript of the Special Administrative Session at which the PSC voted to reverse the Hearing Officer’s initial Decision and deny the petition for condemnation.⁵¹ Because the Special Administrative Session followed the close of oral argument, GWRC had no opportunity to challenge the comments that underlie the PSC’s decision.

As HFUMC highlighted at page 16 of its Motion to Strike filed with the PSC on September 14, 2018:

It is important to note as was made clear at the Administrative Session of June 14, 2018 that the Hearing Officer never visited the subject Church site in Hartwell but the Vice Chairman of the Commission and the Chairman of the Commission did visit the Church site and as aptly stated by Vice Chairman Echols, ‘I believe that had [Hearing Officer] Phil Smith

produced evidence that it has any legitimate claim to the narrow strip of real property on which the runaround track was constructed.

⁵¹ Exhibit 9 hereto.

gone to Hartwell to see this [situation] that he would have made a different decision. (Transcript page 4).⁵²

The transcript of the Administrative Session also reflects the comment of Commissioner Evert who accused GWRC's owners of creating "an eyesore" for the people of Hartwell.⁵³

There is no avoiding the conclusion that the comments of individual commissioners show their votes were not based on evidence of record considered by the Hearing Officer. In effect, the Commissioners assumed the role of witnesses. However, GWRC was given no opportunity to cross examine them regarding their observations and conversations with church officials. By denying GWRC any ability to respond to the charges of not "being a good neighbor" leveled by the Chairman and Vice Chairman of the PSC, GWRC was unquestionably denied due process of law.

Furthermore, one must question the relevance and motivation underlying the comments of the Chairman of the PSC that:

The people of Georgia can't throw us out all at one time. We have to run totally statewide even though we live in districts and run from districts, which are equally apportioned population-wise with the State of Georgia.⁵⁴

⁵² Motion to Strike and Reply Brief of the Hartwell First United Methodist Church to the Application for Rehearing, Reconsideration and Oral Argument and Request to Modify Description of Real Property Sought to be Acquired by Condemnation, at p. 16 (inserts in original).

⁵³ Exhibit 9 at p. 5.

⁵⁴ *Id.* at p. 3.

A partial answer is supplied by a letter sent to the PSC by the District Superintendent of the South Georgia Conference of the United Methodist Church.⁵⁵ As stated therein:

I encourage you to remember also that we are called the United Methodist Church for a reason. We are all connected one to the other. When one United Methodist Church hurts, we all hurt. While it may seem that the only church affected by this potential condemnation of property would be Hartwell First, in truth, all United Methodist Churches would be affected. And there are many, many United Methodist Churches all across the great state of Georgia.

When Congress stripped the states, including Georgia, of jurisdiction over transportation by rail carriers and provided the Board with exclusive jurisdiction, it did not carve out an exception for politically elected members of any state public service commission. As the Board and the various federal courts have uniformly recognized, ICCTA prevents states or localities from imposing requirements that, by their nature, could be used to deny a railroad's right to conduct rail operations, including the reconstruction of the runaround track. As the Fulton County court acknowledged at p. 9 of the November 1, 2019 decision, "the Board required the railroad to implement its proposal," namely to proceed with the rehabilitation and utilization of the Line.⁵⁶ By

⁵⁵ Exhibit 10.

⁵⁶ The court failed to mention that GWRC has been blocked from restoring and rehabilitating its track by HFUMC's and the PSC's actions and litigation that finds no support in ICCTA. *JGB Properties, LLC—Petition for Declaratory Order*, FD 35817, slip op. at 8 (STB served May 21, 2015).

applying O.C.G.A. § 46-8-120(a)(4) to deny GWRC the right to condemn the real property on which its track has been located for over a century, rather than § 46-8-120(a)(1), the PSC prevented GWRC from implementing its proposal. At page 20 of its November 1, 2019 decision, the court determined that the PSC's "decision is not preempted by federal law" and that ICCTA does not preclude the PSC from denying GWRC "the statutory right to condemn property." The court's conclusion disregards the Board's comprehensive test for determining the extent to which a particular state action or remedy is preempted by § 10501(b). As the Board has repeatedly explained, section 10501(b) preemption prevents states from intruding into matters that are directly regulated by the Board (*e.g.* railroad rates, services, *construction, abandonment*, etc.). Plainly both construction and abandonment are at issue herein.

Section 10501(b) preemption also prevents states from imposing requirements that, by their nature, could be used to deny a railroad's ability to conduct rail operations or proceed with activities that the Board has authorized. By denying HFUMC's adverse abandonment, the Board, as noted above, required GWRC to restore service in order to stave off another adverse abandonment application. The crucial point for the Board to consider is that state action, taken at the urging of HFUMC after being denied relief by the Board, is the only thing that is preventing the railroad from restoring the track and rail service.

In the final analysis, the Board must denounce the comment that “the Commission is best suited to determine whether the Hartwell Railroad’s desire to ‘rehabilitate’ the runaround track better constitutes ‘reconstruction’ under subsection(a)(1) or ‘build and maintain’ under subsection(a)(4).”⁵⁷ Given ICCTA’s enactment, neither the PSC nor Mr. O’Brien are better suited, much less authorized, to overrule the Board’s determination that GWRC is entitled to **reconstruct** the sole remaining segment of its runaround. The concerted effort by HFUMC and the PSC to prevent GWRC from clearing title and acquiring real estate that its track has occupied for over a century should be recognized for what it is, namely a denial of equal protection of law under the 14th Amendment to the Constitution and an impermissible intrusion on the Board’s exclusive jurisdiction.

Conclusion

For all of the above-stated reasons, the Board, on an expedited basis, is respectfully requested to issue an Order, pursuant to the Supremacy Clause of the United States Constitution and the Board’s exclusive jurisdiction under 49 U.S.C. § 10501(b) over interstate transportation over the interstate rail system, that holds that GWRC’s reconstruction of its runaround track is subject to the Board’s exclusive jurisdiction following ICCTA’s enactment in 1995.

At a minimum, the Board should issue an appropriate order to clarify that the runaround track is part of the interstate rail network and that the

⁵⁷ Decision of the Fulton County Superior Court, slip op. at 19.

HFUMC's effort before the PSC and the Fulton County Superior Court to override the Board's denial of HFUMC's adverse abandonment application should not be tolerated as it results in conflicts with the Board's exclusive jurisdiction.

Respectfully submitted,

/s/ Richard H. Streeter

Richard H. Streeter

Counsel for The Great Walton Railroad
Company, Inc.

Law Office of Richard H. Streeter

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Washington, D. C. 20016

202-363-2011

rhstreeter@gmail.com

Dated: November 20, 2019

AB 1242 (Sub-No. 1)
Exhibit 1

FILED IN Hart COUNTY
23 OCT OF NOV 14
4:15 PM
JUDGE MALEDM
SUPERIOR COURTS
JUDICIAL CIRCUIT

IN THE SUPERIOR COURT OF HART COUNTY
STATE OF GEORGIA

HARTWELL FIRST UNITED	)	
METHODIST CHURCH, INC.	)	
	)	
Plaintiff,	)	
	)	
v.	)	CIVIL ACTION NO. 16HV00611M
	)	
HARTWELL RAILROAD COMPANY,	)	
F/K/A HARTWELL RAILWAY, AND	)	
GREAT WALTON RAILROAD	)	
COMPANY,	)	
	)	
Defendants.	)	

ORDER GRANTING
EMERGENCY INJUNCTION

This matter came before the Court for a hearing on Plaintiff's request for an emergency injunction to temporarily stop work by Hartwell Railroad Company on disputed property in the City of Hartwell, Georgia. Sufficient notice was provided to Defendants' counsel informing him of the time and place of the hearing and Defense counsel was present at said hearing.

The Court reviewed Plaintiff's Petition and Exhibits and took sworn testimony from Joe Whittemore on behalf of the Church. Defendants offered no testimony, but did introduce four (4) photographs.

Based on the evidence and testimony presented, the Court enters the following findings of fact:

- 1.) The Defendants acts pose a substantial threat of irreparable injury to Plaintiff's property and of continuing trespass. The injury is of a continuing nature for which no legal remedy is sufficient.
- 2.) There is a substantial likelihood that Plaintiff's will prevail at trial.

3.) In balancing the interests of the parties, there was no evidence presented showing harm to Defendants if an emergency Order is granted.

4.) Accordingly, it is hereby ordered and adjudged that the Defendants, Hartwell Railroad Company and Great Walton Railroad Company, their employees and agents, are thereby restrained and enjoined from conducting any work outside of the 20 foot right of way between Bank Street and Webb Street in the City of Hartwell. This 20 foot right of way is shown on the railroad map dated June 30, 1916 and was marked on the ground by multiple red survey stakes placed by Georgia Registered Surveyor, Slate Bauknight on November 24, 2016.

IT IS FURTHER ORDERED, that counsel for the parties shall confer with each other to seek to come to an agreement as to a timeframe for briefs to be submitted to the Court on the issues raised at the hearing. If counsel can agree on said timeframe, the Court shall be notified of same and briefs shall be submitted within said timeframe. If counsel cannot agree, each shall submit their proposed timeframe to the Court and the Court shall issue a directive as to when briefs should be submitted.

This injunction will remain effective until further order of this Court.

A copy of this order has been e-mailed to counsel for both parties.

SO ORDERED this 28th day of November, 2016.



JEFFERY S. MALCOM, JUDGE
SUPERIOR COURT NORTHERN JUDICIAL CIRCUIT

AB 1242 (Sub-No. 1)
Exhibit 2

The First United Methodist Church

200 E. Howell Street
Hartwell, Georgia 30643

September 13, 2016

B. R. Anderson, President
Hartwell Railroad Company
P. O. Box 429
Hartwell, Georgia 30643

Re: Your 8/24 notification letter

Dear B. R.,

We are somewhat perplexed by your August 24 letter. We have been told that TORCH now leases the railroad property from Athens Street to S. Forest Avenue for their "Railroad Street Park" project – a use inconsistent with your proposed reinstitution of rail operations. Moreover, it appears that only the Church has been notified of your rehabilitation plans, and not the City or State which would need to be involved with any necessary rehabilitation of tracks where they cross Athens, Banks and Webb Streets, or TORCH. We can only surmise that your letter was sent in response to the Church's proposed adverse abandonment proceeding. As you know, the STB has given us the necessary waivers for us to proceed, and we intend to continue to do so. Any work that you choose to make to the rail line is at your own risk.

That being said, we acknowledge that we have responsibilities under the license agreement, and appreciate the advance notice you have provided of the work you propose to do. We do not believe that there are any Church materials at either of the crossing locations. Rather than erecting permanent signs at this time since the rail line is not currently operating and can't be until the line is rehabilitated, the Church will place temporary construction notices when you are doing the work, and will have Church members placed at crossings at times when our parishioners and guests, and children will be using the crossings associated with Church programs during construction. Although you have indicated that construction could begin at any time, we appreciate your giving us one – two days' notice before any work is done in the right of way through the Church's property.

Best regards,



Joe M. Whittemore, Chair
Land Use and Planning Task Force

Cc: Eric M Hocky, Clark Hill, PLC

Dr. R. Allen Stewart
Senior Pastor

CHURCH OFFICE – (706) 376-3164

AB 1242 (Sub-No. 1)
Exhibit 3

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF GEORGIA
ATHENS DIVISION

HARTWELL FIRST UNITED METHODIST *
CHURCH, INC., *

Plaintiff, *

vs. *

HARTWELL RAILROAD COMPANY, INC. *
and GREAT WALTON RAILROAD *
COMPANY, *

Defendants. *

CASE NO. 3:16-CV-169 (CDL)

O R D E R

Plaintiff Hartwell First United Methodist Church, Inc. ("the Church") filed a state law trespass action against Defendants Hartwell Railroad Company, Inc. and Great Walton Railroad Company ("Defendants") in Hart County Superior Court. The Church claims that Defendants trespassed on its property by attempting to reconstruct a rail track that Defendants previously maintained across the Church's property. The state court issued a preliminary injunction to stop Defendants' reconstruction of the track. Defendants removed the case to this Court, claiming that the injunction interferes with their obligation to provide rail lines for interstate commerce under the Interstate Commerce Commission Termination Act of 1995 ("ICCTA"), 49 U.S.C. § 10101 et seq. Defendants maintain that the ICCTA grants the Surface Transportation Board ("STB")

exclusive jurisdiction over claims involving an interference with interstate railway commerce and therefore that the ICCTA completely preempts the Church's state law trespass action. Defendants filed a motion to dissolve the state court preliminary injunction (ECF No. 8). The Church filed a motion to remand this action to state court (ECF No. 5).

STANDARD

"On a motion to remand, the removing party bears the burden of showing the existence of federal subject matter jurisdiction." *Conn. St. Dental Ass'n v. Anthem Health Plans, Inc.*, 591 F.3d 1337, 1343 (11th Cir. 2009). Here, Defendants claim that federal subject matter jurisdiction exists based on complete preemption. "Complete preemption occurs when federal law so occupies a given field that a state-law claim is transformed into a claim 'arising under' federal law." *Dunlap v. G & L Holding Grp., Inc.*, 381 F.3d 1285, 1290 (11th Cir. 2004). To determine whether a federal statute completely preempts a state law cause of action, the Court must assess whether the federal statute at issue shows Congress's intent to "provide[] the exclusive cause of action for the claim asserted and also set[s] forth procedures and remedies governing that cause of action." *Id.* at 1291 (quoting *Beneficial Nat'l Bank v. Anderson*, 539 U.S. 1, 8 (2003)).

In determining a motion to remand, the Court is authorized to consider evidence beyond the pleadings. *Cf. Fowler v. Safeco Ins. Co. of Am.*, 915 F.2d 616, 617 (11th Cir. 1990) (per curiam) ("Defendants have the opportunity to submit affidavits, depositions, or other evidence to support removal."). Consequently, the Court held an evidentiary hearing in order to better understand the nature of the Church's state law claim and the evidence supporting it.

BACKGROUND

The Church makes two alternative arguments that Defendants are trespassing by attempting to reconstruct the track. First, the Church claims that Defendants do not have a state law property interest in the land on which Defendants are trying to reconstruct the track. The Church has presented evidence, which if believed, shows that the track in question extends beyond Defendants' right of way and passes over the Church's property and that the Church has never granted any right to Defendants to operate their track on Church property. To the extent that Defendants operated on the same track over the property of the Church's predecessor in title, the Church argues that Defendants maintained the previous track based on a private agreement with a former owner of the land. The Church claims that Defendants have no enduring right to use the land for the track because the Church's predecessor deeded the property unencumbered to the

Church. Defendants question a survey showing that the track extends beyond their right of way onto property that was deeded to the Church, but they suggest that even if the survey is accurate, they have acquired a prescriptive easement to cross the Church's property.

Alternatively, the Church claims that even if Defendants had a right to maintain a track on the property, Defendants abandoned this right. The Church argues that the track that Defendants formerly maintained on the property was a private "spur track" to benefit a particular customer and not a part of Defendants' main rail line. The Church therefore reasons that Defendants could abandon this "spur track" without STB authorization and did so in 2008 when they removed the track. Defendants argue that the track was part of their main rail line because they had previously connected the "spur" to the main line and at one time operated it as a "runaround" which facilitated traffic on the main line.¹ Thus, they argue that they could not have abandoned the track without STB approval.

¹ A "runaround" allows a railroad to pull cars toward the terminus of a main line track, and after the cars have been emptied, park the emptied cars on the main line track that runs parallel to the runaround, detach the locomotive from the cars, run the lone locomotive on the parallel runaround track back in the direction from which it came, back the locomotive to attach the cars to the rear of the locomotive, and then pull the empty parked cars back toward the direction from which they came. This runaround allows the railroad to pull the empty cars back and avoid pushing them, which is less efficient, less safe, and more costly.

Defendants claim that any arguments regarding abandonment must be made to the STB.

DISCUSSION

The Church's state law trespass claim depends first on whether the Church or Defendants own the property on which Defendants claim a right to reconstruct the track. If the Church has a fee interest and Defendants have no state law property interest, including a right of way easement, then the Church has a good-faith claim that Defendants' unauthorized presence on the Church's property constitutes unlawful trespass under Georgia law. Defendants have cited to no authority that allows them to build a main line track over someone else's private property without obtaining consent of the owner or condemnation of the property. The ICCTA may grant the STB exclusive jurisdiction to decide the extent to which a party may interfere with interstate railway commerce. But Congress did not clearly intend for a state law claim that may rest entirely on a state law title dispute to be decided administratively by the STB. Thus, the Court finds that the ICCTA does not completely preempt this case.²

² The Court understands that Defendants may have a strong argument that they obtained the right to traverse the Church's property through prescriptive adverse use. But the Court is not deciding who should prevail on the trespass claim; it is only deciding who should decide the claim—a state court in Hart County or the STB in Washington, D.C.

Defendants cite *New Orleans Terminal Co. v. Spencer*, 366 F.2d 160 (5th Cir. 1966) and *Thompson v. Texas Mexican Railway Co.*, 328 U.S. 134 (1946), for the proposition that the STB has jurisdiction over the discontinuance of any rail line, even if the railroad does not own the land on which the line is placed. But both cases are distinguishable from the facts of this case.

In *New Orleans Terminal Co.*, it was undisputed that the railroad owned several permits to run a rail line over Jefferson Parish, Louisiana's property. 366 F.2d at 162. The issue was whether the Parish could rescind the permits, requiring the railroad to abandon the rail lines, without obtaining a certificate of approval from the Interstate Commerce Commission, the federal regulatory agency that preceded the STB. *Id.* at 163. The court found that the Parish could not require the railroad to discontinue the rail lines without first obtaining an order of abandonment from the Commission. *Id.* at 166. But here the Church does not seek to rescind a right that it previously gave Defendants.³ Rather, the Church claims that Defendants have never had any property interest in the land underlying the rail line at all. *New Orleans Terminal Co.* does

³ This fact also distinguishes the present case from *Norfolk Southern Railway Co.-Adverse Abandonment-St. Joseph County*, STB Docket No. AB-290 (SUB 286), 2008 WL 391303 (Feb. 14, 2008), *aff'd sub nom.*, *City of South Bend v. Surface Transportation Board*, 566 F.3d 1166 (D.C. Cir. 2009). In that case, it was undisputed that the railroad had an easement to use the land underlying the track even though the property owners argued that the easement had expired due to nonuse. *Id.* at *2.

not stand for the proposition that such a claim is completely preempted by federal law.

Nor does *Thompson* support Defendants' argument for complete preemption here. As in *New Orleans Terminal Co.*, in *Thompson* it was undisputed that The Texas Mexican Railway Company ("Tex-Mex") had leased part of its track to The St. Louis, Brownsville and Mexico Railway Company. *Thompson*, 328 U.S. at 136. The Supreme Court held that Tex-Mex could not terminate the contract according to its terms without first seeking an order of abandonment from the Commission. *Id.* at 144-45. Additionally, *Thompson* involved the termination of a private contract for "trackage rights" between two railroads—a contract that the Commission would have had to approve of in the first place if the contract had not been entered before the enactment of the Transportation Act. *Id.* at 147-48.

Nothing in *New Orleans Terminal Co.* or *Thompson* requires that a plaintiff who claims that a railroad is reconstructing a track across its property without its present or previous permission must petition a federal regulatory agency to stop the railroad's trespass. To hold otherwise would require the conclusion that Congress intended for every trespass claim against a railroad to be litigated in Washington, D.C. before the STB. Under this reasoning, if a railroad during construction built its track beyond the right of way that it had

to build the track on and ran the track onto someone's private property without permission and without any legal authority, the injured party who did nothing wrong would be required to litigate that simple state law trespass claim in a faraway venue before a federal administrative agency. It is pure folly to suggest that Congress intended to put its constituents to such trouble.

Now if the Church's trespass claim depends on whether the track has been properly and effectively abandoned under the procedures set out in the ICCTA, Defendants may have a stronger argument that the federal law preempts the state law trespass claim. But this Court need not decide whether Defendants should prevail on their ordinary preemption defense. Additionally, this Court is not determining which party has what interest in the property. The Court is simply finding that federal law does not completely preempt a determination of the parties' relative state law property rights. Accordingly, the Court remands this case so that the state court can make that determination. The Court also finds that Defendants had a good-faith basis for removal and therefore that it is not appropriate to shift the burden of the Church's costs and attorney's fees to Defendants. Accordingly, the Court denies the Church's request for costs and attorney's fees and grants the Church's motion to remand this

case to state court (ECF No. 5). The Clerk is directed to remand this action to the Superior Court of Hart County.

IT IS SO ORDERED, this 3rd day of March, 2017.

S/Clay D. Land

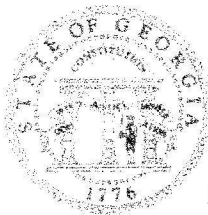
CLAY D. LAND

CHIEF U.S. DISTRICT COURT JUDGE
MIDDLE DISTRICT OF GEORGIA

AB 1242 (Sub-No. 1)
Exhibit 4

COMMISSIONERS:

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



DEBORAH K. FLANNAGAN
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EXECUTIVE SECRETARY

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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.

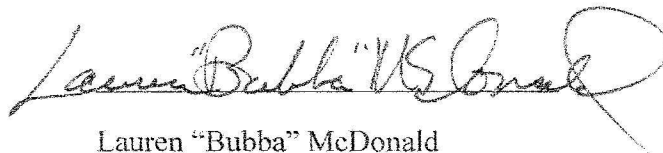
ORDERED FURTHER, that jurisdiction over these matters is expressly retained for the purpose of entering such further Order or Orders as this Commission may deem just and proper.

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



Reece McAlister

Executive Secretary



Lauren "Bubba" McDonald

Chairman

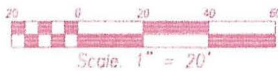
1-3-19

Date

Jan, 3, 2019

Date

AB 1242 (Sub-No. 1)
Exhibit 5

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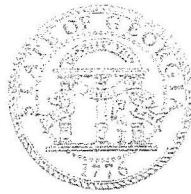


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AB 1242 (Sub-No. 1)
Exhibit 6

COMMISSIONERS:

LAUREN "BUBBA" McDONALD, CHAIRMAN
TIM G. ECHOLS
JACK EATON
JUG EVERETT
TRICIA PRIDEMORE



FILED

AUG 24 2018

EXECUTIVE SECRETARY
G.P.S.C.

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EXECUTIVE DIRECTOR

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EXECUTIVE SECRETARY

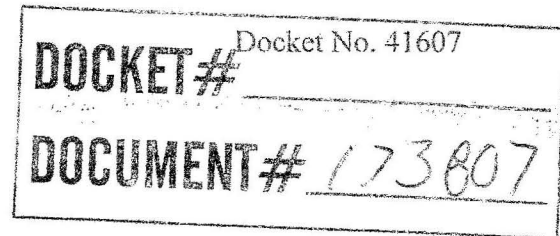
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Petition of the Great Walton Railroad
Company, Inc. d/b/a The Hartwell
Railroad Company for Approval
to Acquire Real Estate by Condemnation.)



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")

Docket No. 41607
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

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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.

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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

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AB 1242 (Sub-No. 1)
Exhibit 7

INITIAL DECISION

Docket No. 41607 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 Great Walton Railroad Company, Inc.,
d/b/a the Hartwell Railroad Company:**

Mathew D. Williams, Attorney, Matthew D. Williams & Associates, LLC

On Behalf of the Hartwell First United Methodist Church:

Robert J. Middleton, Jr., Attorney, Hall Booth Smith, PC and Walter J. Gordon, Sr. Attorney, the Gordon Law Firm

FILED
MAR 20 2017
EXECUTIVE SECRETARY
G.P.S.C.

I. Statement of Proceeding

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") of a Petition for Approval to Acquire Real Estate by Condemnation, pursuant to O.C.G.A. §§ 46-8-120 and 46-8-121 (the "Petition") with the Georgia Public Service Commission ("Commission"). The real estate parcel at issue is a certain strip of land, measuring 20 feet by 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, 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. On December 21,

2017, Hearing Officer Smith issued a Notice of Hearing and Procedural and Scheduling Order setting this proceeding down for hearing at 10:00 A.M. on January 23, 2018 at the Commission's main hearing room. The legal authority for the hearing as stated in the Notice of Hearing and Procedural and Scheduling Order is as follows:

This hearing will be held under the authority and jurisdiction conferred upon the Commission by O.C.G.A. §§ 46-2-50, 46-2-58, 46-2-59, 46-8-120, 46-8-121 and 50-13-13, including the Commission's authority to appoint a hearing officer to hear this case and issue an initial or recommended decision subject to Commission review, as well as Rules of the Georgia Public Service Commission 515-2-1-.04, and 515-2-1-.05, et seq. and 515-16-16-.01, et seq.

At the January 23, 2018, hearing Matthew D. Williams, Matthew D. Williams and Associates, LLC law firm, appeared on behalf of GWRR. Robert J. Middleton, Jr., Hall Booth Smith P.C., and Walter J. Gordon, Sr., the Gordon Law Firm, appeared on behalf of HFUMC.

GWRR presented the testimony of Benny Ray Anderson, President, GWRR; Joseph Dorsey, General Manager, GWRR; Jonathan Colehower, President and CEO; Quality Holdings, George Carter, a retired brakeman/engineer with Hartwell Railroad; and Charles Bishop, General Manager, GWRR from 1995 to 2016. GWRR also introduced Exhibits 8 through 35; 47 through 49; 53 through 58; 61 through 62 and 66. (hereinafter identified as Ex. HR-___).

HFUMC presented testimony of Joe Whittemore a retired Certified Public Accountant, member of HFUMC and Chair of the task force representing the Church in this matter, and the Church's expert witness, John O'Brien, a Professional Engineer. HFUMC introduced Exhibits C-1 through C-8.¹ Near the conclusion of the hearing, GWRR attempted to call an expert witness to rebut the testimony of the Church's witness O'Brien. (Tr. 256). GWRR expert testimony was not allowed by the Hearing Officer GWRR did not pre-file the testimony in compliance with Commission Rule 515-2-1-.04, which was specifically stated in the Hearing Officer's Scheduling

¹ HFUMC Exhibit C-6. is a CD Rom containing 1335 letters in support of HFUMC in opposition to the Petition for condemnation authority filed by GWRR. The original of these 1335 letters were filed with the Commission on January 19, 2018, along with copies of the CD ROM to all Parties and Commissioners

Order, provides as follows and was read into the record in this case by Mr. Middleton at Tr. 256-258:

"Unless otherwise directed by the Commission or one of its hearing officers in a written order, the testimony of any witness who testifies as an expert or about any matters of a technical nature must be pre-filed in its Executive Secretary's Office at least ten (10) days prior to the commencement of the hearing date, along with any exhibits in support thereof. In the event the 10th day before the hearing falls on a weekend or a State Holiday, said testimony and accompanying exhibits shall be pre-filed the next working day."

As agreed to at the close of the hearing, GWRR and HFUMC each filed Initial Briefs on February 28, 2018 and Reply Briefs on March 21, 2018. HFUMC filed a Proposed Initial, as well, on March 21.² Testimony, Hearing Exhibits and arguments raised by GWRR and HFUMC were considered by the undersigned Hearing Officer in arriving at this Initial Decision.

II. Contentions of the Parties

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

HFUMC intervened in opposition to the proposed condemnation stating that the proposed condemnation does not serve a legitimate public purpose, nor is the proposed run-around necessary as required by Georgia law nor would the proposed runaround serve a legitimate public interest or purpose.

² On March 28, 2018, HFUMC filed an additional pleading that it identified as a Sur-Reply Brief. At the close of the January 23, 2018 hearing, both parties, along with the Hearing Officer, were in agreement that post-hearing briefing would be limited to two rounds. (Tr. 270-271) Given that agreement and direction, the Sur-Reply Brief of HFUMC was not given any consideration by the Hearing Officer.

III. A Brief History of the Dispute between HFUMC and GWRR

Prior to the filing to the Petition at the Commission, the specific piece of real estate at issue in this proceeding was also the subject matter of other contentions and proceedings between GWRR and HFUMC. In order to gain a better understanding of the issues involved with the parcel in question, a narrative of the previous and ongoing proceedings is beneficial.

The parcel in question is located on the north side of and adjacent to GWRR's main line just west of its intersection with Webb St. in Hartwell, GA. There 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. Also not in dispute is the fact that the occupancy of this land by a railroad track dates back to at least 1916. In 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 back in service.

HFUMC witness Whittemore explained that during the 2006-2009 time frame, HFUMC began an expansion program buying property on the south side of its main sanctuary complex for construction of a parking lot for Church events, as well as a new gymnasium for athletics and pre-school, (Tr. 160-163), as well as further expansions of its ministry to the entire Hartwell community.

Acknowledging that the GWRR owned a right-of-way interest in the 20-foot wide right-of-way for the main track, agents acting on the Church's behalf, including Mr. Whittemore had several discussions with the Hartwell Railroad CEO, Mr. B. R. Anderson, considering plans for the future use of this portion of the main line as related to the Church's expansion plans. (Tr. 166). During this period of time representatives of the Church informed Mr. Anderson of the Church's desire to purchase, or otherwise obtain the Hartwell Railroad's right-of-way interest in the twenty foot track that bisected the Church's property. (Id.) According to Mr. Whittemore, on each occasion Mr. Anderson represented his intention was that Hartwell Railroad would allow the Church to have possession of that track. (Id.) On one such occasion Mr. Anderson told the Church representatives, specifically testified to by Mr. Whittemore that Mr. Anderson would

donate the property and that he was having a deed of conveyance drafted the following week. (Tr. 167). No deed was delivered.

As a result, the Church requested and obtained crossing rights over the main line as a measure to connect the Church sanctuary and the remaining land that housed the Church's gymnasium and activity center, as well as the Church's parking lot. (Tr. 134-140)

In May of 2015, the Hartwell Railroad entered into a long-term lease with the non-profit group, Transformation Opportunities in Revitalizing Communities of Hart (TORCH). (See Ex. HR-48, Vol. IIB, page 2-4.) The term of the lease was 99 years and gave TORCH the option to purchase the track and properties for One Dollar (\$1.00) at lease conclusion; the lease included the main line track that bisected the Church's property. (Id.) The lease provided for TORCH to use the main line track and other Railroad properties for the purpose of constructing, operating and maintaining a multi-use public park that included children's playgrounds and public walking trails within the Hartwell Railroad right-of-way. (Id.)

In light of the 99-year lease term, the Church concluded that the Hartwell Railroad had no further intention to use the main line track property for commercial freight service, as such use would be inconsistent with TORCH's plan for use of the property for a farmer's market, a children's play area and a public walking trail. (Id.) As a result, the Church commenced the lengthy process of compelling adverse abandonment of this portion of the railway by filing with the Surface Transportation Board ("STB") (successor agent to the Interstate Commerce Commission) which generally regulates national rail traffic (Tr. 167). The Church's adverse abandonment application was based, in part, on the fact that Hartwell Railroad had not provided any local service over the rail line in approximately 20 years. Also, that there were no potential customers located along the Line in downtown Hartwell, and Hartwell Railroad had shown it had no intention of operating rail service over the Line by entering into a 99-year lease with TORCH that gave TORCH control of the Line.³

³ The full adverse abandonment application was admitted as part of the record. GWRR Ex. HR-48.

As part of the STB adverse abandonment case, HFUMC was required to run several notices in the Hartwell newspaper and elsewhere, the first of which was in letters dated June 15, 2016 noting HFUMC's intention to file for adverse abandonment. (Ex. HR-48)

On August 24, 2016, GWRR sent a letter to the Church that informed the Church that Great Walton Railroad Company intended to undertake rehabilitation and repair of the track "immediately". (Ex HR-47) Although the Church had notified Great Walton Railroad Company of its effort to have the main line track abandoned, as the STB had not yet ruled, the Church acknowledged the August 24, 2016 letter. On October 12, 2016, GWRR then sent a second letter citing its intent to repair and rehabilitate, stating that its work would begin on October 17, 2016 (GWRR Ex. HR-33). That date came and went with no activity by Great Walton Railroad Company.

The Church formally filed its notice for adverse abandonment and discontinuance with the STB on November 10, 2016. (Tr. 167). At the same time, the Church continued to fill the prerequisites for STB filing by publishing a required notice in the local legal organ, the Hartwell Sun for three weeks. The date of final publication was November 24, 2016. However, as the regular weekly publication date was Thanksgiving Day, the Hartwell Sun was distributed the day before on November 23, 2016. (Tr. 167). On that day, GWRR entered Church property with workers and earth moving equipment. Hartwell Railroad began digging up Church property far outside Hartwell Railroad's 20-foot right of way and destroying improvements made by the Church and indisputably located on the Church property (Tr. 168). Because of the timing of the publication of notice of the filing for adverse abandonment and the holidays surrounding Thanksgiving Day the Church had no opportunity to seek immediate judicial relief.

On the following Monday, November 28, 2016, the Church filed a petition for declaratory judgment and injunctive relief against Hartwell Railroad and GWRR, seeking to halt further illegal work on Church property pending a final ruling of ownership. The injunction was granted by the court. The issuing Judge found that the Church was likely to prevail on the issue of ownership (Ex C-1), based on the Valuation Map that showed the right of way to be only 20 feet (Ex C-1 and Ex HR-31).

On December 23, 2016, GWRR filed for removal of the Superior Court action to the U.S. District Court. The Church responded with a motion to remand the matter back to the Hart Superior Court, contending that no Federal issues were involved, and that the issue of the Church's title to the land where the north spur had previously been located (but removed in October 2008) was purely a State law issue. (Ex HR-48, appendix 8 generally). After a hearing before U.S. District Court Judge Clay Land on February 9, 2017, the case was remanded to Hart Superior Court on March 3, 2017 so that the State Court can make determinations on state law property decisions.

While 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 of conflicting surveys, there is no clear evidence that establishes the exact location of the boundary line between the properties of the two parties.

Rather than undertake a what it believed would be a lengthy and expensive court battle to establish the correct boundary line, with an uncertain outcome, GWRR decided that it would be more cost effective and quicker to simply condemn the property and remove any cloud on the title as recognized by O.C.G.A § 22-1-1(9)(iv). Hence the filing of the Petition.

On March 31, 2017, GWRR notified the Church of its intention to seek condemnation of the Church's property. In April 2017, the Church filed with the STP the application for adverse abandonment seeking an Order requiring the Hartwell Railroad to abandon approximately 0.25 miles of the Hartwell Railroad's rail line from Athens Street to the end of the Hartwell Railroad Line in downtown Hartwell.⁴

⁴ The adverse application only applied to the "main line" track owned by Hartwell Railroad and not to any of the seven (7) spurs or side tracks owned or used by Hartwell Railroad as STB authority for abandonment is only required for main line tracks. The application did not address the "runaround" track because (1) it was never a main line track, but rather was the connection of two spur or industrial tracks, and (2) at the time the application was filed there was no runaround track, the former north spur having been removed as had the crossing at Webb Street that had connected the spur tracks. The application was denied in a decision of the STB issued January 31, 2018 (Sec. HFUMC Post-hearing Brief, February 28, 2018.).

IV. Findings of Fact

The evidence shows, as here pertinent, the following facts:

The section of railroad at issue in this proceeding is a section of the Hartwell Railroad Track from Bowersville, Georgia to Hartwell, Georgia. The rail line segment runs from Bowersville to Hartwell dead ends in downtown Hartwell. (Tr. 27: 16-18) All rail traffic on the line either originates from or is destined for Bowersville.

Currently, there is one customer on this line segment, Quality Holdings ("Quality"). Quality is located less than one mile from the proposed condemnation. (Tr. 26 – 28) Quality Industries currently uses approximately two railcars every month, but forecasted growth in its business may support up to one railcar every ten (10) days.

When traveling east from Bowersville, the locomotive is pulling the rail cars destined for Quality. Because Quality is served by an east-facing switch, the cars are pulled past the switch and then pushed, or "shoved" onto the Quality track for unloading. Once unloaded, the locomotive must back onto the Quality track to retrieve the empty cars. Upon return to the main line, the locomotive will be on the east end of the cars it must now return to Bowersville, approximately 9 miles to the west. For at least ten (10) years, Hartwell Railroad has "pushed" the empty cars from Quality back to Bowersville. Currently, no facility exists on the line that allows the locomotive to move from the east end of the cars to the west end so that it may pull them back to Bowersville. (Tr. 64 - 66) As a result, the only option currently available is for the locomotive to shove the cars all the way to Bowersville. *Id.*

As currently operated, GWRR is shoving cars the approximately nine miles from Quality to Bowersville. This puts the empty cars in front of the locomotive and directly in the line of sight of the engineer operating the train. (Tr. 119 - 120) Each time a train approaches a crossing, the engineer's view of the crossing is blocked by the rail cars he is shoving. *Id.* Because of this sight view problem, the Federal Railroad Administration requires that the railroad put a man on the side of the lead car to provide visibility forward for the train. See GWRR's Ex. HR 62. (Tr. 65, Tr. 117 - 119). Upon arrival at each crossing, the train must stop and the employee must dismount the car and flag the crossing. *Id.* Once he has done so, the

train may pass through the crossing. Once it has done so, it must stop again so that the employee may remount the lead car. *Id.* This process is repeated at each crossing when proceeding from Hartwell to Bowersville. *Id.* During the entire trip, the engineer is in essence blind as to what lies ahead and is counting on communication from another employee who is hanging on the side of a car and is also blind to what is happening on the opposite side of the car. *Id.*

The currently required shoving move from Quality to Bowersville takes about 1 hour and 45 minutes with an employee hanging on the side of a car for the entire time. See GWRR Ex. HR-62. (Tr. 66, Tr. 118 - 119). During that time, the employee is constantly exposed to all the possible track-side hazards that might cause him injury. *Id.* In addition, the employee must mount and dismount the rail car at each crossing. *Id.* This presents a separate opportunity for injury at each of the 45 crossings between Hartwell and Bowersville. (Tr. 118, Tr. 153 - 154) Riding the side of a railcar for these extreme distances can cause fatigue and is extremely dangerous. *Id.* All of these activities that are hazardous to the employees would be completely eliminated by the completion of the runaround track.

In comparison, if the locomotive were on the front of the train, the engineer would have an unobstructed view of what lies ahead and does not have to stop. He can see immediately anytime something lies in his path and react accordingly without having to rely on reports from another employee. Pulling cars is a much safer practice for the motoring public at each grade crossing than shoving them. (Tr. 64 - 65). Rehabilitation of the runaround track would allow this to occur.

GWRR proposes the runaround, which is a loop track arrangement that enables a locomotive to detach from cars at one end of the train and re-engage the cars at the opposite end of the train, in order to pull rather than push the cars. The proposed runaround is adjacent a former mainline of Hartwell Railroad that has not been used in twenty years. GWRR is requesting approval to condemn a strip of land approximately twenty feet by two hundred sixty feet located on Church property as part of the proposed run-around.

The specific parcel for which GWRR seeks condemnation not only abuts the property of the Church, but also, along with the main line, bisects the Church's property. The Church

congregation, including persons of all ages, and the public at-large, regularly utilize a crossing over the main line and the parcel on which the runaround is proposed. . (Tr. 173) Thus, the use of the property by Church members and, the public, will be affected by the runaround.

The proposed condemnation would allow GWRR to complete the rehabilitation of its existing runaround track that has been in place over 100 years. (Tr. 40, Tr. 58) See also, GWRR Ex HR-56. This track would allow GWRR to depart Quality and pull the cars east less than a mile to the runaround track. (Tr. 64 – 66) Once at the track, the locomotive could park the empty cars from Quality on the main line, then pull around them using the runaround track. *Id.* Once on the west end of the cars, the locomotive could recouple to these cars and then pull them back to Bowersville, rather than having to shove them blind. *Id.*

The Church presented expert testimony of Mr. O'Brien, that analyzed the Hartwell Railroad track from Bowersville to Hartwell and proposed four alternative sites for a runaround which would obviate the need for Hartwell Railroad to condemn Church property and accomplish the return of empty cars to Bowersville.

The most favorable alternative proposed by Mr. O'Brien at page 4 of his report, shown on Figure 3 (Attachment 1), the Sandspur A runaround that is only two thousand feet of Quality Industries and involves no at grade crossings. The evidence demonstrated that the proposed runaround that Hartwell Railroad is proposing through Church property would involve seven at grade crossings for the 1.2 miles from Quality to Hartwell, or fourteen at grade crossings if both directions are considered. Each of the Alternatives proposed by HFUMC are on existing railroad right of way and require no act of condemnation by GWRR.

V. 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 This matter has been assigned to the Commission's undersigned Hearing Officer for hearing and initial decision pursuant to the provisions of O.C.G.A. §§ 50-13-13 and 50-1317. By their agreement to schedule a post-hearing briefing

schedule counsel for the parties have waived statutory or regulatory deadlines for the rendering of a decision in this case.

In addition to Georgia law, Commission Rules require that the Hearing Officer make a finding of whether the proposed condemnation accomplishes a "legitimate" public purpose. Rule 515-16-16-.02

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. In considering powers of Hartwell Railroad under O.C.G.A. § 46-8-120, only § 48-8-120(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.

In *Central of Georgia Railroad v. Georgia Public Service Commission*, 257 Ga. 217, 356 S.E.2d 865 (1987), the Georgia Supreme Court examined the scope of the Commission's review of a railroad's petition for condemnation. The Supreme Court held that the Commission review is limited to two determinations. First, whether any new construction occurring in the wake of the condemnation would result in the elimination of a railway station, and second, whether the condemnation serves a public purpose, not whether the condemnation best serves the public interest. *Id.* at 218-19, 356 S.E.2d at 866. In the instant case, the construction of the runaround track will not close any rail stations. Accordingly, the Commission's review is limited to deciding whether the condemnation serves a public purpose. As applied to the facts of this case, the Commission should determine whether the condemnation sought by GWRR is "necessary and essential for the purpose of rehabilitating of the runaround track and that such construction [is] required for the safe and essential conduct of [GWRR's] business as a public carrier and for public purposes." *Id.* at 218, 356 S.E.2d at 866 (*quoting City of Doraville v. Southern Railway Co.*, 227 Ga. 504, 510, 181 S.E. 346 (1971)).

HFUMC is the only party that has opposed the proposed condemnation. It raised various issues supporting the denial of the railroad's Petition, including the availability of alternate

locations for the project, safety issues created by the project and the project's impact on nearby motor vehicle traffic, etc. Similar allegations of potential harm, damage or inappropriateness were made in *Central of Georgia, Supra*, and in *City of Doraville v. Southern Railway Company*, 227 Ga. 504 (1971), wherein the Georgia Supreme Court found such grounds insufficient to deny the railroads permission to seek condemnation of the property sought or to restrain them from expanding their facilities.

In a proceeding very similar to this one, but for a much larger project with a great deal more opposition, the Commission reviewed a Petition by CSX Transportation, Inc. for condemnation of a much larger area of land for the creation of a new railyard. See Georgia Public Service Commission Docket No. 14710, Order dated April 10, 2002. In that matter, the Commission again considered opposition and objections from many different parties that are similar to those advanced by FUMC. In that decision, the Commission cited the above referenced Georgia Supreme Court decisions in recognizing that the scope of its review is limited to determining whether "the purpose of the condemnation serves a public purpose, not whether the condemnation 'best serves' the public interest." *Id.* at p. 7, quoting, *Central of Georgia Railroad Company v. Georgia Public Service Commission*, 257 Ga. 217 (1987). In Docket No. 14710, the Commission went on to find that,

"[t]he evidence presented in this proceeding by CSXT is convincing that the property sought to be condemned is necessary for construction of the proposed project and that such construction is required for the safe and essential conduct of the railroad's business as a public carrier and for public purposes." *Id.*

HFUMC argues that the two court cases and one Commission case cited by GWRR are distinguishable from this instant case. HFUMC states that *Central of Georgia* case is distinguishable in that case the condemnation was necessary and served a legitimate public purpose of a "necessary and essential 200-acre new railyard constructed in Lee County." (257 Ga. at 217-218). The Church argues further that the *City of Doraville* case is likewise distinguishable because the purpose of the condemnation there was construction of a necessary proposed railyard that operated tracks, terminals, and a switching yard facility, making

transportation of interstate shipments of more than one hundred thirty (130) industries. Finally, the Church argues that the Commission's 2002 decision in Docket No. 14710-U is likewise distinguishable because the condemnation there was for a legitimate and necessary purpose, construction of a "very heavily used track for both local freight and interstate shipments moving between states in New England and New Orleans, Louisiana",

The factual presentation and arguments of the Church are not without merit. It is undisputed that the presence of a rail line between properties of the Church may pose a danger to those who will have the need and occasion to cross such line. The Church through its testimony shows that alternatives to the runaround proposed by GWRR exist. However, prior Commission and court decisions state that a determination to "whether the condemnation serves a public purpose, not whether the condemnation 'best serves' the public interest" is to be made. Commission Order Docket No. 14710-U at p.7.

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.

SO ORDERED, this 29th day of March 2018.


Phillip J. Smith
Hearing Officer
Georgia Public Service Commission

AB 1242 (Sub-No. 1)
Exhibit 8

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.)

Case No. 2019CV316156

**ORDER AFFIRMING THE DENIAL OF THE PETITION FOR
APPROVAL TO ACQUIRE REAL ESTATE BY CONDEMNATION AS
ORDERED BY THE GEORGIA PUBLIC SERVICE COMMISSION**

I. INTRODUCTION

Pending before the Court is the Petition for Judicial Review of the Georgia Public Service Commission's Order denying the Petition for Approval to Acquire Real Estate by Condemnation ("Petition for Condemnation") submitted by The Great Walton Railroad Company, Inc. d/b/a The Hartwell Railroad Company ("Hartwell Railroad"). The Respondent is the Georgia Public Service Commission ("Commission"), and the Intervenor Respondent is the Hartwell First United Methodist Church ("Hartwell Church"). For the reasons set forth herein, the Court

AFFIRMS the denial of the petition for approval to acquire real estate by condemnation as earlier ordered by the Georgia Public Service Commission.

As discussed below, Hartwell Railroad asserts that the Commission erred in denying its Petition for Condemnation on the grounds that the decision was preempted by federal law and inconsistent with state law. Hartwell Railroad asks the Court to reverse the Commission's decision and remand the case back to the Commission with instructions to reopen the proceeding for further hearing and expeditiously resolve the contested title issue. (Petition for Judicial Review, p. 22).

On September 26, 2019, the Court heard oral argument from the parties. The Court has carefully considered the briefs of the parties, the oral argument and citations to Georgia legal authority in reaching this decision.

II. PROCEEDINGS BEFORE THE COMMISSION

On August 27, 2017, Hartwell Railroad filed with the Commission a Petition to Acquire Real Estate by Condemnation. (Tab A)¹. Exhibit A to the Petition identified the 20' by 260' parcel of land whose ownership is in dispute and that Hartwell Railroad sought to have condemned. (Tab A, Exhibit A). Hartwell

¹ Citations to documents included in the administrative record filed with the Court on March 4, 2019 are made to the documents' corresponding tab (Tab ____). Citations made to the transcript of the hearing held on January 23, 2018 are made to (Tr. ____), which is contained in Tab G to the administrative record filed with the court.

Church intervened in the proceeding on November 20, 2017 (Tab C), and objected to the petition on December 13, 2017 (Tab E).

The Commission assigned the matter to a hearing officer, who held an evidentiary hearing on January 23, 2018. (Tabs D and G). Hartwell Railroad sponsored the testimony of Bennie Ray Anderson, Hartwell Railroad President, Joseph Dorsey, Hartwell Railroad General Manager and county commissioner in Hart County, Jonathan Colehower, Quality Industries President and CEO and Charles Bishop, the retired General Manager for Hartwell Railroad. (Tr. 92, 99, 126, Tab G.9 (Hartwell Railroad Exh. 47)). Hartwell Church presented the testimony of Joe Whittemore, a member of Hartwell Church for more than 40 years and chair of a building committee when the church expanded. (Tr. 159). Hartwell Church also sponsored the testimony of John O'Brien, a civil engineer and principal for the consulting firm GeoRisk. (Tr. 207-08). After the submission of briefs, the Hearing Officer issued an initial decision on March 29, 2018, granting Hartwell Railroad's Petition for Condemnation. (Tab M).

Hartwell Church applied to have the full Commission review the Hearing Officer's Initial Decision. (Tab P). The Commission held an oral argument on June 14, 2018. (Tab S). On August 24, 2018, the Commission issued its Order Reversing Hearing Officer's Initial Decision and Denying the Petition for Condemnation. (Tab T). In making this decision, the Commission found that the

condemnation was unnecessary and that the proposed runaround track would not serve the public interest. *Id.* at 4.

On September 4, 2018, Hartwell Railroad submitted an Application for Rehearing, Reconsideration and Oral Argument and Request to Modify the Definition of Real Property Sought to Be Acquired by Condemnation. (Tab V). The Application attached two exhibits. *Id.* In responding to the Application, Hartwell Church moved to strike the exhibits on the grounds that they contained new evidence that had not been subject to cross-examination. (Tab W, p. 1). The Commission denied the application and found that Hartwell Church's motion to strike was moot because the exhibits in question were neither moved nor admitted into evidence. (Tab A1, p. 2).

Hartwell Railroad cited O.C.G.A. § 46-8-120(a)(1) and (a)(4) in its Petition for Condemnation as grounds for granting its requested relief. (Tab A) However, both before the hearing officer and before the Commission prior to decision, Hartwell Railroad argued that the "only question" that must be answered to approve its condemnation request is whether its request is "necessary and essential" for the safe and essential conduct of Hartwell Railroad's business as a public carrier and for public purposes. (Tab J, p. 4, 11, Tab P, p. 17). It was not until its Application for Rehearing, Reconsideration and Oral Argument that

Hartwell Railroad argued that paragraph (a)(1) of O.C.G.A. § 46-8-120 supports a requested condemnation without a showing of necessity. (Tab V).

On February 4, 2019, Hartwell Railroad petitioned for judicial review of the Commission's decision.

III. FINDINGS OF FACT

Sitting as a Court reviewing an agency decision under the Administrative Procedure Act, this Court is not permitted make independent findings of fact but rather, must make its determination based on whether there is any evidence to support the Agency's factual findings. O.C.G.A. § 50-13-19(g) and (h). *See Georgia Power Company v. Georgia Public Service Commission*, 196 Ga. App. 572 (1990). Based upon this standard the Court makes the following findings of fact:

1.

Hartwell Railroad's Petition for Condemnation requested that the Commission condemn a strip of land that is 20' by 260'. (Tr. 209). Hartwell Railroad and Hartwell Church dispute which party owns the property that Hartwell Railroad seeks to condemn. (Tab A, p. 2, Tab E, p. 2).

2.

Adjacent to the disputed property is Hartwell Railroad's main line track. (Tr. 139). The main line track has remained dormant for the last 20 years. (Tr.

202). The purpose of the condemnation is for Hartwell Railroad to construct what is known as a “runaround” on the disputed property. (Tr. 209). A “runaround loop is a track arrangement that enables a locomotive to detach from cars at one end of the train and re-engage the cars at the opposite end of the train.” (Tr. 209). The runaround track was removed 10 years ago. (Tr. 165).

3.

Hartwell Railroad maintains that the runaround track would assist in the service of one customer, Quality Industries, LLC. (Tr. 13-14). Hartwell Railroad contends that the runaround track would be preferable than the current system because it would avoid having the locomotive push the other train cars from behind. (Tr. 12-13).

4.

In response to Hartwell Railroad’s contention, Hartwell Church presented the testimony of John F. O’Brien, who is a civil engineer. Mr. O’Brien concluded that the proposed condemnation would not serve a public purpose. (Tr. 216). Mr. O’Brien testified that the runaround track would not add any service to the Hartwell area and that the condemnation would not benefit the public with additional service. (Tr. 210). Mr. O’Brien also raised numerous concerns about the runaround track. (Tr. 211). The primary concern raised by Mr. O’Brien was that the proposed runaround track was unsafe. In support of this conclusion, Mr.

O'Brien pointed out that the proposed condemnation would result in six additional at-grade crossings, which he stated would endanger the 800 regular users of the Hartwell Church. (Tr. 217). Mr. O'Brien further noted that the proposed runaround track was contrary to the industry design practices and public sector guidance. (Tr. 217). Mr. O'Brien also testified that the runaround track was not necessary because there were preferable alternatives to provide the same benefit to Quality Industries, including maintaining existing operations. (Tr. 216, 218-19). In fact, Mr. O'Brien testified that taking no action was preferable to the action proposed by Hartwell Railroad. (Tr. 218). Mr. O'Brien further testified that "the runaround planned by the railroad does not add any service to the Hartwell area." (Tr. 216).

5.

Based on Mr. O'Brien's testimony, the Commission found that the proposed condemnation did not serve a public purpose, and was not necessary. (Tab T, p. 5). Accordingly, the Commission denied the Petition for Condemnation. *Id.* There is evidence in the administrative record to support the Commission's finding.

6.

There are two separate cases that were discussed in the context of the administrative proceeding. In one case, Hartwell Church submitted an adverse

abandonment application to the Surface Transportation Board (“STB”).² The second case involved Hartwell Church’s petition for declaratory judgment and injunctive relief to stop Hartwell Railroad from continuing to dig on the church’s property.

7.

Before the STB, Hartwell Church submitted an adverse abandonment application asking that Hartwell Railroad be ordered to abandon approximately 0.25 miles of its track from Athens Street to the end of the Hartwell Railroad line located in downtown Hartwell. (Tab I, p. 8). The standard for adverse abandonment is whether the present public convenience and necessity requires or permits the proposed abandonment. *Id.* at 9. The bases for the Hartwell Church’s petition were that there had not been any local service over the rail in approximately 20 years, there were no potential customers located along the rail line in downtown Hartwell and that Hartwell Railroad had shown it had no intention of operating rail service over the line by entering into a lease with a non-profit organization called Transportation Opportunities in Revitalizing Communities of Hart (“TORCH”) pursuant to which TORCH could use the main line track and other GWRCC properties for purposes unrelated to rail service. *Id.* at 7-8. The STB denied the abandonment based on railroad’s proposal to

² STB is the successor agency to the Interstate Commerce Commission.

rehabilitate the line. In doing so, however, the STB required the railroad to implement its proposal. *Id.* at 9. Implementation of the proposal would require the construction of a new north spur. *Id.* at 9-10.

8.

On November 28, 2016, Hartwell Church filed a petition for declaratory judgment and injunctive relief in Hart County Superior Court asking the court to order Hartwell Railroad to stop construction on church property. (Tab I, p. 11). The court granted the injunction finding that Hartwell Church was likely to prevail on the issue of ownership of the disputed property. *Id.* at 11-12.

IV. STANDARD OF REVIEW

The Administrative Procedure Act (“APA”), O.C.G.A. § 50-13-1 *et seq.* governs appeals from decisions of executive branch commissions and agencies, such as the Commission. *Cazier v. Georgia Power Company*, 339 Ga. App. 506, 508 (2016); *see also* O.C.G.A. § 50-13-2 (defining “agency” for purposes of the APA as including the Commission); O.C.G.A. § 50-13-17(d) (specific provision for appeals of decisions from the Commission); O.C.G.A. § 50-13-19 (standard for appeals of executive agency decisions). Under the APA, this Court may reverse the decision of the Commission only 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;
- (3) Made upon unlawful procedure;
- (4) Affected by other error of law;
- (5) Clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record;
- (6) Arbitrary and capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion.

O.C.G.A. § 50-13-19(h).

The limited scope of judicial review of the administrative decisions, and the procedures to be followed are set out in O.C.G.A. §50-13-19. That statute provides that judicial review shall be confined to the record of the proceedings before the agency, whose findings shall be conclusive if there is any evidence in the record to support it. *Pruitt Corp. v. Ga. Dep't of Cmty. Health*, 284 Ga. 158, 160 (2008); *Georgia Power Company v. Georgia Public Service Commission*, 196 Ga. App. 572 (1990). The administrative finder of fact has the exclusive prerogative of weighing evidence and determining the credibility of witnesses. *Professional Standards Commission v. Smith*, 257 Ga. App. 418, 420 (2002). The APA prohibits a reviewing court from substituting its judgment for the judgment of the administrative agency as to the weight of the evidence on questions of fact. O.C.G.A. § 50-13-19(h). In addition, an agency cannot be bound by the testimony of an expert. *Mix v. Allied Readymix*, 248 Ga. App. 261, 263 (2001). Therefore, the reviewing court should not address the credibility or weight of the evidence, but only determine whether there is some evidence in support of the administrative

decision. O.C.G.A. §50-13-19(h); *Georgia Public Service Comm'n v. Alltel Ga. Communications Corp*, 244 Ga. App. 645, 651 (2000).

On questions of law, Georgia courts have established a standard of review for the decisions of administrative agencies in interpreting the laws and regulations within their charge that affords the agencies “great deference.” *Excelsior Elec. Mbrshp. Corp. v. Ga. PSC*, 322 Ga. App. 687, 691 (2013).

V. CONCLUSIONS OF LAW

- A. The Commission’s conclusion that the condemnation would not serve a public purpose is supported by the record and is consistent with applicable statutes, regulations and case law.

The question before the Commission is whether the proposed condemnation served “a legitimate public purpose.” (Commission Rule 515-16-16-.02). The burden to show that a taking is for a public purpose lies with the condemnor. *Meeks*, 283 Ga. App. 343, 345 (2007).

Relying upon *City of Doraville v. Southern Railway Co.*, 227 Ga. 504, 510, 181 S.E. 346 (1971), Hartwell Railroad asserted before the agency that the only issue to be decided was whether the proposed condemnation was “necessary and essential” for the safe and essential conduct of Hartwell Railroad’s business as a public carrier and for public purposes. (Tab J, p. 4, 11, Tab P, p. 17).

The Commission evaluated the evidence and determined that the proposed condemnation did not serve a public purpose. (Tab T, p. 4-5). In reaching this

determination, the Commission explained that the condemnation was not necessary and essential for the safe and essential conduct of Hartwell's business. *Id.* Although Hartwell Railroad disagrees with the weight afforded the evidence, the Commission applied the legal standard urged by Hartwell Railroad and addressed the question that Hartwell Railroad identified as the only issue to be decided.

The Commission's finding that the proposed condemnation was not necessary and essential for the safe and essential conduct of Hartwell Railroad's business as a public carrier and for public purposes should be upheld if it is supported by any evidence. *Pruitt Corp. v. Ga. Dep't of Cmty. Health*, 284 Ga. 158, 160 (2008). The Commission's decision is supported by ample record evidence. In particular, the testimony of Mr. O'Brien, the civil engineer sponsored by Hartwell Church, provides a basis for finding that the proposed condemnation is not necessary and essential. Consistent with *Cent. of Ga. R.R. v. Ga. Pub. Serv. Comm'n*, 257 Ga. 217, 219 (1987), the Commission did not require a showing that the condemnation "best serves" the public interest.

Mr. O'Brien's testimony supported the conclusion that the status quo was preferable to the proposed condemnation. (Tr. 212-13). Mr. O'Brien's expert testimony was in effect that the proposed condemnation was less desirable than taking no action. In support of this conclusion, Mr. O'Brien detailed the increased safety risks that would result from the proposed condemnation. (Tr. 211). The

proposed runaround sits squarely in downtown and requires crossing a State Highway. (Tr. 236). It also involves seven street or highway crossings. (Tr. 217). Per CSX best practices, no rail cars should be uncoupled within 200 feet of a crossing which is what would occur with the implementation of the proposed runaround. (Tab G.8, Exhibit 2, p. 11). Consequently, the administrative record supports the Commission's finding that the condemnation did not serve a public purpose.

Hartwell Railroad points to evidence in the record that supports its Petition for Condemnation. (*See, e.g.*, Hartwell Railroad Supplemental Brief, p. 3). In doing so, Hartwell Railroad asks this Court to re-weigh the evidence from the administrative proceeding. A reviewing court however, "shall not substitute its judgment for that of the agency as to the weight of the evidence on questions of fact." O.C.G.A. § 50-13-19(h). Also, the Commission is not bound by the testimony of an expert witness. *See, Allied Readymix*, 248 Ga. App. at 263. The question on judicial review is not whether the Court finds the evidence presented by Hartwell Railroad more persuasive than the evidence relied upon by the Commission in reaching its decision. Rather, the question is whether there is any evidence to support the Commission's decision. The record clearly contains evidentiary support for the Commission's factual findings and those factual findings are therefore upheld.

The Commission's finding that the proposed condemnation would not serve a public purpose is also supported by the fact that runaround would assist in the service of one customer. (Tr. 210). In *Atlanta v. Atlanta Gas Light Co.*, 144 Ga. App. 157 (1977), the Court of Appeals declined to condemn property for the construction of a railroad spur track for only one customer of the railroad because it found that the public generally would not be served. Similarly, in this case, the Commission found that the condemnation was only for the benefit of one customer, Quality Industries. (Tab T, p. 5). Hartwell Church witness, Mr. O'Brien, testified that "the runaround planned by the railroad does not add any service to the Hartwell area." (Tr. 216). Mr. O'Brien also pointed out that the Hartwell Railroad's condemnation petition did not indicate that the runaround track would serve any additional customers in Hartwell. (Tr. 216). The Commission's decision that Hartwell Railroad did not demonstrate that the proposed condemnation would serve a public purpose is consistent with *Atlanta Gas Light Co.* and supported by record evidence.

Hartwell Railroad claims that its tracks also provide service to TTX, which it asserts is a railroad pooling company. (Hartwell Railroad Brief, p. 20). At the administrative level, however, Hartwell Railroad did not mention TTX in either its Petition for Condemnation or any of its briefs to the Commission. (Tabs H, J, P). Even though Hartwell Church repeatedly argued in brief that Quality Industries

was the only customer served on the line, Hartwell Railroad never rebutted this argument. (Tab I, p. 14, Tab J, p. 10). Hartwell Railroad made no more than a passing reference to TTX at the evidentiary hearing. (Tr. 30). In light of the lack of support that Hartwell Railroad made for its allegation, the Commission did not err in finding that Quality Industries is the only customer served by Hartwell Railroad's lines.

The Hartwell Railroad's argument regarding TTX is insufficient to establish that the condemnation serves a public purpose even if properly preserved. TTX is an ancillary use of a main line not considered a freight service. Storage in this manner is certainly not included within the scope of a railroad's common carrier service. 49 U.S.C. § 11101; (*see also* Tr. 235). The Hartwell Railroad is not carrying for the public here and the fact of storage is not legally operative. Moreover, the fact that the Hartwell Railroad stores TTX cars on its mainline does not mean that the public is now served by the condemnation of the runaround.

B. Hartwell Railroad did not properly preserve its argument that the Commission failed to consider O.C.G.A. § 46-8-120(a)(1), and Hartwell Railroad's argument is without merit.

Hartwell Railroad argues that the Commission erred by failing to consider O.C.G.A. § 46-4-120(a)(1). (Hartwell Railroad Supplemental Brief, p. 3). Hartwell Railroad construes paragraph (a)(1) to provide for condemnation, even where there has been no showing that the condemnation is necessary. *Id.* at 2. In

responding to the arguments of the Commission that this argument was not preserved for judicial review, Hartwell Railroad states that its Petition for Condemnation identifies paragraph (a)(1) as grounds for relief. *Id.* at 5. The issue, however, is not whether Hartwell Railroad cited this paragraph before the agency, but whether, prior to the Commission denying its Petition for Condemnation, Hartwell Railroad asserted the construction of this paragraph that it has asserted on judicial review.

The record shows that Hartwell Railroad did not assert its current interpretation of paragraph (a)(1) prior to the Commission decision denying the Petition for Condemnation. Further, both before the Hearing Officer and the Commission, Hartwell Railroad asserted that the only issue to be decided was whether the proposed condemnation was “necessary and essential” for the safe and essential conduct of Hartwell Railroad’s business as a public carrier and for public purposes. (Tab J, p. 4, 11, Tab P, p. 17). The position that Hartwell Railroad took at the administrative level appears to conflict with the position that it urges this Court to adopt on judicial review. If, as Hartwell Railroad argued before the Commission, the only question is whether the condemnation was “necessary and essential,” then it cannot be said that the condemnation should be granted without a showing that the condemnation is necessary.

Although Hartwell Railroad cited both O.C.G.A. § 46-8-120(a)(1) and (a)(4) in its Petition for Condemnation, it was not until its Application for Rehearing, Reconsideration and Oral Argument that it argued that a showing of necessity was not required to support the proposed condemnation under paragraph (a)(1). (Tab V). This application was filed after the Commission's decision denying the Petition for Condemnation. An Application must identify with particularity "the alleged errors underlying the decision." Commission Rule 515-2-1-.08. Here, Hartwell Railroad cannot allege that the Commission erred because the Commission's legal analysis as to the standard for granting a condemnation petition was consistent with the position advanced by Hartwell Railroad throughout the administrative proceeding. (*See Robinson v. State*, 217 Ga. App. 832, 834 (1995) "A self-planted error is a self-sown seed that reaps no harvest of reversal.")

The Commission argued before this Court in brief and oral argument that Hartwell Railroad did not properly preserve its objection based on O.C.G.A. § 46-8-120(a)(1) because the interpretation of this paragraph that it urges on appeal is contrary to the standard for granting a condemnation petition that it urged both the Hearing Officer and the Commission to adopt. In its Supplemental Brief that was filed after both the Commission's brief and the oral argument, Hartwell Railroad

had the opportunity to rebut this charge. However, Hartwell Railroad did not do so.

This Court finds that Hartwell Railroad did not properly preserve the objection that the Commission failed to consider the interpretation of O.C.G.A. § 46-8-120(a)(1) that it has argued on judicial review. On judicial review, a court is precluded from considering any objection that was not urged before the agency. O.C.G.A. § 50-13-19(c). It would be inconsistent with this principle as well as the prohibition against planting error to permit Hartwell Railroad to allege that the Commission erred by applying the legal standard for granting its Petition for Condemnation that Hartwell Railroad urged it to apply.

Furthermore, Hartwell Railroad did not demonstrate that condemnation was warranted under O.C.G.A. § 46-8-120(a)(1) even if the O.C.G.A. § 46-4-120(a)(1) argument was properly preserved. In its Order Reversing Hearing Officer's Initial Decision and Denying the Petition for Condemnation, the Commission explained 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." (Tab T, p. 4). The Commission's decision should be upheld if supported by any evidence. *Pruitt Corp.*, 284 Ga. at 160. As discussed above, there is evidence in the record to support the

Commission's decision. Georgia courts have also established a standard of review for the decisions of administrative agencies in interpreting the laws and regulations within their charge that affords the agencies "great deference." *Excelsior Elec. Mbrshp. Corp. v. Ga. PSC*, 322 Ga. App. 687, 691 (2013). This application of law by the Commission falls squarely within the Commission's ambit of expertise. See *Bentley v. Chastain*, 242 Ga. 348, 350-51 (1978). The Commission has the experience and specialized knowledge to decide which subsection applies to the case at hand. *Id.* Specifically, the Commission is best suited to determine whether the Hartwell Railroad's desire to "rehabilitate" the runaround track better constitutes "reconstruct[ion]" under subsection(a)(1) or "build and maintain" under subsection(a)(4). O.C.G.A. § 46-8-120.

C. Hartwell Railroad's argument that the Commission decision is preempted was not preserved and is without merit.

Hartwell Railroad claims that federal law preempts the Commission from denying its Petition for Condemnation. (Hartwell Railroad Brief, p. 13). Hartwell Railroad did not argue before the agency that it was preempted from denying the requested relief. Under the Administrative Procedure Act, O.C.G.A. § 50-13-1 *et seq.*, "no objection to any order or decision of any agency shall be considered by the court upon petition for review unless such objection has been urged before the agency." O.C.G.A. § 50-13-19(c). Because Hartwell Railroad did not argue

before the Commission that its decision was preempted, it is precluded from raising this objection on judicial review.

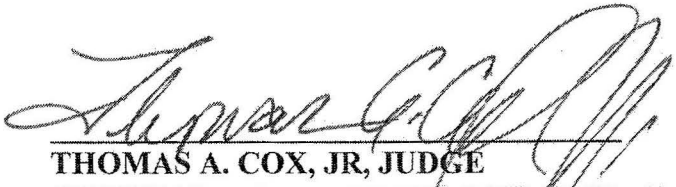
Furthermore, the Commission's decision is not preempted by federal law. The ICC Termination Act of 1995 ("ICCTA") does not preclude the Commission from denying the Hartwell Railroad the statutory right to condemn property under state law. *See* 49 U.S.C. § 10501(b). There is no federal law, whether within ICCTA or otherwise, that gives railroads the power to condemn property. Neither Title 49 nor the Surface Transportation Board ("STB") have the right to grant a railroad the right to condemn property. *See* 49 § U.S.C. 10501(b). A railroad must acquire property under state law – by purchase, lease, or to the extent permitted by condemnation. *See Hartwell First United Methodist Church, Inc. v. Hartwell R.R.*, No. 3:16-CV-169 (M.D. Ga. Mar. 3, 2017) (remanding the Hartwell Railroad's preemption defense to state court, along with other issues brought by the Hartwell Church's state trespass action). In addition, the Hartwell Railroad acknowledges that the north spur was constructed as a spur track. The runaround, which appears to have existed at one time, and which the Hartwell Railroad seeks to re-create through construction of a new spur track, was no less an ancillary track than the spur was originally. As ancillary track, the Hartwell Railroad did not need authority from the STB to abandon and remove the north spur in 2008. 49 U.S.C. § 10906.

Hartwell Railroad initiated the proceeding before the Commission and sought relief under state law. The Commission applied state law to the record evidence and determined that Hartwell Railroad had not met its evidentiary burden. As a result, the Commission denied Hartwell Railroad its requested relief. The Commission did not enjoin or impose a penalty on Hartwell Railroad. Nothing in the Commission's orders prevents Hartwell Railroad from seeking to obtain its desired relief at the federal level if it believes that federal law controls. Hartwell Railroad did not cite any authority for the position that preemption would apply to the weight afforded by the Commission to record evidence.

CONCLUSION

The Court finds that the Petitioner has not carried its burden and therefore Georgia Public Service Commission's Order denying the Petition for Approval to Acquire Real Estate by Condemnation is hereby **AFFIRMED**.

SO ORDERED this 1st day of November 2019.



THOMAS A. COX, JR., JUDGE
SUPERIOR COURT OF FULTON COUNTY
ATLANTA JUDICIAL CIRCUIT

AB 1242 (Sub-No. 1)
Exhibit 9

BEFORE THE GEORGIA PUBLIC SERVICE COMMISSION

SPECIAL ADMINISTRATIVE SESSION

Hearing Room 110
244 Washington Street
Atlanta, Georgia

Thursday, June 14, 2018

The administrative session was called to
order, pursuant to Notice at 11:55 a.m.

PRESENT WERE:

LAUREN "Bubba" McDONALD, Chairman
TIM G. ECHOLS, Vice Chairman
TRICIA PRIDEMORE, Commissioner
CHUCK EATON, Commissioner
DOUG EVERETT, Commissioner

P R O C E E D I N G S

CHAIRMAN McDONALD: We will come to order. This is again a special administrative session on Docket 41607. And we'll hear from staff.

MS. GIBSON: Thank you, Mr. Chairman, Commissioners.

Before you we have Docket Number 41607 Great Walton Railroad Company, Inc., doing business as the Hartwell Railroad Company's Petition for Approval to Acquire Real Estate by Condemnation.

Before you at this time is consideration of the Hearing Officer's Initial Decision. It's staff's recommendation for the Commission to adopt the Hearing Officer's Initial Decision.

I'll answer any questions.

CHAIRMAN McDONALD: Commissioners, do you have any questions to Ms. Gibson at this time?

(No response.)

CHAIRMAN McDONALD: Thank you, Ms. Gibson.

Before we -- I call for the vote on staff's recommendation, I would like to say, Mr. Anderson, I followed what counsel has said about your participation in communities, et cetera, et cetera. I'm a bit set back when you think about being a good neighbor with the condition of the railroad that I've seen through these visuals and

1 through my own visits, in front of people's houses, even the
2 maintenance yard, et cetera. It's been kind of
3 disappointing.

4 And I felt like that in the Hearing Officer's
5 final opinion when he stated that the factual presentation
6 and arguments of the church are not without merit, it is
7 undisputed that the presence of the rail line between the
8 property of the church can pose a danger to those who will
9 need to and occasionally cross that line.

10 We have great responsibilities here at the Georgia
11 Public Service Commission. We have responsibilities that
12 certainly deal with the rule of law and we have
13 responsibilities that deal with personal opinions and how
14 they apply to the rule of law and opinions that come from
15 Commissioners. And I guess that's why years ago that the
16 General Assembly said that we need five public service
17 commissioners to make decisions and our terms don't end at
18 the same time. We have a continuity of existence. The
19 people of Georgia can't throw us out all at one time. We
20 have to run totally statewide even though we live in
21 districts and run from districts, which are equally
22 apportioned population-wise with the State of Georgia.

23 So the job responsibilities here are not ever easy
24 at all. And my colleagues, they will have a chance to
25 express anything that they want to say at this time, but I

1 just wanted to share my opinion, my personal opinion, my
2 concern about promises made and, you know, when we're
3 hearing what happened -- no, I'm not going there.

4 But anyway, so thank you.

5 Commissioners.

6 VICE CHAIRMAN ECHOLS: Mr. Chairman, when the
7 Public Service Commission was created as the Railroad
8 Commission in 1879, it was because railroads who had a
9 monopoly were getting themselves into trouble with
10 constituents, with farmers with passenger -- folks that were
11 on passenger rails and the legislature created this
12 Commission in order to provide a layer of protection and a
13 layer of regulation.

14 And like you, Commissioner, I went to Hartwell, I
15 walked on the track, I looked at the options. And I feel
16 like that in the spirit of being a good neighbor, being a
17 good corporate citizen, doing this run-around away from the
18 church is in the best interest of downtown Hartwell, the
19 best interest of the church and I believe that had Phil
20 Smith gone to Hartwell to see this, that he would have made
21 a different decision.

22 So I'm joining you, Commissioner, in attempting to
23 overturn this decision of our Hearing Officer.

24 COMMISSIONER EVERETT: Mr. Chairman, an old saying
25 comes to my mind, sometimes what's right is not always legal

1 and what's legal is not always right.

2 As far as safety is concerned, we already have a
3 railroad track there that's not going to be moved, it's
4 going to continue there and safety is not going to be
5 jeopardized in any way, shape, form or fashion in my
6 opinion, than it has already.

7 But I would like to say this, that I agree with
8 you 100 percent about being a good neighbor and I would hope
9 -- we have no authority, no way to require, but I would hope
10 that the people that own the railroad would go back and
11 clean up the mess that they have created as an eyesore for
12 those people in town.

13 And that has nothing to do with this case
14 whatsoever and it has nothing to do with my decision
15 whatsoever, but it's just the way it looks out there. It's
16 almost like it is abandoned.

17 CHAIRMAN McDONALD: Anybody else?

18 COMMISSIONER PRIDEMORE: As someone who grew up
19 going to Methodist school, I certainly appreciate Hartwell
20 First United Methodist's position on the matter.

21 And I agree with my colleagues, Mr. Anderson, that
22 those tracks need care. I don't know the railroad business,
23 sir, but I know tidy. And I would like to see those looking
24 tidy as soon as possible, whether that be through Mr. Dorsey
25 or whomever.

1 But as your counsel talks about economic
2 development and job creation, how a community looks is a
3 direct representation of the care placed in it.

4 However, I recognize that it's yours, you own it
5 and I side with the lawful ownership of that.

6 COMMISSIONER EATON: I would say it's a difficult
7 decision. Obviously the railroad has presented evidence as
8 to why they own it, but the church has presented their
9 evidence and, for reasons that were stated here, they chose
10 not to go forward in Superior Court to establish that
11 ownership and felt it would be more streamlined to do it
12 here at the Commission with just a condemnation.

13 I've struggled with it as well, gone back and
14 forth. I think that -- I'm still personally having trouble
15 seeing the public interest aspect of it at this point.

16 CHAIRMAN McDONALD: Anybody else?

17 (No response.)

18 CHAIRMAN McDONALD: All those in favor of staff's
19 recommendation, signify by saying aye.

20 COMMISSIONER PRIDEMORE: Aye.

21 CHAIRMAN McDONALD: All opposed, say no.

22 VICE CHAIRMAN ECHOLS: No.

23 CHAIRMAN McDONALD: No.

24 COMMISSIONER EATON: No.

25 COMMISSIONER EVERETT: No.

1 CHAIRMAN McDONALD: Staff's recommendation is not
2 approved. Voting in favor of staff's recommendation is
3 Commissioner Pridemore. Voting in the negative is
4 Commissioner Echols, Eaton, Everett and McDonald.

5 Is there anything else to come before this special
6 administrative session?

7 (No response.)

8 CHAIRMAN McDONALD: Hearing none, we are
9 adjourned.

10 (Whereupon, the special administrative
11 session was adjourned at 12:05 p.m.)
12

C E R T I F I C A T E

I, Peggy J. Warren, Certified Court Reporter, do hereby certify that the foregoing transcript is an accurate record of the proceedings had in the above-entitled matter at the time and place therein set forth.

Peggy J. Warren, CVR-CM, CCR A-171

The minutes of the Administrative Session were approved this _____ day of _____, 2018.

Lauren "Bubba" McDonald, Chairman

Reece McAlister,
Executive Secretary

AB 1242 (Sub-No. 1)
Exhibit 10

 The South Georgia Conference
Southwest District

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Georgia Public Service Commission
244 Washington Street, SW
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RE: The Great Walton Railroad Company, Inc., d/b/a The Hartwell Railroad Company – In RE:
Petition for Approval to acquire Real Estate by Condemnation – Docket No. 41607

Dear Public Service Commission:

I wish to express my opposition to the filing made by Hartwell Railroad to the Public Service Commission to condemn an area within the property owned by Hartwell First United Methodist Church, which is a part of the church campus.

The railroad has not needed this property for a great many years. The tracks that cross the church property end at the street, as the government approved paving over the tracks many years ago, thereby ending the railroad's ability to move beyond the church property. So we are discussing only a small piece of property, the very end of the track literally.

Allowing the railroad to reclaim these tracks and add additional track would greatly harm the church. The railroad tracks split the church property in half. The elderly of the church would have difficulty entering the church from the parking lot. The pre-school children would be endangered as they crossed from the fellowship building to the church. The many ministries that the church offers to assist the already fragile poverty-stricken members of the community would be hindered. Allowing this change would potentially cause harm to those in the community who can least overcome that harm.

The railroad reclaiming the tracks is not necessary for commerce in Hartwell. There are other options that allow an expansion of commerce while avoiding the hindering of ministry to the community.

I encourage you to remember also that we are called the United Methodist Church for a reason. We are all connected one to the other. When one United Methodist Church hurts, we all hurt. While it may seem that the only church affected by this potential condemnation of property would be Hartwell First, in truth, all United Methodist Churches would be affected. And there are many, many United Methodist Churches all across the great state of Georgia.

Please do the right thing and deny the request by Hartwell Railroad for authorization to condemn the church property.

Grace to you and peace,



Nita M. Crump