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*Working Together to Protect the Ogeechee, Canoochee and Coastal Rivers*

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August 25, 2023

Ms. Sallie Tanner  
Executive Secretary  
Georgia Public Service Commission  
244 Washington Street S.W.  
Atlanta, GA 30334

**Re: Notification of Ogeechee Riverkeeper's Request to Make a Non-Party Limited Appearance by Means of Written Statement.**

Dear Ms. Tanner,

Ogeechee Riverkeeper ("ORK") hereby notifies the Georgia Public Service Commission ("Commission") of its intent to make a limited appearance as person who is not a party to the proceedings of Docket Number 45045 pursuant to O.C.G.A. §§ 46-2-59 and Commission Rule 515-2-1-.06 via the written statement respectfully submitted below. Thank you for your attention to this matter.

If you have any questions, please contact our offices at the information listed above.

Sincerely,

Damon Mullis, Riverkeeper and Executive Director  
Ogeechee Riverkeeper

STATE OF GEORGIA  
BEFORE THE  
GEORGIA PUBLIC SERVICE COMMISSION

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|--|---|-------------------------|
| <b>In Re:</b>                                | ) |                         |
|  | ) |                         |
| <b>Sandersville Railroad Company</b>         | ) | <b>Docket No. 45045</b> |
| <b>Petition for Approval to Acquire Real</b> | ) |                         |
| <b>Estate by Condemnation</b>                | ) |                         |

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**NOTIFICATION OF OGEECHEE RIVERKEEPER  
REQUEST TO MAKE A LIMITED APPEARANCE  
AS A PERSON WHO IS NOT A PARTY TO THE PROCEEDINGS  
BY MEANS OF WRITTEN STATEMENT**

Ogeechee Riverkeeper (“ORK”) hereby notifies the Georgia Public Service Commission (“Commission”) of its intent to make a limited appearance as a person who is not a party to the proceedings of the above-referenced docket pursuant to O.C.G.A. §§ 46-2-59 and Commission Rule 515-2-1-.06 via the written statement respectfully submitted below.

I. Introduction

Ogeechee Riverkeeper is a 501(c)(3) nonprofit organization headquartered in Savannah, Georgia. ORK’s mission is to protect, preserve, and improve the water quality of the Ogeechee River Basin. ORK works with local communities to share and collect information on the ecological and cultural importance of rivers and streams throughout the Basin, and use that information to amplify the voices of those who speak for the watershed. One of ORK’s primary roles is as a watchdog on proposed actions within the Basin that could pose a significant threat to water quality, the aquatic environment, and the communities that rely on the Ogeechee River and its tributaries.

In this role, ORK wishes to have our position on Sandersville Railroad Company's ("Sandersville RR") Amended Petition to Acquire Real Estate by Condemnation included in the Commission's consideration of its ultimate decision. The property sought for condemnation and its subsequent development falls within the Ogeechee River Basin. The proposed rail line's construction and operation will present a serious risk to water quality and ecological integrity for decades to come. On behalf of the Ogeechee River and its tributaries, the local Georgia communities who rely on the river and its tributaries, and for our members and supporters throughout the state, Ogeechee Riverkeeper respectfully submits our position below.

## II. Factual Background

Sandersville RR seeks to construct a 4.5 mile rail line that will require the condemnation and use of eminent domain to acquire property from private landowners.<sup>1</sup> The rail line will begin east of Sparta, GA on State Route 16 and will terminate on Dickinson Cemetery Road north of Smith Lane, crossing 18 properties in Hancock County along the way.<sup>2</sup> On the proposed route, the rail line would also cross over Two Mile Creek, its floodplains, and wetlands. Finally, the end of the rail line appears to travel through and end in a designated conservation area.<sup>3</sup>

As described on Sandersville RR's website,<sup>4</sup> the rail line's purpose is to benefit and support the Hanson Aggregates Quarry. No other business, commercial, or industrial entities were contemplated in its initial plans for the rail line's construction. Additionally, any other entities identified in subsequent

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<sup>1</sup> "Amended Petition for Approval to Acquire Real Estate by Condemnation." Docket 45045, Document Filing # 205194. Filed July 20, 2023. At ¶¶ 2 & 8.

<sup>2</sup> Document Filing # 205194. At Exhibit B.

<sup>3</sup> "Pre-filed Direct Testimony of Gregory D. Teague" Docket 45045, Document Filing #205200. Filed July 21, 2023. At Exhibit No. GT-3-01 "Preliminary Rail Constraints Map."

<sup>4</sup> Sandersville Railroad Company. "Project Information - Hanson Spur." Available at: <https://www.sandersvillerrailroad.com/hanson-spur-project>. (Accessed August 24, 2023).

See also Sandersville Railroad Company "Hanson Spur Fact Sheet." Available at: <https://acrobat.adobe.com/link/review?uri=urn%3Aaaid%3Aascds%3AUS%3Ae3d230ec-30da-37ee-809d-9905a92bc50a>. (Accessed August 24, 2023).

filing as potentially benefiting are either speculative<sup>5</sup> or wholly owned by Sandersville RR itself.<sup>6</sup> The limited scope of service provided, finite amount of resources available at the quarry, and harmful impacts from rail line operations and an expanded quarry raise questions about the purported public use and benefit this proposed action would bring. Further, rail line and expanded quarry operations create serious concerns for the property owners and area residents who would be directly impacted if condemnation and accompanying rail construction is allowed.

### III. Argument

Ogeechee Riverkeeper opposes Sandersville Railroad Company's Petition to Acquire Real Estate by Condemnation. With no public use being shown or proven for this proposed rail line, condemnation is not appropriate and should not be approved. Additionally, the far-reaching and long-lasting impacts from the rail line's construction and operation that will be borne by the property owners, nearby residents, and the wider public raise serious questions about the true benefit from this action. As such, Ogeechee Riverkeeper urges the Public Service Commission to deny the petition.

#### A. No Public Use from the Proposed Rail Line

No public use has been sufficiently established in either the initial Petition<sup>7</sup> or in the Amended Petition. Sandersville RR bears the burden of identifying and proving a public use for the condemnation it is seeking by its petitions. Without successfully showing a public benefit, private property condemnation is not proper and the petition should be denied.

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<sup>5</sup> See "Pre-filed Direct Testimony of Arnie Pittman" Docket 45045, Document Filing # 205198. Filed July 21, 2023 and "Pre-filed Direct Testimony of Cale Veal" Docket 45045, Document Filing # 205199. Filed July 21, 2023.

<sup>6</sup> See "Pre-filed Direct Testimony of Jeff Custer" Docket 45045, Document Filing # 205201. Filed July 21, 2023.

<sup>7</sup> "Petition for Approval to Acquire Real Estate by Condemnation" Docket 45045, Document Filing # 193527, Filed March 3, 2023.

In condemnation proceedings, the burden of showing the public use is on the entity requesting to condemn and acquire the private property. O.C.G.A. § 22-1-2(a). In its limited discussion in its Amended Petition ¶¶s 1-5, Sandersville RR does not ever establish that the condemnation will be for a public use. Nearly the entirety of its discussion focuses on the private financial benefits and the economic development that, it alleges, would come from the rail line's construction.

It is critical to note that the public benefit of economic development does not constitute a public use. O.C.G.A. § 22-1-1(9)(B). Any discussion of the local or regional economic benefits from the rail line or any related businesses or industries cannot have any weight in the Commission's determination of whether this action has a public use. This extends beyond Sandersville's filings to also include any economic benefit discussion in supporting testimony from Heidelberg Materials, Pittman Construction Company, Southern Chips LLC, Veal Farms Transload, LLC, Revive Millings, LLC, the City of Sparta, GA, or any other entity testifying to the economic benefit that would result from the proposed rail line's construction.

Additionally, Sandersville RR has not shown that the proposed rail line is necessary for the railroad functioning. No discussion is dedicated to why the proposed rail line is necessary. Instead, what is discussed in the submitted testimony are the potential financial benefits for private entities that would come with rail line construction. Seeking new financial opportunities is not a necessity for continued operation, but is rather a desired outcome that would principally benefit businesses.

Beyond showing the minimum requirement of public use for the condemnation, the long-term financial benefit is questionable. While short-term financial benefits will result for some businesses, it is unclear how long those benefits will persist. When dealing with finite resources, like the granite quarried on site, eventually the resource will be depleted. Similarly, other industries that could benefit from a rail line may also have limited lifetimes, whether because of product need, facility age, or localized pollution

issues requiring operations to cease. The uncertainty of long-term economic develop raises additional questions beyond the lack of a clear public use required for condemnation

Extending this long-term outlook further, it is important to consider the whole lifetime of the rail line, including its eventual abandonment. Looking at the trend toward rail line abandonment,<sup>8</sup> it is almost a certainty that, eventually, this proposed rail line will no longer serve a purpose and will be abandoned. The local environment and the Georgians who rely on it, on the other hand, will be forced to deal with the resulting ecological degradation not just during the rail line's operational life, but for decades and generations afterwards. Railroad-proposed condemnation proceedings themselves have their origin in a much different time in history. Originally used to facilitate the creation of a true public use and benefit - effective, long-distance transportation where no other options existed - condemnation was an effective tool in creating this system from whole cloth.<sup>9</sup> Today, however, that system has been built out and rail lines have consistently been abandoned over the last century.<sup>10</sup> And unlike in the mid-Nineteenth century, today there are many other options available for transporting commodities, goods, and people long distances. With this changed transportation landscape, it is questionable whether new rail lines provide the same kind of public use and benefit that they once did. Especially in the specific situation here, the proposed rail line will be relatively short, service only one location, and benefit exceedingly few business interests, who will bring small numbers of new jobs and a limited financial benefit to the residents most impacted by the condemnation and rail line construction. While this alone raises considerable concerns, the additional long term environmental, recreational, and human

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<sup>8</sup> In the area around Sandersville, the Augusta, Gibson and Sandersville Railroad has previously abandoned long stretches of rail lines. Available at: <http://www.abandonedrails.com/georgia>. (Accessed August 24, 2023).

<sup>9</sup> Errol E. Meidinger. "The 'Public Uses' of Eminent Domain: History and Policy," 11 *Envtl. L.* 1 (1980), at page 27. Available at: [https://digitalcommons.law.buffalo.edu/cgi/viewcontent.cgi?article=1557&context=journal\\_articles](https://digitalcommons.law.buffalo.edu/cgi/viewcontent.cgi?article=1557&context=journal_articles). (Accessed August 24, 2023).

<sup>10</sup> One survey has cataloged over 60,000 miles of abandoned rail lines. <https://www.atlasobscura.com/articles/mapping-ghostly-traces-abandoned-railroads-interactive-crowdsourced-atlas>. (Accessed August 24, 2023)

health impacts that will be discussed below makes the question of public benefit, let alone a conclusively established public use, even less clear.

B. Rail Line Construction will have Wide-Ranging and Long-Enduring Negative Impacts to the Local and Regional Environment

The proposed rail line will negatively and unavoidably impact the area's water quality, aquatic environment, the wider ecosystem, and the people who rely on these resources. These impacts - immediate, long-term, and permanent - will reshape the land, water, fish, wildlife, and human communities that have adapted to and come to depend on those natural resources for their livelihood and will threaten the status quo that these natural and human environments rely on. As trustee of these important and treasured public resources and places, consideration must be given to preserving Georgia's state waters so that future generations can experience and rely on these irreplaceable resources as past and present generations have. Equally important is ensuring that the area's residents can continue to live comfortable and healthy lives free from water, air, and noise pollution that increased industrial activity brings with it. Ogeechee Riverkeeper urges the Public Service Commission to take the decades-long outlook of environmental and health impacts that this proposed action demands. We call on the Commission to deny the Petition to Acquire Real Estate by Condemnation.

1. Negative Environmental Impacts from Rail Line Construction and Increased Industrial Activity

The aquatic environment at the headwaters of the Ogeechee River will be degraded by the proposed condemnation and accompanying rail line construction. The rail line's proposed route will twice-cross Two Mile Creek, its floodplains, and its associated wetlands. In addition, the proposed rail line will cross other wetlands not within the U.S. Army Corps of Engineers' jurisdiction. These

non-jurisdictional wetlands provide important environmental functions and should not be overlooked. Further, these aquatic environments are upstream of and interconnected with the larger Ogeechee River Basin. Impacts to these areas near the headwaters have the potential to have far-reaching implications for miles downstream. As such, all of these concerns should be carefully considered in the Public Service Commission's decision-making process.

Our first concern is with the wetlands that will be destroyed by the rail line's construction. Wetlands are a valuable and quickly disappearing natural resource in the State of Georgia. These areas are very biodiverse and provide forage, shelter, and habitat for both terrestrial and aquatic wildlife. Wetlands also play a vital role in natural flood damage prevention by slowing down and assimilating large amounts of rainwater as well as rivers and streams that crest their ordinary high water marks. Similarly, wetlands are crucial in managing and naturally treating stormwater runoff. Acting as filters, wetlands prevent sedimentation and pollution from negatively impacting water quality and the aquatic environment. Additionally, wetlands provide natural shoreline erosion control. All of these environmental services are vital for healthy waters, ecosystems, and the wider environment.

Constructing the proposed rail line will necessarily require significant amounts of wetlands to be filled, bisected, or otherwise damaged. The rail line's proposed location crosses numerous acres of wetlands. With the wetland filling that will be necessary to build the rail line, biodiversity and habitat will be lost, flooding will increase, erosion and sedimentation will increase, and associated river, streams, and other state waters will see their water quality suffer in the areas around the rail line. Removing these services will negatively impact the human and natural environment, requiring either artificial structures to proactively prevent property and environmental damage or significant financial expenditures to repair and restore the surrounding area following increasingly frequent and intense storms. No amount of wetland mitigation credits will effectively prevent these localized harms, which



then will stack on top of the air and noise pollution, property loss, and harm to recreation and relaxation opportunities for the landowners, local citizens, and recreators alike. Preserving the current wetlands and the natural environmental services they provide is always preferable to their destruction and attempted mitigation and restoration efforts. Regardless of mitigation, some of these environmental services, like flood control, will be permanently lost and will require expensive artificial replacement to be constructed. Instead, by denying the petition, these wetlands will be protected and the cost of replacing or responding to their destruction can be avoided altogether.

Our second concern surrounding rail line construction is the impact to the rivers, streams and other state waters that will be crossed by the proposed rail line. While Two Mile Creek is the only waterway identified in submitted petitions and testimony, the impacts to local waterways extended beyond just that one creek. Additional unnamed streams and creeks will also be crossed. Likewise, the Little Ogeechee River is in the immediate vicinity. While it is not crossed by the proposed rail line, it will see the first-hand impacts from construction-related sedimentation, erosion, and pollution. And as noted above, the rail line will cross numerous acres of wetlands. Due to the structure of land-disturbing construction permitting requirements,<sup>11</sup> sedimentation, erosion, and pollution from rail line construction will be an unavoidable outcome. Rather than results-oriented monitoring and measures, construction activities are merely required to implement a minimum number of ‘best management practices.’ Successful compliance with these construction plans merely requires installation and infrequent monitoring and does not normally require water quality monitoring. As such, sediment and pollution will almost certainly enter these small tributary streams, where even small changes to the morphology or aquatic environment can have significant environmental and ecological ramifications. Downstream impacts, including to the Little Ogeechee River, are likely to occur. All of these issues combine to paint a clear picture - localized impacts to water quality and the aquatic environment can be expected not just

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<sup>11</sup> See generally O.C.G.A § 12-7-1 *et seq.* and GAC 391-3-7.

to the water directly crossed by the proposed rail line but also to the immediate downstream waters as well.

Our third concern is the persistent threat to the Ogeechee Basin, its water quality, aquatic and terrestrial environments, during and long beyond the proposed rail line's operational lifetime. Beyond its construction, the actual operation of the proposed rail line will almost certainly result in increased industry-related environmental stress around the headwaters of the Little Ogeechee River, bringing new sources of pollution, and will pose a daily threat of derailment to the area. The proposed rail line, if built, could bring increasingly intense and dangerous industrial activity in this rural and natural area. In the proposed rail line's construction plans, quarry and accompanying structure expansion is noted in the area, with a "future pit expansion area" planned in the immediate vicinity of Two Mile Creek.<sup>12</sup> The rail line would facilitate and likely expedite these expansion plans. Similarly, the rail line could potentially increase other environmentally demanding industrial activity nearby. With access to the rail line, heavy industry will be able to take advantage of easier transportation. These industries will bring new sources of pollution, whether from discharge or atmospheric deposition, and will risk the threat of spills, accidents, or other polluting incidents. It will also place new stresses on the environment from increased water demand and need for wastewater treatment and disposal. While it is difficult to anticipate what other industries may be attracted by the promise of rail line service in the future beyond the speculative entities providing testimony, the Public Service Commission should be aware of and consider a full range of potential occupants, including any exceedingly noxious industry that is permitted to operate in either Hancock County or the State of Georgia.

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<sup>12</sup> "Pre-filed Direct Testimony of Scott Dickison" Docket 45045, Document Filing # 205202, at Exhibit SD-1. Filed July 21, 2023.

## 2. Negative Impacts to the Local Community from Rail Line Construction and Increased Industrial Activity

Beyond the environmental impacts from expanding industry, the nearby residents who are near-unanimous in their opposition to the rail line, will face negative impacts to their health, property, human environment, and quality of life. These property owners and other residents will bear the brunt of the proposed rail line construction and expanded industrial activity, leading to increased risks of flooding, harm fishing, hunting, and recreating opportunities, increase vibration and noise pollution, and bring new and increased sources of air and water pollution. Expanding the analysis of this petition and the accompanying rail line to include the full range of impacts is vital for understanding the true impacts of granting this petition. The harmful outcomes to long-standing communities should play an important role in the Public Service Commission's decision on this petition and subsequent rail line construction.

The harm to the aquatic environment will hurt their source of drinking water for local wells, will increase the threat of flooding from wetland loss, and will harm fishing, hunting, and recreating opportunities in the area. As discussed above, wetlands function in many important ways to protect both human and natural environments. The loss of stormwater processing potential could increase flooding and damage properties. Likewise, the loss of wetlands' filtration functionality could harm delicately-balanced ecosystems and harm fish and wildlife.

Beyond these environmental impacts, the proposed rail line and subsequent industrial activity is likely to reduce the quality of life in the impacted community. It is likely to increase noise pollution and could create property-damaging vibrations, increasing stress levels and bringing accompanying health issues. Likewise, the new industries attracted by the rail line will necessarily change the living conditions of the long-established communities by potentially increasing air pollution, surface and groundwater contamination, and depleting aquifers. The planned quarry expansion and a range of different industries could further add to noise pollution, vibration, and increased stress levels. These

worrying outcomes could devastate the local communities who have lived on these lands for generations.

While the rail line is operational, residents will be forced to deal with elevated stress levels from increased industrial activity and the potential of multiple train trips passing very close to their homes on a daily basis. Environmental health hazards are also likely to follow from expanding and new industries. Additionally, the lower-income and predominantly minority residents that this rail line will pass by will see their community disrupted and potentially destroyed.

These outcomes mirror another transportation-related use of eminent domain - interstate highway construction. In constructing these highways through cities, lower-income and minority landowners had their properties condemned and bisected, permanently displacing established communities.<sup>13</sup> Those remaining were exposed to increased pollution levels and continue to suffer negative health outcomes,<sup>14</sup> including elevated stress levels and the accompanying physical and mental ailments they cause and contribute to.<sup>15</sup> All this excludes the non-human environmental harms that will persist long after the rail line is no longer operational, which is discussed below. Determining the public benefit of condemning these properties and constructing a rail line must take into account these long-term impacts.

Also unclear is whether and to what extent the public most impacted will benefit from such a limited rail line servicing just a few businesses and industries, especially when other alternatives exist. Additionally, the impacts from rail line operation and the accompanying industrial activity will degrade human health and threaten to destroy the vulnerable communities nearby. While weighing these factors,

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<sup>13</sup> David Karas. "Highway to Inequity: The Disparate Impact of the Interstate Highway System on Poor and Minority Communities in American Cities," *New Visions for Public Affairs*, Vol. 7, April 2015, at pages 13-14. Available at: <https://www.ce.washington.edu/files/pdfs/about/Highway-to-inequity.pdf>.

See also: NBC. June 21, 2021. "Bulldozed and Bisected: Highway construction built a legacy of inequity - will their removal heal historic wounds?" Available at: <https://www.nbcnews.com/specials/america-highways-inequality/>.

<sup>14</sup> American Lung Association. Living Near Highways and Air Pollution. Available at: <https://www.lung.org/clean-air/outdoors/who-is-at-risk/highways> (Last visited July 27, 2023).

<sup>15</sup> Vivian C. Pun, et al. "Close proximity to roadway and urbanicity associated with mental ill-health in older adults," *Sci Total Environ*. 2019 Mar 25; 658: 854–860. Available at: <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC7004241/>.

the Public Service Commission should remember and carefully consider its trustee role for the public resource of Georgia's state waters, fish, and wildlife. Ogeechee Riverkeeper urges the Commission to deny the petition.

Further, the threat of train derailment is another concern to the long-term health of the area's residents. As has been seen recently in East Palestine, OH<sup>16</sup> and many other places throughout the country,<sup>17</sup> train derailments can devastate the nearby communities for years and decades afterwards.<sup>18</sup> Even derailments with relatively inert cargo can still cause harmful impacts to the natural and human environment, fuel spills from the train itself, changes to water quality and hydrology, and acute harms resulting from potential fire, chemical smoke, and fire suppression techniques. Ultimately, it is unknown what kind of industries and what kind of cargo might use the rail line during its operational lifetime. As such, the Public Service Commission should consider all potential material - hazardous, corrosive, carcinogenic, or otherwise - that could potentially cross Two Mile Creek at the headwaters of the Little Ogeechee and through the backyards of local residents.

Overall, the wide-ranging and long-term threats to the human and natural environment that would come with the proposed condemnation and rail line construction are immensely concerning. During the operational life of the rail line, the continuous and constant threats of increased pollution, decreased quality of life, and unknown impacts from train derailment could devastate the residents of Hancock County and the vulnerable wetlands and state waters of Two Mile Creek, the Little Ogeechee River and further downstream. Ogeechee Riverkeeper urges the Public Service Commission to seriously

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<sup>16</sup> See generally EPA. East Palestine, Ohio Train Derailment. Available at: <https://www.epa.gov/east-palestine-oh-train-derailment> (last visited - July 27, 2023)

See also The Business Journal. July 27, 2023. "Norfolk Southern Says Cost of Fiery Ohio Derailment Doubles to \$803 Million as Cleanup Continues." Available at:

<https://businessjournaldaily.com/norfolk-southern-says-cost-of-fiery-ohio-derailment-doubles-to-803-million-as-cleanup-continues/>

<sup>17</sup> Gizmodo. February 22, 2023. "America's Worst Toxic Train Disasters" Available at: <https://gizmodo.com/worst-train-derailments-chemical-spills-usa-1850129958>

<sup>18</sup> Democrat & Chronicle. May 5, 2015. "Toxic cleanup begins at Le Roy site — 45 years later." Available at: <https://www.democratandchronicle.com/story/news/2015/05/05/belated-toxic-spill-cleanup-begins/26933719/>.

consider the harm to the environment and the Georgians who rely on these resources that would result from this proposed condemnation, to take a long-term view of the ongoing effects that will come from the accompanying rail line construction, and to ultimately deny the petition,

#### IV. Conclusion

Ogeechee Riverkeeper opposes Sandersville Railroad Company's Amended Petition to Acquire Real Estate by Condemnation and the rail line that would be constructed if it is granted. The proposed rail line serves no public use. In addition, constructing the rail line itself will destroy wetlands, degrade water quality, and threatens the ecological integrity and properties of the area. Its continued operation will bring additional threats to the natural environment while also disrupting and devastating a long-established community's health, happiness, and well-being while bringing new and potentially devastating new sources of pollution that will threaten the human and natural environment in the surrounding areas. In its public trust duties to preserve the environmental health for future generations of Georgians to benefit from, Ogeechee Riverkeeper calls on the Public Service Commission to deny this petition.