



CITY OF PORTSMOUTH

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August 17, 2015

HAND-DELIVERED AND EMAILED TO Jane.Murray@des.nh.gov

Martin Honigberg, Chairman
Alex Speidel, Acting Chairman
NH Site evaluation Committee
NH Public Utilities Commission
21 South Fruit Street, Suite 10
Concord, NH 03301

Re: Sea-3, Inc
Request for Exemption
NHSEC No. 2015-01

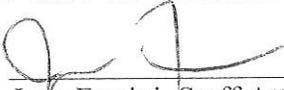
Dear Chairman Honigberg and Acting Chairman Speidel:

Enclosed for filing in connection with Sea-3, Inc.'s Request for Exemption please find the original and three copies of the City of Portsmouth's Witness List, along with three copies each of the named witnesses Prefiled Testimony.

I certify that copies of the above referenced documents have been sent to all parties listed on the SEC's Service List in the above captioned matter.

Very truly yours,

THE CITY OF PORTSMOUTH

By: 
Jane Ferrini, Staff Attorney

JMF

Enclosures

cc: Jane Murray, NHDES (hand delivered and emailed)
Michael Iacopino, Esq.
John P. Bohenko, City Manager
Robert P. Sullivan, City Attorney
Service List

L/RPS/litigation/Sea-3/prefiledtestimony/city/ltrtoSECPrefiled

STATE OF NEW HAMPSHIRE
SITE EVALUATION COMMITTEE

DOCKET NO. 2015-01

CITY OF PORTSMOUTH'S WITNESS LIST
FOR ADJUDICATORY PUBLIC HEARING

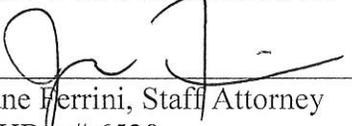
NOW COMES the City of Portsmouth, through its attorney, and submits its list of witnesses, together with their prefiled testimony and exhibits filed herewith, pursuant to the Committee's Procedural Order dated June 18, 2015, as follows:

- 1) Peter Britz, Environmental Planner
1 Junkins Avenue
Portsmouth, NH 03801
(603) 610-7215

- 2) Steve Achilles, Fire Chief
City of Portsmouth
170 Court Street
Portsmouth, NH 03801
(603) 610-7340

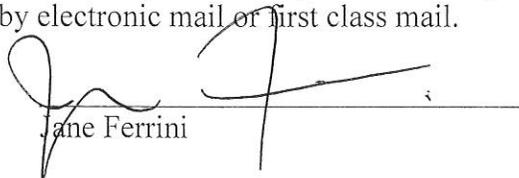
Respectfully submitted on this 17th day of August, 2015,

THE CITY OF PORTSMOUTH

By: 
Jane Ferrini, Staff Attorney
NHBA # 6528
1 Junkins Avenue
Portsmouth, NH 03801
Phone: (603) 610- 7256
Email: jferrini@cityofportsmouth.com

CERTIFICATE OF SERVICE

I certify that on this 17th day of August, 2015, I have provided copies of the foregoing pleading to all parties on the Service List by electronic mail or first class mail.


Jane Ferrini

STATE OF NEW HAMPSHIRE
SITE EVALUATION COMMITTEE

DOCKET NO. 2015-01

PREFILED DIRECT TESTIMONY STEVE ACHILLES

August 17, 2015

1. **Q. Please state your name and address?**

A. Steven Achilles, Fire Chief, City of Portsmouth, work address 170 Court Street, Portsmouth, NH 03801

2. **Q. How are you employed?**

A. I am the Fire Chief of the City of Portsmouth.

3. **Q. Could you describe you professional background and experience?**

A. I have served as Fire Chief for the last two years and as Assistant Chief for the thirteen years before that. I have a Masters in Pubic Administration and a B.A in Fire Science from Anna Maria College and an Associates Degree in Emergency Medical Care from NH Technical Institute. I have received Chief Fire Officer Designation from the Center for Public Safety Excellence. I have also completed the National Fire Academy's Executive Fire Officer Program.

4. **Q. Are you aware of Sea-3's request to expand its facilities in Newington?**

A. Yes.

5. **Q. How have you been involved in providing any type of analysis with respect to fire safety of the expansion?**

A. I have answered questions from citizens and the City Council, attending a meeting with Newington and Sea-3 officials shortly after Sea-3 submitted its application and reviewed the report of Philip R. Sherman, P.E., submitted to the Site Evaluation Committee.

6. **Q. Sea-3 has represented that you have opined that Sea-3's expansion will not pose a safety threat to Portsmouth. Is that a correct summary of your opinion?**

A. My comments were focused on the narrow issue of whether I believe that the City of Portsmouth has sufficient training, resources and equipment to address any leak or fire from a rail car or truck carrying LPG through the City. I do believe we have sufficient resources in personnel and equipment for that. My comments were not applicable to the site itself or a catastrophic event.

7. **Q. Is Portsmouth subject to a mutual aid agreement with the Town of Newington?**

A. Yes.

8. **Q. What is this mutual aid agreement and how does it work?**

A. Mutual Aid Agreements are governed by RSA 154. Among other things, these agreements provide that one community will response to a request for assistance from another community without burdening the receiving community with any cost for those services. This serves as a mutual benefit to participating communities. The purpose of these agreements is to allow communities to share resources and equipment to help each other if the need arises. These Mutual Aid Agreements are intended to supplement, not supplant, the resources of the host community.

9. **Q. Have you reviewed the Reports of Philip R. Sherman, P.E., Fire Protection Engineering and Building Code Consultant?**

A. Yes

10. **Q. In describing Fire Department Operations, the Sherman report states as follows:**

Form 8.1 provides data on the responding fire departments.

- **The Newington Fire Department is a combination paid and call department, with at least two firefighters on duty. Normal response to a verbal alarm report of a leak, or an automatic alarm, is a single engine with the two firefighter duty crew. Any sign of fire, or a decision by the duty crew, results in a first alarm response, consisting of Newington duty and call-back crews, and apparatus from four other departments, and this response is used in this analysis.**
- **The first alarm assignment consists of four engines, one tower, an ambulance with 24 firefighters.**

Form 8.2 identifies response time for the responding fire departments

- **It is expected to take about seven minutes for the first alarm apparatus with about 14 firefighters to arrive on site.**

- **It is expected to take about 25 minutes for the remaining call back firefighters to arrive on site.**
- **These times do not include potential delay due to single engine response prior to first alarm activation.**
- **These times are for arrival at the site, and do not include set up time required prior to applying water to a fire**

Under Sea-3's expert analysis, is it likely Portsmouth Fire Department and the Pease Fire Department could be on the scene of a fire at the first alarm 18 minutes before the Newington call back personnel?

A. That could happen, yes.

11. Q: And if the Newington two fire fighters on duty are responding to another fire at the time of an alarm, could Portsmouth Fire Department be first on the scene?

A. That is possible.

12. Q: How important is it for responding fire departments' personnel to have LP- Gas and LP-Fire training?

A. Very.

13. Q: Under table 8.1, did Sea-3's expert do any analysis of the responding fire departments other than Newington?

A. I am not aware of such an analysis. It is an analysis that I can not do but it is important in this particular case for this type of facility because a first alarm would necessarily involve a significant amount of assistance from neighboring communities.

14. Q: Should the analysis have been done for the responding fire departments of Portsmouth, Pease, Dover and Durham regarding the number of qualified Firefighter Level I and II, the number of firefighters who would respond on the fire alarm and who are qualified to the operations level requirements of NFPA 472 or similar local requirements or have specific knowledge and training on the properties of LP-Gas and LP- Gas fires and the number of fire apparatus that have the capability to deploy a 125 gpm hose line supplied by onboard water for at least 4 minutes?

A. Yes. The first alarm responding communities should each assess their training and equipment. Again, when dealing with a facility such as Sea-3's, it would be helpful for all responding communities' resources, training and equipment to be looked at collectively.

15. Q: Why?

A. Because in the event of a catastrophic event, the responding communities must be able to respond.

16. Q: Does the report address response to fire along the rail line?

A. No.

17. Q: Should it?

A. Each town should already have a plan of rail access in its community. I am unaware of what those access plans are for the communities outside my jurisdiction.

18. Q: Does the report address response to fire for ships transporting LPG by ship along the Piscataqua River?

A. No. When a fire occurs on the river, it is under the Coast Guard's jurisdiction. When there is a fire along a dock in Portsmouth, for example, the Coast Guard and Portsmouth would both respond and have joint jurisdiction. So for the Sea-3 facility, and other similar facilities in Newington, the Coast Guard and Newington would be responsible. It would be helpful for there to be a dialogue between Newington, Portsmouth and the Coast Guard to properly analyze resources and equipment for such a response along the waterfront.

19. Q: Was there an Emergency Evacuation and Notification Plan attached as a part of the Sherman report?

A. I am not aware of one.

20. Q: Should one be done on the Sea-3 facility?

A. Yes. For a facility such as Sea-3, there is what I would define as a low frequency but high risk. I do not have jurisdictional authority to require such a plan. My jurisdiction limits me to an analysis of the City's resources and equipment. This type of analysis is important, however, because the impact of a high risk event would be borne by our first responders and potentially affect the safety of our citizens, tourists, real estate and infrastructure. It would be very important to have sufficient evacuation plans in place and reviewed by all responding communities in the event of a high risk event.

21. Q: Does this conclude your testimony?

A. Yes.

STATE OF NEW HAMPSHIRE
SITE EVALUATION COMMITTEE

DOCKET NO. 2015-01

PREFILED DIRECT TESTIMONY OF PETER BRITZ

August 17, 2015

1. **Q. Please state your name and address.**

A. Peter Britz, work address 1 Junkins Avenue, Portsmouth, NH 03801

2. **Q. How are you employed?**

A. As the Environmental Planner/Sustainability Coordinator with the City of Portsmouth.

3. **Q. As the City of Portsmouth's Environmental Planner, how were you involved in the expansion of the Sea-3 facilities in Newington, NH?**

A. I attended most of the Newington Planning Board's public hearings, posted updates to the City's web page on Sea-3's expansion, including providing documents to be posted to the website and consulted with the City's staff attorney during the City's appeal of the Newington Planning Board's decision to grant Sea-3's expansion.

4. **Q. What is your work experience and professional background?**

A. I have a broad background in natural resource management and nearly 15 years of experience in municipal government. Broadly speaking my work includes long range natural resource planning, regulatory review and enforcement of inland and coastal wetlands, environmental remediation oversight, and sustainability coordination.

I have a multidisciplinary Masters in Marine Affairs degree which includes a combination of planning and science.

5. **Q. Why did the City maintain a web page on Sea-3 expansion?**

A. Once the public became aware of Sea-3s proposed expansion, the City received inquiries from its citizens on the site review process and rail safety. The City created a web page for the public's use to address these issues. The web page included contact information for federal, state and local officials, the Newington Planning Board, Sea-3, Pan Am, the Federal Railroad Administration and the NH DOT; information regarding relevant proposed legislation on the delivery of oil and gas throughout the state, map of rail lines to access Sea-3's facility through Newfields, Stratham, Greenland, Portsmouth and Newington, information regarding the determination of the project being deemed a development of regional impact pursuant to RSA 36:55, minutes of City meetings with

Town Administrators and the NH DOT, Minutes of meetings with the City and Pan Am, correspondence to and from the City to our Senatorial and Congressional Delegation and Governor, information regarding rail Quiet Zones, information regarding rail inspection from the Federal Rail Administration, minutes of Newington Planning Board Meetings on Sea-3's application, information regarding the status of Sea-3's application and certain documents submitted to the Planning Board, the Planning Board decisions and the City's appeal of that decision to the Rockingham County Superior Court.

6. Q. Why did the City appeal the Newington Planning Board's decision?

A. The City appealed the Newington Planning Board's decision because it believed that the Newington Planning Board failed to follow its site plan regulations in granting Sea-3's application for the expansion of the site.

7. Q. What site plan regulation did the City feel the Planning Board violated?

A. The Newington Site Plan Regulations explicitly require compliance "in all respects [with] any and all pertinent ordinances and regulations." Town of Newington Site Plan Regulations, Section 2. The Site Plan Regulations expressly indicate that the purpose of site plan review "is to protect the public health, safety and welfare...[and] to avoid development which may result in negative environmental impacts." Town of Newington Site Plan Regulations, Section 2. Section 19 of the Site Plan Regulations provides the Planning Board with the ability to require an applicant to reimburse it and the Town for "administrative expenses and costs of special investigation and other matters..., including review by consulting engineers or other consultants to assess the environmental impact, hydrological impact, ground water impact, traffic impact, or any other study deemed necessary by the Planning Board in order to make an informed decision." The Newington Site Plan Review Regulations also provide that "[s]ites for non-residential development shall be reviewed so as to minimize traffic congestions, traffic hazards, unsightliness, annoyance to other nearby land uses, erosion and other effects detrimental to the abutter, the neighborhood, the environment of the Town. In order to attain these goals, the Planning Board shall determine that ... (e) loading (h) light, glare, odor, noise (i) street (access) and (l) the public health, safety and welfare will be otherwise protected.

8. Q. How does the City feel the Newington site plan regulations were violated?

A. The City believes that the Planning Board's decision not to first require and then review a comprehensive safety/hazard study before it granted Sea-3's application for expansion violated the Site Plan Regulations cited above. Simply put, it is the City's position that the Planning Board could not make the determination that the public's health, safety and welfare would be protected if it never reviewed a comprehensive safety study/hazards assessment before granting site plan approval.

The only mention by the Planning Board of any type of safety/hazard assessment is in condition 5 of its approval dated May 19, 2014. The fifth condition provides:

Several safety plans were adopted in conjunction with the original Sea-3 site plan approvals. They shall be reviewed by Sea-3, updated and submitted to the appropriate public officials (including the Newington Fire Chief) for review and approval prior to the commercial operations of the improvements authorized by this approval.

Nothing in the record indicates that the Planning Board reviewed these “original” safety plans; there was at least six (6) safety plans in the 1996 expansion file and there is no indication in the Planning Board’s decision which of these “safety plans” are to be updated.

In addition, it is the City’s position that a review of the updated “safety plans” – outside the public hearing process and the scrutiny of resident of the Town and abutters from affected communities due to the expansion’s regional impact, denies the affected communities a meaningful opportunity to review, understand and comment on how these “updated safety plans” address community concerns about the expansion. The Planning Board’s post-approval “update” condition denies the City and others the opportunity to comment on these “safety plans” in violation of RSA 36 and the site plan regulations themselves, and constitutes procedural error.

The City has requested that the Planning Board’s decision be overturned and remanded back to the Planning Board.

9. Q. How does local site plan review differ from the Site Evaluation Committee’s review under RSA 162-H.

A. The Planning Board felt it could not look much beyond the site itself, and that any review or consideration of the intensification of use of the rails, safety, environmental or economic impacts beyond the borders of the site and the Town of Newington was beyond their scope or would be challenged by Sea-3 or Pan Am as preempted by federal law.

Intent and purpose of RSA 162-H is much broader. RSA 162-H:1 provides in its Declaration of Purpose the following;

The legislature recognizes that the selection of sites for energy facilities may have significant impacts on and benefits to the following: the welfare of the population, private property, the location and growth of industry, the overall economic growth of the state, the environment of the state, historic sites, aesthetics, air and water quality, the use of natural resources, and public health and safety. Accordingly, the legislature finds that it is in the public interest to maintain a balance among those potential significant impacts and benefits in decisions about the siting, construction, and operation of energy facilities in New Hampshire; that undue delay in the construction of new energy facilities be avoided; that full and timely consideration of environmental consequences be provided; that all

entities planning to construct facilities in the state be required to provide full and complete disclosure to the public of such plans; and that the state ensure that the construction and operation of energy facilities is treated as a significant aspect of land-use planning in which all environmental, economic, and technical issues are resolved in an integrated fashion. In furtherance of these objectives, the legislature hereby establishes a procedure for the review, approval, monitoring, and enforcement of compliance in the planning, siting, construction, and operation of energy facilities.

The Site Evaluation Committee may not limit its analysis to a facilities site itself, the Committee must, as stated in the statutes declaration of purpose, analyze the impact on the state as a whole, its citizens, economy and environment and must, as a factor in issuing a certificate, determine that the issuance of a certificate “will serve the public interest”. See RSA 162-H:16, VI (e).

The Planning Board process was much narrower in scope and purpose than the broad scope and purpose of RSA 162-H. The Planning Board did not look much beyond the facility’s border, the Site Evaluation Committee must look beyond the facility’s borders in its analysis of balancing the public’s interest with state’s, not the Town of Newington’s or the private property owners, need for the site. That balancing analysis and review of safety, environmental or economic impact of the site to the State and region was not done by the Planning Board and must be done by the Site Evaluation Committee. The narrow scope of the Planning Board’s analysis was insufficient to meet the requirements of RSA 162-H.

10. Q. Were to Reports attached as Exhibits to Mr. Bogan’s prefiled testimony submitted to the Planning Board or in the certified record?

A. Most were not. The USCG Standard Operating Procedures & Emergency Manual, the EPA Risk Management Plan, the OSHA Process Hazard Analysis, the Contingency Plan, Safety Standards & Procedures Manual and Standard Operating Procedures Manual were not reviewed as part of the Planning Board’s site review. These reports, among others, will be reviewed by the Site Evaluation Committee and in part, by Sebago, the consultant doing the safety study for the Site Evaluation Committee. The analysis of whether these reports comply with their governing regulatory scheme it not something easily done by a lay person but is part of the role of the Site Evaluation Committee and the retained expert in this process.

11. Q. Does this conclude your testimony?

A. Yes.