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May 7, 2015

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Martin Honigberg, Chairman
New Hampshire Site Evaluation Committee
21 South Fruit Street
Concord, NH 03301-2429

**Re: Application of SEA-3
Docket No. 2015-01**

Dear Chairman Honigberg:

I represent the Town of Newington Selectmen and its Planning Board with respect to the SEA-3 application. I write on their behalf in support of SEA-3's application to be exempt from the approval and certificate provisions of NH RSA 162-H.

Before addressing why Newington believes that SEA-3 has met the exemption criteria set forth in RSA 162-H:4, IV, a-d, set forth below is some information that Newington Town officials would like the Committee to consider.

--SEA-3 has been operating its business involving the unloading and distribution of liquefied petroleum gas (LPG) at its 190 Shattuck Way property for approximately 38 years.

--SEA-3 is an important employer in Newington and the region. It supplies an important energy product to the region, and it has conducted its business in Newington safely for all of its 38 years.

--When SEA-3 last expanded its Newington facility, it received an exemption from the Committee based in part upon the site plan review and approval it gained from the Newington Planning Board.

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--Most often, Planning Board reviews of site plan applications have 3 public hearings or less. The Newington Planning Board held 7 public hearings on the SEA-3 application, beginning in November, 2013 and concluding in April, 2014. This yielded a record of 583 pages. I understand the record has been submitted by SEA-3 in this docket.

--Most of the public comment and input before the Planning Board arose from non-Newington residents. Most of the public comment and input related to the operation of the railroad and rail inspections and safety, and did not relate to SEA-3's Newington facility.

--The Planning Board was able to induce John Killoy, a Federal Railway Association employee and the Track Safety Administrator for the New England Region to attend the Board's March 10, 2014 public hearing. He confirmed that the federal government has exclusive jurisdiction to regulate railway operations.

--At page 177 of the Planning Board's record, you will find a letter from Shelley Winters, Administrator of NH DOT's Bureau of Rail and Transit. Ms. Winter's letter outlines the State's limited jurisdiction over Pan Am's privately owned rail lines, jurisdiction limits that apply to all NH agencies due to the preemptive effect of federal law.

Turning to the exemption criteria, the Town adopts the arguments and points made by SEA-3 in its initial January 8, 2015 Request for Exemption filing, and in its May 1, 2015 Reply to Objection of Public Counsel. Set forth below are additional comments in support of SEA-3's contention that it has reasonably satisfied the exemption criteria.

(a) Existing state or federal statutes, state or federal agency rules or municipal ordinances provide adequate protection of the objectives of RSA 162-H:1.

Review of this exemption application must start with the recognition that this energy facility site has already been approved by the SEC (by virtue of the prior exemption from Certificate that was granted), by state agencies with permitting jurisdiction and by the Town of Newington land use boards.

The only objective set forth in RSA 162-H:1 that remains outstanding after the Newington Planning Board conducted its extended and thorough site plan review process is the objective that charges the Committee to ensure that, "undue delay in the construction of new energy facilities be avoided."

(b) A review of the application or request for exemption reveals that consideration of the proposal by only selected agencies represented on the committee is required and that the objectives of RSA 162-H:1 can be met by those agencies without exercising the provisions of RSA 162-H.

Respectfully, the expertise and experience in reviewing site plan applications such as this one lies not with any one state agency or board, but with municipal planning boards such as the Town of Newington's. Consider the Town of Newington and its existing industrial and commercial development, its infrastructure and the self-evident expertise and experience of its Planning Board to critically review all that have come to be developed in Newington. I would encourage the Committee to reflect on the expertise that the Town of Newington brought to the Committee's review of what was then known as the ConEd gas generating facility. The Committee deferred to the input from Newington on traffic, road improvements, site arrangement, noise and fire safety. Certainly, issues of financial capability and engineering aspects of the generating facility itself and plant emissions were issues most properly in the purview of the Committee, but for the issues of land use, traffic and access, and local fire safety and emergency response, these are the meat and potatoes of municipal land use review.

The issues presented by the proposed improvements to this site are the type of typical facility expansion issues that the Newington Planning Board has long addressed in its Industrial and Commercial zoning districts. It is the Town's understanding that SEA-3 already possesses most of the state permits that it requires, and the air permit is only issued after construction is complete. Granting the requested exemption is sensible, as little state agency review is triggered by this application, and most of what agency review or permitting that is required has already occurred.

(c) Response to the application or request for exemption for the general public indicates that the objectives of RSA 162-H:1 are met through individual review process of the participating agencies.

The Town of Newington's public officials support the exemption. A review of the Planning Board's public hearings on the SEA-3 application reveals not only an open, thorough process, informed by independent engineers and fire safety experts that the Board engaged to review the project, but also the almost complete absence of objections to the project by Newington residents. Newington's public officials will tell you that Newington residents were overwhelmingly in favor of the SEA-3 application.

(d) All environmental impacts or effects are adequately regulated by other federal, state, or local statutes, rules, or ordinances.

The operation of the railroad and the carriers who use its tracks to deliver products to SEA-3 and other customers is exclusively regulated by the Federal Railway Administration and the Surface Transportation Board under federal law. This is not debatable. Both Federal Railway Administrator John Kilroy and NH DOT's rail safety inspector, John Robinson, testified to the federal government's exclusive jurisdiction over rail operations.

The State has permitting jurisdiction through NH DES with regard to certain aspects of site development that relate to the environment. There is no reason to believe that such permitting regulation at the agency level is inadequate, so as to warrant a denial of the exemption.

The Town has authority to regulate environmental impacts as they relate to the proposed application and development of the site. As the site plan review process reveals, the Planning Board retained engineers and expert consultants as necessary to address all onsite and offsite impacts that are not otherwise preempted by federal or state jurisdiction.

As with any site plan approval granted by a NH planning board, the Town of Newington has a number of different statutory options to enforce compliance. See, NH RSA 676:15, 676:17 et seq.

In conclusion, the exemption sought by SEA-3 is more than adequately supported. Newington respectfully requests that the Committee grant the exemption.

Very truly yours,

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cc: Town of Newington