

February 17, 2015

16 Dunlin Way
Portsmouth, NH 03801
603-559-9765

Martin P. Honigberg, Chairman
Site Evaluation Committee
c/o NH Public Utilities Commission
21 South Fruit Street, Suite 10
Concord, NH 033 01-2429

Re: Docket 2015-01 Sea-3 Request for exemption from a full Site Evaluation Committee project review.

Dear Mr. Honigberg:

As you may be aware, in October 2013, the Town of Newington Planning Board determined that the proposal by Sea-3 to reconfigure its terminal at 90 Shattuck Way (Tax Map 14, Lot 2; and Map 20, lot 13) in order to accommodate Liquefied Petroleum Gas (LPG) shipments via rail, and the export of same via ocean-going ships, was a development with regional impacts. Although the Sea-3 facility is situated totally within the town of Newington, the Planning Board recognized that the expansion requested by Sea-3 would potentially have adverse economic, safety, and environmental impacts on the communities of Portsmouth, Greenland, Stratham and Newfields. As such residents and municipal officials within these communities became actively engaged in the Sea-3 application before the Newington Planning Board. Considering the implications of this project, we, along with the City of Portsmouth, requested that the Newington Planning Board conduct comprehensive safety/security and environmental impact studies, to insure that the public health, safety and welfare of the public is protected and to avoid any development which may result in any negative environmental impacts, as required under their site Plan Review Regulations. The Newington Planning Board refused to have such studies conducted and approved the Sea-3 application on May 19, 2014. As a result, the City of Portsmouth filed appeals with the Rockingham County Superior Court and the Newington Zoning Board of Adjustment (ZBA). It should be noted that over 700 residents signed a petition requesting that the Portsmouth City Council vote to appeal any approval of the Sea-3 project by the Newington Planning Board. The ZBA denied the appeal and a request for a reconsideration. The appeal before the Superior Court remains pending as of this date.

We are strongly opposed to the Sea-3 request to an exemption from a full application and review of their expansion project. We recognize that the mandate provided by statute to the Site Evaluation Committee (SEC) is to "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.” We further understand that recent changes to law also provides the SEC with the authority to determine whether a project is in the “public interest.” In the absence of Sea-3 providing a full application and a comprehensive review of that application by the SEC, we strongly feel that the mandate provided by the Legislature cannot be honored, and the Sea-3 request for an exemption be denied. In addition we provide the following items for you to consider as part of your deliberations.

1. While Sea-3 now claims that the propane that will be received via rail is primarily for domestic use, this change in policy only took place late in the Planning Board review. In Fact, Mr. Paul Bogan, VP Operations for Sea-3 stated at the November 13, 2013 Planning Board meeting, “They were proposing to convert the majority of their operation from importing foreign propane to exporting domestic propane, with a small percentage to the local market in New England.” As a result, we are concerned that there is some serious questions regarding the fate of the propane that will be received via rail at the Sea-3 site. If in fact, the majority of the propane is exported overseas, where the price for propane is much higher than in America, this will have negative economic consequences on the people of New Hampshire and the region, and would not be in the “public interest.” We are attaching a full economic analysis of the effects of exporting propane by Kim Tucker, Esq., who has extensive expertise in the matter for your review. In any event, if Sea-3 continues to claim that the majority of their propane would be for regional domestic use, the SEC should consider placing a stipulation on any approvals granted Sea-3 limiting the amount of propane they can export overseas.
2. In the absence of any comprehensive safety/security studies, regional emergency response capabilities have never been fully evaluated to determine if they are prepared to respond to a major emergency either at the Sea-3 facility itself or off-site . Considering that Portsmouth and other communities are part of a mutual aid agreement with Newington, we have a vested interest in understanding what financial and personnel risks are involved in responding to an emergency at an expanded Sea-3 facility that will now be receiving 16 tank cars, of 33,000 gallons each, six days per week, 52 weeks per year. The fact that the propane that will be unloaded at the Sea-3 facility will be unodorized adds to the safety hazards involved. In the absence of an odorizing agent, a leak would not be obvious without the use of sophisticated sensing equipment, resulting in a possible serious event occurring before a leak was ever detected. This change in operation, from the previous unloading ships a few times a year, to almost daily unloading of rail tank cars, increases safety risks greatly. These are concerns that were never fully explored by the Newington Planning Board. We are concerned that the emergency response capacity of the region may be overextended, and not properly

prepared to adequately respond. Only a comprehensive safety analysis, including the assessment of the regional emergency response capabilities can provide the necessary assurances or identify any significant gaps that might exist.

3. While the safety concerns of the rail transport of propane through densely populated areas such as downtown Portsmouth remain a major risk, the issue of federal preemption of anything to do with the railroads has limited the full analysis of this risk with regard to the Sea-3 project. However, there is a precedent that the SEC may wish to consider in its deliberations. In March 2013 the Massachusetts Department of Transportation released the report; Report on the Safety Impacts of Ethanol Transportation by Rail. Despite the federal exemption issues, they conducted a very comprehensive safety review in a situation not very different than the Sea-3 project. If Massachusetts can conduct such a study that was used by regulatory agencies there, the New Hampshire SEC could justifiably follow this route as well. We urge you to review this report and consider applying this model in your review process.

For these and other very serious concerns, we request that, at a minimum, the SEC should conduct a full and comprehensive review of the Sea-3 expansion project. This will be the only means available to fully respect the mandate provided the SEC by the Legislature. Just as importantly, it is the only process that assures the public trust and that the interests of the public are being considered by those agencies tasked with such responsibilities can be respected and maintained. It is critically important that we are confident that due process has been followed and that no short cuts with regard to the protection of the public are permitted. To allow such a project, with such serious potential consequences, to be approved without a through vetting and critical analysis, would not be acceptable or responsible.

Thank you for your consideration and thoughtful consideration of our concerns.

Sincerely,




Rich and Cathy DiPentima
16 Dunlin Way
Portsmouth, NH 03801

✓ CC: Jane Murry, DES

Attachment: Kim Tucker, Esq. Letter

Kim Ervin Tucker
Attorney at Law

Admitted to Practice:
State of Maine
State of Florida
District of Columbia

United States Supreme Court
U.S. Eleventh Circuit Court of Appeals
U.S. District Court Northern District of Florida
U.S. District Court Middle District of Florida

Tom Morgan, Town Planner
Newington Planning Board
Newington Town Hall
205 Nimble Hill Road
Newington, NH 03801

RE: Sea-3 Conversion to Export
190 Shattuck Way, Newington

Dear Mr. Morgan and Members of the Newington Planning Board:

I am writing to express opposition to the proposed conversion of the Newington Sea-3 LPG import terminal to export use. This conversion risks the safety of New Englanders in far more profound ways than simply the threat posed by increased propane shipments by rail. The current propane shortages in New England, and the rest of the country, are a man-made crisis, created primarily by the export of U.S.-produced LPG to the world market, rather than using this valuable commodity to supply our nation's propane needs. Conversion of Newington to export use will exacerbate this problem and will eliminate an essential resource for supplying the growing propane needs of our region. While the increased rail shipments of propane to Newington will certainly exponentially increase the safety risks that this dangerous, but regionally essential, facility poses to the public in Newington and all communities along the rail route(s) that will supply it, the threat that conversion of this facility to export use poses to the energy and economic security of our region and our nation is much more profound and significant.

I became familiar with the use of, and need for, the Newington Sea-3 facility in my representation of a group of property and small business owners in Midcoast Maine, known as Thanks But No Tank, who were opposing the construction of a 22.7 million gallon LPG storage tank and marine "import" terminal in Searsport, Maine. Because of the rural nature of Searsport and the Midcoast region, the Searsport Planning Board (SPB) wisely denied local Land Use and Site Plan Review permits to DCP Searsport LLC, a subsidiary of DCP Midstream Partners, LP, on April 4, 2013. DCP had previously been granted all required State and federal permits needed to construct this facility.

Although the SPB considered the DCP applications *as filed* – as an *import* facility -- during consideration of that project by the Searsport Planning Board, it became apparent that the proposed DCP Searsport LLC project would really be used as an *export* facility. In fact, by the time of the SPB's final deliberations and vote on the DCP application, Newington Sea-3, and DCP's Providence, RI and Chesapeake, VA, marine import facilities had not accepted a

shipment of propane in more than a year and DCP's Chesapeake, VA, facility had re-exported the last import shipment it had accepted.

We determined that if this facility was converted to use as an export facility the impacts on the surrounding communities and environment were exponentially greater. Rather than 4-8 vessels a year making LPG deliveries to Searsport, primarily in the late Fall and Winter, an export facility would have meant 8 to 14 ships *a month* operating at that pace twelve (12) months a year to supply worldwide propane needs. Rather than 12 tanker trucks a day in the Summer and up to 40 tanker trucks a day in the Winter, transporting propane from the terminal, an export facility would have been supplied by land by up to 144 tanker trucks a day on the two-lane rural roads of Maine or by an undisclosed number of railcars a day, transported by the now-defunct Montreal, Maine & Atlantic RR (in bankruptcy after the Lac Megantic disaster which killed 47 people).

Further, there was a significant threat posed by the lack of odorant in the propane at the facility. Currently, marine import terminals receive unodorized LPG brought by tanker ships. The LPG in the refrigerated tanks, like those at Newington, is unodorized. Odorant, usually mercaptan, is mixed with the liquefied petroleum gas when it is sent from the refrigerated tank and pressurized for shipments by railcar and tanker trucks for most uses. Thus, while propane leaving an import terminal like Newington for consumer use, by tanker truck and rail car, contains odorant to allow detection in the event of a leak, propane being shipped in for export likely will be UNodorized. Therefore, not only will the LPG rail cars coming to Newington be far greater in number, the nature of the propane they contain will be far more dangerous, because the heavier than air, colorless gas they will be carrying, will now also be odorless – making this cargo undetectable by human senses if a leak or spill occurs along the route to Newington.

Further, while currently and in the past, propane has been shipped to and from Newington, on primarily a *seasonal* basis, to meet the propane needs in the New England region, conversion of the Newington Sea-3 terminal to export use would mean that this facility would operate at full capacity twelve months a year to supply worldwide propane needs.

The impacts of an export versus import facility are thus exponentially greater in more ways than just rail car volumes. These impacts would have been devastating on the environment and quality of life in Midcoast Maine and would have resulted in significant safety risks on our people. The same increase in adverse impacts that Searsport would have experienced with an export versus import facility, will result to the people and businesses of Newington if the Sea-3 facility is converted to export use.

However, the adverse impacts on long-term domestic propane supplies that an export facility would pose are even greater to New England and the United States – I do not believe that these impacts have been explored on considered, to date, in the Planning Board's consideration of this proposed conversion. Yes, Newington and New England would have an increased safety risk from increased rail traffic from a conversion. But the exacerbation of propane shortages in New England and nationally, from increased exports of U.S.-produced propane, will cause an even greater long-term economic and safety threat. Newington and New England would endure these increased physical safety risks without obtaining any of benefit of increased propane

supplies to the region from these increased propane shipments. New England would be reduced to a mere conduit for propane going to the world market, while New Englanders would be required to pay ever-increasing prices for the reduced U.S. propane supplies.

Unlike LNG, exports of LPG (propane) are not currently under the jurisdiction of the Federal Energy Regulatory Commission (FERC) and, thus, unlike LNG, FERC authorization is not required for corporations to export our LPG supplies. That is why the current nationwide shortages have occurred, when LPG exports have been left unchecked by any federal regulatory authority. These exports have left many in our nation without adequate propane supplies and have allowed our people to be price-gouged to obtain the artificially reduced domestic stocks of propane. This means that the Newington Planning Board is in the unenviable position of being our region's (and our nation's) last line of defense to prevent approval of this economically damaging conversion of Sea-3 to export use.

The current rise in propane prices, in Maine, New England and throughout the United States, is not due to a lack of supply, the United States produces more propane a year than U.S. consumers use. The current propane crisis results from the manipulation of propane supplies by corporations that have chosen to *export* propane produced in the United States, rather than supplying the American public with sufficient propane to meet domestic agricultural, heating or other needs. By *increasing* exports, during the period of peak demand in the U.S., these companies have created a man-made supply crisis and an excuse to charge exorbitant rates for the propane remaining in U.S. stocks. The man-made propane shortages of the Winter of 2013-2014, have caused most State Governors, including the Governors in New England States, to suspend safety regulations relating to propane shippers.

During this unusually frigid winter, the people of this country, including New England, find themselves in the grip of the polar vortex, and their wallets in the grip of propane profiteers. Local propane suppliers are as much the victims of this man-made manipulation of domestic propane supplies as the consumers who use propane for agricultural applications or home and business heating. But the reason for rising propane prices is not the "lack of storage capacity" or "problems with rail shipments." It is not even the result of a lack of pipeline capacity to bring propane to consumers. The primary reason for the man-made propane shortage and price hikes is *too many exports*.

Propane is produced from natural gas at processing plants and from crude oil at refineries. According to a December 12, 2013, U.S. Energy Information Administration (EIA) Report, propane produced from natural gas has been the fastest-growing component of the overall U.S. propane supply. Propane production in the United States set record highs on an almost weekly basis in 2013, as a result of increased U.S. oil and natural gas drilling. *Propane production from natural gas supplies climbed 17.3% or roughly 126,000 b/d in 2013. Propane production from refineries was higher by 26,000 b/d to 294,000 b/d, in 2013.* Despite these production increases, U.S. propane stocks are at their lowest levels since 1993 according to the U.S. Energy Information Administration (EIA).

This conclusion is not based on my analysis, but rather, the assessment of propane industry representatives and analysts, and on data compiled by the U.S. Energy Information Administration (EIA). The Propane Gas Association of New England (PGANE), a trade association representing nearly 675 members who sell propane or propane-related appliances and equipment in the 6 New England States, has said the following about the so-called "propane shortage":

Press Release

There is No Propane Supply Shortage
Epsom, NH (January 21, 2014)

—
Propane production in the United States remains the highest it has ever been. Supply is plentiful in the Gulf Coast where exports continue at record levels. What customers are feeling are the results of a strained transportation and infrastructure system that is masquerading as a propane shortage.

<http://propane.net/uploadedFiles/State/Texas/PGANE%20No%20Supply%20Shortage%2001-21-14.pdf>

One PGANE member company described the issues with our New England supplies as follows:

[T]here is plenty of propane, but supply in New England can still be strained when there are issues with the rail or pipeline. Rail and pipeline are the primary ways of shipping propane to New England from propane storage hubs, such as Mt. Belvieu, Texas.

When the infrastructure becomes strained, suppliers have to come up with other ways of getting the propane to New England, such as by truck, or by ship. Both these options, however, are unfortunately more costly. Ships generally export propane abroad where propane is significantly more expensive, this makes deliveries to U.S. ports less desirable for the ships, therefore resulting in higher prices. This affects the price of propane all around, and is a reason that the price this winter has risen fairly significantly in the last few weeks.

<http://holdenoil.com/propane-situation-this-winter/>

Industry analysts have acknowledged that U.S. propane prices have been driven higher as a direct result of exporting propane supplies to the world market. In the December 30, 2013 article, "*How Soaring Propane Exports Affect Prices (Part 1)*," published by the Market Realist, the impact of exports on prices is directly assessed, concluding that:

Propane exports have increased significantly through 2013, and have spiked recently

Propane exports have increased throughout 2013. First quarter propane exports averaged ~150 thousand barrels per day, second quarter propane exports averaged ~180 thousand barrels per day, third quarter propane exports averaged ~230 barrels per day, and fourth quarter propane exports to date have averaged ~270 thousand

barrels per day. Most recently, the U.S. Department of Energy reported that as of December 20, propane exports were at 370 thousand barrels per day.

Increased propane exports are a positive for domestic propane prices because they represent increased demand for domestic propane. U.S. propane prices have increased nearly 60% since mid-June—with much of the price increase likely due to increased demand from propane exports.

More propane export capacity coming online further boosts propane demand

Currently, domestic propane trades at a discount to international propane. This is because domestic propane production has continued to grow and despite a growing amount of propane exports, export capacity has been limited by a lack of infrastructure. However, this price disparity provides an economic incentive to build the necessary infrastructure to export propane. Midstream companies have already announced projects to build or expand propane export terminal facilities, which should result in increased propane exports and support for propane prices.

The Market Realist, “*How Soaring Propane Exports Affect Prices (Part 1)*,” by Ingrid Pan, CFA (December 30, 2013) (emphasis supplied)

<http://marketrealist.com/2013/12/soaring-propane-exports-affect-prices/>

On November 20, 2013, at a conference discussing propane supply issues held in Augusta, Maine, PGANE President Joe Rose enumerated the impediments to obtaining adequate propane supplies in N.E. this year, which include the region’s dependence on rail to supply our growing propane needs, which has been necessitated by the fact that, because the United States’ is a net exporter of propane, New England’s two marine import terminals – in Newington, N.H., and Providence, R.I. – have been “essentially mothballed” for the past two years. Four years ago, these facilities brought in 60 percent of New England’s propane. *However, no imports were received at these facilities for almost 2 years*, until the 3 shipments in the past month, including one to the Newington Sea-3 facility. Those shipments brought, *higher-priced, foreign* LPG to these facilities for sale and use in N.E. – despite the ample and record production of propane in the U.S. in 2013. While the need to use these terminals to bring in foreign propane, when our nation has a surplus of U.S.-produced propane is regrettable, the critical role that these terminals still play in supplying our propane needs is undeniable.

Converting the existing Newington Sea-3 marine import terminal to use as an *export* facility would permanently jeopardize N.E.’s supply sources for propane, would exacerbate the current U.S. and N.E. supply deficits, reduce diversity in the N.E. propane supply chain, and permanently eliminate this facility as a supply source for N.E. in the future -- removing this essential supply safety-net for the region.

Would converting the Sea-3 facility impact the U.S. propane supply? *Absolutely – in fact converting this facility to **export** propane would exacerbate future regional and national, man-made propane supply problems and eliminate Sea-3 as a resource for obtaining propane for U.S. consumers in the future.* A better solution would be to work as a region to have the President suspend the Jones Act for LPG deliveries, to allow the use of foreign-flagged LPG tankers to transport propane from U.S. refineries and export facilities in TX and LA, and use them to

deliver LPG to Newington and the other under-utilized, existing East Coast LPG marine import terminals.

Because there are no U.S.-flagged LPG tankers that satisfy the criteria under the Jones Act (U.S.-built, U.S.-flagged, U.S.-crewed), suspension of the Jones Act by the President, for this limited purpose, would harm no U.S. shipping interests. There is precedent for suspending the Jones Act by Presidential Order in times of emergency – President Bush suspended the Jones Act after Katrina to bring in supplies to the storm-ravaged Gulf Coast. Such shipments would provide cheaper-cost U.S. propane supplies to New England from the Gulf Coast export facilities in TX and LA. It is unconscionable that New Englanders are being required to now import more costly, foreign LPG to supply our propane needs, when there is an abundance of cheaper LPG produced in this country that is being exported to the world.

The problem is that propane suppliers can make more money exporting the propane produced here, than they can make using it to meet our energy needs at home. The “energy independence” we have sought for more than a generation is being threatened by multi-national corporations that are using the propane resources of the United States for their own enrichment – to the detriment of national security and regional economic prosperity. Energy Independence can never be achieved if our nation’s natural resources are allowed to be exported to the world market.

Weekly U.S. Exports of Propane and Propylene (Thousand Barrels per Day)

1/27/14 2:01 PM



PETROLEUM & OTHER LIQUIDS

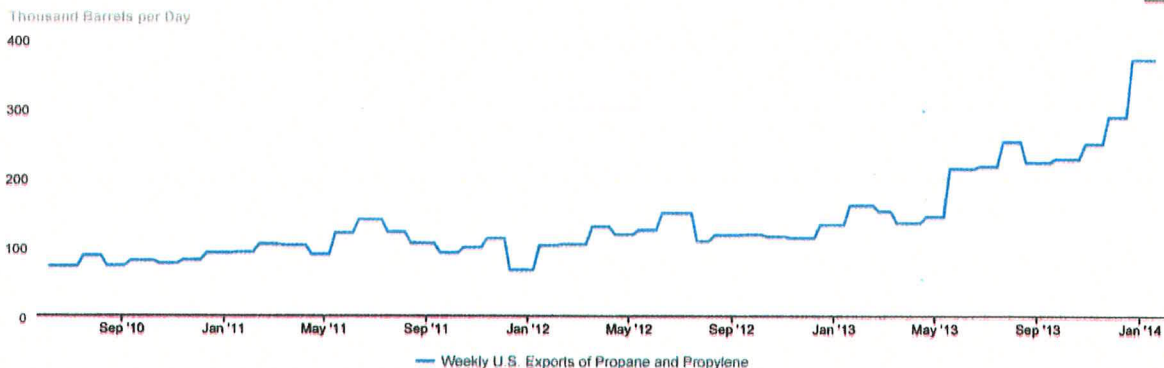
OVERVIEW DATA ANALYSIS & PROJECTIONS

GLOSSARY FAQs

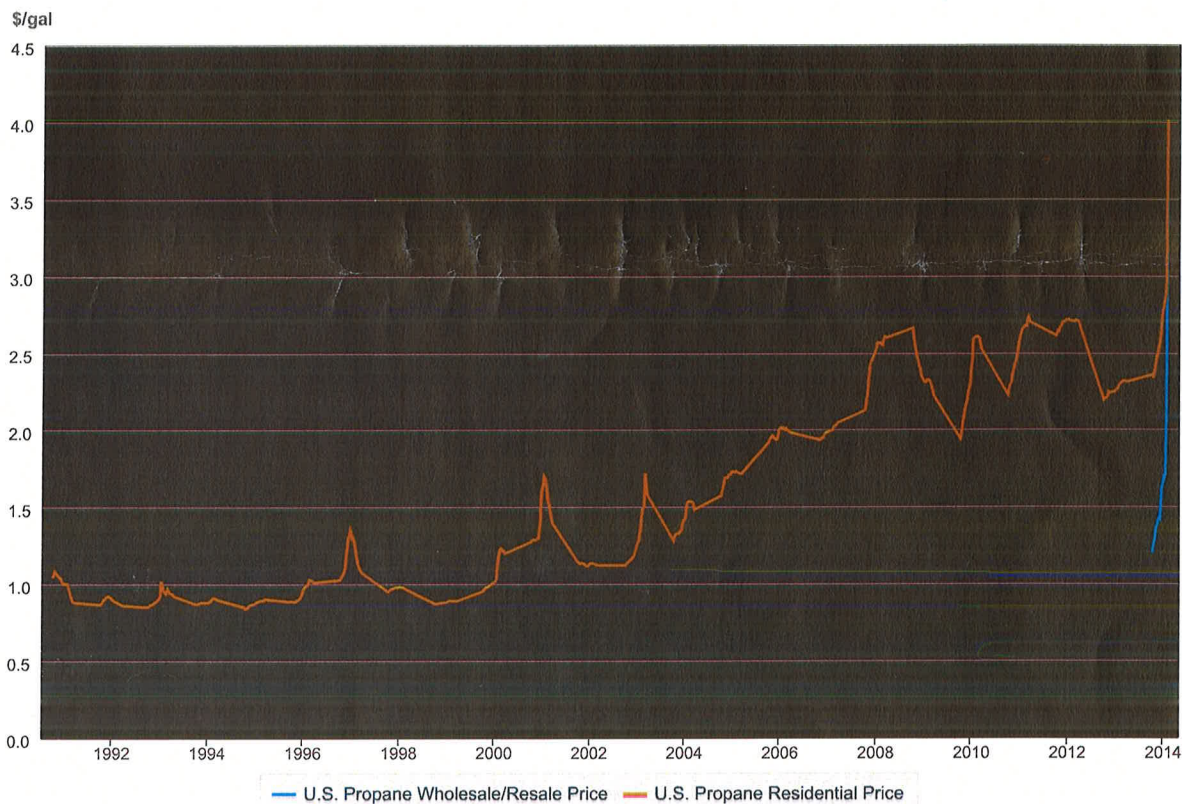
View History: Weekly 4 Wk Avg

[Download Data \(XLS File\)](#)

Weekly U.S. Exports of Propane and Propylene



Weekly Heating Oil and Propane Prices (October - March)



Source: U.S. Energy Information Administration

The charts above (and additional charts sent with this letter), prepared by the U.S. Energy Information Administration (EIA), illustrate that, rather than reducing exports as demand and need in the U.S. increased, due to the unusually harsh winter and a larger fall corn crop that required propane for drying, propane producers *radically increased exports* – causing the current man-made crisis. Indeed, the chart produced by the EIA shows that propane exports have continued to significantly *increase* as the winter weather has gotten worse. As a result, U.S. propane prices have predictably spiraled out of control. Midcontinent propane stocks are down more than 35.9% from 2012, while the price is up by more than 74.3%. In some Midwest locations, propane is costing \$5/gallon or more.

Texas and Louisiana, which have the largest propane storage tank capacity and greatest number of refineries in the country are, like most other States, suspending safety regulations for propane deliveries because of the “propane shortages” now being experienced in the Gulf States. As early as mid-November, *supplies fell the most on the Gulf Coast*. In 2013, Gulf Coast stocks were down 31% from 2012, while prices climbed 44%. Accordingly, having Sea-3 converted to export use will similarly do nothing to help New England’s ability to obtain sufficient supplies of propane in the future.

Newington Planning Board Letter

February 8, 2014

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Losing the Newington Sea-3 facility as a supply source for regional propane needs, supplementing pipelines and rail and truck transportation resources, will jeopardize our national and regional security, harm our economic stability and prosperity, and pose a public health and safety threat. *No additional marine import facilities should be converted to increase the volume of exports of U.S. propane – including Newington Sea-3.* Please take all steps needed to deny the request to convert Newington Sea-3 to export use. The proposed Sea-3 conversion to export use fails to meet the requirements of Section 5(I), of the Newington Site Plan Ordinance, because the public health, safety, and welfare will not otherwise be protected if conversion is permitted.

Sincerely,



Kimberly J. Ervin Tucker
Maine Bar No. 6969

Sources:

“*Tracking the Latest Developments in U.S. Propane Supplies,*” by Brian Richesson (December 9, 2013). <http://www.lpgasmagazine.com/tracking-the-latest-developments-in-u-s-propane-supply/>

<http://www.eia.gov/todayinenergy/detail.cfm?id=14151>

<http://www.platts.com/latest-news/petrochemicals/houston/us-propane-propylene-stocks-last-week-31-less-21002820>

http://www.eia.gov/dnav/pet/hist/LeafHandler.ashx?n=PET&s=W_EPLLPZ_EEX_NUS-Z00_MBBLD&f=W

<http://www.startribune.com/business/234815871.html>

http://www.agweb.com/article/minnesota_propane_pipeline_reversal_will_impact_growers_NA_A_Davis_Michaelsen/

Vancouver Observer, “*Obama Approves Border-Crossing Fracked Gas Pipeline Used To Dilute Tar Sands,*” by Jenny Uechi (November 26, 2013)

<http://www.vancouverobserver.com/environment/obama-approves-kinder-morgans-cochin-pipeline-expansion>