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STATE OF NEW HAMPSHIRE

SITE EVALUATION COMMITTEE

May 7, 2015 - 6:00 p.m.
Newington Town Hall Auditorium
205 Nimble Hill Road
Newington, New Hampshire

IN RE: SEC DOCKET NO. 2015-01
Request of SEA-3, Inc.,
for an Exemption from
the Application and
Certification Requirements
of RSA 162-H.
(Public hearing)

PRESIDING: Alexander F. Speidel, Esq.
Hearings Examiner/Staff Attorney
N.H. Public Utilities Commission
(Designated as Presiding Officer)

Also present: Michael J. Iacopino, Esq. (Brennan...)
(Counsel to the Committee)

Iryna Dore, Esq. (Brennan, Lenehan...)

COURT REPORTER: Steven E. Patnaude, LCR No. 52

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APPEARANCES :

Reptg. SEA-3, Inc.

Alec L. McEachern, Esq.
Jacob J.B. Marvelley, Esq.
(Shaines & McEachern, PA)

Reptg. Counsel for the Public:

Peter Roth, Esq.
Senior Asst. Atty. General
N.H. Attorney General's Office

Reptg. the City of Portsmouth:

Jane Ferrini, Esq.

Reptg. the City of Dover:

Anthony I. Blenkinsop, Esq.

Richard and Catherine DiPentima, *pro se*

Matthew Nania, *pro se*

John and Jane Sutherland, *pro se*

Laura Byergo, *pro se*

Patricia Ford and Robert Gibbons, *pro se*

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1
2 PRESIDING OFFICER SPEIDEL: Good
3 evening, ladies and gentlemen.

4 FROM THE FLOOR: No, we can hear it from
5 all the speakers. That's fine.

6 PRESIDING OFFICER SPEIDEL: Okay.
7 Excellent. Good evening, ladies and gentlemen. Welcome
8 to a public meeting of the New Hampshire Energy Facilities
9 Site Evaluation Committee. I ask that we open today's
10 proceeding with a recitation of Pledge of Allegiance.

11 *(Recitation of Pledge of Allegiance.)*

12 PRESIDING OFFICER SPEIDEL: I would ask
13 that, for the pendency of this proceeding, that we all
14 have our cellphones and other electronic devices on buzz
15 or mute please. We have one docket for consideration on
16 today's agenda, SEA-3, spelled S-E-A dash 3, Incorporated,
17 Docket Number 2015-01. Before turning to our agenda, I
18 would ask the Committee's members to introduce themselves.
19 I, myself, am Alexander Speidel. I'm a resident of the
20 Town of the Hooksett. And, I work as a Hearings Examiner
21 at the New Hampshire Public Utilities Commission.

22 MR. HAWK: Thank you. I'm Roger Hawk.
23 I'm a public member appointed by the Governor and Council.
24 And, I just started working on this in December. So, I'm

1 still very new to this. But thank you very much.

2 MR. DUCLOS: My name is John Duclos.
3 I'm the Administrator of the Hazardous Waste Management
4 Bureau of the New Hampshire Department of Environmental
5 Services. And, I'm here representing Commissioner Burack.

6 PRESIDING OFFICER SPEIDEL: I'm here
7 serving as the Chairman in the stead of Chairman Martin
8 Honigberg of the New Hampshire Public Utilities
9 Commission. And, I will be serving together with my
10 colleagues as the presiding officer during this
11 proceeding.

12 Now, we will turn to our agenda item.
13 I'm sorry, I've just been reminded. Here we have our
14 Staff counsel, Michael Iacopino, and also Counsel for the
15 Public, Mr. Philip Roth.

16 MR. ROTH: Peter.

17 PRESIDING OFFICER SPEIDEL: Peter. I'm
18 sorry, I'm new to this. Okay. Thank you.

19 All righty. So, now, we will turn to
20 our agenda item. Docket Number 2015-01, the request of
21 SEA-3, Incorporated, for exemption from the approval and
22 certificate provisions of RSA Chapter 162-H. On
23 January 7, 2015, SEA-3, Incorporated, filed a request for
24 exemption from the approval and certificate provisions of

1 RSA 162-H (Petition) with the New Hampshire Site
2 Evaluation Committee (Committee). SEA-3 owns and operates
3 a propane storage and distribution facility located at 190
4 Shuttuck Way, in Newington, New Hampshire. The existing
5 facility and associated equipment at the site was exempted
6 from the requirements of RSA 162-H in 1995. The site
7 contains two parcels of real estate owned by SEA-3: (1)
8 7.02 acres to the west of the Newington Branch trail that
9 lies partly within Newington's General Industrial Zoning
10 District and partly within the Waterfront Industrial and
11 Commercial Zoning District (Upper Lot), and (2) 3.92 acres
12 located within Newington's Waterfront Industrial and
13 Commercial Zoning District with frontage on the Piscataqua
14 River on the other side of the Newington Branch trail, or
15 the "Lower Lot".

16 SEA-3 seeks to construct five additional
17 rail unloading berths, three 90,000 gallon aboveground
18 storage tanks, a condenser, condenser cooling unit, dryer
19 and heater, a mechanical building, refrigeration equipment
20 and associated pipelines and accessory equipment. The
21 proposed improvements appear to be a sizeable change or
22 addition to the existing facility.

23 The purpose of the proposed improvements
24 is to facilitate the off-loading, processing, and

1 distribution of liquid propane gas delivered to the
2 facility by railcar. The proposed improvements will allow
3 SEA-3 to off-load additional quantities of propane from
4 the rail berths, pump it to the Lower Lot storage tanks,
5 send it to the dryer and condenser, refrigerate it, and
6 ultimately pipe it to the primary storage tanks located on
7 the Upper Lot for storage.

8 SEA-3 requests the Committee to
9 determine that the construction of five additional rail
10 unloading berths, storage facilities, and associated
11 equipment at the site, should be exempt from the approval
12 and certification provisions of RSA 162-H:1 and other
13 laws.

14 The siting, construction, and operation
15 of such facilities are usually regulated by the Site
16 Evaluation Committee in an integrated fashion and require
17 a Certificate of Site and Facility. However, under
18 certain circumstances, the Committee has the authority to
19 exempt a proposed project from its regulation. When the
20 Committee chooses to grant an exemption, the applicant
21 must still comply with all state and local regulations,
22 and obtain all necessary permits and licenses from the
23 appropriate federal, state, and local agencies.

24 In this docket, we must consider the

1 proposed modifications to the Project to determine whether
2 the Project, as modified, should be exempted from the
3 requirements of RSA Chapter 162-H. The Committee's
4 authority to hold this hearing is set forth in RSA
5 162-H:4, IV.

6 After review of the request, the
7 Chairman of the Committee, Mr. Honigberg, determined that
8 additional information was necessary. On January 30th,
9 SEA-3 was notified that additional information was
10 required for the Committee to review the request for
11 exemption. On February 27th, 2015, SEA-3 supplemented its
12 filing as requested by the Chairman.

13 On March 26, 2015, an Order of Notice of
14 Public Hearing together with an Acceptance of Request and
15 Procedural Order were issued in this docket. In this
16 Order, the Committee found that SEA-3's Petition was
17 complete and accepted it. The Committee further
18 designated a subcommittee, ourselves here, to address
19 SEA-3's request and schedule this public meeting.

20 The Committee also set forth a
21 procedural schedule that should be followed in this docket
22 in order for potential intervenors to file motions to
23 intervene by April the 22nd of 2015. On April 6, 2015,
24 Attorney Peter Roth was designated to serve as Counsel for

1 the Public in this docket.

2 Notice of this public informational
3 hearing was served upon the public by publication in the
4 New Hampshire Union Leader on March 30th, 2015, and in the
5 Portsmouth Herald on April 3rd of 2015.

6 Now, pursuant to the Committee's Order,
7 the following motions to intervene were filed with the
8 Committee: Richard and Catherine DiPentima's Motion to
9 Intervene was filed on April 16th, 2015. (2) William and
10 Kristina Campbell's Motion to Intervene was filed on April
11 17, 2015. (3) Matthew and Erica Nania's Motion to
12 Intervene was filed on April 19, 2015. (4) John and Jane
13 Sutherland's Motion to Intervene was filed on April 20,
14 2015. (5) The City of Portsmouth's Petition to Intervene
15 was filed on April 22, 2015. (6) The City of Dover's
16 Motion to Intervene was filed on April 22, 2015. (7)
17 Laura Byergo's Motion to Intervene was filed after the
18 deadline set forth in the procedural order, on May 5th,
19 2015. And (8) Patricia Ford and Robert Gibbons's
20 late-filed Motion was received on May the 7th.

21 On May the 1st of 2015, SEA-3 filed
22 objections requesting that the Committee deny requests to
23 intervene filed by the City of Dover, the City of
24 Portsmouth, John and Jane Sutherland, Matthew and Erica

1 Nania, William and Kristina Campbell, and Richard and
2 Catherine DiPentima.

3 On April 22nd, 2015, Counsel for the
4 Public filed his objection to SEA-3's request for
5 exemption. And, on May 1st, 2015, SEA-3 filed a reply to
6 Counsel for the Public's objection.

7 In this docket, we will proceed as
8 follows: We will first address the motions to intervene.
9 I will allow each party seeking intervention in this
10 docket to briefly summarize the reasons why their Motion
11 to Intervene should be granted. We will allow SEA-3 a
12 response to each argument once presented.

13 Once we have completed arguments
14 regarding intervention, we will move on to the public
15 hearing portion of our hearing. We will first hear a
16 presentation by SEA-3, I believe a multimedia one there on
17 the screen. At that point, we'll have a brief five-minute
18 break, so folks can go to the restroom and we'll have the
19 electronics set up. And, following that presentation, the
20 Committee members and the Staff will have the opportunity
21 to pose questions to SEA-3. Thereafter, the public will
22 be permitted to pose questions to SEA-3. If you have a
23 question for SEA-3, we ask that you please write your
24 question down on a card and hand it to Counsel for the

1 Committee, Mr. Mike Iacopino, or Iryna Dore, who I believe
2 is right there. We will try to organize all of the
3 questions by subject matter and present them to SEA-3 in
4 an organized fashion.

5 Once we have asked all the questions
6 that the public may have, we will then take public
7 statements or comments on the Petition orally. There's a
8 microphone right there, the big one standing there.
9 Please make your public statements as succinct as
10 possible, and please try not to be repetitive. You can
11 sign up to make a public statement on the sheets provided
12 at the door. If there's any significant volume of folks
13 interested in making public statements, we'd try to limit
14 them to about three minutes, which is actually quite a
15 long time to speak, believe it or not. But that will
16 enable us to stay here at a reasonable hour.

17 So, let us begin then. First, let me
18 take appearances from any person who have requested
19 intervention in this docket. And, I guess we can begin
20 with Mr. and Mrs. DiPentima, is that right? Are they
21 here?

22 MS. DiPENTIMA: Yes.

23 PRESIDING OFFICER SPEIDEL: Yes. Would
24 you like to stand up and just state your name in the

1 microphone, if you could. It's for the benefit of the
2 court reporter here, Mr. Patnaude.

3 MR. DiPENTIMA: Richard DiPentima, 16
4 Dunlin Way, Portsmouth, New Hampshire.

5 PRESIDING OFFICER SPEIDEL: Thank you.
6 And. Then, we'll go on with William and Kristina
7 Campbell? Are they here today?

8 (No verbal response)

9 PRESIDING OFFICER SPEIDEL: Okay.
10 Matthew and Erica Nania, are they here today?

11 MR. NANIA: Matt Nania, 18 Dunlin Way.
12 My wife is sick at home.

13 PRESIDING OFFICER SPEIDEL: Okay. Thank
14 you, sir. John and Jane Sutherland?

15 MS. SUTHERLAND: I'm Jane Sutherland, 8
16 Dunlin Way, Portsmouth, New Hampshire.

17 PRESIDING OFFICER SPEIDEL: Thank you.

18 MS. SUTHERLAND: And my husband, John.

19 PRESIDING OFFICER SPEIDEL: Excellent.
20 That's all right. You don't have to state your name
21 separately, sir.

22 MR. SUTHERLAND: Okay.

23 PRESIDING OFFICER SPEIDEL: Thank you.
24 I believe we have a representative of the City of

1 Portsmouth here today?

2 MS. FERRINI: Jane Ferrini, Staff
3 Attorney for the City of Portsmouth.

4 PRESIDING OFFICER SPEIDEL: Thank you.
5 And, the City of Dover?

6 MR. BLENKINSOP: Good evening. Anthony
7 Blenkinsop, City Attorney, City of Dover.

8 PRESIDING OFFICER SPEIDEL: Thank you.
9 Ms. Byergo?

10 (No verbal response)

11 PRESIDING OFFICER SPEIDEL: Laura
12 Byergo?

13 (No verbal response)

14 PRESIDING OFFICER SPEIDEL: Okay.
15 Patricia Ford and Robert Gibbons?

16 MS. FORD: Patricia Ford, 135 Spinnaker
17 Way, in Portsmouth. And, my husband, Bob Gibbons.

18 PRESIDING OFFICER SPEIDEL: Thank you.
19 And, should we have an appearance from Mr. Roth at this
20 time? Mr. Roth, please.

21 MR. ROTH: Peter Roth, Office of the
22 Attorney General, Counsel for the Public.

23 PRESIDING OFFICER SPEIDEL: Thank you.

24 MR. ROTH: Thank you.

1 PRESIDING OFFICER SPEIDEL: And, the
2 Company's representatives, SEA-3's?

3 MR. McEACHERN: Mr. Chairman, members of
4 the Committee, my name is Alec McEachern, of Shaines
5 McEachern, in Portsmouth. And, I represent SEA-3.

6 PRESIDING OFFICER SPEIDEL: Thank you.
7 And, there was a run-off of a letter from the Town of
8 Newington. Is there a representative of the Town of
9 Newington that would like to make an appearance today?

10 MR. RATIGAN: Do you think it's
11 necessary?

12 PRESIDING OFFICER SPEIDEL: It would
13 help, be helpful for the record, if you want to.

14 MR. RATIGAN: Okay. John Ratigan,
15 R-a-t-i-g-a-n, Town of Newington.

16 PRESIDING OFFICER SPEIDEL: Thank you.
17 I appreciate that. Okay. Now, on May the 1st, 2015,
18 SEA-3 filed objections requesting that this Committee deny
19 the requests to intervene filed by the City of Dover, the
20 City of Portsmouth, John and Jane Sutherland, Matthew and
21 Erica Nania, William and Kristina Campbell, and Richard
22 and Catherine DiPentima. So, we already have those
23 objections to intervene.

24 Now, I think what we should do is we

1 would begin with the City of Portsmouth. We will allow
2 the City of Portsmouth to make a short presentation
3 explaining why the Committee should grant the City's
4 Motion to Intervene. When the City's presentation is
5 complete, we will allow SEA-3 to address the City's
6 position.

7 I would now ask the City of Portsmouth
8 to provide a summary of its request.

9 MS. FERRINI: Thank you, members of the
10 Committee. As previously stated, I'm Jane Ferrini. I'm
11 Staff Attorney with the City of Portsmouth. The State
12 Supreme Court, 35 years ago, in the predecessor of RSA
13 162-H, stated "The statutory scheme envisions that all
14 interests be considered and all regulatory agencies
15 combined for the twin purpose of avoiding undue delay and
16 resolving all issues in an integrated fashion. By
17 specifically requiring consideration of views of municipal
18 planning commissions and legislative bodies, the
19 Legislature assured that their concerns would be
20 considered in the comprehensive site evaluation. Thus,
21 the Committee protects the public health and safety of the
22 residents of the various towns with respect to the
23 siting." And, that's Public Service Company of New
24 Hampshire versus Town of Hampton, 120 New Hampshire 68,

1 way back in 1980. And, the purpose of this Committee and
2 the statutory scheme has not changed.

3 One of the primary purposes is to ensure
4 that siting of an energy facility is in the public
5 interest and in the public welfare. Specifically, 162-H
6 states that "the siting of the energy facility may have
7 significant impact on and benefits to the welfare of the
8 population." And, that's the first consideration listed
9 in the particular provision of the statement of purpose of
10 the statute.

11 This Committee has broad discretion in
12 granting motions to intervene. RSA 541-A:32 gives this
13 Committee that discretion. And, that discretion is based
14 upon the following: Whether the "rights, duties,
15 privileges, immunities or other substantial interests may
16 be affected by the proceeding", and if "the interests of
17 justice and orderly and prompt conduct of the proceedings
18 would not be impaired". And, we would submit that, based
19 on the arguments submitted in our Motion to Intervene,
20 that the City of Portsmouth's specific rights, duties,
21 privileges, immunities, and substantial interests are
22 affected by this expansion.

23 This Committee is not limited to grant
24 motions to intervene only where a facility is cited. This

1 Committee has previously reviewed the Antrim cases and the
2 Timbertop cases, which involved several towns, and also
3 wind turbines, and the impact of sound that goes across
4 town boundaries.

5 In this particular case, fundamentally,
6 is the public interest isn't served, if one community
7 receives the benefit of an energy siting and the other
8 community receives the burden of an energy siting.

9 The reason that the City of Portsmouth
10 is so concerned regarding this is because the siting
11 impacts are rails in the City, our roads in the City, and
12 our rivers in the City. This is a huge intensification of
13 use, and an huge increased burden particularly on the rail
14 system that travels throughout the City.

15 And, I'm going to describe the rail
16 route, because that's what distinguishes Portsmouth from
17 other abutters and other towns that has the rail route,
18 towns like Newington, I believe Stratham -- I'm sorry,
19 Newfields, Stratham, and Greenland.

20 Here's the route: The rail route enters
21 Portsmouth by crossing under Interstate 95 south of Exit
22 3. It then crosses under Route 33 west of Griffin Road
23 and roughly parallels Borthwick Avenue before crossing
24 over the Route 1 Bypass, and following Islington Street to

1 the downtown rail yard along the North Mill Pond. From
2 there, the rail line crosses Maplewood Avenue, Green
3 Street and Market Street at grade, then curves to the
4 west, passing under the approach to the Sarah Mildred Long
5 Bridge and I-95 bridge. Finally, the tracks pass under
6 Kearsarge Way and between Laurel Court and Spinnaker
7 Way/Osprey Landing neighborhoods before exiting the City
8 at the PSNH property. Everyone's heard of all of those
9 roads, particularly major thoroughfares; I-95, Route 33
10 and Route 1. They're vastly populated neighborhoods, and
11 also the Commercial District is right along Market Street
12 that is the subject of recent development. Portsmouth is
13 a destination location. It contributes \$77 million to the
14 Meals & Rooms Tax.

15 So, how are we affected? We are now
16 required, because of this expansion, to pay for rail
17 crossings. This isn't something from the state, this
18 isn't something that our City Council has voted to do,
19 this is something that we must do, because the tracks had
20 to be upgraded in order to carry the 16 railcars that
21 is -- and that is the whole purpose of the expansion.

22 So, we had exempted track, which was
23 sort of the lowest level of track that one can have in our
24 City. And, we also had Track 1, which is a track that is

1 of a certain grade that is allowed to go 10 miles an hour.
2 The proposal, and in your record, states that we now have
3 to upgrade -- well, Pan Am has to upgrade the track to a
4 Level 2. What does that mean for the City of Portsmouth?
5 That means that, of the seven crossings, six rail
6 crossings need to be improved. We don't have a choice.
7 And, the payment for that is shared partially by the State
8 and partially by the City. So, I believe our estimate so
9 far for only five of the crossings, not the major one from
10 Market Street, is a million dollars. And, the State is
11 going to pay a large portion of that, I believe they run
12 about 80 percent of the cost. But, at the minimum, the
13 City of Portsmouth and its taxpayers will be paying at
14 least \$100,000 to improve these rail crossings all
15 throughout the City.

16 Now, I know that my esteemed colleague,
17 Attorney McEachern, is going to argue that we can't talk
18 about the rails, because that involves federal preemption
19 and the Surface Transportation Board and the Federal Rail
20 Administration. That is not what the City is talking
21 about. The City is talking about not stopping these
22 railcars and not impeding interstate commerce, but we are
23 talking about how we are personally affected and why our
24 rights should be heard and why we should intervene. And,

1 part of that reason is, because we have to spend money.
2 Our taxpayers are going to be paying for this, no one
3 else.

4 There's also questions that need to be
5 explored. Because my understanding from the Petition that
6 the -- any export -- any LPG that leaves the site is
7 odorized by track. Any LPG that comes in by ship is
8 unodorized and is odorized on site. But what is unclear
9 is whether the rail -- the tank cars have odorized LPG
10 going in and out and weaving through our City and all of
11 its crossings.

12 It is my belief that the railcars, based
13 upon the Petition filed by SEA-3, is unodorized. What
14 does that mean? You can't detect it. So, that is a
15 concerning factor regarding health, safety, and welfare.
16 And, that's a factor that needs to be more fully explored.

17 There's also a question of the safety
18 study. There's been much discussion in the pleadings
19 before you about the request of the City of Portsmouth and
20 why that safety study has been requested and disputed.
21 One of the considerations that this council must do is to
22 figure out whether local laws provide the appropriate
23 evaluation of the site itself. And, it's the City of
24 Portsmouth's position that the local zoning and planning

1 regulations of the Town of Newington did not provide that
2 appropriate oversight. Thus, the appeal and the
3 voluminous record that no doubt you've seen and it's been
4 filed before you.

5 The problem with the safety study is
6 there seems to be some confusion on the part of the
7 Petitioner about what our safety study is about. Our
8 safety study is about the site and its environs. It is
9 about "what happens if something blows up? It's about,
10 "who's the first response?" It's about "who pays for
11 those first responders?" The City's position is that the
12 Town of Newington is small, the City of Portsmouth has
13 quick access to anything that would happen, if anything
14 did, God forbid. But our taxpayers pay for the first
15 responders that would be responsible for responding to any
16 sort of catastrophic event.

17 One of the things that the City has
18 asked for is a comprehensive safety hazard assessment.
19 And, the reason we've asked for this is because, in 1996,
20 when SEA-3 expanded, they hired an expert to do just that,
21 to be the conduit to review all of the manuals that SEA-3
22 has on its process, all the federal OSHA regulations, all
23 of the maritime requests, and opine as to those manuals,
24 and the emergency contingency plans and energy -- and

1 emergency management plans.

2 PRESIDING OFFICER SPEIDEL: So, in
3 summing up, the City of Portsmouth, on intervention, would
4 conclude?

5 MS. FERRINI: We would conclude that the
6 local laws didn't cover the safety of the site. And,
7 because of it, we would ask that (a) the City be allowed
8 to intervene, and (b) that the request for exemption be
9 denied.

10 PRESIDING OFFICER SPEIDEL: Thank you so
11 much. I would now ask SEA-3 to provide a summary of its
12 position as it relates to the City's request to allow
13 intervention in this docket.

14 MR. McEACHERN: Thank you, Mr. Chairman.
15 And, of course, I would rely on my written objection, and
16 I am just going to summarize what our position is here.

17 Our position is that intervenors have an
18 obligation to state facts demonstrating that they have a
19 substantial interest that may be affected by this
20 proceeding.

21 FROM THE FLOOR: Can you speak into the
22 microphone a little better please? We can't hear in the
23 back.

24 MR. McEACHERN: Sure.

1 FROM THE FLOOR: Thank you.

2 MR. McEACHERN: I don't want to bend
3 over, my back will go out. The only facts alleged by
4 Portsmouth pertain to the effect of increased railroad
5 traffic as it passes through the City. However, the
6 City's railroad-related interests are not before this
7 Committee, as the STB has exclusive jurisdiction over the
8 regulation of railroad operations.

9 As the Committee may be aware, an action
10 was filed with the Surface Transportation Board by SEA-3
11 against the City of Portsmouth. And, in its decision in
12 that matter, in which the STB declined to enjoin
13 Portsmouth's Superior Court appeal, the Surface
14 Transportation Board left us with this statement: "If
15 Portsmouth, or any other state or local entity, were to
16 take actions as part of a proposed safety hazard study or
17 otherwise that interfere unduly with Pan Am's common
18 carrier operations, those actions would be preempted."

19 And, that's our position with respect to
20 all of the railroad-related claims that the City has --
21 City of Portsmouth has made.

22 Now, when you strip out those specific
23 allegations of railroad-related effects, there isn't much
24 left to the Petition. What we have is speculation,

1 discussion about economics of propane exporting, sharing
2 of common transportation systems, all of these are really
3 just general interests. And, it's our position that the
4 Public Counsel can adequately represent those interests in
5 this proceeding, and that the City of Portsmouth does not
6 have a substantial interest in those issues. Thank you.

7 MR. ROTH: Mr. Chairman?

8 PRESIDING OFFICER SPEIDEL: Yes, Mr.
9 Roth.

10 MR. ROTH: Excuse me. I don't know
11 whether it makes sense for me to address the Committee on
12 the intervention of Portsmouth now or --

13 FROM THE FLOOR: Could you repeat the
14 question please?

15 MR. ROTH: I said, I don't know whether
16 it makes sense for me to address the --

17 FROM THE FLOOR: The microphone.

18 MR. ROTH: -- intervention of the City
19 of Portsmouth now or after the City of Dover has --

20 FROM THE FLOOR: I'm sorry. We can't
21 hear back here. Can he step up to the microphone?

22 PRESIDING OFFICER SPEIDEL: Yes. That
23 might be wise. Mr. Roth, if -- we're a little short on
24 mikes. Perhaps, if you sit in that general area there,

1 and when you wish to address the Committee, you should use
2 that microphone, that would be pretty good. Yup, there
3 you go.

4 FROM THE FLOOR: Thank you, Mr.
5 Chairman.

6 MR. ROTH: I apologize to everybody. It
7 was just a point of order. And, I would like to address
8 the Committee on the questions of the intervention
9 motions. And, I just was asking when you thought that
10 might be an appropriate -- when an appropriate time to do
11 that might be? Whether it's immediately after the
12 argument on each particular one or after all have been
13 argued?

14 PRESIDING OFFICER SPEIDEL: As a matter
15 of fact, Mr. Roth, I think, if it would be all right, I
16 would prefer that the Committee rule on each intervention
17 request in sequence. And, at the end, if you have any
18 positions, you know, regarding each ruling, you can make
19 them known. I think that might be a little bit more of an
20 efficient process. Unless you have -- do you have
21 specific positions on each specific intervention request?

22 MR. ROTH: Yes, I do.

23 PRESIDING OFFICER SPEIDEL: You do?

24 MR. ROTH: And, I would like to be heard

1 before the Committee makes its decision on those. And, I
2 promise I'll be brief.

3 PRESIDING OFFICER SPEIDEL: And, you're
4 standing to make a statement -- because what I'm concerned
5 about, sir, is that, you certainly have a significant role
6 as Counsel for the Public, but I was trying to have a
7 situation where we would simply have the intervenor make
8 their case, and then the objector, or the Company, as the
9 case might be, make their position known, and not
10 necessarily open it up to the floor for everyone to weigh
11 in on.

12 MR. ROTH: I am not everyone that's
13 weighing in on it. I have a statutory role in this
14 proceeding. I have all the rights of an intervenor as
15 though I've already been admitted as an intervenor. I'm a
16 party to this matter, and I have the right to be heard on
17 any matter before the Committee.

18 It would be unprecedented for me to be
19 derived the opportunity to speak on a question of
20 intervention. Especially in a case like this, where the
21 applicant is suggesting that, one, the rights of these
22 intervenors are going to be met by participation of
23 Counsel for the Public, or, in the alternative, that they
24 be grouped with Counsel for the Public.

1 So, I think I have a right to be heard
2 on these before you make a decision. And, I respectfully
3 ask for that.

4 PRESIDING OFFICER SPEIDEL: Well, in
5 light of what you described as your special role in this,
6 and certainly your office and your role has been invoked
7 already during the pendency of this proceeding, I think it
8 would be appropriate for you to make your positions known
9 on the interventions.

10 However, I would ask that the other
11 intervenors not get into a habit of making collateral
12 statements regarding each individual intervenor, where you
13 have 17 permutations of arguments regarding each
14 intervention. I will allow it for Mr. Roth. But we must
15 keep this hearing moving along.

16 So, Mr. Roth, you're in the right spot
17 to make a statement. You can go over to that tall
18 microphone. And, I would like to ask for you to make your
19 statement regarding the City of Portsmouth's Motion to
20 Intervene.

21 MR. ROTH: If I may, I just stay here.

22 PRESIDING OFFICER SPEIDEL: Okay.

23 MR. ROTH: I have no objection to the
24 intervention of the City of Portsmouth. And, I would be

1 surprised if they were not allowed to intervene. The
2 statute specifically provides for the Committee to
3 consider the views of municipal governing bodies, and I
4 think that probably includes the City of Portsmouth.

5 The point was made that, by the
6 Applicant, that "Counsel for the Public will adequately
7 represent all the interests of the City of Portsmouth."
8 And, I suspect the same argument has been made with
9 respect to the City of Dover, and I know it's been made
10 with respect to all the individual intervenors as well. I
11 think that that's not a good way to go. Counsel for the
12 Public represents the interests all of the people in the
13 state; the people who support this Project or support the
14 exemption and the people who are against it. We try to
15 find a balanced view of the Project and the purposes of
16 the statute. So, where you may have, you know, an
17 intervenor or a municipality that is dead set against it
18 and wants to fight it till the death, that's not the role
19 of Counsel for the Public. We don't -- that's not our
20 position on this, on this matter or any other. So,
21 their -- to put us together or to assume that we represent
22 the interests of all those other parties would be a
23 mistake, because that's not simply the case.

24 The point was made, and perhaps I can

1 just wrap this up in terms of all of the interventions,
2 and I really don't have any opposition to any of the
3 individuals as well. Though, I suspect it would make
4 sense, if they are to be allowed, that the individual
5 intervenors be put together in a group. That seems to be
6 a manageable way to do it. We've done that in the past.

7 But the argument about preemption that
8 was made, and I'll be very brief about it, is I think the
9 same argument that was made by the Applicant in front of
10 the Surface Transportation Board, and which was rejected
11 by them. I would strongly encourage all of you to read
12 the decision of the Surface Transportation Board. And,
13 I've actually brought copies for you of it, if you would
14 like. It's buried at the end of a long submittal that was
15 made by the Applicant on April 1st.

16 PRESIDING OFFICER SPEIDEL: Yes. We've
17 seen the document, Mr. Roth.

18 MR. ROTH: Okay. So, I encourage you to
19 read it carefully, because it essentially takes apart the
20 argument that was made by the Applicant in this case, that
21 somehow all of these things are preempted. That people
22 can't explain about the noise or they can't complain about
23 the passage of the trains. What it says is, is if this
24 body is going to make a basic land use decision, as long

1 as it doesn't affect a rail carrier, that is it's not
2 directly impacting a rail carrier then -- or partly does
3 an agent of a rail carrier, then it's not -- there's no
4 preemption. So, I think they have already lost that
5 battle at the Surface Transportation Board, and they're
6 trying to get you to win it for them again. So, I
7 respectfully suggest that the preemption issue is really
8 not that strong.

9 They make reference in their papers to
10 the CLF, the Conservation Law Foundation, decision again
11 as authority for preemption. They rely on essentially
12 *dicta* in the decision, and ignore the basic holding, when
13 the basic holding is a fairly narrow one. And, the narrow
14 holding is "the PUC cannot essentially overturn an already
15 made decision on abandonment of railroad track line."
16 There's no second guessing. So that, I think the CLF
17 decision, it's interesting, and it's nice *dicta*, but it
18 doesn't help them, and I don't think you should follow it.

19 With that, I think I've covered
20 everything I would say about any of the intervention
21 petitions, and I'll close with that. If you have any
22 questions, I'd be happy to answer them.

23 PRESIDING OFFICER SPEIDEL: Thank you,
24 Mr. Roth. I see that Mr. Ratigan has stepped up to the

1 microphone.

2 MR. RATIGAN: Mr. Chairman, I think all
3 the submissions for intervention have been made in
4 writing, and people have articulated why they want to
5 intervene. The only objector has been the Applicant. I
6 think you have all the information that you need on the
7 record. There's a lot of people here tonight who are
8 going to want to speak. And, I think, if you hear all of
9 them, there's going to -- our experience has been you lose
10 people. And, so, I think you have a record to make a
11 decision on it. I encourage you to make a decision about
12 it, than going through additional testimony, which would
13 just be surplus to what you've already received.

14 PRESIDING OFFICER SPEIDEL: Mr. Ratigan,
15 this is at my discretion, and I would prefer to have
16 something for the oral record for today's proceeding. So,
17 I thank you for your comment. I would ask that we get
18 going again, since folks have kind of stepped up to the
19 mike a couple times.

20 Having heard the record, I would
21 recommend, and I would like to make a motion for adoption
22 by this Committee, the Subcommittee, to accept the City of
23 Portsmouth's motion to intervene under the subpart II
24 basis of RSA 541-A:32, II, as it would be in the interest

1 of justice and not disrupt the orderly process that we
2 have before us. What we're doing today is most likely
3 going to be the beginning of a process, rather than the
4 conclusion of a process.

5 And, so, I would move in favor of having
6 the City of Portsmouth's intervention motion granted.

7 Does anyone second my motion?

8 MR. DUCLOS: Seconded.

9 PRESIDING OFFICER SPEIDEL: Okay. And,
10 therefore, I hereby order that the City of Portsmouth
11 Motion to Intervene is granted.

12 MS. FERRINI: Thank you.

13 PRESIDING OFFICER SPEIDEL: Now, we will
14 allow the City of Dover to make a short presentation
15 explaining why the Committee should grant the City's
16 Motion to Intervene. When the City's presentation is
17 complete, we will allow SEA-3 to address it.

18 MR. BLENKINSOP: Thank you, Mr. Chairman
19 and members of the Committee. And, in light of Attorney
20 Ratigan's comments, I will be brief. Essentially, the
21 City of Dover, Attorney Ferrini, stated the reasons why
22 the City of Portsmouth should intervene, they apply to the
23 City of Dover as well. Obviously, the railroad issue is a
24 distinct issue that doesn't necessarily apply to the City

1 of Dover. But, fundamentally, the other arguments apply.

2 And, the City of Dover, as it set forth
3 in its motion, it does have concerns about its first
4 responders. Dover is the largest city in this area. If,
5 in fact, there was some form of disaster at this site, it
6 would be the City of Dover, along with other
7 municipalities that would be called upon to respond to
8 this site. Therefore, issues of safety and safety plan
9 are of utmost importance.

10 The City of Dover is surrounded by
11 rivers; the Cocheco, the Bellamy, the Piscataqua. If
12 there was ever an environmental issue that arose, again,
13 the City of Dover would have direct impacts. And, I can
14 assure you, based on the actions of entities like EPA,
15 people actually view the City of Dover as being different
16 than other municipalities in this state, in terms of their
17 responsibility for those rivers and Great Bay. So, I
18 think we are different. We are unique.

19 So, again, I think for reasons set forth
20 in our Motion, for the reasons that Attorney Ferrini
21 stated, the City of Dover does request intervention in
22 this issue. We don't -- the issue of consolidation has
23 been raised, obviously, in the objection. We don't
24 necessarily object to having the City of Dover being

1 consolidated with the City of Portsmouth, in terms of both
2 being municipalities. I think the only municipalities
3 that have sought to intervene.

4 I don't know if Attorney Ferrini or the
5 City of Portsmouth would object to that. But, again, from
6 the City of Dover's perspective, that would be fine.

7 That's all I have. Thank you.

8 PRESIDING OFFICER SPEIDEL: Thank you.
9 Okay. We'd like to hear from SEA-3 please, regarding
10 their position on the City of Dover's Motion to Intervene.

11 MR. McEACHERN: Thank you, Mr. Chairman.
12 Our position on the City of Dover's Petition to Intervene
13 is that they have alleged no specific facts whatsoever in
14 their motion. It's purely based on speculation. And, I
15 also question whether or not a proper vote has been taken
16 by the City of Dover to authorize it. Portsmouth, in
17 their Petition, alleged that the Council voted to
18 authorize the action. There's no similar allegation.
19 And, we certainly would like to hear from Dover City
20 Attorney on that, if that action was taken or not.

21 And, at the very most, if they are
22 allowed in the case, it should be -- they should be
23 consolidated with Portsmouth. They have expressed no view
24 on the matter that's any different than what Portsmouth

1 has expressed. Thank you.

2 PRESIDING OFFICER SPEIDEL: Does the
3 City of Dover's attorney present here have any response to
4 this question regarding its authorization by the City
5 Council?

6 MR. BLENKINSOP: Yes. The City Council
7 was informed of the intent to file this, and didn't
8 object.

9 UNIDENTIFIED SPEAKER: Was there a vote?

10 MR. BLENKINSOP: No. There's not been a
11 vote.

12 PRESIDING OFFICER SPEIDEL: Interesting.
13 Okay. Thank you for that additional explanation.

14 Well, we have a little bit of
15 housekeeping to take care of. And, for starters, I would
16 like to have a full vote of the Committee regarding the --
17 essentially, the Motion to Intervene by the City of
18 Portsmouth, just to be sure, for our oral record, to have
19 it clarified. And, so, if we could all vote -- do we vote
20 by raising our hands, Mr. Iacopino?

21 MR. IACOPINO: That would be the easiest
22 way.

23 PRESIDING OFFICER SPEIDEL: Okay. All
24 those in favor of granting the motion to the City of

1 Portsmouth raise their hands please?

2 (Show of hands by members.)

3 PRESIDING OFFICER SPEIDEL: All right.

4 The vote's unanimous. Very good. Now, regarding the
5 Motion to Intervene of the City of Dover. As the
6 Chairman, I've heard that the attorney of the City of
7 Dover says that he essentially has authorization, in his
8 view, from the City of Dover to engage in this activity
9 tonight. And, I would take him at his word, because he is
10 an attorney, he's making representation and appearance
11 under the color of law and the representation of the City
12 of Dover. If that changes somehow, I would imagine that
13 there would be a withdrawal of that appearance at some
14 later date and we would hear about that very soon.

15 On that basis, I would make a motion
16 that we, on the basis of the record, written and oral,
17 that we grant the Motion to Intervene by the City of
18 Dover, under the Part 2 of RSA 541-A:32, II.

19 And, could I have a second of that
20 motion?

21 MR. HAWK: I'll second.

22 PRESIDING OFFICER SPEIDEL: Okay. May
23 we take a vote on the Motion to Intervene by the City of
24 Dover to approve?

1 (Show of hands by members.)

2 PRESIDING OFFICER SPEIDEL: It's
3 unanimous. Thank you. The motion is approved.

4 Now, then, we have a group of individual
5 intervenors, not all of them are here. I suppose one
6 request that I could make is for each of them to come up
7 in turn and make a short position -- excuse me?

8 MR. DiPENTIMA: Mr. Chairman, in the
9 exercise of time, we did file an objection to the SEA-3
10 motion to have our individual petitions to intervene.

11 PRESIDING OFFICER SPEIDEL: And, your
12 name, sir, just for the record.

13 MR. DiPENTIMA: I'm sorry. Richard
14 DiPentima, from Portsmouth.

15 PRESIDING OFFICER SPEIDEL: Yes.

16 MR. DiPENTIMA: And, we filed this
17 motion objecting to that, and we defined it as a "Proposed
18 Intervenors' Joint and Consolidated Objection to the
19 Motion Filed by SEA-3 to Deny Intervention Status" for the
20 individuals that had filed individually, the four parties
21 that had filed individual motions. And, that was
22 submitted on Monday, and it was received on May 6th by the
23 Public Utilities Commission and posted on the site and the
24 docket today.

1 So, I would be happy to speak for all
2 four of the potential intervenors under one, and with the
3 motion that we submitted to the Committee.

4 PRESIDING OFFICER SPEIDEL: You know, in
5 light of this, sir, would your group of four homeowners,
6 so to speak, would you agree to be consolidated as a
7 single intervenor group?

8 MR. DiPENTIMA: Yes, we will.

9 PRESIDING OFFICER SPEIDEL: Okay. Well,
10 I suppose you can speak for that group in that instance,
11 and then we would have a response from SEA-3.

12 MR. DiPENTIMA: I think, you know,
13 that's fine. And, SEA-3, obviously, did respond to that,
14 because they filed one motion to deny our intervention and
15 listed all four of us in that one motion. So, that's why
16 we consolidated our motion and objection.

17 PRESIDING OFFICER SPEIDEL: Understood.
18 So, would you like to make just a quick statement of why
19 you believe intervention is warranted?

20 MS. DiPENTIMA: Well, I will make a
21 statement. I don't know how quick it will be, because I'm
22 representing now four different individuals. So, I'd like
23 to speak, give me a few minutes to address the issues, so
24 we can get it covered adequately.

1 PRESIDING OFFICER SPEIDEL: Sure.

2 MR. DiPENTIMA: And, I will use most of
3 what's on my motion, and maybe a few other comments. But,
4 basically, I'm saying that the Proposed Intervenors do
5 have substantial interests that are directly related to
6 the expansion of the SEA-3 site in Newington. New
7 Hampshire is totally -- Newington, New Hampshire, excuse
8 me. And, these interests are totally outside of the
9 railroad operations. We are well aware that the
10 railroad-related interest influence are not before the
11 Committee.

12 We have two arguments, basically -- or,
13 four arguments. Number one, the SEA-3 expansion of their
14 rail terminals for the purpose of unloading rail tank cars
15 will expand from three to eight, a 166 percent increase.
16 SEA-3 plans to unload almost 5,000 railcars each year,
17 carrying 33,000 gallons of unodorized liquid petroleum
18 gas. This is a substantial increase over the recent
19 history experienced by SEA-3.

20 In the last year that we have records
21 for, 2013, they unloaded 42 tank cars; in 2013, they
22 unloaded zero tank cars; in 2012, they unloaded 20 tank
23 cars; in 2010, 25; and, in 2000 -- excuse me, zero in
24 2010; and 25 in 2009. The proposed increase in railcars

1 to be unloaded represent a dramatic increase, and
2 represents a level never before experienced by SEA-3. As
3 such, the possibility of a serious accident resulting from
4 either mechanical failure or human error, or both,
5 increases proportionately. In the event of a serious
6 event involving a propane tank car or other equipment at
7 SEA-3, the Portsmouth Fire, Ambulance, and Police would be
8 called upon to assist the very small Newington emergency
9 response capabilities. As Portsmouth taxpayers, we have a
10 substantial interest in the safety and the financial
11 burden placed on our emergency response personnel and
12 equipment. Such direct financial costs and costs that
13 might be incurred as a result of injury or death to a
14 Portsmouth emergency responder are of primary concern to
15 us as individual taxpayers and residents of Portsmouth.

16 And, these evens are not hypothetical.
17 There was an event that happened in 2011 in Lincoln,
18 California. A fire -- a tank car was being unloaded at a
19 facility similar to that of SEA-3, caused an evacuation of
20 4,800 homes and businesses in a one-mile radius. The fire
21 chief stated "Our fear is that not only does the railcar
22 explode, but so do the tanks around it, and with it
23 one-half million gallons of propane in that field." He
24 went on to describe the possible explosion as being "like

1 a low-level thermonuclear bomb". And, that was not from
2 an hysterical resident, that was from the Fire Chief of
3 Lincoln, California.

4 A catastrophic event at SEA-3, including
5 a Boiling Liquid Expansion Vapor Explosion, or BLEVE,
6 could result in serious damage to the environment,
7 including the Piscataqua River which flows into
8 Portsmouth. It could also result in damage to common
9 roadways shared by Newington and Portsmouth, such as
10 Woodbury Avenue and the Spaulding Turnpike. It is
11 important to note that the SEA-3 sits close to the
12 Piscataqua River, and very close to other major serious
13 sources of hazardous materials.

14 And, I do have a map. And, I would be
15 happy to point it out. With the one-mile radius, if there
16 was a tank car on fire at SEA-3, the Department of
17 Transportation would require a one-mile evacuation in all
18 directions from the SEA-3 site. And, you can see from the
19 satellite photo, that includes a large number of issues in
20 Portsmouth and mostly in Newington, including the
21 Newington Mall, and other malls, and some really
22 significant issues that need to be addressed.

23 The Sprague Oil facility is adjacent to
24 SEA-3. And, in the event of a BLEVE, or a tank car

1 explosion, this facility could be damaged, causing a
2 catastrophic event and severe pollution to enter the
3 Piscataqua River. Such an event would have a severe
4 negative impact on our quality of life, our environment,
5 and our rights and privileges to the use of these
6 resources for recreational purposes, and will have a
7 devastating impact on our City's economy, as well as our
8 own property value.

9 The City of Portsmouth, as well as the
10 proposed intervenors, have requested comprehensive
11 independent safety, security and environmental impact
12 studies be conducted as part of the SEA-3 expansion
13 proposal. These requests have been denied. The only way
14 to determine the real potential effects of a catastrophic
15 event at the SEA-3 facility is to conduct such studies.
16 In the absence of such studies, the general public could
17 be placed at undue risk in the event of such an accident
18 at SEA-3. The evacuation zone, as instituted by the
19 Department of Transportation, that I already mentioned, is
20 one mile. In the case of the SEA-3 facility, this would
21 include major industrial sites, shopping malls, two energy
22 producing plants, highways, and a number of small and
23 large businesses. The requested plans would assess the
24 local communities' emergency response capacity to

1 effectively manage a catastrophic event at SEA-3, as well
2 as review evacuation plans, and other related measures to
3 protect the public. The significant gap in available
4 information and planning is of substantial interest and
5 concern to us as individuals, as well as the general
6 public and adjacent communities.

7 And, lastly, although the Counsel for
8 the Public will represent the interest of the general
9 public, this does not prevent or prohibit other members of
10 the public who may be affected by the proceedings that
11 have a special interest to also intervene on their behalf.
12 Thank you.

13 PRESIDING OFFICER SPEIDEL: Okay. Thank
14 you very much.

15 MR. DiPENTIMA: And, I could give you
16 some documentation?

17 PRESIDING OFFICER SPEIDEL: If you would
18 like to, you may approach Mr. Patnaude and the Committee,
19 yes. And, be sure to give a copy to Mr. Iacopino as well,
20 and to Mr. Roth, and to SEA-3, if you have enough. I
21 would presume that you do, you have quite a bit.

22 (Mr. DiPentima distributing documents.)

23 PRESIDING OFFICER SPEIDEL: The
24 Committee itself hasn't received copies of your -- the

1 Committee itself hasn't received copies of your
2 presentation, sir, Mr. DiPentima.

3 (Off the record.)

4 PRESIDING OFFICER SPEIDEL: Okay. Now
5 then, getting back on the record. Does SEA-3 have any
6 response for Mr. DiPentima's discussion?

7 MR. McEACHERN: Yes, Mr. Chairman. We
8 do. Again, the proposed intervenors have not alleged any
9 specific facts. When we're talking about intervening in a
10 proceeding, we expect that the proposed intervenor is
11 going to have some stake, some personal stake in it. And,
12 they said "well, this is not about the railroad." This is
13 all about the railroad.

14 When we went through the Planning Board
15 process for seven months before the Town of Newington,
16 these intervenors wanted to reroute the railroad and have
17 it go across Pease, and they would have been fine with
18 that, but it didn't happen. And, what they're here to do
19 is to stop this Project because of the railroad. And,
20 now, they're looking -- you know, they're saying "Well, we
21 have no issue with the railroad. It's not about the
22 railroad." They have not alleged any specific interest of
23 theirs in this site. And, what they're doing is voicing
24 general interests, and those general interests are best

1 represented by Public Counsel, or the City of Portsmouth.
2 I would propose that these individual intervenors be
3 consolidated with the City of Portsmouth, where they live,
4 and let the City represent their interests. Thank you.

5 PRESIDING OFFICER SPEIDEL: Thank you.
6 I would ask if we have received word whether Ms. Byergo
7 has arrived at the meeting today, the late-filed
8 intervenor? Is she here?

9 Would you mind please approaching the
10 microphone, and just briefly explaining why you have filed
11 for intervention, and why your intervention is warranted.

12 MS. BYERGO: Excuse me, why I didn't
13 file or --

14 PRESIDING OFFICER SPEIDEL: Why you did
15 file for intervention and why it's warranted.

16 MS. BYERGO: Thank you very much. My
17 name is Laura Byergo. And, I am a resident of Greenland.
18 I would like very much to make two points. One is that
19 this company, SEA-3, has presented its case as being in
20 the public interest, because they have said repeatedly
21 that they are a reliable supplier of propane to the New
22 England market. Nonetheless, for at least 2012, 2013, and
23 2014, they were not supplying the New England market. In
24 2013, there was an emergency, and there was a declaration

1 of an emergency in prices. It's one of the documents
2 that's on your site. That emergency was not caused by
3 something local, it was caused by a change in plans out in
4 the Midwest. SEA-3 said "Oh, prices have changed enough,
5 we can now afford to bring in propane, we can afford to
6 import propane and meet the local demand." That was only
7 that particular time that particular year. Last year, one
8 of the worst years we had, there was no need for SEA-3's
9 propane. They were not supplying the market. They have
10 not made this change in their -- in their facility to be
11 able to supply the market. And, that's point one.

12 PRESIDING OFFICER SPEIDEL: And, that
13 relates to your intervention how?

14 MS. BYERGO: It does relate to my
15 intervention, because it relates to whether SEA-3 is
16 addressing the public interest and can position itself
17 that way, or whether the public interest, in the potential
18 effects to the environment, to the Piscataqua River, to
19 the Great Bay estuary, by having this facility and by
20 having a massive expansion of the energy industry in this
21 area, supplied by the railroad, but also on the border of
22 the Piscataqua River, it is a public interest.

23 So, point one was that we're not
24 dependent on SEA-3. We haven't been, and we don't have to

1 be.

2 Point two is that the federal government
3 and the towns in this region have spent millions of
4 dollars to try and protect the estuary of the Great Bay
5 and to protect the environment in the Piscataqua River.
6 There are hundreds and thousands of jobs and individuals,
7 and there are many dozen of companies that are dependent
8 on the health of that estuary and of that river. If we
9 have a -- and I and my property values, and my standard of
10 living in Greenland, are also potentially affected by what
11 happens with Great Bay. Therefore, and I don't believe
12 that I'm the only individual that feels that way. That
13 this stands to dramatically change the way our local
14 region is structured, if we let this go through.

15 And, the last point on that is, SEA-3 is
16 aiming at exporting this. That export market is a
17 potentially infinite market, if you're exporting to the
18 international market, not just to the regional market.
19 So, their potential for growth is enormous, and it could
20 affect all of us.

21 And, that -- those are my two points.
22 Thank you very much.

23 PRESIDING OFFICER SPEIDEL: Just one
24 more thing, Ms. Byergo. Would you be willing to be

1 consolidated, if your intervention were to be granted with
2 the Portsmouth group as a so-called "homeowner" or "public
3 citizen" intervenor?

4 MS. BYERGO: No, I would not. Thank you
5 very much. Because I am from Greenland, I am not from
6 Portsmouth. And, because I think that the individual
7 security interest, safety and security interests are
8 paramount for those intervenors. And, I would like to be
9 able to continue to speak to the environmental issues as a
10 resident of Greenland.

11 PRESIDING OFFICER SPEIDEL: Thank you.

12 MS. BYERGO: Thank you.

13 PRESIDING OFFICER SPEIDEL: Does SEA-3,
14 Mr. McEachern, do you have any response to Ms. Byergo's
15 request for intervention?

16 MR. McEACHERN: Mr. Chairman, SEA-3
17 opposes it. I believe it was late-filed, which is why we
18 didn't file a formal written objection to it. But I'd
19 like to orally object to that right now. And, at the risk
20 of sounding like a parrot, I don't believe that Ms. Byergo
21 alleged any specific facts that pertain to her, that show
22 that there's a substantial impact to her in this matter.
23 And, for that reason, we object to her intervention.

24 PRESIDING OFFICER SPEIDEL: Thank you.

1 I would invite Patricia Ford and Robert Gibbons, or one or
2 both, to speak in favor of their late-filed interventions,
3 if they might.

4 MS. FORD: Pat Ford, of Portsmouth. We
5 have concerns regarding the correct planning, the
6 construction, the oversight and safety of a project of
7 this magnitude. Our home is in a condo development. The
8 railroad tracks run very close to where we live. There's
9 been derailments. We've had a locomotive running for two
10 to three days. It was in the winter. We had a lot of
11 snow. The railroad was not able to respond. And, we had
12 a locomotive belching, smoke, noise. This we feel is a
13 hazard. The train that derailed was not of hazardous
14 material. But the point is this could happen, it has
15 happened. And, we are very concerned about the safety,
16 for ourselves, our neighbors, and our community.

17 MR. GIBBONS: Good evening. Robert
18 Gibbons, 135 Spinnaker Way, in Portsmouth. And, I'd like
19 to be granted intervention status based on the idea that,
20 in 1995, when SEA-3 was granted an exemption to the SEC
21 examination and the study, mistakes were made during the
22 construction phase of that Project, which resulted in one
23 of their storage tanks straddling the two industrial zones
24 in Newington, one of which does not allow for hazardous

1 materials to be stored. And, so, the Company has been
2 working and operating in noncompliance for the last 20
3 years. This alone, I think, is enough reason for the SEC
4 to oversee the newest phase, if it's granted, and make
5 sure that whatever happens on that site is done correctly,
6 legally, and in the best interest of the public.

7 There are many safety concerns at risk
8 here. And, I think the general public should have all the
9 assurances possible that a safe construction is going to
10 take place, if this is going to be granted. Thank you.

11 PRESIDING OFFICER SPEIDEL: Now,
12 Mr. Gibbons, before you go, and I don't know necessarily
13 if you want to speak for Ms. Ford, she could also speak
14 for herself, would you two be willing, if your
15 intervention would be granted, to be consolidated with the
16 group of your Portsmouth neighbors, that has sort of
17 agreed to its own consolidation?

18 MR. GIBBONS: As long as my statements
19 and my wife's statements can be included in the intervenor
20 statements, then that would be fine.

21 PRESIDING OFFICER SPEIDEL: Well, it's
22 something that you would be involved in as a group, of
23 course. And, you're always able, as a member of the
24 public, to file written statements on the record for any

1 case under review. So, I don't know if that adequately
2 answers your question?

3 MR. GIBBONS: I think, in that event,
4 that would be acceptable.

5 PRESIDING OFFICER SPEIDEL: Thank you
6 very much, Mr. Gibbons.

7 MR. GIBBONS: You're welcome.

8 PRESIDING OFFICER SPEIDEL: And, Mr.
9 McEachern, does SEA-3 have a response regarding Ms. Ford
10 and Ms. Gibbons's joint petition?

11 MR. McEACHERN: Yes, we do,
12 Mr. Chairman. We object to their Motion to Intervene for
13 the reasons that I've previously stated here tonight. I
14 would say, you know, the only reasons they have raised in
15 their motion are railroad-related. And, it's our position
16 that the Committee does not have any jurisdiction to
17 regulate railroad operations.

18 PRESIDING OFFICER SPEIDEL: Thank you.
19 Now, regarding this group of homeowners in the Portsmouth
20 and Greenland areas, we have heard quite a bit of
21 discussion, not only of both railroad, not strictly
22 speaking, but general concern about property values, the
23 ecology, other questions that seem to be related to the
24 interests, not only as owners of property in these areas,

1 but also as citizens of New Hampshire. And, historically,
2 the Site Evaluation Committee has taken a liberal view on
3 interventions by members of the public who are concerned
4 about a given petition to enable that citizen
5 participation and to enable their voices to be heard in an
6 organized fashion.

7 And, therefore, I would make the
8 following recommendation: That the DiPentimas, the
9 Campbells, the Nantias, the Sutherlands, and Ms. Ford and
10 Mr. Gibbons be granted the right -- I move to have them
11 granted the right of intervention under subpart II of RSA
12 541-A:32, II, and that they be consolidated as a single
13 Portsmouth Citizens Group or Portsmouth Homeowners Group,
14 they can select the name that they would like.

15 And, on the basis of that motion, I
16 would ask that it be seconded?

17 MR. DUCLOS: Seconded.

18 PRESIDING OFFICER SPEIDEL: I say we
19 take a vote. In favor of the Portsmouth Homeowners
20 Group's Motion for Intervention, all those in favor?

21 (Show of hands by members.)

22 PRESIDING OFFICER SPEIDEL: Thank you.
23 It is unanimous. Regarding Ms. Byergo's Motion to
24 Intervene as a resident of the Town of Greenland,

1 similarly, I think her concerns revolve around questions
2 of the ecology. And, I understand that there's a
3 two-phased aspect to the review that is at hand. We have
4 the subcommittee review regarding the exemption request,
5 and then subsequent potential, and I reiterate
6 "potential", full Site Evaluation Committee review. And,
7 there are different statutory aspects and requirements of
8 each phase of the review.

9 However, she has indicated an interest
10 on the basis of economics and ecology for her
11 participation in this phase of the review proceeding
12 before the Subcommittee. And, similarly, I believe that
13 her participation would be warranted under subpart 2, as
14 it would not disrupt the proceeding and would be in the
15 interest of justice and would be reasonable as an example
16 of citizen's participation.

17 And, therefore, I would move that we
18 also accept her individual Motion to Intervene under that
19 subpart. And, I move.

20 MR. HAWK: Second.

21 PRESIDING OFFICER SPEIDEL: Thank you.

22 And, all those in favor of her intervention being
23 approved, please raise their hand?

24 (Show of hands by members.)

1 PRESIDING OFFICER SPEIDEL: It is
2 unanimous. Therefore, Ms. Byergo's intervention, in her
3 personal capacity, is approved.

4 Therefore, Mr. Iacopino, I believe that
5 all of the intervention business has been taken care of
6 thus far. It might be an opportune time for a five-minute
7 break, five, six, seven-minute break, so that we could
8 have SEA-3's presentation begin. And, then, we'll have
9 opportunities for public comment. Thank you.

10 (Recess taken at 7:09 p.m. and the
11 hearing resumed at 7:20 p.m.)

12 PRESIDING OFFICER SPEIDEL: All right.
13 Ladies and gentlemen, we are now ready for the
14 presentation phase by the Applicant, SEA-3. The members
15 of the Committee are sitting here not to be disrespectful
16 or to show any favoritism to one side or the other. But
17 for the simple reason that we are human beings and our
18 necks can't swivel around like an owl. So, we're going to
19 be looking at the presentation for this vantage point.
20 And, after the conclusion of the presentation by SEA-3, we
21 would have the public comment and question session. We've
22 received, I think, all the cards from the members of the
23 public here today, and we'll move through them, and then
24 we'll have the public statements.

1 I think, yes, those are the folks that
2 will take those. Thank you. So, I'll take my seat, and I
3 invite the SEA-3 representatives to make their
4 presentation.

5 MR. McEACHERN: Thank you, Mr. Chairman.
6 Alex McEachern back again. Since 1975, SEA-3 has owned
7 and operated a propane storage and distribution facility
8 at 190 Shattuck Way, in the Town of Newington. Over this
9 period, the Facility has received LPG by ship, via the
10 Piscataqua River, and by rail, via the Newington Branch
11 Rail Line, which is owned and operated by Pan Am.

12 Okay. My trustee sidekick, Jake, is
13 going to operate the laser and point out items as we go
14 through here. So, Jake, if you could show the location of
15 the Facility? Okay. And, the Rail Line? Okay. Thank
16 you very much. The Facility is situated on two separately
17 deeded parcels that are separated from each other by the
18 Rail Line.

19 The western parcel consists of 7.02
20 acres and lies partly within Newington's General
21 Industrial Zoning District and partly within the
22 Waterfront Industrial and Commercial Zoning District. The
23 Upper Lot contains a main building, housing offices,
24 control rooms, the refrigeration plant and boiler; it has

1 a truck loading rack with five loading stations, each
2 having the capacity to load one truck at a time; a 400,000
3 barrel refrigerated storage tank and a 160,000 barrel
4 refrigerated storage tank; it also has a smaller 60,000
5 gallon storage tank that feeds the truck loading rack.

6 The eastern-most parcel, or the "Lower
7 Lot", consists of 3.92 acres and is located entirely
8 within Newington's Waterfront Industrial and Commercial
9 Zoning District with frontage on the Piscataqua River.
10 The Lower Lot contains a cleared, fenced area with a
11 hard-packed gravel surface adjacent to the Rail Line.
12 And, it contains a small storage building; a rail spur
13 with three rail berths and associated improvements for the
14 loading and unloading of LPG, with each rail berth having
15 the ability to handle two cars at a time, for a total
16 capacity of six cars; and there's also a flare located on
17 the Lower Lot.

18 As originally constructed, the Facility
19 contained just the larger 400,000 barrel storage tank.
20 And, in 1996, SEA-3 constructed the second smaller 160,000
21 barrel storage tank, giving it a total refrigerated
22 storage capacity of 560,000 barrels. The second tank was
23 reviewed by the Rockingham Planning Commission, received
24 site plan approval from the Town of Newington and

1 Exemption from the approval and certificate provisions of
2 RSA 162-H from the Committee.

3 In its present configuration, this
4 Facility is one of just two refrigerated storage
5 facilities for propane in New England. And, it's the only
6 one with rail access. Historically, the Facility has
7 distributed up to 170 million gallons of LPG per year; the
8 vast majority of which has been received from
9 approximately 12 to 13 ships per year that dock at the
10 neighboring Sprague terminal on the Piscataqua River to
11 unload. The product is unloaded at the waterfront, and it
12 goes through an existing pipeline across the Sprague
13 property, onto the SEA-3 property, and up to the two
14 primary refrigerated storage tanks.

15 LPG that arrives by ship has already
16 been refrigerated to negative 42 degrees Fahrenheit and is
17 pumped from the ship and transported, as mentioned,
18 through the pipeline up to the primary storage tanks. LPG
19 that arrives by railcar on the Lower Lot is at ambient
20 temperature when it arrives. The ambient temperature LPG
21 is offloaded from the railcars and sent via pipeline to
22 the Upper Lot where it's sent to the 60,000 gallon storage
23 tank for immediate distribution via the truck rack. When
24 ready for distribution, the refrigerated LPG is piped out

1 of the storage tanks over to the main building where it's
2 heated, and then it's piped to the truck rack where it's
3 odorized for distribution.

4 During its existence, the Facility has
5 distributed up to 40 percent of the propane consumed in
6 the New England market. The Facility is staffed 24 hours
7 a day, 365 days a year by a staff of 16 employees. These
8 employees receive extensive training in both operations
9 and safety, and utilize automated and manual equipment and
10 technology to operate the Facility and insure its
11 security. During the 40 years that the Facility has been
12 in operation, it has had no explosions, fires, significant
13 injuries or major environmental incidents.

14 As one of only two primary propane
15 storage facilities in New England, and the only one with
16 rail access, SEA-3's Facility plays a critical role in
17 both New Hampshire's and New England's energy market.
18 According to the U.S. Census Bureau's 2009 American
19 Community Survey over 67,000 New Hampshire households use
20 LPG as their primary heat source. This comes to over 13
21 percent of the state's homes. In 2009, New Hampshire
22 consumed 126,726,000 gallons of propane. Approximately
23 70.5 percent of this consumption was for residential use,
24 with the balance going to commercial and industrial uses.

1 Propane is the third most popular household heating fuel
2 in New Hampshire behind fuel oil and utility gas.

3 The presence of a primary storage tank
4 facility in New Hampshire allows propane to be stockpiled
5 and released during peak-demand, cold-weather months.
6 This stabilizes the local propane market and secures a
7 critical energy supply for the State and the region.

8 Recent changes in the world energy
9 markets have increased the importance of SEA-3's Facility
10 to the State and region. For decades, New England's
11 propane demand has been met from international sources.
12 As a result, New England's propane distribution network is
13 based on the receipt of propane by ship from ocean-going
14 vessels.

15 In recent years, international prices
16 have gone up, while at the same time domestic prices have
17 come down, as domestic propane production has
18 significantly increased due to new drilling -- new
19 drilling technologies. Consequently, the price of
20 domestic propane is now significantly cheaper than
21 international propane. Due to this price spread reversal,
22 this standing business model of importing foreign propane
23 to New England by ship is generally no longer viable.

24 The effect is demonstrated by the number

1 of truck transports from SEA-3's Facility on an annual
2 basis for the period 2009 through 2014. As you can see,
3 there's a steady downward trend from 2009 until we come to
4 2014. During the Winter of 2013-14, domestic propane
5 prices spiked due to an unusually cold winter in the
6 Eastern U.S. and pipeline supply issues in the Midwest.
7 At the same time, Europe was experiencing a much warmer
8 winter, which freed up international supplies and lowered
9 their prices. As a result of these events, SEA-3 was able
10 to bring in several ships in early 2014, which alleviated
11 local shortages and stabilized propane prices. This is
12 reflected in the 2014 truck count, with most of those
13 truck trips having taken place in the first quarter of the
14 year. While there may be some exceptions going forward,
15 the new reality is that international propane is going to
16 be priced out of the New England market.

17 Because of this, New England's two
18 primary storage tank facilities, built to receive
19 international propane via ship, are now drastically
20 underutilized. As a result, the region has been forced to
21 rely on rail and truck shipments from other regions of the
22 U.S. to satisfy local demand on an as-needed basis. As a
23 result, 75 percent of all LPG now comes into New England
24 by rail from various production facilities throughout the

1 U.S. and Canada, with the remaining LPG being trucked into
2 New England, primarily from the terminus of the TEPPCO
3 pipeline in Selkirk, New York.

4 The effect of these market changes has
5 been to deny New Hampshire and the New England region the
6 ability to stockpile propane. Without this ability, New
7 Hampshire's retail propane distributors face shortages
8 during the critical winter heating season due to supply
9 and logistical bottlenecks as they all compete for the
10 delivery of product at the same peak-demand periods.

11 During periods of short supply, propane prices spike
12 upward. Higher propane prices allow suppliers of other
13 fuels to increase their prices as well. As a direct
14 result of these conditions, the New Hampshire Department
15 of Safety declared an emergency on December 27th, 2013,
16 allowing interstate truck drivers carrying propane to
17 exceed the hours of service regulations set forth in the
18 Federal Motor Carrier Regulations. In declaring this
19 emergency, the Department of Safety specifically cited the
20 shortage of propane at SEA-3's Facility. The conditions
21 that created this propane shortage will remain until the
22 Facility's rail capacity is increased.

23 The Facility's current rail capacity is
24 too small to meet market demand. With just three

1 unloading berths, the Facility can only receive six
2 railcars per day, amounting to 198,000 gallons, enough to
3 fill just 18 tank trucks per day. So, the table here
4 illustrates the amounts involved in both gallons and
5 barrels.

6 Based on its current rail capacity of
7 six cars per day, it would take SEA-3 119 receiving days
8 to fill its primary storage tanks, assuming no
9 distribution of product. The current offload capacity is
10 inadequate to build and maintain a stockpile through the
11 critical winter heating season. In order for New
12 Hampshire to benefit from the stabilizing effect of
13 SEA-3's primary storage tank facility and to help avoid
14 future fuel emergencies, SEA-3 must increase its rail
15 offloading capacity.

16 SEA-3's plan calls for the construction
17 of five new rail unloading berths on land to be leased
18 from Pan Am. It's located between the Rail Line and the
19 existing unloading berths. Show with the laser, go back.
20 And, Jake, yes, I realize the lighting here is a little
21 bright, and we're not getting a good view.

22 UNIDENTIFIED SPEAKER: Just for a quick
23 second. There.

24 (Lights were turned down for viewing.)

1 PRESIDING OFFICER SPEIDEL: Now can you
2 read, sir?

3 MR. McEACHERN: I can read. Yes, this
4 works fine.

5 PRESIDING OFFICER SPEIDEL: Okay.

6 MR. McEACHERN: Okay. Jake, if you want
7 to flip to the next slide.

8 This is a view of the Lower Lot,
9 taking -- taken from the north end, looking across to the
10 south end of the lot. You can see the flare, the existing
11 flare, on the right-hand side of the photo. As you can
12 see, it's an existing cleared area, the surface is
13 hard-packed gravel. There's an existing shed in the back
14 corner of the lot that would be taken down as part of this
15 Project.

16 Next photo, Jake. This is a view also
17 taken from the north end of the lot, looking now across,
18 you can see the Georgia-Pacific facility in the
19 background. You can see, on the right-hand side, the
20 existing rail unloading berths, with the assemblies or the
21 rigs for unloading the railcars. And, this is generally
22 the area where the three 90,000-gallon distribution tanks
23 will be going.

24 Next photo, please. And, this is a

1 better shot of the existing rail unloading berths. You
2 can see where the train tracks come in at the far end of
3 the lot, and the trains come in, they pull in, they're on
4 either side of the unloading rack. And, the pipeline is
5 right there, it receives the product, and takes it to the
6 Upper Lot.

7 And, this is a photo from the Upper Lot,
8 looking towards the Piscataqua River. You can see the
9 pipe rack as it, yes, as it comes up from the river. And,
10 it goes over and serves the two primary refrigerated
11 storage tanks, and then travels back up towards the main
12 building and the truck loading rack area.

13 And, this is a view from the water,
14 taken from the land, obviously. Looking back towards the
15 site, as you can see, there's an existing stand of trees
16 that screens the area of the proposed improvements from
17 the water, so they're not visible. What you see in the
18 foreground, that silver pipe, is a relic from the days of
19 Pease Air Force Base, when they used to unload jet fuel at
20 the end of the dock there. And, right next to SEA-3, on
21 the north side, is the jet fuel tank farm, where the tanks
22 are all buried underground, so they're not visible.

23 Next slide. Okay. What we have on the
24 screen now is a sheet from the site plan. SEA-3's plan

1 calls for the construction of five new rail unloaded
2 berths, on land to be leased from Pan Am. It's located
3 between the Rail Line and the existing unloading berths.
4 In addition to the new rail berths, there will be
5 associated improvements constructed on SEA-3's Lower Lot,
6 to be located within the existing cleared, graveled and
7 fenced-in area.

8 The five new rail berths will be
9 enclosed within SEA-3's security fencing. The Lower Lot
10 improvements consist of compressors and pumps, three
11 90,000 gallon aboveground storage tanks, two drying
12 towers, a dryer and heater, a mechanical building housing
13 refrigeration equipment and electric motors, a condenser
14 cooling unit and piping joining these components to the
15 existing pipe rack assembly.

16 As proposed, the compressors will be
17 used to create a pressure differential between the
18 railcars and the storage tanks causing the propane to
19 leave the railcars and flow into the storage tanks. From
20 there, the propane can either be pumped direct to the
21 60,000 gallon storage tank on the Upper Lot for immediate
22 distribution or refrigerated for long-term storage.

23 Propane that will be refrigerated will be pumped from the
24 90,000 gallon storage tanks through one of the two drying

1 towers.

2 The drying towers are lined with a
3 drying agent, calcium oxide, which absorbs the moisture
4 from the propane. As one tower is in use, the other tower
5 is dried out by the dryer and heater. As the dried
6 propane exits the drying tower, it's piped into the
7 mechanical building where it is refrigerated to negative
8 44 degrees Fahrenheit and then piped to the primary
9 storage tanks on the Upper Lot for storage.

10 The refrigeration equipment will be
11 powered by electric motors contained inside the machinery
12 building. The refrigeration equipment utilizes propylene
13 as the refrigerating agent. After being used to chill the
14 propane, the propylene is condensed back into a liquid in
15 the condenser cooling unit and is recycled back through
16 the refrigeration process.

17 SEA-3's Facility, we're going to talk
18 about the benefits of these proposed improvements. And,
19 this Facility currently employs 16 full-time persons.
20 While the Facility has been largely dormant due to market
21 changes, SEA-3 has retained all of its employees who are
22 highly trained and skilled in the operation of the
23 Facility. If the requested improvements are not approved,
24 SEA-3 will need to assess the continued viability of the

1 Facility and the need to maintain its workforce.

2 If approved, SEA-3 will make a major
3 economic investment in the Facility. The investment will
4 benefit the local and state economy and will also increase
5 the Town of Newington's property tax basis.

6 If approved, New Hampshire will once
7 again enjoy the benefit of having a fully utilized primary
8 storage tank facility for propane. When operating to
9 capacity, SEA-3's Facility will help to prevent fuel
10 emergencies by providing a critical propane stockpile that
11 that will stabilize markets during periods of peak-demand,
12 benefiting the 67,000 plus households in this state that
13 rely on propane for their heat, as well as businesses that
14 use propane.

15 Propane is among the most clean-burning
16 of all fossil fuels, and is an approved, clean fuel under
17 both the 1990 Clean Air Act and the National Energy Policy
18 Act of 1992. Propane itself is nontoxic and it is not
19 harmful to soil or water. If liquid propane leaks, it
20 will vaporize and dissipate into the air. As a result of
21 its properties, the placement of propane tanks is not
22 regulated by the EPA.

23 In New Hampshire, propane is typically
24 utilized by homeowners and businesses located in rural

1 areas who lack access to natural gas mains, and who want a
2 fuel source other than oil, electricity or wood. If the
3 requested improvements are not approved, propane supplies
4 and pricing in New Hampshire will be more volatile. This
5 will have the effect of decreasing consumer willingness to
6 utilize propane, leading to increased carbon emissions as
7 consumers choose less environmentally friendly
8 alternatives. Having an affordable, dependable supply of
9 propane in New Hampshire will encourage economic
10 development throughout the state.

11 The proposed improvements will not be
12 visible to the public. They will be installed on an
13 existing cleared and graveled areas, and will not result
14 in the loss of any natural resource habitat, and will have
15 little or now impact on the environment in the proposed
16 location.

17 At this time, I'd like to address the
18 statutory elements to obtaining an exemption. And, of
19 course, it's our position that the Facility is subject to
20 existing federal, state and local laws that adequately
21 protect the objectives of RSA 162-H:1. And, I'm going to
22 talk for some time now about the regulations that apply to
23 this facility, because there are quite a few, and they're
24 very specific and detailed.

1 Because of its ability to receive
2 ocean-going vessels, the Facility is subject to the
3 Maritime Transportation Security Act of 2002, which is
4 intended to protect public safety. Under the Act, SEA-3
5 is required to implement a Facility Security Plan that is
6 approved by the Federal Maritime Security Coordinator.
7 SEA-3's Facility Security Plan must satisfy all the
8 requirements of 33 C.F.R., in Parts 105.200 to 296. These
9 are extensive and include requirements that SEA-3 train
10 all Facility personnel in emergency procedures and
11 contingency plans, conduct security drills every -- every
12 three months and maintain fencing, lighting, and
13 surveillance, and backed-up communication system providing
14 continuous communication between Facility security
15 personnel and national and local authorities having
16 security responsibility. SEA-3's Facility Security Plan
17 is audited annually by an independent third party, and its
18 content is classified as sensitive security information.
19 The Facility is also subject to the EPA's Risk Management
20 Program regulations, set forth at 40 C.F.R. Section 68, *et*
21 *sequitur*. These require the Facility to maintain a Risk
22 Management Plan that must be updated every five years.
23 And, it must contain a hazard assessment that details the
24 potential effects of an accidental release, an accident

1 history of the last five years, and an evaluation of
2 worst-case and alternative accidental releases. Must
3 contain a prevention program that includes safety
4 precautions and maintenance, monitoring, and employee
5 training measures. And, it must have an emergency
6 response program that spells out emergency health care,
7 employee training measures and procedures for informing
8 the public and response agencies, for example, first
9 responders, should an accident occur.

10 The Facility is also subject to OSHA's
11 Process Hazard Analysis regulations for liquefied
12 petroleum gases set forth at 29 C.F.R. Section 1910.110,
13 *et sequitur*. These regulations consist of 64 pages of
14 rules specific to the handling of liquefied petroleum gas,
15 and they govern such things as odorizing gases; approval
16 of equipment and systems; requirements for construction
17 and original test of containers; welding of containers;
18 markings on containers; location of containers and
19 regulating equipment; container valves and container
20 accessories; piping, including pipe, tubing and fittings;
21 hose specifications; safety devices; vaporizer and
22 housing; filling densities; LP, for gas in buildings;
23 transfer of liquids; tank car or transport truck loading
24 or unloading point and operations; instructions;

1 electrical equipment and other sources of ignition; and
2 fixed electrical equipment in classified areas.

3 PRESIDING OFFICER SPEIDEL: Excuse me,
4 Mr. McEachern. Could you slow down for the court reporter
5 please?

6 MR. McEACHERN: I apologize.

7 PRESIDING OFFICER SPEIDEL: Thank you.

8 MR. McEACHERN: I'm going to take a
9 seat, too, because it's a little easier sitting down in
10 this.

11 These regulations also require SEA-3 to
12 maintain a Process Hazard Analysis Plan detailing the
13 operational safety of the Facility that must be updated
14 every three years and approved by OSHA.

15 The Facility is regulated under the
16 EPA's National Pollutant Discharge Elimination System,
17 which is for the protection of water resources.

18 The Facility is also subject to the New
19 Hampshire State Fire Code and Building Code, which mandate
20 compliance with the National Fire Protection Association's
21 Liquefied Petroleum Gas Code, otherwise known as the "NFPA
22 58". NFPA 58 is a model codes developed by the National
23 Fire Protection Association's Technical Committee on
24 Liquefied Petroleum Gases. This Committee includes Paul

1 Bogan as one of its principal members. Paul is Senior
2 Vice President in charge of Operations for SEA-3 and is
3 responsible for the Newington Facility. NFPA 58 is used
4 by state and local government to regulate the storage,
5 handling, transportation and use of liquefied petroleum
6 gas. NFPA 58 sets forth specific requirements for the
7 design, construction, installation, and operation of
8 marine terminals whose primary purpose is the receipt of
9 LP gas for the delivery to transporters, distributors or
10 users.

11 The Facility is also subject to
12 comprehensive regulation by the New Hampshire Department
13 of Environmental Services. SEA-3 and its representatives
14 have consulted with DES officials, including
15 representatives of the Air Resources Division, the
16 Wetlands Bureau, and Waste Management Bureau, to discuss
17 all applicable DES requirements for the proposed
18 improvements. Based on these consultations, SEA-3 has
19 applied for and received an Alteration of Terrain Permit
20 and a Shoreland Impact Permit. SEA-3 currently holds a
21 Permit to Operate issued by the Air Resources Division for
22 the existing primary storage tanks, flare, and generator,
23 and has been advised by the Division that it will need to
24 update this permit upon completion of the proposed

1 improvements, which it will, of course, do.

2 The proposed development was also
3 subject to a review by the Rockingham Planning Commission
4 under RSA Chapter 36. The Planning Commission is charged
5 under RSA 36:54 with reviewing developments having the
6 potential for regional impact.

7 The Town of Newington further regulates
8 the proposed improvements through its zoning ordinance and
9 site plan review regulations. The proposed improvements
10 will be located within Newington's Waterfront Industrial
11 District and constitute an allowed use in that District
12 provided they comply with NFPA 58.

13 Upon receiving SEA-3's application for
14 site plan approval, the Newington Planning Board
15 designated the Project as having regional impact pursuant
16 to RSA 36:54 and notified the communities of Portsmouth,
17 Greenland, Stratham, and Newfields, all of which are
18 located on the Newington Branch Rail Line. The Planning
19 Board held seven public hearings on the proposed
20 improvements over the period November 2013 through May
21 2014. These hearings involved extensive public comment,
22 testimony and reports from fire safety experts,
23 transportation experts and representatives of the State of
24 New Hampshire Department of Transportation and the Federal

1 Railroad Administration.

2 As required by Town Ordinance, SEA-3
3 commissioned Philip R. Sherman, a licensed engineer, to
4 prepare a Fire Safety Analysis for the proposed
5 improvements. And, Mr. Sherman's Fire Safety Analysis was
6 submitted to the Newington Planning Board as part of
7 SEA-3's application for site review approval. In
8 response, the Town of Newington retained its own
9 independent expert, SFC Engineering Partnership, Inc., to
10 review Mr. Sherman's analysis. Upon its review, SFC
11 concluded that Mr. Sherman's analysis was in general
12 compliance with NFPA 58 and that no significant problems
13 were found with the proposed system. SFC did recommend
14 that the final design be submitted and reviewed prior to
15 the issuing of a building permit and system commissioning.

16 Following a review of the Project by the
17 Rockingham Planning Commission's Development of Regional
18 Impact Committee on January 8, 2014, the Committee issued
19 its own recommendation to the Newington Planning Board,
20 and encouraging it to "engage in post development approval
21 inspections to insure that the new site improvements at
22 the SEA-3 facility are constructed in accordance with NFPA
23 58."

24 These Planning Board hearings culminated

1 in a unanimous vote to approve the proposed improvements
2 on May 19, 2014. The Planning Board supported its
3 decision with eight pages of written findings, which
4 included findings that: The preliminary design complies
5 with NFPA 58; that the improvements will enhance the
6 Facility's safety; the improvements will not change the
7 Facility's existing distribution capacity or increase
8 traffic impacts; the improvements will result in no
9 adverse change to existing dust, erosion or run-off
10 conditions; and will upgrade the existing storm drainage
11 system.

12 The referenced federal, state and local
13 laws adequately protect the objectives of RSA 162-H:1 by
14 addressing and regulating issues concerning the public
15 welfare, health, safety and the environment. During the
16 seven months of public hearings that took place before the
17 Town of Newington's Planning Board, SEA-3 made a full and
18 complete disclosure of its construction plans to the
19 public, which plans indicated no evidence of environmental
20 impact.

21 During the site review process, area
22 fire chiefs met to review potential impacts of the
23 Project. As stated by City of Portsmouth Fire Chief
24 Steven E. Achilles to Richard DiPentima, one of the

1 proposed intervenors in this matter: The Portsmouth Fire
2 Department and other area fire departments are not
3 debating or questioning the many concerns of our elected
4 representatives or citizens. We met to review and discuss
5 the Project, the mode of transportation, our ability to
6 respond, and other related fire and life safety concerns.
7 At this time the general consensus is that the risk of
8 fire and the accidental release of product is extremely
9 low, but not zero. Most fire departments are extremely
10 familiar with the product and the emergency response
11 required if there is an accidental release or fire.

12 In this case, the extensive framework of
13 federal, state and local laws and regulations adequately
14 protect the objectives of RSA 162-H:1. These laws provide
15 a proper balance between potential significant impacts and
16 benefits to the criteria listed in RSA 162-H:1, because
17 the laws provide stringent regulatory oversight of the
18 site's public safety, health, and impacts on the
19 environment, air and water quality, while allowing SEA-3
20 to continue to provide a dependable, affordable supply of
21 clean burning propane to the citizens of this state who
22 rely on it to heat their homes and run their businesses.

23 Requiring a further lengthy
24 certification process at this time would result in undue

1 delay and would be a waste of the Committee's resources,
2 because the only state agency on the Committee that is
3 required to approve this Project has already issued its
4 required approvals.

5 The extensive federal environmental
6 regulation of the site currently provides for a full and
7 timely consideration of environmental consequences.

8 The Newington Planning Board's lengthy
9 site plan approval process, which included seven months of
10 public hearings and resulted in a 583 page certified
11 record has provided a full and complete disclosure of
12 SEA-3's construction plans to the public.

13 There is simply no role for the
14 integrative function of the Committee in this matter,
15 because the only agency on the Committee with jurisdiction
16 over the Project has already issued the required
17 approvals, and the Project's final design is subject to
18 the approval of the State Fire Marshal, whose jurisdiction
19 is independent of the Site Evaluation Committee's
20 certification process.

21 A review of the request for exemption
22 reveals that consideration of the propped improvements by
23 only select agencies represented on the Committee is
24 required, and that the objectives of RSA 162-H:1 can be

1 met by those agencies without exercising the provisions of
2 RSA 162-H.

3 One of the stated objectives of RSA
4 162-H:1 is to resolve all environmental, economic, and
5 technical issues before the Committee in one integrated
6 proceeding, instead of requiring the applicant to obtain
7 approvals from multiple agencies in a piecemeal fashion.
8 However, this objective does not apply when only one
9 agency on the Committee is required to consider the
10 improvements. The only agency represented on the
11 Committee with regulatory jurisdiction over the proposed
12 improvements is DES, and it has already issued the
13 necessary permits.

14 Requiring full certification under these
15 circumstances would be a waste of the Committee's
16 resources and would unduly delay the construction of a
17 much needed project. Exercising the provisions of RSA
18 162-H by requiring certification in this circumstance
19 would not further the objectives of the statute.

20 Third element in obtaining an exemption
21 involves the public comment. Response to the request for
22 exemption from the general public will indicate that the
23 objectives of RSA 162-H:1 have been met through the
24 individual review process of the participating agencies.

1 During Newington's lengthy site plan
2 review process, the City of Portsmouth and certain
3 residents of Portsmouth and Greenland appeared at the
4 hearings. And, they requested the Planning Board deny the
5 application due to the claimed effects increased LPG rail
6 traffic or, in the alternative, that it require a railroad
7 study safety [safety study?] as part of the approval
8 process.

9 In a letter to United States Senator
10 Shaheen, asking her assistance in compelling a
11 representative of the Federal Railroad Administration to
12 attend the Planning Board hearings, the City of Portsmouth
13 admitted its concerns were "not due to the site plan
14 itself."

15 After receiving extensive testimony on
16 this issue from representatives of the FRA and New
17 Hampshire DOT, and legal advice from its counsel, the
18 Newington Planning Board declined to impose any conditions
19 on rail traffic servicing SEA-3's Facility based on its
20 lack of jurisdiction under federal law.

21 Following the Newington Planning Board's
22 unanimous approval of this Project, the City of Portsmouth
23 appealed that decision to Superior Court and the Newington
24 ZBA. At the time it appealed the Planning Board's

1 decision, Portsmouth publicly acknowledged in a letter to
2 Governor Hassan that the Planning Board had "performed a
3 thoughtful and deliberate review of this application", but
4 it took issue with the Planning Board's decision not to
5 require a study of the railroad, stating "the City
6 specifically requested that Newington require a
7 safety/hazard assessment to identify the risks and hazards
8 associated with the transporting LPG through the City and
9 other affected communities. Unfortunately, no such
10 stipulation was required of the Applicant and the City has
11 appealed the Newington Planning Board's approval of the
12 SEA-3 expansion to compel such a study."

13 The problem with that position, of
14 course, is that neither the Town of Newington nor the
15 State has the power to compel such a study. As previously
16 recognized by the New Hampshire Supreme Court, "Congress
17 intended the federal government to exclusively occupy the
18 field of railroad regulation". And, that's in re
19 Conservation Law Foundation, at 147 New Hampshire, at Page
20 94. Based on that ruling, the Supreme Court rejected the
21 Conservation Law Foundation's claim that the New Hampshire
22 Public Utilities Commission had authority to regulate
23 abandoned rail lines under a statute that gave them that
24 authority. That was RSA 365:24-alpha.

1 In the context of this case, the New
2 Hampshire DOT has already announced that "New Hampshire
3 DOT has no jurisdiction over commodities that Pan Am
4 transport over the line."

5 The Interstate Commerce Act, as amended
6 by the Interstate Commerce Commission Termination Act,
7 otherwise known as "ICCTA", expressly states that the
8 jurisdiction of the Surface Transportation Boards over
9 "transportation by rail carriers and the remedies provided
10 in this part with respect to rates, classifications, rules
11 (including car service, interchange, and other operating
12 rules), practices, routes, services, and facilities of
13 such carriers ... is exclusive."

14 As noted by one federal court, "the
15 enactment of ICCTA broadened the express preemption
16 provisions of the Interstate Commerce Act to the point
17 that it is difficult to imagine a broader statement of
18 Congress's intent to preempt state regulatory authority
19 over railroad operations."

20 In a 2013 decision of the Surface
21 Transportation Board in a case filed by Pan Am, the Board
22 ruled that "In interpreting the reach of preemption, the
23 Board and the courts have found that it prevents states or
24 localities from intruding into matters that are directly

1 regulated by the Board (e.g. railroad rates, services,
2 construction, and abandonment). It also prevents states
3 or localities from imposing requirements that, by their
4 nature, could be used to deny a railroad's ability to
5 conduct rail operations. Thus, state or local permitting
6 or preclearance requirements including building permits,
7 zoning ordinances, and environmental and land use
8 permitting requirements are preempted.

9 SEA-3 anticipates that the City of
10 Portsmouth and others who wish to regulate rail traffic
11 will oppose this Request for Exemption here tonight based
12 on their opposition to LPG rail traffic through their
13 communities. However, any use of RSA 162-H to achieve
14 their goal of regulating rail operations is preempted by
15 federal law and must be rejected.

16 RSA 162-H must be interpreted in a
17 manner that does not frustrate or conflict with federal
18 law. Consequently, in determining whether the general
19 public's response indicates that the objectives of RSA
20 162-H:1 have been met through the individual review
21 process of the participating agencies, the Committee must
22 disregard any public response that is based on opposition
23 to LPG rail traffic, because the Committee does not have
24 jurisdiction to regulate rail operations.

1 SEA-3 expects that the majority of the
2 permissible public response to the proposed improvements
3 will indicate that the objectives of RSA 162-H have been
4 met through the individual review process of the
5 participating agencies.

6 And, the last element of the test to
7 obtain the exemption that I'll address is that all
8 environmental impacts or effects are adequately regulated
9 by other federal, state or local statutes, rules or
10 ordinances. The proposed improvements in this case will
11 be located within an existing industrial complex, hidden
12 from public view, on land that consists of hard-packed
13 gravel with little if any vegetation and no wetlands. The
14 improvements will result in no adverse change to existing
15 dust, erosion or run-off conditions, and will upgrade the
16 existing storm drainage system.

17 The minimal environmental impacts of the
18 proposed improvements will be subject to extensive
19 federal, state and local regulation, which will adequately
20 regulate the minimal environmental impact and effects of
21 the Project.

22 And, in conclusion, I'd like to say
23 that, you know, for all the foregoing reasons, SEA-3
24 respectfully submits that the existing statutory and

1 regulatory framework adequately protects the objectives of
2 RSA 162-H:1, and that the Committee should therefore
3 exempt the Applicant from the approval and certificate
4 provisions of RSA Chapter 162-H, and thereby avoid an
5 undue delay in the construction of these much needed
6 improvements. Thank you very much.

7 (Brief off-the-record discussion ensued
8 with the court reporter.)

9 PRESIDING OFFICER SPEIDEL: We have a
10 question from a Committee member, Mr. Duclos. And, I
11 would like to invite him to direct it to the
12 representatives of SEA-3 at the present time.

13 MR. DUCLOS: Mr. McEachern, that was a
14 very thorough presentation. Thank you very much for
15 putting that together. The only question that I had
16 looking over the notes was the tank cars or the railcars
17 that are coming in containing 33,000 gallons of liquefied
18 petroleum gas, it comes in unodorized?

19 MR. BOGAN: Yes.

20 MR. McEACHERN: I'm going to let Paul
21 Bogan answer, because he -- get it straight from the
22 horse's mouth.

23 MR. DUCLOS: Thank you.

24 PRESIDING OFFICER SPEIDEL: And, Mr.

1 Bogan, could you just state your full name and your
2 position with SEA-3 for the record?

3 MR. BOGAN: Paul Bogan, Vice President
4 of Operations for SEA-3. And, yes, that's correct.

5 FROM THE FLOOR: We can't hear back
6 here. Did he say "yes"?

7 MR. IACOPINO: Yes.

8 MR. BOGAN: Is this working?

9 UNIDENTIFIED SPEAKER: Paul, pull it a
10 little closer or get closer.

11 MR. BOGAN: Okay. Yes, that's correct.

12 MR. DUCLOS: And, is that a requirement
13 of SEA-3 or is that a requirement of the railroad or --

14 MR. BOGAN: It's a requirement of SEA-3
15 for the operation.

16 MR. DUCLOS: And, it's -- all your
17 propane received by ship also comes in unodorized. So,
18 there's no difference in handling at the SEA-3 Facility?

19 MR. BOGAN: That is correct.

20 MR. DUCLOS: Thank you.

21 PRESIDING OFFICER SPEIDEL: That would
22 conclude the questions from the Committee. And,
23 therefore, I've taken the written questions that members
24 of the public have supplied, and I'll direct them to the

1 SEA-3 representatives.

2 First question: Please clarify: What
3 percentage of propane will stay in New Hampshire and
4 actually be available for domestic use from this facility?

5 MR. BOGAN: I can't really give you any
6 percentages right now. That depends on our customers and
7 the amount of product that they would want to contract
8 with us for over any particular winter. What I've said
9 from the beginning, that we intend to service the New
10 England market with propane, which we will do, and that
11 will fluctuate from year to year.

12 PRESIDING OFFICER SPEIDEL: How does the
13 propane arrive at Rockingham junction for transport by
14 rail?

15 MR. BOGAN: Well, by railcar. You mean
16 the route the rail takes?

17 PRESIDING OFFICER SPEIDEL: I'm reading
18 what's been written. I suppose that's what they might
19 have meant.

20 MR. BOGAN: I am not really sure. I'm
21 not a Pan Am employee.

22 PRESIDING OFFICER SPEIDEL: It also says
23 "for SEA-3 or Pan Am". I don't know if there's any Pam Am
24 representatives here. But there's a subsequent question

1 "By train, by truck? Where does it come from? I.e,
2 please explain how it gets to Rockingham junction."

3 MR. BOGAN: Well, it can come from
4 refineries in Canadian, it can come from refineries in the
5 Chicago area. It just depends on pricing, availability,
6 those issues.

7 PRESIDING OFFICER SPEIDEL: There's a
8 third question, and, again, I'm reading this verbatim.
9 So, the question reads "Why is it that every time a
10 citizen asks questions about safety or the environment it
11 becomes obscured by "Railroad Federal Exemption"?"

12 MR. BOGAN: I don't believe that
13 statement's true. If anyone in the past has asked me
14 questions about safety, I have done my best, of course,
15 depending who's asking it and why you're asking it, I've
16 done my best to answer the question. And, I have never
17 hidden behind federal exemption at all.

18 PRESIDING OFFICER SPEIDEL: All righty.
19 We have gone through the written questions.

20 And, now, we have a list of public
21 speakers that would like to stand up. I can excuse the
22 SEA-3 representatives. They can sit back in the gallery,
23 if they so choose. There's going to be a series of -- we
24 have quite a few folks who have expressed a desire to

1 speak. And, I think it's only fair, we have heard from
2 the intervenors, and they have made some statements. And,
3 so, I think, if it wouldn't be considered rude, I think it
4 would be nice to start with the folks who have not filed
5 intervention petitions, let them speak first. Because I
6 think there's -- there could be a potential for future
7 participation by the intervenors in this exemption request
8 proceeding as it continues on. I'm not speaking about
9 tonight, necessarily, I mean in the future hearings that
10 we might end up having on this.

11 So, what we'd like to do is, we'll just
12 have the folks that have signed up to speak begin. And,
13 so, therefore, I would like to invite Mr. Denis Hebert of
14 Newington to speak.

15 FROM THE FLOOR: He's just stepped out
16 of the room for a minute.

17 PRESIDING OFFICER SPEIDEL: Okay. We'll
18 get back to him. How about Linda Harding of Portsmouth.

19 And, as I discussed, we were hoping to
20 have these statements be roughly three minutes. If you
21 see me tapping my watch like this [indicating], it's kind
22 of -- we won't have a vaudeville hook, but would be nice
23 if you could wrap up.

24 So, please, Ms. Harding.

1 MS. HARDING: Thank you. Linda Harding.
2 I live at 43 Laurel Court. Laurel Court is the new road
3 which has been built directly alongside of the railroad
4 tracks, off of Kearsarge Way. And, I'd like to just
5 address a few remarks related to derailments. And, these
6 derailments would be just over the past year.

7 First of all, we have been told several
8 times that "there have been no derailments of liquid
9 petroleum gas railcars related to SEA-3." That's fine.
10 But, of course, we haven't been seeing too many of those
11 cars going through.

12 However, we've had many derailments in
13 Portsmouth. And, I have personally seen three of them in
14 the last seven months. There was one which actually made
15 the paper. This derailment was on Tuesday, September 9th,
16 4:16 p.m. Fortunately, it derailed -- it derailed
17 downtown, you know, it wasn't blocking any roads when it
18 derailed. Representatives from Pan Am said that "this
19 derailment was equivalent to a flat tire on a car."

20 However, this derailment occurred on a
21 portion of the track which had been upgraded. This
22 derailment occurred on an upgraded rail track, where the
23 ties had been replaced. However, the Pan Am
24 representative did admit that the steelwork in the track

1 there had not been replaced.

2 I have watched them work on the tracks
3 over the last -- it's been a year and a half now. And,
4 the way they upgrade these tracks, they take off the ties,
5 they take the old railroad ties, which are soaked with
6 materials which are not good for the environment, and they
7 pile these ties up alongside the tracks. They are allowed
8 to do this, because the railroads own the area on both
9 sides of the tracks. So, they are allowed to pile up
10 hazardous waste, which I believe is not very good for our
11 groundwater. But it is legal. So, anyway, these tracks
12 are being upgraded, but only the main track is being
13 upgraded.

14 On September the 21st through the 25th
15 of 2014, there was another derailment, which did not make
16 the paper. And, this one was on the track right by the
17 bridge, Kearsarge Way bridge over the Pan Am track. As
18 you're heading toward Atlantic Heights, you could see the
19 train derailed off to the right. You really had to look
20 for it. The cars were totally off the track. There
21 were -- these were boxcars. I have photographs, if anyone
22 is interested later. And, this train was off the tracks
23 for at least two days.

24 Then, we had a derailment in mid-March.

1 Now, this derailment was directly behind my bedroom
2 window. My house is on Laurel Court, and I can look out
3 in my back and I can read the writing on the propane cars.
4 I can read the fact that these are "non-odorized" cars.
5 You know, I don't mind them going by my house. But they
6 are parked in back of my house for a weeks -- not, I'm
7 sorry, weeks at a time, days, two weeks.

8 This winter, in March, I don't have the
9 exact date, I'm sure someone in the audience does, we had
10 a derailment. And, for two days, a diesel engine, a
11 diesel locomotive tried to move the cars, which were stuck
12 on the siding behind my house. The siding was not
13 upgraded. The ties there are, for the most part,
14 nonexistent. There's basically just rails there, no ties.
15 Two days, this diesel ran for two days. We're talking day
16 and night. The fumes were amazing.

17 And, then, I'm just going to cast your
18 minds back to the year 2001, August 2001. Funny, I did a
19 little research, and, in August of 2001, Gilford Pan Am
20 train carrying propane, which would be propane tank cars,
21 derailed in downtown Portsmouth. And, we've been told
22 that there have never been any accidents with the propane
23 from SEA-3, or maybe this propane was going somewhere
24 else, I don't know. I didn't find that out.

1 My concern is, we have had derailments
2 of propane cars. At this time, in 2001, the cars were not
3 allowed to go more than 10 miles an hour. The new
4 proposal is that they be allowed to go 25 miles an hour.
5 In 2001, we got maybe 20, tops, propane tankers, tank cars
6 a year through Portsmouth. There's a big difference
7 between 20 tank cars and what's being proposed, which I
8 believe is almost 5,000 tank cars. From 20 -- excuse me,
9 to 4,992 per year.

10 And, then, let me just tell you what
11 happened this past Sunday. Because I live right near the
12 track, I can see, I can see, I can hear. By the way, all
13 of these trains come and go between 2:00 and 3:00 in the
14 morning. Luckily, I'm a pretty good sleeper. But
15 sometimes I do wake up. This Sunday morning, I was
16 awakened, not by trains, but by voices. Young 20
17 somethings, I believe they had been partying all night,
18 were out on the tracks. And, I look out my window, and
19 there is the propane car, which has been parked there
20 since, I believe, Tuesday or Wednesday night, this is now
21 early Sunday morning, "Liquid Petroleum Gas -
22 Nonodorized", nice black car. I have a picture. And,
23 these young 20 somethings were walking up to the car,
24 looking at it, getting ready to climb on it. And I opened

1 my window and I called out to them and told them that this
2 was private property. This was -- the property belonged
3 to the railroad. They were not allowed on the tracks.

4 PRESIDING OFFICER SPEIDEL: Ms. Harding,
5 are you all set?

6 MS. HARDING: I have one more, one more
7 point, and then I am done.

8 I'm just going to say that I called the
9 Fire Department the next day and spoke to the fire
10 prevention person, Pat Howe, and told him of my concern,
11 that there were people playing on this propane car. I
12 said "this is an attractive nuisance." This is a legal
13 term, an "attractive nuisance". "You leave a propane tank
14 car around for a week, something could happen." I then
15 got a call back from the Fire Department. And, I was told
16 that "Pat Howe had contacted Pan Am. And, we couldn't do
17 anything about it. And, in fact, we should get ready to
18 see a lot more cars parked around on the tracks." This
19 was not going to be an uncommon thing. And, then, the
20 next day there was a second propane tank car in back of my
21 house.

22 PRESIDING OFFICER SPEIDEL: Well,
23 Ms. Harding, thank you for your statement. I think I
24 wanted to be sure --

1 MS. HARDING: May I make one more point,
2 and this will only take 30 seconds?

3 PRESIDING OFFICER SPEIDEL: Oh. Okay.
4 I'm timing you.

5 MS. HARDING: Okay. We had a
6 transformer go out this past fall. We lost power;
7 Atlantic Heights, Spinnaker Point, Laurel Court. The
8 transformer was down on the tracks. There was no way to
9 access it. It took eight hours for Public Service to get
10 a vehicle in, which could go along the tracks to service
11 this transformer. We have an access issue. There is one
12 way in to Atlantic Heights and one way out. And, the
13 railroad goes directly under the one bridge that takes
14 people out of Atlantic Heights.

15 That's all I have to say. Thank you.

16 PRESIDING OFFICER SPEIDEL: Thank you,
17 Ms. Harding. Has Mr. Hebert come back?

18 MR. HEBERT: I have.

19 PRESIDING OFFICER SPEIDEL: Okay.
20 Mr. Hebert of the Town of Newington.

21 MR. HEBERT: Yes. Denis Hebert. Denis
22 Hebert, Town of Newington. I'm also the Chairman for the
23 Planning Board in the Town of Newington. And, I've
24 actually seen most of these people here for a good part of

1 the last year.

2 PRESIDING OFFICER SPEIDEL: You can
3 detach the mike. For the taller folks that are coming to
4 the mike, it might be better just to detach it or, you
5 know, move the pole up.

6 MR. HEBERT: I'll be putting it in my
7 mouth, if I do that.

8 PRESIDING OFFICER SPEIDEL: No, no.
9 That's all right. Yes, for the folks in the back.

10 MR. HEBERT: Can you hear me back there
11 okay?

12 PRESIDING OFFICER SPEIDEL: Yes.

13 MR. HEBERT: All right. Good.

14 PRESIDING OFFICER SPEIDEL: Okay.

15 MR. HEBERT: Thank you. I would like to
16 say that probably the -- we had testimony in this room for
17 about seven months, which almost all of it was about the
18 rail. In fact, we brought in the federal, the FRA, we
19 brought in the Regional Administrator, which he has never
20 done before, but he came here at the request of the U.S.
21 Senators Ayotte and Sheehan. And, even then wasn't
22 coming, until I got on the phone and promised him that he
23 would not be executed verbally in this meeting. All
24 right. He was our guest, and I was going to see to it

1 that happened. And, I said that pretty clearly. And, I
2 think I ran a pretty good meeting, where people were able
3 to get up and speak really clearly what their concerns
4 were, including the rail. Just like the lady before me,
5 we heard lots and lots and lots and lots and lots of it,
6 to the point of there was no comments about the site.
7 And, I said "the next meeting is about the site." And,
8 even then, it was -- I had to shut people down talking
9 about the rail -- about the rail, because we had no
10 jurisdiction over it, and the Regional Administrator told
11 us so, that we did not, our attorneys told us so, the
12 railroad told us so, SEA-3 told us so, my attorney told me
13 so. We even looked at studies that were done in other
14 states, like the one in Massachusetts. But that was done
15 with a state-owned railroad. They did a study. We looked
16 at it. We said "how can we apply this?" "How can we make
17 this happen?" We really looked hard to try to even bend
18 the rules to get a study, so we could look at the
19 railroad, but there was no way we could do it.

20 But I think you have heard tonight, and
21 you're going to hear even more, and if you look at the
22 stacks of paper that you have received, if you looked at
23 them, that the meetings were about the rail, it's not
24 about SEA-3. SEA-3 already has an approved site. They

1 did so a long time ago. And, I believe this Board looks
2 at it, and has, in the past, granted the waiver to speed
3 up the process, to allow for the processing and the
4 production of and transportation of propane gas.

5 I hear what all these people have to
6 say. I feel their pain. I understand what they're
7 talking about. This -- I'm not kidding when I say that.
8 I truly do feel that. Because this is in their backward,
9 and I understand that. But it's the rail, it's not SEA-3.

10 If the Board could have done something
11 to deal with the rail, we would have done so. We could
12 not. And, I'm not sure that you have the authority to do
13 so either. I don't know if you do. If you do, I'd like
14 to hear about it, because it's a learning experience for
15 this town and for everybody. We truly want to know if
16 there is a way.

17 But it's been, if you look at the record
18 and look at all the meetings, even to the point of me, as
19 a chairperson, stating "Look, folks, we've got to talk
20 about the site. We've discovered and we have no way of
21 dealing with the railroad in any capacity, nor can we try
22 to restrict SEA-3 in dealing with the railroad. Because,
23 in an indirect way, we are then controlling the railroad
24 through SEA-3."

1 We have done everything we could to
2 allow the public opinion, to the point of repetition to
3 the nth degree. I don't know what else I can say about
4 this, but this is clearly about SEA-3. I got the time.

5 So, a comprehensive regional study,
6 again, it was about the railroad, it included SEA-3,
7 but -- what was being proposed to us, but they wanted the
8 rail to be included in the comprehensive study. So, be
9 aware that, when we said -- when the Board voted not to
10 have a comprehensive regional study, we voted that it
11 would be -- it would be a study at a very big expense, but
12 we could not apply it to the rail. And, that's what the
13 rail -- that's what the study was about.

14 And, I would request that the Board do
15 grant the waiver as SEA-3 has requested. Thank you.

16 PRESIDING OFFICER SPEIDEL: Thank you,
17 Mr. Hebert.

18 Mr. Patnaude, how are you doing?

19 MR. PATNAUDE: Keep going.

20 PRESIDING OFFICER SPEIDEL: Okay. Keep
21 going. Thank you. I would like to invite Mr. Matthew
22 Beck, and he has marked down an affiliation with IBEW
23 Local Number 1837, in Dover.

24 MR. BECK: Thank you for the opportunity

1 to speak. My name is Matthew Beck. I'm a staff
2 representative from the International Brotherhood of
3 Electrical Workers, Local Union 1837. We represent ten of
4 the workers that handle fuel at SEA-3. And, we have about
5 500 members overall in the State of New Hampshire.

6 We are supporting SEA-3's request for
7 exception from the approval and certificate provisions of
8 RSA Chapter 162-8 [162-H?]. The workers we represent are
9 highly experienced and dedicated professionals. All but
10 one of them has the benefit of between 15 and 40 years of
11 experience working at SEA-3. Even the least experienced
12 among them has been working there for five years.

13 We understand that many members in the
14 community have concerns about safety at SEA-3, and what
15 effect the proposed improvements might have on the
16 operation. The workers at SEA-3 have demonstrated a
17 consistent and unrelenting focus on the safety of the
18 facility since it first opened in 1975.

19 To that end, management has gone above
20 and beyond to make sure they receive the proper training.
21 All employees receive two weeks initial training, and then
22 regular refresher trainings every couple of months,
23 depending on the work that's being done at the facility.
24 The training includes regular reviews of the written

1 emergency and operations procedures.

2 SEA-3 has all the necessary fire and
3 detection alarms, fire monitors with deluge guns, an
4 auto-start fire pump, portable gas detectors, and a system
5 that provides an automatic call-in to the Newington Fire
6 Department upon fire detection.

7 This laser-like focus on safety has paid
8 off for SEA-3 and the surrounding communities. SEA-3 has
9 never had a reportable safety incident. Not one. They
10 have been recognized for their outstanding safety record
11 with an award from the Safety and Health Council of
12 Northern New England.

13 We've worked closely and cooperatively
14 with the management at SEA-3 during recent years, as
15 variations in the market for propane have led to what
16 could only be described as "slow periods" for the
17 facility. We negotiated our collective bargaining
18 agreement with the Company in a manner that helped ensure
19 the continued economic viability of their operations, and
20 therefore helped our members avoid layoffs and continue to
21 earn the good wages and benefits we feel they deserve.

22 If the proposed improvements to SEA-3
23 are approved, and approved without delay, the Company will
24 make significant economic investment in the facility that

1 will help provide tremendous benefits to businesses and
2 homeowners throughout the state. It would help stabilize
3 New Hampshire's propane market by providing a consistent
4 and a reliable year-round supply of the most clean-burning
5 of fossil fuels.

6 Of course, these improvements would also
7 help provide job security to our members at SEA-3 by
8 ensuring that the facility remains viable and profitable
9 for years to come.

10 I have a few additional comments, which
11 I'll include in printed comments that I can give to you.

12 PRESIDING OFFICER SPEIDEL: Thank you
13 very much, Mr. Beck. Thank you for keeping an eye on
14 time.

15 (Court reporter asking for prepared
16 comments from Mr. Beck.)

17 PRESIDING OFFICER SPEIDEL: Thank you.
18 And, if folks do have written comments that they're
19 submitting, it's always more efficient to submit a written
20 presentation in writing, than to have it read into the
21 record, for time purposes. And, also, Mr. Patnaude is a
22 person who has a big job to do. And, if we can cut it
23 down a little, that would be helpful.

24 So, at the present time, I would like to

1 invite Mr. Lou Salome of Dover to speak.

2 MR. SALOME: Good evening, gentlemen.
3 And, thank you very much. My name is Lou Salome. I live
4 at 132 Dover Point Road, with my wife, Pat, who is here
5 also, in Dover. And, we would both like to support and
6 commend the City of Dover's action in seeking intervention
7 and achieving intervention, I think, in this matter of the
8 SEA-3 expansion and the Pan Am -- the use of the Pan Am
9 railway, through Portsmouth, through Dover, and
10 surrounding cities.

11 As citizens of Dover, our interests are
12 those of safety and cost in the event of a disaster.
13 Clearly, there's a need for a comprehensive regional
14 environmental and safety study to determine the full
15 ramifications of this Project and its effect on the
16 public. The propane storage facility and their railroad
17 are inextricably linked and cannot be separated. A blind
18 person could see this, someone who sees only words will
19 refuse to see the connection, no matter how visible it is
20 to everyone else. Thank you very much.

21 PRESIDING OFFICER SPEIDEL: Thank you,
22 Mr. Salome.

23 I would like to invite the Senator,
24 State Senator Martha Fuller Clark, of Portsmouth, to

1 speak.

2 SEN. FULLER CLARK: Thank you very much.
3 For the record, I am State Senator Martha Fuller Clark. I
4 reside at 152 Middle Street, in downtown Portsmouth. And,
5 I appear before you both as a private citizen, and also as
6 an elected official on behalf of the residents of the
7 communities that are surrounding and impacted by the
8 proposition that has come forward for the expansion of
9 SEA-3.

10 I believe that, as you've heard this
11 evening, that there remains considerable concern about
12 whether or not due diligence has been undertaken with
13 regard to the issues of personal safety, environmental
14 safety, the economic stability of the communities
15 potentially being put at risk. And, as we saw in the
16 presentation this evening, there are concerns both with
17 the site and with the relationship of the site to the
18 increase of railcars being brought through the surrounding
19 communities and stored on-site.

20 I do not believe that there has been
21 adequate review and evaluation of the expansion of the
22 site to the degree that we can assure the citizens of the
23 surrounding communities that they are going to be safe and
24 that their livelihood and their quality of life is not

1 being put at risk.

2 And, I would just like to read into the
3 record, if I can make this happen without taking too
4 long -- and maybe I can't. But I -- I guess I won't do
5 that. But I think it's important to review on the very
6 first section of the charge of the Site Evaluation
7 Committee. And, it is to look at achieving a balance
8 between the proposal for the energy needs and the
9 facilities of an energy industry and of the citizens and
10 the environment that are going to be impacted by that
11 facility, whether it's a new facility or it's an expanding
12 facility. And, clearly, there is going to be a major
13 expansion, both in terms of the build-out of the site and
14 of the amount of propane that is going to be brought into
15 the site and stored there for unlimited periods of time,
16 depending upon the demand through out New England.

17 So, I'm just here tonight to ask you to
18 very seriously look at the request for the exemption, and
19 whether or not you feel that all the criteria for granting
20 the exemption has actually been adequately met. And, I
21 would contend that, due to the concerns that you're
22 hearing here this evening, that they have not been
23 adequately met. And, I would call upon you for this whole
24 proposal to go and be fully vetted before the Site

1 Evaluation Committee here in New Hampshire. Thank you.

2 PRESIDING OFFICER SPEIDEL: Thank you,
3 Senator Fuller Clark.

4 Do we have Mr. Joseph Rose of Loudon,
5 New Hampshire here? Okay.

6 MR. ROSE: Thank you, Mr. Chairman. For
7 the record, my name is Joseph Rose. I live at 4 Memory
8 Lane, in Loudon, New Hampshire. I'm here this evening in
9 my capacity as the President and Chief Executive Officer
10 of the Propane Gas Association of New England. And, I'm
11 joined by ten of my members, who have chosen to allow me
12 to bring up our points.

13 We are here in support of SEA-3
14 receiving the exemption from the requirement of RSA 162-H.
15 They have demonstrated at SEA-3, over the past 40 years,
16 an impeccable record of safety and concern.

17 But I did want to address in my remarks
18 a couple of points. You know, they mentioned in the
19 presentation that they had once provided 40 percent of New
20 England's regional propane supply. And, they showed some
21 figures about New Hampshire propane use. In the last five
22 years, since that slide that you watched earlier was
23 created, the gallons sold in New Hampshire have increased
24 40 percent. So, we now consume in this state 175

1 million gallons of propane annually. Eight out of every
2 ten new homes being built in New Hampshire are heated with
3 propane.

4 So, the reality is, they -- we need that
5 storage, we need them to be a viable entity. And, we have
6 two ways for them to do that. We can use inexpensive
7 American-produced propane brought in by rail, or my
8 members, who determine how much propane they sell. They
9 don't determine it. The membership determines it, based
10 on the -- they want the lowest possible price for their
11 customers.

12 If we can't have the rail, we're going
13 to have to go back and bring in the propane from Africa.
14 And, you know, there's just part of me that cringes at
15 sending all that money to a place where the people hate
16 us. And, I'd really rather be spending that money and
17 supporting American workers and American jobs. But, one
18 way or the other, we have to have the gas.

19 So, at this point, the 175 million
20 gallons has to come from somewhere. And, today, the price
21 of importing it by ship is about 75 cents a gallon more
22 than it is to use the use the American fuel. And, so, who
23 pays that? The people sitting in this room. Every
24 consumer. That cost is not borne by the propane company,

1 it's not borne by SEA-3; it's borne by the consumers,
2 because, ultimately, we pay.

3 And, then, the last thing, I just did
4 want to mention, being mindful of time, is that, as an
5 organization, we provide emergency response training for
6 the fire service in all of the New England states. I've
7 spoken to Chief Achilles, from Portsmouth, spoken to the
8 good folks in Newington, the folks in Dover. We've
9 provided them with free training on how to handle
10 situations, and we will continue to do that whether or not
11 this is ultimately approved.

12 But our industry, there is nothing more
13 important than safety. And, I would say that, if the
14 expansion were in place today, they wouldn't see all these
15 railcars here, there, and yonder on the tracks, because
16 there would be adequate space to bring them into the
17 facility and get them unloaded.

18 So, I thank you for your time.

19 PRESIDING OFFICER SPEIDEL: Thank you,
20 Mr. Rose. I would like to invite Mr. Dave Marcotte of
21 Brunswick, Maine to speak.

22 MR. MARCOTTE: Good evening. Thank you
23 for letting me address you. My name is Dave Marcotte. I
24 am a member of the Propane Gas Association of New England.

1 I also manage an energy company located in Arundel, Maine,
2 that services central and southern Maine and eastern New
3 Hampshire. But, more importantly, I'm here as a resident
4 of Brunswick, Maine.

5 I am here in favor of the proposed SEA-3
6 Project and exemption. SEA-3 plays a vital role supplying
7 propane to New England. This Project will help ensure
8 that users of propane in New England will have a safe,
9 reliable, and affordable supply of propane. Our country
10 is posed to become energy-independent or minimally
11 dependent on foreign energy due to the abundant production
12 of crude oil and natural gas, as well as refined fuels,
13 including propane. This translates to lower-cost, clean,
14 American-made and produced energy. The SEA-3 Project will
15 enable New England residents -- residents and businesses
16 to benefit from lower-cost propane energy, that is clean,
17 safe, abundant and affordable.

18 The SEA-3 counsel references -- excuse
19 me, references the impact of SEA-3 -- references the
20 impact of SEA-3 to New Hampshire only. However, SEA-3
21 impacts all of New England, not only New Hampshire. This
22 Project is vital to propane energy supply for all of New
23 England. Thank you.

24 PRESIDING OFFICER SPEIDEL: Thank you,

1 Mr. Marcotte. Mr., and pardon me if I can't read your
2 name properly, Mr. John Raidgon of Exeter.

3 MR. IACOPINO: Ratigan.

4 PRESIDING OFFICER SPEIDEL: Oh, Ratigan.
5 I'm sorry. It's hard to read your name, Mr. Ratigan.

6 MR. RATIGAN: Every time I pick up a
7 pen, there's a Sister of Mercy who shudders.

8 PRESIDING OFFICER SPEIDEL: Oh, I see.
9 I thought I read "coming to Newington" --

10 MR. RATIGAN: She turns over in her
11 grave, and God place her soul.

12 PRESIDING OFFICER SPEIDEL: Okay.
13 "Counsel to Newington", not "coming to Newington".
14 Mr. Ratigan.

15 MR. RATIGAN: I represent the Town of
16 Newington and Selectmen and its Planning Board with
17 respect to this application. And, I have in my hands, for
18 those of you who might be reading the dry record, a 15- to
19 20-pound, 6-inch thick sheet of papers, and they're
20 numbering 570 -- 583 pages, that was the record that was
21 produced by the application before the Planning Board. I
22 commend it to your reading, although you have my
23 condolences if you have to read it all, because there's a
24 lot of material here.

1 If you look at the Site Evaluation
2 Committee statute, in Section 1, it talks about "The
3 Legislature recognizes that the selection of sites for
4 energy facilities may have significant impacts and
5 benefits", and talks about the balancing decision that
6 needs to be made in selecting sites. I would invite you
7 to go to the facility. This site is there. That horse
8 has left the barn. That site determination was made many,
9 many years ago. You've got an aerial flavor of it from
10 the slides that were presented by Attorney McEachern in
11 part of his presentation. But the State of New Hampshire
12 has designated this as a suitable site for this purpose.

13 There is a modest expansion that has
14 been proposed for this site. And, I understand the
15 railcar capacity or traffic will increase more than it
16 has. But, as to the actual occupancy of the site by new
17 facilities, this is a modest expansion. The site is fully
18 developed, the tanks are there, the infrastructure is
19 there. And, we've heard, in a way that really the
20 Planning Board I don't think did hear, because it wasn't
21 presented, the significance, that addresses your criteria,
22 that it is important to have energy sources in New
23 Hampshire and have the infrastructure that can accept
24 them. And, we know, from 2013, that, if you don't have

1 the infrastructure that can accept this product, we have
2 pricing problems.

3 And, with due respect to Portsmouth and
4 to Dover, these are communities that have gas in the
5 street. And, we're talking about rural areas of the state
6 that don't have gas in the street that rely upon these
7 products. And, Newington is proud to be able to service
8 the infrastructure energy needs of this state. We have
9 two -- we have an oil plant, we have a gas plant, we have
10 storage facilities, and we have land that is perfectly
11 suited for this use.

12 I think the Planning Board did a
13 terrific job of approving and reviewing -- reviewing and
14 approving this Project. I would commend the findings that
15 the Board made to your review. And, on behalf of the
16 elected officials in Newington, we would hope that you
17 would grant the exemption and allow this Project to
18 proceed without undue delay. Thank you.

19 PRESIDING OFFICER SPEIDEL: Thank you,
20 Mr. Ratigan. I would like to invite Cosmas Iocovozzi,
21 from Newington, to speak.

22 MR. IOCOVOZZI: Good evening. My name
23 is Cosmas Iocovozzi. I'm on the Board of Selectmen. I've
24 been here almost 20 years. I have to commend the Planning

1 Board for doing an outstanding job on the SEA-3 Project.
2 I know they spent a lot of time -- excuse me -- they spent
3 a lot of time on it. They took a lot of information from
4 a lot of the residents from the local area. And, the
5 Board of Selectmen are very proud of our Planning Board.
6 They did everything they were supposed to do.

7 And, right now, the Board of Selectmen
8 feel that this exemption should go through, because our
9 Planning Board is not like any other planning board. A
10 lot of you guys have been to a lot of Planning Board
11 meetings, I have, too. I don't agree with them all the
12 time on some of their things. But, in this case, they did
13 a great job. They were very thorough with all their
14 findings. And, they did take a lot of things into
15 consideration from a lot of the folks that came from
16 Portsmouth, Greenland, and Dover.

17 And, I just want to say that the Board
18 of Selectmen did take a vote the other night to come up
19 here and praise our Planning Board and push for the SEA-3
20 Project. The Town of Newington -- what scares the Town of
21 Newington is, we have about 60,000 people come through our
22 town. Our town is only about 900 people. But our basic
23 thing in the Town of Newington is we have a very good
24 industrial/commercial base. We would like to keep it. We

1 don't like to stop anything. We like to move along and
2 keep our base growing all the time.

3 We are a very business-friendly
4 community. We set that up a number of years ago, our
5 industrial/commercial area. So, there's been a lot of
6 thought put through what we want to do with the Town of
7 Newington. We lost half our town when Pease came in.
8 And, we have to use every inch of our property to continue
9 with our tax base. We have a good tax base. And, we have
10 it for a number of reasons, and the biggest reason is our
11 industrial/commercial area. We are on the water, we do
12 like to use the water, to bring our products in and out.
13 That's why the Town of Newington's Planning Board is very
14 adamant about the growth of SEA-3 and any other
15 commercial/industrial base that we have.

16 So, if there's anything that you guys
17 want to ask me, you can do it right now.

18 PRESIDING OFFICER SPEIDEL: Well, thank
19 you for coming.

20 MR. IOCOVOZZI: Thank you for listening.

21 PRESIDING OFFICER SPEIDEL: Don't worry
22 about it. It's all right. Have you finished your
23 statement?

24 MR. IOCOVOZZI: Yeah, I'm about ready.

1 I'm about done. But, if there is anything you need from
2 the Town of Newington, just ask. Thank you.

3 PRESIDING OFFICER SPEIDEL: Excellent.
4 Mr. Wayne Barston of Durham?

5 (No verbal response)

6 PRESIDING OFFICER SPEIDEL: He left?
7 Okay. Peg Millar of Portsmouth.

8 MS. MILLAR: Good evening, and thank
9 you. Can you hear me all right?

10 PRESIDING OFFICER SPEIDEL: Yes.

11 MS. MILLAR: When this all started, I
12 read every article that came out. I followed everything,
13 the newspapers, the letters that came through on our
14 internet, and so on, and I thought I understood everything
15 I read. And, I didn't like any of it, because I live in
16 Portsmouth. And, I read that the people, and the good
17 people, I might add, in Newington, said that they "didn't
18 want to do any harm", said they "wanted to be good
19 neighbors". The reason I'm up here is I have trouble
20 believing that the people of Newington realize where this
21 was going to go. And, I'm asking you, if they had all of
22 this information when they made the decision to go to
23 Planning Board? Thank you. Thank you.

24 PRESIDING OFFICER SPEIDEL: Thank you,

1 Ms. Millar. Mr. Michael Marconi of Newington? Mr.
2 Marconi?

3 (No verbal response)

4 PRESIDING OFFICER SPEIDEL: No
5 Mr. Marconi.

6 MR. HEBERT: He was here. I don't see
7 him.

8 PRESIDING OFFICER SPEIDEL: We will
9 commune with him in spirit.
10 Let's see. Well, Mr. Justin Richardson
11 of Newington.

12 MR. RICHARDSON: Good evening. That
13 always gets me every time. I want to thank you,
14 Mr. Presiding Officer Speidel, Mr. Duclos, and, Mr. Hawk,
15 congratulations on your appointment to the Committee. I
16 want to thank you for coming down to Newington and hear
17 these concerns from everyone, people from Newington,
18 people from Portsmouth as well. This is an important
19 decision, and the statute recognizes that.

20 I was actually there, in 1995, as an
21 intern, I believe, although I might have been Counsel for
22 the Public at the time, when this facility was exempted on
23 the last expansion. And, I've -- actually, as Counsel for
24 the Public, I represented the public on the Newington

1 energy facility, which is immediately adjacent to this,
2 and actually began kind of my familiarity with Newington.
3 It led me to join an energy markets and property appraisal
4 firm that evaluates energy facilities. And, it really
5 actually led me to ultimately moving to Newington and
6 becoming a member of the Planning Board. I was the member
7 that voted to approve -- or, made the motion to approve
8 the facility under our zoning ordinance. And, if any of
9 the members have any questions about why we did what we
10 did, I, for a large part, lead the discussion, and was
11 sitting in the very room and in the very seats that you're
12 in right now, and I'd be happy to answer any questions at
13 any time.

14 The reason the Planning Board approved
15 this was really because it complied with the zoning
16 ordinance. And, I want to read from you, and you have it
17 in the record, it's referred to as "Page Z18", and, in the
18 certified record, you actually have my scribbled notes as
19 we were checking through this. And, the reason you have
20 those is there was a dispute about what district this was
21 in, due to a typo that referred to it in Section 4 in the
22 Planning Board's decision, but, during the deliberations,
23 we had this Page Z18.

24 And, it's very important, because it

1 leads to the question of "why didn't the Newington
2 Planning Board do a study?" Or, at least the allegation
3 that has been made. And, I think it's important for you
4 to understand what our zoning ordinance says in order to
5 find the answer to that question.

6 So, it says, on Page Z18, "upon a
7 finding by the Planning Board that the contemplated use
8 will constitute a development of sustained desirability
9 and stability". And, as we went through each section of
10 the sentence, we actually deliberated every phrase before
11 making the finding, because we felt that we couldn't
12 approve it unless we made all of these findings. "That
13 the contemplated use will constitute a development of
14 sustained desirability and stability, that it will be in
15 harmony with the character of the surrounding area", which
16 I concur with Attorney Ratigan's comment. I don't mean
17 this in a disparaging way. But, if you visit the site,
18 and the Planning Board conducted a view, you could call it
19 an "industrial wasteland". I mean, there are huge areas
20 where it's just gravel and pipes and petroleum storage.
21 And, the plants don't even grow there. So, we're talking
22 about an expansion to a facility, where the tanks already
23 exist, where the railroad tracks already exist and drive
24 right up to the site. Nothing is going to change here,

1 except for we are going to reconfigure the railroad
2 receiving facilities, which is like the pumps at the gas
3 station. They're a lot more complicated, and they have
4 numerous safety features. And, that's another reason to
5 view the site. Is because, when you do, as the Planning
6 Board members did, the control systems that exist
7 throughout this site are unbelievable. They have sensors
8 that will detect at any location on the property. If
9 there's propane in the air, things just start shutting
10 down, valves start shutting from all locations. If the
11 people unloading it, you know, walk away from the station
12 where they're doing their work, all sorts of chain
13 reactions, all controlled both remotely at every site and
14 in the control room start to set off.

15 I see you're talking about the time.
16 So, I'll try to -- I'll try to go as fast as I can. But I
17 will beg your indulgence, because of the scope I'm trying
18 to address.

19 PRESIDING OFFICER SPEIDEL: Mr. Richards
20 on, I think the idea is to make a public statement, not a
21 closing argument. So, --

22 MR. RICHARDSON: Understood. And, so,
23 what I'm trying to provide you is is the information
24 necessary to understand what the Planning Board did and

1 why it's not necessary to repeat that. Because, when the
2 City of Portsmouth came before our hearings, I turned to
3 Mr. Bohenko, and it's actually, I believe, in our minutes
4 somewhere before the May 5th vote. And, I said "Mr.
5 Bohenko, please tell us, what do you want us to do?" He's
6 the City Manager for Portsmouth. And, the reason I asked
7 this is because we, the members of the Newington Planning
8 Board, really want to support the towns next to us, and
9 the residents. The only thing that he said, I said "do
10 you want us to deny the Project?" He said "No." He said
11 "Just consider all of the evidence."

12 So, the criteria that you have there
13 says what we have to do, and we walked through all of
14 those criteria. We had extensive debate. And, we found
15 that each one had been met.

16 What Portsmouth asked us to do was to
17 conduct a subsequent study, on just the rail issue, when
18 we had already determined, based on their representation,
19 that the tracks would be upgraded to Class II status.

20 And, I'm going to be very fast. I'm
21 almost finished.

22 PRESIDING OFFICER SPEIDEL: Okay.

23 MR. RICHARDSON: So, understand, these
24 railroad tracks currently carry spent nuclear fuel rods

1 from Wiscasset that go through downtown Portsmouth.
2 Because those spent fuel rods are there, and because those
3 rail tracks are not in proper form, is a huge benefit to
4 allow this Project to be approved to make the rail even
5 safer. And, --

6 PRESIDING OFFICER SPEIDEL: Okay,
7 Mr. Richardson. I think you've taken enough time. I'm
8 sorry, but we still have a couple of commenters. It's
9 almost 9:00 p.m.

10 So, I would like to invite Mr. Toussaint
11 to come to the microphone.

12 MR. RICHARDSON: Okay. Will --

13 PRESIDING OFFICER SPEIDEL: Mr. Tous-
14 saint of North Berwick, Maine.

15 MR. RICHARDSON: May I ask you just a
16 question? Will we have the opportunity to submit
17 something in writing then, because --

18 PRESIDING OFFICER SPEIDEL: Absolutely.
19 Absolutely.

20 MR. RICHARDSON: All right. Well, thank
21 you very much. And, understand, all I want to say is
22 this. We repeatedly asked for --

23 PRESIDING OFFICER SPEIDEL: Thank God
24 Mr. Toussaint is coming to the microphone. Thank you.

1 MR. TOUSSAINT: Thank you, everyone, for
2 staying. My name is Reggie Toussaint. And, I'm a
3 painting contractor, okay? SEA-3 has supported my
4 business for over 30 years. It has supported my family
5 and several employees of mine. The security and the
6 safety at SEA-3 is impeccable. We receive a safety
7 orientation and all kinds of safety things where we have
8 to be at certain types when we are at SEA-3. SEA-3 is
9 also one of the cleanest, well-maintained industrial areas
10 my company has ever worked in.

11 To not approve this exemption request by
12 SEA-3 is a disfavor to the community. Let's get this
13 Project going. Thank you.

14 PRESIDING OFFICER SPEIDEL: Thank you,
15 Mr. Toussaint. Ms. Jane Ferrini of Portsmouth. Oh.
16 Counsel for the City of Portsmouth.

17 MS. FERRINI: Counsel for the City of
18 Portsmouth, yes.

19 PRESIDING OFFICER SPEIDEL: Yes.

20 MS. FERRINI: I understand that we've
21 been granted intervenor status, there will be ultimately
22 subsequent hearings. But I just want to state for the
23 record that the request for the safety study, the City of
24 the Portsmouth had every right to bring the appeal of the

1 Planning Board's decision, and that is still pending in
2 the Superior Court.

3 But that isn't what this is about. This
4 is your Committee's review of whether or not, you know,
5 the processes are appropriate, and whether all of the
6 information, the laws, the statutes that currently exist
7 provide for all of the safeguards that are required.

8 And, we would just submit that the study
9 that was requested by the City was more than just a rail
10 study. It's been said so many times that I feel that I
11 need to correct the record, that it was a study of the
12 site, but beyond the perimeters, and particularly relative
13 to first response and safety.

14 So, I just feel that there's been a lot
15 of comments relative to what Portsmouth did and what they
16 said and what they wanted. I just wanted to make sure
17 that the record reflected that it wasn't a rail study
18 solely that was requested, that it was a comprehensive
19 study of the site. Thank you.

20 PRESIDING OFFICER SPEIDEL: Thank you.
21 The remaining list of names that I can read off of the
22 sign-up sheet, they're familiar, and DiPentima twice,
23 Sutherland twice, Gibbons and Ford. The question is,
24 would the Portsmouth homeowners group like to make an

1 additional comment, public comment?

2 MS. DiPENTIMA: Yes, please.

3 PRESIDING OFFICER SPEIDEL: Yes.

4 MS. DiPENTIMA: May I?

5 PRESIDING OFFICER SPEIDEL: Please.

6 MS. DiPENTIMA: Thank you. I need a
7 step stool here.

8 PRESIDING OFFICER SPEIDEL: Yes. You
9 can bend it right down.

10 MS. DiPENTIMA: Okay. Thank you. Thank
11 you for the opportunity to speak. All right. I do
12 not believe -- my name is Catherine DiPentima. I'm from
13 Portsmouth. I do not believe that there should be any
14 shortcuts taken or exemptions given to 3-SEA [sic].

15 What we have on the table here is an
16 exponential increase in activity for a propane export
17 project. We need and expect a full, thorough,
18 comprehensive review of the site, the plan, and potential
19 impacts that could result to the region and statewide.

20 I am cutting down my remarks here. Our
21 group has not wavered from our initial request since we
22 started this journey in February of 2014. And, this
23 Project then was determined to be of regional impact. So,
24 it goes way beyond Portsmouth. We have steadfastly asked

1 for comprehensive studies that must include the following:
2 An all hazards risk assessment, which identifies critical
3 assets in the surrounding communities and the marine
4 environment. There needs to be identification of
5 potential threats and evaluation and ranking of the
6 seriousness of threats and the vulnerability of the
7 identified assets that are close by, such as the General
8 Sullivan Bridge, the Spaulding Turnpike, the Piscataqua
9 River.

10 This type of study has never been done.
11 We need an assessment of the probability of the incident
12 types occurring, and the consequences and the potential
13 risks. We also expect to see a gap analysis of the
14 emergency capabilities for communities in the region
15 should the worst possible scenario occur. This also
16 includes planning for messaging, for warning, for
17 sheltering, for evacuation. This is the type of
18 comprehensive study and planning that we have been looking
19 for.

20 Finally, we have no commitment from
21 SEA-3 that this propane will be kept locally or will be
22 used domestically. I personally understand that this is a
23 business. And, I believe that it's going to go to the
24 very lucrative European markets.

1 So, finally, our region and our state
2 will incur tremendous risks involved, many of which was
3 outlined, but we won't receive the benefit. For all of
4 these reasons, I ask the Committee to deny SEA-3 their
5 exemption. Thank you.

6 PRESIDING OFFICER SPEIDEL: Thank you
7 very much. That would lead -- I just received a
8 late-filed request to speak from Mr. Christopher Cross of
9 Newington.

10 MR. CROSS: Thank you, Mr. Chairman.
11 And, I'll be brief. I'm a resident of Newington. And, as
12 Mr. Iocovozzi, the Chairman, has indicated, the Town of
13 Newington looks very closely in its planning to balance
14 the residential areas, wildlife, to protect the shoreline.
15 We have a number of federal and now state utilities and
16 highways. But, particularly, the heart of Newington is
17 the preservation of the -- and the expansion of an
18 industrial capability and economic development. It's very
19 lucrative for the Town of Newington, but also for the
20 State of New Hampshire. It's essential to our economic
21 growth, as you've heard.

22 I've been a member of the Planning Board
23 since 1995. And, I just wanted to address the point that
24 the question was "why not another study?" "Why not

1 another study?" I was a member -- I was not a member of
2 the original study 37 years ago, when SEA-3 was first
3 approved and selected as a viable site, as you heard. But
4 I was member of the Committee and went through the entire
5 review of the upgrade for that facility when the second
6 tank was added. That was a very extensive facility. And,
7 as you've heard, it's been updated every five or required
8 years, and it's been executed flawlessly by 3-SEA [sic].

9 The reason, in my mind, and I reviewed
10 all 500 plus pages before making my decision on this
11 particular activity, and we -- I looked particularly as to
12 whether I thought another study was warranted, not for the
13 rail, but for the overall site. And, I concluded, based
14 on my extensive work on this and seeing that that is not
15 required, because this is not really an expansion on the
16 overall number of tanks. We have one large tank, one
17 small tank. The addition of the additional off-loading
18 sites and the transfer tanks are simply an efficient, very
19 effective way of providing a new way of providing that --
20 this propane in, and getting it not only to the State of
21 New Hampshire, but also to export, which is -- and exports
22 are very important for the nation, as well as the State of
23 New Hampshire.

24 So, for that reason, reviewing that, I,

1 in my mind, found that SEA-3 has a 100 percent flawless
2 execution rate. I expect, with the expansion of the
3 sites, that they will be just as committed. And, this
4 Project is needed to provide energy in a more
5 business-friendly approach and is good for the State of
6 New Hampshire. And, an additional study is not warranted.
7 Thank you.

8 PRESIDING OFFICER SPEIDEL: Thank you,
9 Mr. Cross. I believe that would conclude our -- oops?

10 MR. DiPENTIMA: Mr. Chairman, could I
11 just make a comment to read -- to actually hand in a
12 written statement that I would have read?

13 PRESIDING OFFICER SPEIDEL: Okay. That
14 would be fine. Yes, you may hand in a written statement.
15 By all means, sir.

16 MR. DiPENTIMA: Thank you. I just have,
17 instead of reading this statement that I had planned to
18 read, I will enter it in writing to the Committee.

19 PRESIDING OFFICER SPEIDEL: Mr. Patnaude
20 is very grateful. Thank you.

21 (Laughter.)

22 PRESIDING OFFICER SPEIDEL: There's one
23 more person that wishes to speak I see somewhere. You
24 would like to, ma'am? Please approach the microphone.

1 State your name please.

2 MS. VAN OSS: Yes. My name is -- excuse
3 me. My name is Sherry Van Oss. And, I'm new, within the
4 last year, to the Portsmouth area. I have been following
5 this somewhat. But I feel that, having heard the evidence
6 from the towns, that the Project is probably an excellent
7 idea for our state. As long as we would hope that most of
8 it would stay, even though the price wouldn't be better
9 for them, it would stay local and used domestically.

10 And, if SEA-3 is really as good as it
11 says, I don't see the harm in doing this one study that
12 takes care of all of the possibilities that could happen.
13 In this day and age of ISIS and terrorism, you just never
14 know where they're going to strike, ever. And, I think it
15 would be SEA-3's commitment to their own reputation and a
16 commitment to the State of New Hampshire if they were to
17 allow this.

18 If the exemption has been granted in the
19 past, and it hasn't been done since 1995, if they have
20 done everything, crossed all their t's, dotted all their
21 i's, there shouldn't be an issue with doing the study.
22 And, it should be just something that is granted, and the
23 exemption denied, and let's get the study done and then
24 move forward with the Project, and keep it good for New

1 Hampshire. Thank you.

2 PRESIDING OFFICER SPEIDEL: Thank you,
3 Ms. Van Oss. Well, it would appear that the public
4 statement portion of this hearing is concluded.

5 And, I think it would be appropriate for
6 me to remark, in the form of open public deliberation,
7 that it is very clear that there are very weighty issues
8 for the Subcommittee to consider as part of the exemption
9 request. There is a great deal of discussion surrounding
10 the role of federal preemption, the role of state and
11 federal safety standards, related to the site itself, and
12 also members of the public and intervenors have mentioned
13 safety standards governing railroads, for instance. There
14 has been a great deal of discussion regarding engineering
15 details and potential ecological impacts.

16 And, what I do, as part of my day job,
17 so to speak, I'm in the business of administrative
18 procedure under RSA 541-A of the New Hampshire
19 Administrative Procedures Act. And, at the New Hampshire
20 Public Utilities Commission, we believe and we have had a
21 general approach that, when you have something that
22 requires legal analysis and factual analysis, it's best to
23 develop a full record, written record, in particular,
24 quality testimony, quality development of what you need to

1 have a proper decision-making outcome.

2 So, my initial recommendation that I'm
3 sharing with you all know is that it would probably be
4 advisable to have an ongoing adjudicative proceeding under
5 RSA 541-A, which is fancy way of saying "due process", to
6 examine this question of the exemption. Both to hear the
7 perspective of the Company, the proposer, SEA-3, of the
8 intervenors, and of members of the general public, to
9 carefully develop a written evidentiary record to examine
10 the question of whether the exemption should be granted or
11 denied.

12 Therefore, I would move that we continue
13 this proceeding in a more formal adjudicative fashion
14 going forward, and that an order be developed to that
15 effect by this Committee, that will give parties an
16 opportunity to weigh in with more formal evidence, more
17 formal written arguments, and not to make this a sudden
18 "yes" or "no" answer at the conclusion of this evening. I
19 think that would be a mistake. It would be a mistake for
20 the due process of the Company, their rights, to have this
21 carefully considered, and the due process rights of the
22 public and intervenors included.

23 So, therefore, I move that we continue
24 this proceeding as an adjudicative proceeding under RSA

1 541-A, that an order be issued to that effect. And, I
2 would ask that we have a second of that motion. And, as
3 part of that process, there will be a development of a
4 procedural schedule that would be made known to all
5 participants. So, I move to have that approach taken.

6 MR. DUCLOS: Second.

7 PRESIDING OFFICER SPEIDEL: All those in
8 favor of having a continuing adjudicative proceeding to
9 consider the question of the exemption raise your hand?

10 (Show of hands.)

11 PRESIDING OFFICER SPEIDEL: It is
12 unanimous. Therefore, it will be ordered.

13 I thank you all for your participation
14 and your careful consideration of this matter. Thank you.
15 This hearing is adjourned.

16 **(Whereupon the public hearing was**
17 **adjourned at 9:09 p.m.)**