

**STATE OF NEW HAMPSHIRE
SITE EVALUATION COMMITTEE**

June 8, 2015

Docket No. 2015-01

**Request of SEA-3, Inc. for Exemption from
the Approval and Certificate Provisions of RSA Chapter 162-H**

REPORT OF PREHEARING CONFERENCE

On June 5, 2015, a prehearing conference was held in the above referenced docket. Counsel to the Committee, Michael J. Iacopino, presided. This memorandum will serve as a Report of Prehearing Conference pursuant to RSA 541-A: 31, V (d). Notice pursuant to RSA 541-A: 31, V (b), of the prehearing conference was provided to the service list on May 19, 2015.

Participants

The following parties were present for the prehearing conference: Alec McEachern, Esq. and James Monahan on behalf of the Petitioner SEA-3; John Ratigan, Esq., on behalf of the Town of Newington; Anthony Blenkinsop, Esq., on behalf of the City of Dover; Jane Ferrini, Esq., on behalf of the City of Portsmouth; Christopher Cole, Esq., on behalf of the Portsmouth intervenor group; Richard DiPentima, Matthew Nania, Erica Nanaia, John Sutherland, Jane Sutherland, and Robert L. Gibbons all members of the Portsmouth intervenor group; Fred Mason on behalf of the Great Bay Stewards; Laura Byergo, *pro se*; and Peter Roth, Counsel for the Public. Nathaniel Mose, an intern at the New Hampshire Attorney General's office, was also present.

General Discussion

The parties were advised of the scope and nature of a pre-hearing conference.

At the outset of the prehearing conference, the parties engaged in a general discussion regarding the issue of federal preemption. This is an area where there may be significant litigation in this docket. The parties do not appear to disagree about the fact that the doctrine of federal preemption will apply. However, they do disagree about the extent that the doctrine of federal preemption will affect the decisional authority of the Site Evaluation Committee. The parties discussed the possibility of first briefing the issue of the doctrine of federal preemption. However, after considerable discussion, it was determined that a factual record would be necessary for the Subcommittee to appropriately apply the doctrine of federal preemption to the facts in this docket.

The Town of Newington repeatedly insisted that factual development was not necessary because the petitioner has submitted the complete record of the Newington planning board process. Counsel for the Public, the City of Dover, the City of Portsmouth and the intervenors disagreed. They indicated that they did not adopt that record and reserve their right to dispute any facts determined by the planning board or otherwise contained in the record.

Procedural Schedule

Given the extent of disagreement amongst the parties, discussion was directed to a procedural schedule. At the outset, Counsel for the Public, advised the parties that he intended to seek permission to employ to experts. He indicated that he intends to employ a safety expert with particular expertise in the field railway safety and that he may seek to employ an overall operational safety expert with respect to the operations of the facility on site. He indicated that he

anticipated that the Petitioner would object to his motions. Petitioner indicated that it would, most likely object. However, both parties recognize that the motion has not yet been filed.

After considerable discussion, the parties agreed that the following procedural schedule would provide them with sufficient time to prepare for a final evidentiary hearing on the issue of the exemption:

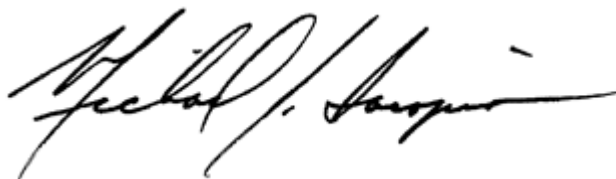
June 26, 2015	SEA-3 will identify witnesses and pre-file their testimony.
July 6, 2015	Counsel for the Public will file his motion seeking to employ experts.
July 16, 2015	The Petitioner's objection to counsel for the Public's motion to employ experts is due.
July 10, 2015	Deadline to submit data requests to the Petitioner.
July 20, 2015	Deadline for Petitioner's answers to data requests.
August 17, 2015	All parties other than the Petitioner will identify witnesses and pre-file their testimony.
August 31, 2015	Deadline for the Petitioner to submit data requests to the other parties.
September 10, 2015	Deadline for answers to data requests submitted by the Petitioner.
September 18, 2015	Technical session. All parties and witnesses must appear. (Request for telephonic appearance shall be made on or before September 10, 2015.)
October 5, 2015	Legal briefing and memoranda are due on any legal issues including the application of the doctrine of federal preemption.
Later in October, 2015	Final hearing on the merits (the exact date is to be determined.)

Counsel for the Public expressed concern that he would need a timely order on his motion to employ experts in order to comply with the above schedule. Counsel for the Public and the Petitioner were encouraged to try to resolve procedural matters that may arise and to cooperate with each other during the discovery phase of this proceeding. If such matters cannot be resolved between the parties, a motion seeking relief should be filed in accordance with the Committee's rules and practice.

All parties were encouraged to pursue areas of potential settlement. While recognizing that the parties may never be able to agree on a the final resolution of this matter they were advised to seek agreement with regard to procedural matters and other matters that would make the process of the adjudicative proceeding more efficient.

The parties were also advised that the presiding officer will issue a final procedural order incorporating the deadlines and dates set forth herein and scheduling the adjudicative hearing referenced herein. To the extent that the procedural order is different than this Report, the parties shall follow the procedural order. The parties are encouraged to cooperate with each other in the trading of information and performing discovery.

Date: June 8, 2015



Michael J. Iacopino, Counsel
Site Evaluation Committee