



CITY OF PORTSMOUTH

LEGAL DEPARTMENT

Robert P. Sullivan, City Attorney – 603-610-7204 (Direct Dial)
Suzanne M. Woodland, Deputy City Attorney – 603-610-7240 (Direct Dial)
Kathleen M. Dwyer, Assistant City Attorney – 603-427-1338 (Phone/Fax)

November 2, 2015

EMAILED to pamela.monroe@sec.nh.gov

Martin P. Honigberg, Chairman
Alex Speidel, Acting Chairman
NH Site Evaluation Committee
NH Public Utilities Commission
21 S. Fruit Street, Suite 10
Concord, NH 03301

**RE: SEC Docket Number 2015 – 01
Request of SEA-3, Inc. for Exemption from the Approval and Certificate
Provisions of RSA Chapter 162-H**

Dear Chairman Honigberg and Acting Chairman Speidel:

Enclosed for filing please find the original and two (2) copies of the City of Portsmouth's Objection to the Applicant's Motion to Strike Testimony of Peter Britz.

I certify that copies of the within filing have been provided to those named in the Service List.

Thank you for your assistance.

Sincerely

Jane Ferrini, Staff Attorney
City of Portsmouth

enclosure

cc: Pamela G. Monroe, Administrator - SEC (emailed and mailed)
Service List (emailed)
John P. Bohenko, City Manager
Robert P. Sullivan, City Attorney

<https://litigation/sea3/sec/letters/ltr-re-cop's-Obj-to-Applicant's-Motion-to-Strike-Testimony-of-Peter-Britz>

**Site Evaluation Committee
Of the New Hampshire Public Utilities Commission**

In the Matter of the Application of Sea-3, Inc.

SEC DOCKET NO. 2015-01

(Request for Exemption)

**THE CITY OF PORTSMOUTH'S OBJECTION TO THE APPLICANT'S MOTION
TO STRIKE TESTIMONY OF PETER BRITZ**

NOW COMES the City of Portsmouth, by its counsel, and respectfully objects to Applicant's Motion to Strike Testimony of Peter Britz ("Objection"). In support of this Objection, the City states as follows:

1. The prefiled testimony of Peter Britz was filed with the SEC on August 17, 2015.
2. The Applicant filed a Motion to Strike Testimony of Peter Britz's on October 23, 2015, some eight (8) weeks after the testimony was filed.
3. The Applicant's analysis of Peter Britz's testimony was not dependent upon the filing of its Memorandum on the Federal Preemption issue due October 23, 2015.
4. N.H. Code R. Site 202.24 (c) provides that all "objections to the admissibility of evidence shall be stated as early as possible in the hearing, but not later than the time when the evidence is offered."
5. The Applicant failed to object to the admissibility of Peter Britz testimony when the evidence was offered and should be barred from seeking its exclusion at this late date.
6. N.H. Code R. Site 202.24 (b) provides that all "documents, materials and objects offered as exhibits shall be admitted into evidence unless excluded by the presiding officer as irrelevant, immaterial, unduly repetitious or legally privileged."

7. “An administrative agency is given “broad discretion in determining the admissibility of evidence.” Rhuel v. New Hampshire Real Estate Appraiser Bd., 163 N.H. 34, 45 (2011) quoting McLaughlin v. Fisher Eng’g. 150 N.H. 195, 199 (2003).

8. Further, it is within this Committee’s “discretion to admit hearsay evidence because the rules of evidence do not apply in adjudicative proceedings. RSA 541-A:33, II.” In re Brooks, 161 NH 457, 463 (2011).

9. Peter Britz’s testimony is not irrelevant and immaterial because it is offered to summarize Portsmouth citizens’ safety concern about the Sea-3 site expansion and should be admitted for the Committee’s consideration.

WHEREFORE, the City of Portsmouth respectfully requests that the Committee:

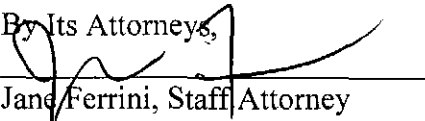
- A. Deny the Applicant’s Motion to Strike Testimony of Peter Britz;
- B. Consider Peter Britz’s testimony; and
- C. For such other and further relief as may be just.

Respectfully submitted,

DATE: November 2, 2015

THE CITY OF PORTSMOUTH

By Its Attorneys,


Jane Ferrini, Staff Attorney

N.H. Bar # 6528

1 Junkins Avenue

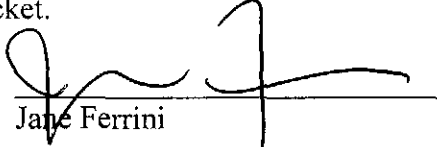
Portsmouth, NH 03801

Phone: (603) 436-3110

Email: jferrini@cityofportsmouth.com

Certification

I hereby certify that on this 2ND day of November, 2015, I caused a copy of the foregoing Objection to Applicant’s Motion to Strike Testimony of Peter Britz to be sent via email to the persons on the Service List on this Docket.


Jane Ferrini