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STATE OF NEW HAMPSHIRE

SITE EVALUATION COMMITTEE

November 5, 2015 - 9:00 a.m. **DAY 1**
Public Utilities Commission
21 South Fruit Street Suite 10
Concord, 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.
(Hearing on Settlement Agreement
Proposal.)

SUBCOMMITTEE: Alexander F. Speidel, Esq. (NH PUC)
(Designated as Presiding Officer)

John Duclos, Designee (NH DES)

Roger Hawk, Public Member

ALSO PRESENT: Pamela G. Monroe, Administrator (NH SEC)

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

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.

Reptg. the Town of Newington:

John J. Ratigan, Esq. (Donahue, Tucker)

Reptg. the Portsmouth Intervenors Group:

Christopher Cole, Esq.

Reptg. the Great Bay Stewards:

Fred Mason
Laura Byergo

I N D E X

OPENING STATEMENTS BY:	PAGE NO.
Mr. McEachern	5
Mr. Roth	6
Ms. Ferrini	7
Mr. Blenkinsop	8
Mr. Cole	8
Mr. Ratigan	9
Mr. Mason	9
WITNESS PANEL:	
PAUL BOGAN	
ANDREW HEAD	
STEPHEN ACHILLES	
ERIC HAGMAN	
EXAMINATION BY:	
Presiding Officer Speidel	15, 30
Mr. Duclos	23, 38
Mr. Iacopino	32
QUESTIONS TO COUNSEL/REPRESENTATIVES BY:	
PRESIDING OFFICER SPEIDEL	41, 43
RESPONSES/STATEMENTS BY:	
Mr. McEachern	42
Mr. Roth	44
Ms. Ferrini	44
OTHER QUESTIONS BY:	
MR. ROTH	46

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
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E X H I B I T S

EXHIBIT NO.	D E S C R I P T I O N	PAGE NO.
1	Document entitled "Proposal", containing 11 numbered paragraphs	12

P R O C E E D I N G

(Hearing commenced at 1:38 p.m.)

PRESIDING OFFICER SPEIDEL: Good afternoon, everyone. I'm Alexander Speidel, Presiding Officer of the Site Evaluation Committee Subcommittee regarding the exemption request filed by SEA-3 in Docket Number 2015-01. We are here at our evidentiary hearing at the conclusion of the various developments related to discovery and site inspections and other matters during the pendency of this consideration of the exemption request.

And, it has been brought to our attention that there has been a settlement agreement that has been developed by several Parties to this case for the Subcommittee's consideration. Therefore, I'd like to ask if any of the attorneys representing these various Parties would like to make some opening statements?

MR. McEACHERN: Mr. Commissioner and members of the Committee, my name is Alec McEachern. I'm an attorney, and I represent SEA-3, the Applicant, in this case. And, I'm pleased to report that, after a long process, it was vigorously investigated and litigated by the Parties, we had an opportunity today to sit down and to discuss the case, and to hear from the Fire Chiefs.

1 And, based on that discussion, we reached an agreement for
2 conditions that will allow Public Counsel and the
3 Intervenors to support the exemption request.

4 And, I urge the Committee to grant the
5 exemption request based on this Settlement Agreement.

6 And, we certainly would make any of our witnesses
7 available here today available to answer any questions
8 that you may have about the Application and the proposed
9 settlement terms.

10 PRESIDING OFFICER SPEIDEL: Thank you.
11 I would ask that those who will be speaking today that you
12 use the microphones. There's a silver button. If there's
13 a red light on, that means the microphone is on. Thank
14 you very much. That's for the benefit of our court
15 reporter.

16 The next person that would like to speak
17 as a party representative with an opening statement,
18 please go ahead.

19 MR. ROTH: Good afternoon. Peter Roth,
20 Counsel for the Public. I agree with what Alec said, that
21 this was a long, hard-fought matter, and brought us to the
22 settlement discussions that took much greater shape today,
23 and, thanks to the Fire Chiefs, we were able to work it
24 out in a way that I think is going to be generally

1 protective, certainly more protective of public safety in
2 that area with respect to this facility, and even more
3 generally than that.

4 So, with that in mind, we would withdraw
5 our objection to the exemption.

6 PRESIDING OFFICER SPEIDEL: Thank you.

7 MS. FERRINI: Good afternoon. I am Jane
8 Ferrini. I'm an attorney for the City of Portsmouth.
9 And, we also participated and have participated for I
10 think the last two years on this issue in various venues.
11 But we are happy to report that our very fruitful efforts
12 have resulted in what we think is a very all-encompassing
13 list of particular conditions that satisfy issues relative
14 to fire safety and the public welfare. And, I would join
15 in the comments by Alec McEachern and by Assistant
16 Attorney General Peter Roth.

17 And, the City of Portsmouth would also
18 withdraw its objection to the exemption, conditioned upon
19 these particular conditions having been incorporated into
20 the request for the exemption and any order that this
21 Committee brings forward.

22 We also have our Fire Chief here
23 available to answer any questions that you may have
24 relative to the terms and conditions that have been set

1 forth today.

2 PRESIDING OFFICER SPEIDEL: Thank you.

3 MR. BLENKINSOP: Good afternoon.

4 Anthony Blenkinsop, Dover City Attorney. I would echo the
5 comments that have been made. We believe the proposal
6 that has been put before you addresses the fire safety,
7 public welfare, and first responder concerns that the City
8 of Dover had.

9 And, we would also, if approved,
10 pursuant to those conditions, withdraw our objection to
11 the exemption being granted.

12 PRESIDING OFFICER SPEIDEL: Thank you.
13 Anyone else?

14 MR. COLE: Mr. Chairman -- is this on?

15 MR. PATNAUDE: Yes, it's on.

16 MR. COLE: Yes. Thank you. Mr.
17 Chairman, Chris Cole. I represent a group of Portsmouth
18 intervenors, eight or nine people. We also support the
19 settlement. We believe it goes a long way, if not all the
20 way, in filling the gaps that would have existed between a
21 full certification process under RSA 162-H. We believe
22 that the settlement as proposed to you is reasonable, and
23 would like to thank the Chiefs, the Fire Chiefs, in
24 particular, for getting us through a lot of the minutia

1 and having, you know, laypeople able to understand what's
2 going on.

3 We would likewise withdraw our objection
4 to the granting of the exemption on these conditions that
5 are before you. Thank you very much.

6 PRESIDING OFFICER SPEIDEL: Thank you.
7 Is that all?

8 MR. RATIGAN: John Ratigan, representing
9 the Town of Newington. As the host community, whose
10 Planning Board approved this Application in the first
11 instance, we're pleased that a set of very reasonable
12 conditions have been adopted by the Parties here today.
13 These are conditions that, at least as a town, we fully
14 expected would have been adopted as part of the permitting
15 process. And, we're happy that they were articulated as a
16 guide document for going forward to see how this proposal
17 will move forward. Thank you.

18 PRESIDING OFFICER SPEIDEL: Thank you.

19 MR. MASON: Fred Mason, non-attorney
20 representative for the Great Bay Stewards. The Great Bay
21 Stewards have participated in this process with a focus on
22 the environmental concerns, specifically, the safety of,
23 the welfare of the Great Bay estuary and its ecosystem.

24 We have agreed with counsel for SEA-3

1 and counsel for Trammo that we would develop a memorandum
2 of understanding stating mutual intent to explore
3 opportunities by which Trammo can be providing support for
4 the research preserve. Thank you.

5 PRESIDING OFFICER SPEIDEL: Thank you.
6 Anyone else who would like to make an opening statement?

7 *[No verbal response]*

8 PRESIDING OFFICER SPEIDEL: Well, seeing
9 none, I would ask as to whether the Settlement Agreement
10 in question has been filed as an exhibit yet to the
11 Subcommittee? And, whether copies are available for
12 inspection at the Bench directly as part of this hearing
13 proceeding? Or, is that a little less formal than what we
14 do here at the Commission usually?

15 MR. IACOPINO: Mr. Chair, I believe we
16 all have the most recent document prepared by the Parties.
17 It's entitled, at the top, "Proposal", contains eleven
18 paragraphs. Is that correct, Mr. McEachern?

19 MR. McEACHERN: That is correct,
20 Mr. Iacopino. And, just to roll back for one minute, I'm
21 not sure I heard if Great Bay Stewards was withdrawing its
22 objection. And, I don't think that, and it may have been
23 an oversight, Fred, I just don't know that I heard that on
24 the record. So, I wanted to make that clear.

1 PRESIDING OFFICER SPEIDEL: So, just for
2 my own education, because I'm new to this specific area of
3 practice within the Subcommittee, this document has been
4 informally proffered to the Subcommittee and to the
5 various folks here. In terms of noticing as a hearing
6 exhibit, Mr. Iacopino, will there be some notification or
7 marking of this as a hearing exhibit?

8 MR. IACOPINO: Yes. We can mark it as
9 an exhibit.

10 PRESIDING OFFICER SPEIDEL: Okay. I
11 think a copy of this latest version should be marked as an
12 exhibit for this hearing.

13 MR. IACOPINO: Do you have a preference
14 on what you want to call it?

15 PRESIDING OFFICER SPEIDEL: Well, I see
16 that we did -- is this exhibit numbering list stipulated
17 to by the Parties still in effect?

18 MR. IACOPINO: No.

19 PRESIDING OFFICER SPEIDEL: Or has it
20 been rendered moot?

21 MR. IACOPINO: It's been rendered moot.

22 PRESIDING OFFICER SPEIDEL: Okay. I
23 would call this "Hearing Exhibit 1".

24 (The document, as described, was

1 herewith marked as **Hearing Exhibit 1** and
2 entered as a full exhibit.)

3 PRESIDING OFFICER SPEIDEL: Very well.
4 Well, I would inquire to the attendees here today as to
5 whether there's been an agreed upon ordering of witnesses
6 in support of the Settlement Proposal that's been
7 proffered as "Hearing Exhibit 1"?

8 MR. McEACHERN: There has been no
9 agreement as to the witnesses in support of the Settlement
10 Agreement. It's my understanding, from Attorney Iacopino,
11 that the Committee would want to hear from several of the
12 witnesses who were here. And, I can -- certainly, Paul
13 Bowling could be the first witness. What I'm not clear on
14 is on, you know, whether the testimony should be confined
15 directly to the Settlement Agreement or do you want to
16 hear testimony beyond that point?

17 Obviously, I came here today prepared to
18 put on my case. And, so, I have the full lineup of all
19 his testimony and the questions I was going to ask him.
20 But I guess I'm looking for some guidance from the
21 Committee on whether you want his testimony to be confined
22 to the Settlement Agreement?

23 PRESIDING OFFICER SPEIDEL: I think, in
24 general terms, there's certainly some overlap between the

1 subject matter of the Settlement Agreement and the more
2 general matters that had been raised by the various
3 Parties to this case.

4 What the Subcommittee would be most
5 interested in is hearing from Mr. Bogan and the Fire
6 Chiefs from the several communities that are here today.
7 I do notice that we have a capacity for four as a panel.
8 So, if Mr. Bogan and the Chiefs were to sit up there as a
9 collective panel, I think that could save some time, and
10 enable us to ask questions about the contents of the
11 Settlement Agreement to our satisfaction.

12 Does that sound reasonable to everyone?

13 MR. McEACHERN: It certainly does.

14 PRESIDING OFFICER SPEIDEL: Okay. Then,
15 let's proceed on that basis please.

16 Now, to the court reporter, one last
17 little piece of administrative work. Would it be
18 reasonable to invite the various Parties to ask questions
19 of these witnesses before the Bench questioning begins?
20 Would you be willing to do that? Is there a desire to ask
21 questions of these witnesses?

22 MS. FERRINI: If I may? I think, for
23 practical purposes, I think that it would be best if the
24 Committee started out with its specific questions. In the

[WITNESS PANEL: Bogan~Head~Achilles~Hagman]

1 fact that everyone has kind of hashed out, you know, their
2 understanding of the terms, I think it would be more
3 important for the Committee to ask the questions first.
4 And, then, if any further information is needed, then the
5 intervening Parties and the Parties to this matter could
6 ask additional questions.

7 PRESIDING OFFICER SPEIDEL: Is there
8 general agreement with that point of view?

9 MR. McEACHERN: I'm in agreement.

10 MR. ROTH: I'm in agreement. I have no
11 questions for the witnesses on this issue.

12 MR. RATIGAN: That's fine.

13 PRESIDING OFFICER SPEIDEL: Very well.
14 I would ask that the witnesses be sworn.

15 (Whereupon **Paul Bogan, Andrew Head,**
16 **Eric Hagman,** and **Steven Achilles** were
17 duly sworn by the Court Reporter.)

18 PRESIDING OFFICER SPEIDEL: I would ask
19 that the witnesses identify themselves by name and title
20 and affiliation, moving from left to right.

21 WITNESS ACHILLES: Good afternoon.
22 Steven Achilles, Fire Chief for the City of Portsmouth
23 Fire Department.

24 WITNESS HAGMAN: Eric Hagman, Fire

[WITNESS PANEL: Bogan~Head~Achilles~Hagman]

1 Chief, City of Dover, New Hampshire.

2 WITNESS HEAD: Andrew Head, Fire Chief
3 of Newington.

4 WITNESS BOGAN: Paul Bogan, Vice
5 President of Operations for SEA-3, Inc.

6 PRESIDING OFFICER SPEIDEL: Thank you
7 very much, gentlemen. I think, at least for my sequence
8 of questions, I will tend to refer to Mr. Bogan
9 specifically or the Chiefs as a collective. And, I would
10 ask that each fire chief proffer answers to my questions
11 directly and address my concerns, so that each individual
12 town's Chiefs are on the record in answering my questions,
13 I'd appreciate that.

14 **PAUL BOGAN, SWORN**

15 **ANDREW HEAD, SWORN**

16 **ERIC HAGMAN, SWORN**

17 **STEVEN ACHILLES, SWORN**

18 BY PRESIDING OFFICER SPEIDEL:

19 Q. So, my first question, and I think I can direct this to
20 Mr. Bogan and to the panel generally, is the language
21 presented in Hearing Exhibit 1, the Proposal, is this
22 the actual language of what would be signed and
23 executed by the various Parties to this agreement?

24 A. (Bogan) I'm not sure I understand your question.

[WITNESS PANEL: Bogan~Head~Achilles~Hagman]

1 Q. Well, --

2 A. (Bogan) We agree to the stipulations, yes.

3 Q. Well, do you foresee that you would sign this
4 stipulation --

5 A. (Bogan) Oh, yes.

6 Q. -- as a legal document?

7 A. (Bogan) Yes.

8 Q. So, this is the actual wording of the legal document
9 that you're expecting to sign?

10 A. (Bogan) I would sign it, yes.

11 Q. And, that is true of the Chiefs as well?

12 A. (Hagman) Yes.

13 A. (Achilles) Yes.

14 A. (Head) Yes.

15 Q. Thank you. Well, Mr. Bogan, I understand that SEA-3 is
16 a subsidiary of the Trammo Corporation, is that
17 correct?

18 A. (Bogan) Yes.

19 Q. Have you received corporate authorization from a
20 responsible officer at Trammo to enter into this
21 Settlement Agreement?

22 A. (Bogan) Not directly, but through our attorney, who has
23 received that, yes.

24 Q. Thank you. There's a series of defined terms here or

[WITNESS PANEL: Bogan~Head~Achilles~Hagman]

1 that is terms of art that I'd like to go through and
2 get an understanding of what they mean. I see in Point
3 2 there's a term that reads "A virtual facility tour
4 for all shifts held at Portsmouth and Dover Fire
5 Departments when crews are on duty". What is a
6 "virtual facility tour"?

7 A. (Hagman) Sure. I'll address that. In our case, from
8 Dover, it is very hard for us to deploy crews to
9 Newington for a training class, because it renders our
10 community unprotected. So, having a virtual tour,
11 where a representative from SEA-3, and potentially
12 Newington Fire, can come up and explain the site, the
13 site layout, the fire protection features, that is what
14 we're calling a "virtual tour". And, that would
15 suffice in meeting Dover Fire's concerns.

16 If I answered your question?

17 PRESIDING OFFICER SPEIDEL: Thank you
18 for that explanation. As we go along, I'm thinking in the
19 back of my mind, it might not be a terrible idea, when
20 this Settlement Agreement is reworked into a final
21 version, that we have a glossary of terms that kind of
22 explain to the general public and to laypersons what some
23 of these terms mean. So, just be prepared to include that
24 in a final version for submission to the Subcommittee for

1 its consideration.

2 BY PRESIDING OFFICER SPEIDEL:

3 Q. Moving along, this is another example of this, under
4 Subpart 4, the "Town of Newington shall convene and
5 believed SEA-3 shall participate in a Mutual Aid
6 command district table top for the scenario of (1) leak
7 and/or fire on site", and then it goes on. What is a
8 "table top"?

9 A. (Head) I'll address that. Instead of going out to the
10 actual site and doing a drill there, we do it in a
11 closed room, get everybody together, and we act out
12 what would actually happen.

13 Q. Thank you. That's -- I think that could be included in
14 a glossary of terms, and maybe more legalese-type
15 language, but simple language to just explain what that
16 is. And, there's a number of acronyms here in this
17 Subpart 4, too. We see "NH HSEM", I guess that's
18 "New Hampshire Homeland Security & Emergency
19 Management"?

20 A. (Hagman) Correct.

21 Q. And, then, there is "EPA/DES", that would be the
22 "Environmental Protection Agency" in our own state's
23 "Department of Environmental Services"?

24 A. (Hagman) Yes.

[WITNESS PANEL: Bogan~Head~Achilles~Hagman]

1 Q. Thank you. And, then, there's "NH HSEM EOC", that
2 would be the "Emergency Operations Center"?

3 A. (Hagman) Yes.

4 Q. Thank you. And, let me see if there is anything else
5 here. Farther down, under Subpart 6, I see there's an
6 acronym "NHFMO". Is that the "New Hampshire Fire
7 Marshal's Office"?

8 A. (Hagman) Yes.

9 Q. Thank you. Mr. Bogan, under Subpart 5, I see that the
10 way the language reads right now it says "Stipulated
11 limit of 16 propane rail cars (no more than
12 33,000 gallons per car) to facility per day consistent
13 with Newington Planning Board stipulation - SEC
14 approval required to increase amount." That seems to
15 be a little bit of shorthand. And, it's not in a very
16 active tone of voice, and it's kind of shorthand for a
17 broader concept. We're going to explore that in a few
18 questions here.

19 I think what this means to accomplish is
20 that SEA-3 is agreeing that it will not receive more
21 than 16 propane rail cars into its facility every day,
22 is that correct?

23 A. (Bogan) That is correct.

24 Q. And, is SEA-3 and its parent company, Trammo, agreeing

[WITNESS PANEL: Bogan~Head~Achilles~Hagman]

1 to this specific stipulation as a condition of any
2 exemption being granted by the Subcommittee from SEC
3 review, is that correct?

4 A. (Bogan) Yes.

5 Q. And, does SEA-3 and its parent company, Trammo,
6 understand that the exemption would be revocable on the
7 failure of any of the conditions presented within the
8 stipulation, including this Stipulation Number 5,
9 limiting the number of rail cars that SEA-3 may receive
10 on any day?

11 A. (Bogan) Yes.

12 Q. Now, the statement regarding "SEC approval required to
13 increase amount", you understand that, in order to have
14 this modification of this particular stipulation term,
15 and any other stipulation term, that SEA-3 would have
16 to petition the Site Evaluation Committee for a
17 granting of the modification of the stipulation, is
18 that correct?

19 A. (Bogan) I understand that, yes.

20 Q. This is not really directed at any particular witness,
21 but I think there's another definitional issue, just to
22 state this on the record, under Part 10, "The City of
23 Portsmouth shall voluntarily nonsuit its Appeals, with
24 prejudice". Again, in the glossary of defined terms, I

[WITNESS PANEL: Bogan~Head~Achilles~Hagman]

1 think it would be helpful to have a greater sense of
2 how that term means to be implemented, just in layman's
3 terms. Just, you know, what does this mean? What is a
4 "voluntary nonsuit"? Because it's not obvious to the
5 layperson on the street, I don't think, and I think
6 this needs to be an accessible document that everyone
7 can understand.

8 And, then, under Subpart 11, this
9 question is for Mr. Bogan. "The non-occurrence of any
10 event required under this agreement that is outside of
11 SEA-3's control shall not result in the loss of its
12 exemption." Mr. Bogan, could you talk a little bit
13 about what sort of events or non-occurrence of events
14 would be outside of SEA-3's control?

15 A. (Bogan) I wasn't involved in the preparation of these
16 stipulations. And, I really, I mean, I have no problem
17 with all the stipulations. I don't know what would be
18 outside of my control.

19 A. (Achilles) I may be able to answer that.

20 Q. Okay.

21 A. (Achilles) There are some stipulations that are
22 predicated on outside agencies, such as Homeland
23 Security Emergency Management and the Newington Fire
24 Department and the willing participation of Mutual Aid

1 partners. So that -- we understand that's borne on us
2 to accomplish. And, SEA-3 may not have any influence
3 in affecting that. So, that language recognized the
4 fact that SEA-3 may not be able to affect certain
5 outcomes, such as the after-action report from an
6 exercise, and we did not see that that should hold this
7 process up.

8 Q. I see. I was wondering if it would be possible to have
9 this description in 11 fleshed out a little bit, to
10 perhaps indicate to outside parties and to future
11 subcommittees and committees as to the meaning of what
12 that was intended to address. That would be most
13 helpful, I think.

14 I think, in general terms, it's
15 important to inquire, because this is rather heavy on
16 the matters of fire safety, and I would like each chief
17 to address this in turn. In your professional opinion,
18 are the concerns that you may have had regarding the
19 SEA-3 proposal alleviated due to the inclusion of these
20 conditions? Do you think that these conditions serve
21 to meet your goals in ensuring public safety in
22 connection with this proposal?

23 A. (Achilles) For the City of Portsmouth, I can state that
24 these conditions meet, and at some points exceed, our

[WITNESS PANEL: Bogan~Head~Achilles~Hagman]

1 expectations to ensure the public safety, of not only
2 our residents, but the generic geographical area around
3 the site, along with our Mutual Aid partners.

4 A. (Hagman) I view that, exactly what Chief Achilles said,
5 is the same for myself and for Dover. Our concerns are
6 addressed with these stipulations.

7 A. (Head) The Town of Newington, most of this stuff was
8 issues that were going to be dealt with with the
9 original permit. So, we absolutely have no issue. It
10 covers everything.

11 PRESIDING OFFICER SPEIDEL: Thank you
12 for that explanation. I believe that my colleagues on the
13 Subcommittee might have some questions for the witnesses
14 as well. And, I'd like to invite Mr. Duclos to begin his
15 questions.

16 MR. DUCLOS: John Duclos, New Hampshire
17 DES. And, I just had a couple questions of the Chiefs.

18 BY MR. DUCLOS:

19 Q. Is Newington, Dover, and Portsmouth the only Mutual Aid
20 towns to be involved should there be an incident at the
21 SEA-3 facility?

22 A. (Head) No.

23 Q. I notice there is one occurrence where the surrounding
24 the communities are going to, in Stipulation 7,

[WITNESS PANEL: Bogan~Head~Achilles~Hagman]

1 Proposal Number 7, "include notification to the
2 surrounding communities" -- "surrounding communities of
3 the need of activating their reverse 911 system". What
4 other communities are involved that would be activating
5 the reverse 911?

6 A. (Head) I think this is what we do with an evacuation,
7 it's the area. And, it really, besides Eliot, on the
8 other side of the river, I don't think any other
9 communities, besides Portsmouth and Dover would -- and
10 Newington, would fall into these.

11 Q. I believe we heard from Chief Hagman, is that correct?

12 A. (Hagman) Yes.

13 Q. That the virtual tour was really the extent of what
14 Dover was looking for for --

15 A. (Hagman) It was one concern. The other -- we had some
16 other concerns, but they are completely addressed with
17 the Stipulation Number 1, the "Comprehensive Fire
18 Safety Analysis" that is based on the requirements in
19 NFPA 58. And, that was actually a bigger concern for
20 us. And, it's taken care of right there in Stipulation
21 Number 1.

22 Q. Chief Hagman, when we did the facility tour, we had,
23 obviously, a very good presentation by Mr. Bogan as to
24 how the alarm would be sent out to Newington, and the

[WITNESS PANEL: Bogan~Head~Achilles~Hagman]

1 response time, the next responder would be Portsmouth.
2 And, we had some questions as to -- or, I had some
3 personal questions as to volume of water and the flow
4 of that water should a situation occur. I see in some
5 of the literature that there's a "2,000 gallon per
6 minute" number given for fire flow for a response.
7 Could you tell me where that came from? And, is that
8 some type of a requirement by NFPA or where that number
9 came from?

10 A. (Hagman) My understanding from the fire protection
11 engineers hired by SEA-3, their analysis, utilizing
12 portions of NFPA 58, come up with that number, is a
13 number -- is determined through using that standard.
14 So, it's, for lack of better words and clear language,
15 it's not picked out of thin air. The fire protection
16 engineers using that standard have come up with that
17 number for the degree of hazard. The number changes
18 based on the amount of product and hazard on the site.
19 So, a smaller facility may require a smaller amount of
20 water, gallons per minute, a larger facility would need
21 up to what has been determined, around the 2,000 gallon
22 mark.

23 Q. And, all the water is, obviously, fresh potable water
24 that was supplied here, and that comes from what town

1 or city?

2 A. (Achilles) It comes from the City of Portsmouth.

3 Q. Okay. And, the City of Portsmouth, on their water
4 distribution system, during a peak flow period, how
5 much water would they be able to supply should an
6 incident happen at SEA-3?

7 A. (Achilles) There was a model calculated out from a date
8 in --

9 A. (Head) 2011.

10 A. (Achilles) -- 2011. And, that showed it had between I
11 think approximately a thousand gallons or more. But,
12 again, it is a model. I'm comfortable that the fire
13 safety analysis required under the stipulations would
14 further explore that and ensure what is the adequate
15 amount or appropriate amount of water required at an
16 incident at SEA-3. And, I think they would also start
17 to model out to see what the flow rate is, not just on
18 one day, but over multiple evaluation periods.

19 Q. With up to 16 tank cars there at any time --

20 *[Court reporter interruption.]*

21 BY MR. DUCLOS:

22 Q. With up to 16 tank cars at the facility at any
23 particular time, and if one had an incident, could you
24 explain how that response would happen, from a fire

[WITNESS PANEL: Bogan~Head~Achilles~Hagman]

1 control perspective, the amount of water that you'd put
2 on those cars?

3 A. (Head) What we're looking at right now, again, we've
4 only had a preliminary discussion on the fire
5 protection for the new addition to SEA-3. It would be
6 that there would be automatic monitors or hose streams,
7 basically, is the easy way to say it, that would
8 activate, set off at the control house. They would
9 start cooling the tanks, and the fire department would
10 be notified, we'd start out, bring in Mutual Aid.

11 Q. So, all Chiefs are satisfied with the volume of water
12 for an incident there then?

13 A. (Head) Yes.

14 A. (Achilles) From Portsmouth, yes. And, it's my
15 understanding that, in touring the site, that not all
16 cars at one time would be at risk, based on the
17 operations. And, I think that's an important factor to
18 consider. And, we believe there's also other
19 workarounds, that we can supply more water at peak
20 hours as required.

21 Q. Mr. Bogan, how many tank cars are off-loaded at any
22 particular time?

23 A. (Bogan) We are presently planning on off-loading six at
24 a time. And, just to put it out there, I guess, NFPA

[WITNESS PANEL: Bogan~Head~Achilles~Hagman]

1 58 requires a coverage for a propane incident on fire
2 to be 0.25 -- 0.24 gallons per minute per square foot
3 of coverage. And, if I remember correctly, the car
4 that's affected has to be covered, plus the car on
5 either side of it, either end of it. So, that, again,
6 as the chief said, limits the quantity of water
7 required by code.

8 Q. Okay. And, those issues would be covered under the --

9 A. (Bogan) Yes.

10 Q. -- Proposal Number 1?

11 A. (Bogan) Yes.

12 Q. Okay. Thank you. Another question I have is on
13 Proposal Number 8, where the Town of Newington receives
14 a copy of the Contingency Plan, and they'll make it
15 available to the other fire departments or "area fire
16 departments upon request". Why do the other fire
17 departments have to "request it"? Can't Newington just
18 submit it to the other towns upon request -- or, upon
19 receipt, rather?

20 A. (Head) I think one of -- this is some discussion we had
21 during -- coming up with this proposal was, it's not
22 something that every town usually gets is a copy of a
23 contingency plan for another town. But, once we
24 received an updated one from SEA-3, if any of the towns

[WITNESS PANEL: Bogan~Head~Achilles~Hagman]

1 would want one, we would absolutely get it to them.

2 Q. You're saying that you would submit it to them or they
3 would have to request it from you? And, how would they
4 know you received it?

5 A. (Head) Just let them know.

6 A. (Achilles) From Portsmouth, I'm comfortable not
7 maintaining a contingency plan from multiple
8 communities on multiple sites. So, as we've done in
9 the past, if there's a particular site hazard, we've
10 requested it before from other communities to share.
11 And, we think this facility is the same, where,
12 especially in light of these hearings and the process,
13 we would request it to maintain. But I feel
14 comfortable that we don't want to automatically start
15 receiving contingency plans or reports from multiple
16 communities on multiple sites.

17 MR. DUCLOS: That's the end of my
18 questions. Thank you.

19 PRESIDING OFFICER SPEIDEL: Mr. Hawk --
20 excuse me, Mr. Hawk?

21 MR. HAWK: No questions.

22 MR. IACOPINO: I do.

23 PRESIDING OFFICER SPEIDEL: Sure. Let
24 me just ask one quick follow-up question.

[WITNESS PANEL: Bogan~Head~Achilles~Hagman]

1 BY PRESIDING OFFICER SPEIDEL:

2 Q. There is a mention of "workarounds". I understand that
3 the Portsmouth Harbor/Piscataqua River area is a very
4 busy maritime zone, and there's a lot going on. I was
5 wondering if we could have a general discussion from
6 the Fire Chiefs about some of the associated resources
7 that might be brought to bear in a contingency
8 situation. Do you know of whether Naval personnel or
9 Air Force personnel from Pease have resources that
10 could be made available in emergency response? What
11 towns and cities have fireboats, for instance? Could
12 we have a little bit of discussion about that?

13 A. (Head) We automatically use Pease Fire Department as
14 one of our Mutual Aid responders. The shipyard is also
15 on our run --

16 *[Court reporter interruption.]*

17 **CONTINUED BY THE WITNESS:**

18 A. (Head) -- run cards, incident cards. Portsmouth has a
19 fireboat, the shipyard has a few boats that can pump
20 water. We have a rescue boat. I think that's pretty
21 much it in the area.

22 A. (Hagman) Coast Guard as well.

23 A. (Head) Coast Guard. Coast Guard, yes.

24 BY PRESIDING OFFICER SPEIDEL:

[WITNESS PANEL: Bogan~Head~Achilles~Hagman]

1 Q. Yes, the Coast Guard Station, which is in Portsmouth?

2 A. (Achilles) It's technically in Newcastle.

3 Q. Newcastle.

4 A. (Achilles) But, and I will add, that all those assets
5 exist in addition to support the water supply. Many
6 communities around in our Mutual Aid District have
7 water tankers or tenders. And, because of the design
8 of the municipal water system, there are instances that
9 we currently use and can employ to increase the volume
10 of water from wells and from our Madbury Reservoir and
11 the pump stations by physically opening valves. So,
12 we've employed this before in the past in our city,
13 when there's a high demand for water supply for
14 suppression. It will minimize available water in the
15 rest of the municipal system, but it's focusing the
16 water. And, that makes more water available than from
17 that one day report that shows the max amount
18 available.

19 Q. What about aviation-based resources? Does the State of
20 New Hampshire maintain some level of fire suppression
21 aircraft, helicopters?

22 A. (Achilles) Currently, the State of New Hampshire
23 contracts out with a helicopter company for water
24 drops. They don't have any other assets. But, for a

{SEC 2015-01} [Day 1] {11-05-15}

[WITNESS PANEL: Bogan~Head~Achilles~Hagman]

1 fire or an incident at that location, it would not be
2 my recommendation to use air assets for suppression.
3 But I would defer to the Chief of Newington.

4 A. (Head) No.

5 PRESIDING OFFICER SPEIDEL: Thank you
6 for that explanation. Mr. Iacopino.

7 MR. IACOPINO: Thank you.

8 BY MR. IACOPINO:

9 Q. What I -- the first question, I just want to, so that
10 folks understand, the "Comprehensive Fire Safety
11 Analysis, pursuant to NFPA 58", contained in the first,
12 Stipulation Number 1, that's a report that is going to
13 be drawn up, is that correct?

14 A. (Achilles) Yes.

15 Q. And, that will have additional conditions that will
16 have to be followed at the facility, is that correct?

17 A. (Head) Yes.

18 Q. Okay. Is there any objection from any of the Chiefs or
19 Mr. Bogan with having a copy of that analysis report
20 being provided to the Site Evaluation Committee?

21 A. (Achilles) I have no objections.

22 A. (Bogan) I have no objection.

23 Q. Is it the type of thing that should not be a public
24 record for any reason, for any kind of safety reason or

[WITNESS PANEL: Bogan~Head~Achilles~Hagman]

1 anything like that, do you know?

2 A. (Bogan) I would be uncomfortable with that being made a
3 public record.

4 Q. Okay. Let me start with the Chiefs first. And,
5 obviously, I know you speak as to fire safety, but do
6 you believe that, in addition to the conditions here,
7 existing state and federal statutes or rules or
8 ordinances provide adequate protection, in addition to
9 the conditions here, for -- at least for fire safety
10 with regard to this facility?

11 A. (Achilles) From Portsmouth, yes.

12 A. (Hagman) From Dover, yes.

13 A. (Head) Newington, yes.

14 Q. Mr. Bogan, do you agree with them?

15 A. (Bogan) Yes.

16 Q. Okay. And, Mr. Bogan, during the course of the
17 pendency of this proceeding, we received a number of
18 letters, public comments, both pro and against -- both
19 for and against the particular Application for
20 Exemption. And, is it your opinion that the response
21 from the public indicates that the objectives of our
22 statute are met through the individual review processes
23 of state agencies?

24 A. (Bogan) Yes, I do.

[WITNESS PANEL: Bogan~Head~Achilles~Hagman]

1 Q. With respect to state agency involvement, and this is
2 for everybody, will there be other state agencies that
3 will be involved, if this exemption is granted, in
4 regulating the various aspects of the facility, with
5 respect to not only public safety, but with respect to
6 environmental issues?

7 A. (Head) From our side, I know the Fire Marshal's Office
8 will be involved.

9 Q. Are you aware of any other state agencies that may be
10 involved that you have contact with through your
11 business?

12 A. (Head) No.

13 A. (Achilles) Not aware of it.

14 A. (Hagman) Not aware.

15 Q. Mr. Bogan, are you aware of other state agencies that
16 are involved in regulating your facility?

17 A. (Bogan) Yes. DES would be one of them. I am not quite
18 sure of the name, but the coastline, the agency that
19 governs coastline and habitat and so forth, they would
20 be involved -- they are involved, and we have the
21 permits already in place for that, as well as
22 Alteration of Terrain Permit, which is in place.

23 Q. And, what about the trucks coming in and out of your
24 facility, are they regulated by the Department of

[WITNESS PANEL: Bogan~Head~Achilles~Hagman]

1 Transportation?

2 A. (Bogan) Yes. DOT, yes.

3 Q. And, of course, many aspects of the railway itself are
4 regulated by federal agencies, is that correct?

5 A. (Bogan) Yes.

6 Q. And, do you believe that those regulations adequately
7 provide protection of the purposes of our statute here?

8 A. (Bogan) Yes, I do.

9 Q. Can you think of any environmental impacts or effects
10 that aren't adequately regulated between the various
11 state and federal agencies and the conditions contained
12 in this agreement?

13 A. (Bogan) No. If I understand the question correctly, I
14 think all of the impacts are considered.

15 MR. IACOPINO: I have no further
16 questions.

17 PRESIDING OFFICER SPEIDEL: Thank you
18 very much to my colleagues. I would say, in general
19 terms, I'm entering into a little bit of a gray area. So,
20 I think this should be classified as "comments of the
21 Presiding Officer", and not necessarily "deliberations".

22 I think there is a need to freshen the
23 language of this Proposal that's presented in Hearing
24 Exhibit 1 to incorporate some of the issues that we need

[WITNESS PANEL: Bogan~Head~Achilles~Hagman]

1 to have addressed, regarding the passive voice of the
2 language or the failure to specify duties and rights under
3 the agreement.

4 For starters, I think, certainly,
5 Subelement Number 5 should read in a positive way,
6 something to the effect of "SEA-3 shall not receive more
7 than 16 propane rail cars", *etcetera, etcetera*, instead of
8 having the statement read "Stipulated limit of 16 propane
9 rail cars". As a matter of legal construction, it's a
10 little bit vague and uncertain as to what that means and
11 what responsibilities lie with what party.

12 I think there's a lot of intelligent
13 lawyers and nonlawyers in the room, I think you all
14 understand the general direction that is being offered.
15 Because I think, for the Subcommittee to consider a
16 settlement agreement proposal for a final consideration,
17 there has to be a clear definition of terms, there has to
18 be a delineation of rights and responsibilities. And, I
19 think there needs to be a clarification of the
20 understanding of all the Parties that all of these points
21 within the proposal amount to conditions for approval by
22 the Subcommittee of the exemption request, that is
23 revocable, and that all Parties understand that. It would
24 also be the expectation of the Subcommittee that this be

[WITNESS PANEL: Bogan~Head~Achilles~Hagman]

1 executed by responsible officers representing each
2 individual party.

3 So, I think what we have to do at this
4 present time, if my colleagues are in agreement, I don't
5 know whether this sort of wordsmithing, including the
6 glossary of terms and the expansion of definitions, could
7 be accomplished during this very afternoon. I would need
8 to have some feedback from the witnesses perhaps on that
9 point.

10 Mr. Bogan, do you think that it would be
11 possible to revise the language of this agreement, to have
12 it executed today, or should we reconvene at tomorrow's
13 planned time at 9:00 a.m., and examine the reformed
14 Settlement Agreement at that time?

15 WITNESS BOGAN: Well, as I said, I
16 wasn't involved in the construction of the Proposal. And,
17 I don't know -- I do know that there was a lot of time
18 involved. So, as far as reconstructing, I would have to
19 dismiss myself from the comment of whether or not we could
20 do that.

21 PRESIDING OFFICER SPEIDEL: Understood.
22 And, in terms of availability for execution, would the
23 Chiefs expect that you would be signatory Parties or would
24 your attorneys be signing the Agreement on your behalf?

[WITNESS PANEL: Bogan~Head~Achilles~Hagman]

1 WITNESS ACHILLES: I would defer to
2 counsel on that.

3 PRESIDING OFFICER SPEIDEL: Okay. Very
4 good.

5 WITNESS HAGMAN: The same.

6 PRESIDING OFFICER SPEIDEL: Then, I
7 would suggest that at the present time that we dismiss the
8 witnesses, and I'll begin some questioning of the various
9 counsel to the various Parties regarding some of these
10 wordsmithing. Hold on a second.

11 (Mr. Duclos and Presiding Officer
12 Speidel conferring.)

13 PRESIDING OFFICER SPEIDEL: One more
14 quick question from Mr. Duclos. Sorry.

15 MR. DUCLOS: While we have you in the
16 hot seat over there, Chiefs, I appreciate this.

17 BY MR. DUCLOS:

18 Q. I see the Stipulation 2 and 4, you know, talks about
19 the "virtual facility tour", and I have an
20 understanding of what that is now, and the "district
21 table top", and I have a better understanding of what
22 that is now. Do you see a need to actually have a
23 field event to put those virtual and table top
24 trainings into practice, to see if what you learned in

[WITNESS PANEL: Bogan~Head~Achilles~Hagman]

1 the classroom will be attributed to actual, you know,
2 field response?

3 I know, from Environmental Services'
4 activities and doing table tops for oil spills at the
5 Sprague facility, we learn something by going out in
6 the field every time, communication, laying a boom, are
7 important issues.

8 And, I just want to understand from you
9 Chiefs, that will be in the field should an incident
10 happen, that should it be necessary or, in this
11 Proposal, to put in some type of a field exercise?

12 A. (Achilles) From Portsmouth, I think the combination of
13 the stipulations on Number 2 and 3 meet that objective,
14 by having hands-on training with the actual rail cars,
15 and having a facility tour with our staff.

16 Our concerns, as we discussed this
17 earlier was, a full-scale exercise still has some
18 falsehoods in it or it's not real-life. We can't
19 respond at the right amount of time. We simulate all
20 the staffing that would come to bear. We don't really
21 deploy all what we would normally do.

22 So, having done a lot of full-scale
23 exercises in the past and table tops, I think, for this
24 facility, these two stipulations would be more than

[WITNESS PANEL: Bogan~Head~Achilles~Hagman]

1 adequate, and also reach more of our personnel, because
2 all personnel would participate. Where a field
3 exercise many times limits the number of people you can
4 have engaged in that training.

5 Q. And, from the City of Dover?

6 A. (Hagman) I concur with that. Part of the issue is, so,
7 as Chief Achilles mentioned, so, in Dover's case, to
8 deploy the whole force out of Dover to Newington is an
9 issue. So, we felt things like table tops and the
10 virtual tours were the most effective for the entire
11 Department. And, though we would send command staff
12 down, if there was a drill or for the offer of a walk
13 through the facility and those things, it's just
14 technically very difficult to send an entire force down
15 to Newington. So, that's how we came up with those
16 other options.

17 MR. DUCLOS: Thank you.

18 PRESIDING OFFICER SPEIDEL: Are you
19 satisfied, Mr. Duclos?

20 MR. DUCLOS: Yes, I am. Thank you.

21 PRESIDING OFFICER SPEIDEL: All right.
22 Anything from Mr. Hawk at this time, before the witnesses
23 are dismissed?

24 MR. HAWK: No thank you.

1 PRESIDING OFFICER SPEIDEL: All right.
2 Very well. I invite the witnesses to take their seats in
3 the gallery. And, thank you for your participation in
4 answering our questions.

5 Well, I think at the present time, as I
6 had indicated, and as the witnesses had indicated, I think
7 there are some housekeeping that needs to be done, in
8 terms of figuring out how and when we can have an
9 enhancement of the wording of this stipulation, and
10 ensuring that the stipulation will be executed by
11 responsible officers of each party.

12 I will first direct my questioning to
13 Mr. McEachern, because he's the counsel for the moving
14 party. And, I think, Mr. McEachern, I think you
15 understand what I'm driving at here, in terms of using
16 active language to specifically describe the
17 responsibilities of each party for us. So, for instance,
18 I had indicated that it was SEA-3's responsibility, under
19 the understanding of Point 5, to limit the number of rail
20 cars that are delivered to its facility that it accepts.
21 Then, under Subpart 6, it would appear that the Newington
22 Fire Department and the Newington building inspector have
23 responsibilities. So, it should read something to the
24 effect that "The Newington Fire Department and the

1 Newington building inspector shall have and engage in a
2 full facility inspection by the New Hampshire Fire
3 Marshal's Office", etcetera. I think you understand
4 what --

5 MR. McEACHERN: I do understand, Mr.
6 Chairman, yes.

7 PRESIDING OFFICER SPEIDEL: Okay. Does
8 that seem responsible in terms of having these different
9 points reformed?

10 MR. McEACHERN: Yes. It certainly does,
11 yes.

12 PRESIDING OFFICER SPEIDEL: And, in
13 terms of execution, would it be preferable, do you think,
14 to have the execution of a reformed agreement accomplished
15 today or perhaps brought to the Subcommittee's attention
16 tomorrow morning after a recess?

17 MR. McEACHERN: I think a recess might
18 be better, to allow the attorneys here to get together and
19 to get all the language put in the proper form for the
20 Committee. Attorney Ratigan just briefly mentioned to me
21 the possibility of convening at 1:00 tomorrow, which would
22 give us this afternoon, and we'd have to get it signed up
23 at some point.

24 So, if we had to get everything

1 accomplished in what we have left today, and be back here
2 at 9:00 in the morning, I wouldn't want to keep the
3 Committee waiting again while we're rushing around. If it
4 was a 1:00 start, we could be here and it would be signed,
5 and it would be ready for your review.

6 PRESIDING OFFICER SPEIDEL: Excellent.
7 I think that's a very fair suggestion, in terms of
8 allowing adequate time to have the wordsmithing happen.
9 We do need to have the active voice, the clear delineation
10 of responsibilities, the understanding that these are
11 conditions for a revocable approval. And, on top of that,
12 you know, the definitions need to be fleshed out. You
13 know, we can use parentheses, we can use a glossary of
14 terms. But, certainly, again, the idea is accessibility
15 for the layperson, for the member of the general public,
16 and for future subcommittees, committees, and enforcement
17 officers, just be able to understand, "okay, you know,
18 these are our responsibilities." I think fire chiefs, in
19 20, 30 years hence might have to refer back to this
20 document, and they need to know what this is all about.

21 So, I would ask my colleagues whether it
22 would -- you know, we can hear from other Parties. Does
23 anyone else have any input, in terms of the question of
24 having a recess until 1:00 tomorrow?

1 MR. ROTH: I think that's a splendid
2 idea. I don't think that it would be realistic to get a
3 revision of the Proposal in contract form and executed and
4 back here by 9:00.

5 PRESIDING OFFICER SPEIDEL: Very good,
6 Mr. Roth. Thank you for that.

7 Anyone else have anything to mention?

8 *[No verbal response]*

9 PRESIDING OFFICER SPEIDEL: Well, I
10 would recommend to my --

11 MS. FERRINI: Excuse me, sir.

12 PRESIDING OFFICER SPEIDEL: I'm sorry.

13 MS. FERRINI: On the terms of executing
14 the document, and whether the Fire Chiefs would execute
15 separately or in addition to the towns, I think that, you
16 know, the City is the City, and the Fire Department is a
17 department within the City. So, I would propose, unless
18 there's any objection, that town counsel or city attorneys
19 could sign on behalf of those towns and cities that
20 intervened, and not have a separate signature from the
21 fire departments, unless the Committee or any of the other
22 counsel of record disagree.

23 PRESIDING OFFICER SPEIDEL: Well,
24 hearing no --

1 MR. ROTH: I agree with that.

2 PRESIDING OFFICER SPEIDEL: Oh,
3 excellent. And, hearing no objection, I would say that
4 that is also very reasonable.

5 I think it would also be reasonable to
6 have folks come back tomorrow at 1:00, without having to
7 bring your entire train of witnesses along with you. Now,
8 that presumes that you are going to have an agreement that
9 is substantially similar to this one, insofar as the
10 substantive terms are concerned, but just reworked to
11 address the issues of clear delineation of responsibility
12 and also definition of terms. And, I think, in a
13 situation like that, we can ask questions of counsel and
14 get adequate explanations for our own satisfaction
15 tomorrow, without having to go through the exercise of
16 swearing witnesses and having questions and answers
17 provided, if that would work for everyone.

18 Is there any objection to that course of
19 action?

20 *[No verbal response]*

21 PRESIDING OFFICER SPEIDEL: Okay.
22 Hearing none, I would recommend to the other members of
23 the Subcommittee that we recess until 1:00 tomorrow. And,
24 that the interests of the various Parties can be

1 adequately represented by counsel, and that a second
2 exhibit, which would be marked as "Exhibit 2" in all
3 likelihood, will present the executed revised Stipulation
4 Agreement.

5 MR. ROTH: Mr. Chairman, can I inquire
6 if it's the intent of the Committee to actually act upon
7 the Petition and the approval of the conditions tomorrow
8 or if that would be -- result in a further hearing or a
9 further session for deliberation at some other later
10 date?

11 PRESIDING OFFICER SPEIDEL: I would
12 surmise that the deliberations would occur tomorrow, after
13 we've received the revised or, if you will, finalized
14 Stipulation on the spot.

15 MR. ROTH: Thank you.

16 PRESIDING OFFICER SPEIDEL: Well, then,
17 would the other members of the Subcommittee concur with
18 the course of action of having a recess until 1:00
19 tomorrow?

20 MR. DUCLOS: I concur.

21 MR. HAWK: I concur.

22 PRESIDING OFFICER SPEIDEL: Very well.
23 It is so ordered. I will see counsel tomorrow with a
24 finalized version of the Stipulation at 1:00 p.m. Thank

1 you very much. This hearing is adjourned.

2 ***(Hearing was adjourned at 2:36 p.m.)***

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