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October 19, 2015

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Martin Honigberg, Chairman
NH Site Evaluation Committee
NH Public Utilities Commission
21 South Fruit Street, Suite 10
Concord, NH 03301

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Re: **SEA-3, Inc. ("SEC-3")**
SEC Docket No. 2015-01

HANOVER
17 1/2 LEBANON STREET
HANOVER, NH
03755
T 603 643-9070
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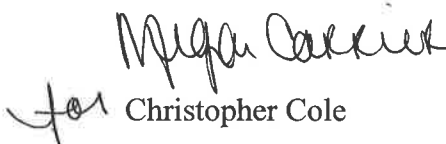
Dear Chairman Honigberg:

Enclosed for filing in connection with the above-captioned matter, please find
Portsmouth Intervenors' Motion to Compel Responses to Data Requests.

BOSTON
255 STATE STREET
BOSTON, MA
02109
T 617 897-5600
F 617 439-9363

I certify that copies of the within filing have been sent to the parties identified on
the Service List on this docket.

Very truly yours,


for Christopher Cole

WWW.SHEEHAN.COM

cc: Service List

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

In the Matter of the Application of Sea-3, Inc.
(Request for Exemption)

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SEC Docket No. 2015-01

**PORTSMOUTH INTERVENORS' MOTION TO COMPEL RESPONSES TO DATA
REQUESTS**

NOW COME the Portsmouth Intervenors,¹ by their counsel, Sheehan Phinney Bass & Green, Professional Association, and respectfully submit this Motion, pursuant to Site 102.10, to Compel documents responsive to certain Data Requests propounded on the Applicant Sea-3, Inc. during and after the Technical Session on October 14, 2015. As this matter is currently scheduled to be heard in an adjudicative hearing on November 5 and 6, 2015, the Portsmouth Intervenors respectfully note that time is of the essence for receipt of the materials requested.

Background

Sea-3 seeks an order pursuant to which the significant expansion of its facility along the Piscataqua River in Newington, New Hampshire would be determined to be exempt, under RSA 162-H:4 (IV), from the otherwise applicable site certification process established by the Legislature in RSA 162-H. In the course of this proceeding under RSA 162-H, the various parties have exchanged discovery materials and information, filed Pre-Filed Testimony and conducted a day-long Technical Session, at which witnesses were asked various questions.

¹ The Portsmouth Intervenors are Richard and Catherine Dipentima; Robert Gibbons and Patricia Ford; William and Kristina Campbell; John and Jane Sutherland; and Erica and Matthew Nania.

Over the past few weeks, including immediately prior to (and after) the October 14 Technical Session, the Site Evaluation Committee's docket has received a not inconsiderable number of letters purporting to support the Applicant's request for an exemption. Many, perhaps most, of these letters are unsigned in the traditional sense, and many, and perhaps most, of these letters appear to be in a specific template conducive to a mass mailing or emailing, brief retrofitting for a name and address, and re-sending to an address at the Commission. In the October 14 Technical Session, undersigned counsel asked Sea-3's General Manager and principal spokesman, Paul Bogan, if the Applicant or a parent company had hired a public or media relations consultant or firm to assist in the generation of these sorts of letters and their submission "in evidence" to the Commission. Mr. Bogan replied that the Applicant or its parent corporation had hired a firm known as Purple Strategies to carry out such a campaign or tasks. Accordingly, undersigned counsel – first orally at the Technical Session, and then in writing the following day, made the following Data Request related to the Applicant's engagement of Purple Strategies, as follows:

1. Any and all agreements and understandings between Purple Strategies and Sea-3 (or Sea-3 parents, affiliates or subsidiaries, but collectively, "Sea-3") relating to Sea-3's application for an exemption from the certification requirements of RSA 162-H;
2. Any and all agreements between Purple Strategies and Sea-3, as defined above, relating to Sea-3's proposed facility expansion;
3. Any and all documents, communications and correspondence between Purple Strategies and Sea-3 (as defined) relating to Purple Strategies' work or engagement from January 1, 2015 to the present;
4. Any and all communications (in whatever form and however stored, including electronic mail and electronically stored information) between Purple Strategies and any third parties, including but not limited to persons submitting letters to the Site Evaluation Committee, relating to the Sea-3 application now pending before the Site Evaluation Committee.

See attached Email to Alec McEachern dated October 15, 2015 (10:08 AM) (copying counsel for the City of Portsmouth, the City of Dover, representatives of the Great Bay Stewards, and Counsel for the Public). Counsel for the Public, Counsel for the Cities of Dover and Portsmouth, and representatives of the Great Bay Stewards thereafter joined in the Data Requests as fashioned by undersigned counsel. Undersigned counsel also provided a rationale for the requested information, and indicated as follows to the Applicant's counsel:

"I understand and appreciate Attorney Iacopino's desire that we reach some kind of a middle ground and would welcome a suggestion from you – so long as it is very promptly made and, if accepted by me and Counsel for the Public, promptly complied with. But the reality here is that Sea-3 appears to have arranged – or hired an outside firm to arrange – the creation and delivery of evidentiary materials to the SEC. The parties, not to mention the SEC itself, are entitled to understand the background, process and implementation of that strategy."

Id. Having received no response during the day, undersigned counsel then wrote to the Applicant's counsel, as follows:

"Alec, I am going to need some kind of response tomorrow, as the deadline for a motion to compel is coming fast. If I don't hear anything by midday Friday, I will go ahead and prepare the motion to compel.

Thanks.

CC"

Id. (email of October 15, 2015 at 9:52 PM).

Since that email, counsel for Sea-3 has at least tentatively agreed to provide the documents contemplated by Data Request Nos. 1 and 2, which seek contracts and agreements relating to the Purple Strategies engagement. Undersigned counsel has yet to receive those materials, notwithstanding the tight schedule in this matter. Sea-3's counsel has refused to produce the materials sought by Data Request Nos. 3 and 4. This motion follows.

Argument

Site 202.12 provides authorization for the making of “data requests in the nature of interrogatories, requests for production of documents, requests for admission of material facts, depositions and any other discovery method permissible in civil judicial proceedings before a state court when such discovery is necessary to enable a party to acquire evidence admissible in a proceeding and when such method will not unduly delay the prompt and orderly conduct of the proceeding.” The above Data Requests seek information directly related to numerous letters submitted to the Committee.

The Committee has received in excess of eighty (80) letters (as of October 19, 2015), purporting to be from members of the public, in support of the Sea-3 application for an exemption from the certification requirements of RSA 162-H. Many, perhaps most, of the letters have been received after the October 14 Technical Session. Among the uniform statements used in the templated letter submitted by the sender is this one: “given the fact that Sea-3 has satisfied all of the legal requirements for an exemption from the SEC’s lengthy review process and given the benefits this upgrade will bring to the New Hampshire economy and families relying on propane, I do hope [the Committee] will respond to the Sea-3 application with an affirmative vote.” This solicitation of a vote in favor of the Applicant’s request for exemption, frankly, begs for elucidation, including asking the party submitting the letter the basis for each of the statements (satisfaction of legal requirements, entitlement to an exemption, benefits to the economy). Most of the letters are not signed in the traditional sense. None of the letters provide any background or bona fides about the sender. And all of the letters, as far as one can tell, appear to have been generated by the Applicant’s media consulting firm, Purple Strategies, for the purpose of influencing the Committee in a manner that is favorable to the application for

exemption (e.g., “I do hope [the Committee] will respond to the Sea-3 application with an affirmative vote”).

Mr. Bogan’s frank admission that the Applicant has hired a media or public relations firm to manage and generate these submissions required the subject Data Requests and, respectfully, requires responsive documents and information. This is the only meaningful avenue by which the parties and the Committee might understand the process and methodology by which Purple Strategies, on the Applicant’s behalf, approached people, drives people to the dedicated website, generated the letters, decided on the specific text to be presented to the Committee, and the like. The alternative – to call and inquire of each of the people submitting letters – is simply untenable. But the letters are submitted for evidentiary purposes, and as such must be exposed to some scrutiny, particularly as the Applicant has hired a proxy to assist it in carrying out a strategy apparently aimed, at some level, at influencing the Committee decision in this matter.

Although the parties expect to receive, as promised, the documents responsive to Data Request Nos. 1 and 2, above, the documents responsive to Data Request Nos. 3 and 4 are as important or more important to a fair evaluation of this large body of so-called “evidence.” For example, Purple Strategies appears to have created a website devoted entirely to developing public opinion favorable to the Sea-3 application, and to soliciting letters in support of the Sea-3 application. See <http://securepropanenh.com/TakeAction.aspx>. Data Request No. 3 seeks “documents, communications and correspondence between Purple Strategies and Sea-3 (as defined) relating to Purple Strategies’ work or engagement” on this matter. This would include, for example, Purple Strategies’ explanation of exactly how – the specific methodology – by which the letters are actually created, and by which the so-called sender or signatory of the letter is made aware of the text and method of transmission of the letter.

Similarly, and perhaps more importantly, Data Request No. 4 seeks “communications (in whatever form and however stored, including electronic mail and electronically stored information) between Purple Strategies and any third parties, including but not limited to persons submitting letters to the Site Evaluation Committee, relating to the Sea-3 application now pending before the Site Evaluation Committee.” This Data Requests seeks, among other things, information on exactly how Purple Strategies drives computer and email users to the securepropanenh.com website, so that those people will use the so-called “take action” function, which entreats visitors to the site as follows:

We want you to send a letter to the New Hampshire Site Evaluation Committee to support Sea-3’s efforts to bring low-priced, domestically-produced propane to New Hampshire. Simply fill out the information below and click “send” to let your voice be heard.

The Committee and other parties to this important application for an exemption are entitled to understand exactly how Sea-3’s public relations firm, Purple Strategies, induces people to visit the site, review the uniformly positive information provided by the site, and to “simply...click ‘send’” to influence the Commission and “support Sea-3[.]” The Committee and other parties are entitled to understand what, if any, checks are in place to ensure that the website mailing system (which apparently sends the email and identical text directly to the SEC administrator) is limited to a single use per email address, or some other control.

Accordingly, the Portsmouth Intervenors respectfully request an Order from the Committee requiring the Applicant to immediately produce the documents, information and materials sought by the Data Requests listed above.

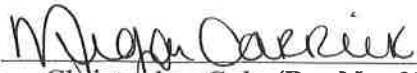
Respectfully submitted,

PORTSMOUTH INTERVENORS,

By Their Attorneys,

Sheehan Phinney Bass & Green, P.A.

Dated: October 19, 2015

By: 
for Christopher Cole (Bar No. 8725)
1000 Elm Street
P.O. Box 3701
Manchester, NH 03105-3701
(603) 627-8223
ccole@sheehan.com

Certification

I hereby certify that on this 19th day of October 2015, I caused a copy of the foregoing Motion to Compel, to be sent via email to the persons on the Service List on this Docket.


for Christopher Cole

ATTACHMENT - EMAIL

Lesley J. LaPerle

From: Christopher Cole
Sent: Thursday, October 15, 2015 9:52 PM
To: Alec McEachern (alecm@shaines.com)
Cc: Roth, Peter; jferrini@cityofportsmouth.com; Fred Mason (fmason@chicagobooth.edu); A.Blenkinsop@doover.nh.gov
Subject: RE: Sea-3/Data Request of Portsmouth Intervenors

Alec, I am going to need some kind of response tomorrow, as the deadline for a motion to compel is coming fast. If I don't hear anything by midday Friday, I will go ahead and prepare the motion to compel.

Thanks.

CC

From: Christopher Cole
Sent: Thursday, October 15, 2015 10:08 AM
To: Alec McEachern (alecm@shaines.com)
Cc: Roth, Peter; jferrini@cityofportsmouth.com; Fred Mason (fmason@chicagobooth.edu); A.Blenkinsop@doover.nh.gov
Subject: Sea-3/Data Request of Portsmouth Intervenors

Alec, although I made the request yesterday, I wanted to repeat – with more precision – what we are asking for. I believe that at least Counsel for the Public (copied) joins me in the requests, below:

1. Any and all agreements and understandings between Purple Strategies and Sea-3 (or Sea-3 parents, affiliates or subsidiaries, but collectively, "Sea-3") relating to Sea-3's application for an exemption from the certification requirements of RSA 162-H;
2. Any and all agreements between Purple Strategies and Sea-3, as defined above, relating to Sea-3's proposed facility expansion;
3. Any and all documents, communications and correspondence between Purple Strategies and Sea-3 (as defined) relating to Purple Strategies' work or engagement from January 1, 2015 to the present;
4. Any and all communications (in whatever form and however stored, including electronic mail and electronically stored information) between Purple Strategies and any third parties, including but not limited to persons submitting letters to the Site Evaluation Committee, relating to the Sea-3 application now pending before the Site Evaluation Committee.

I understand and appreciate Attorney Iacopino's desire that we reach some kind of a middle ground and would welcome a suggestion from you – so long as it is very promptly made and, if accepted by me and Counsel for the Public, promptly complied with. But the reality here is that Sea-3 appears to have arranged – or hired an outside firm to arrange – the creation and delivery of evidentiary materials to the SEC. The parties, not to mention the SEC itself, are entitled to understand the background, process and implementation of that strategy.

Thanks. CC