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City of Dover, New Hampshire

OFFICE OF GENERAL LEGAL COUNSEL

November 2, 2015

VIA EMAIL & FIRST CLASS MAIL

Pamela Monroe, Administrator
NH Site Evaluation Committee
21 South Fruit Street, Suite 10
Concord, NH 03301
pamela.monroe@sec.nh.gov

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

Dear Ms. Monroe:

Please find enclosed the City of Dover's Objection to SEA-3, Inc.'s Contested Motion to Strike Testimony Concerning Railroad Issues regarding the above captioned matter that I wish to place on file at this time with the New Hampshire Site Evaluation Committee.

Sincerely,

A handwritten signature in blue ink, appearing to be 'Anthony I. Blenkinsop', is written over the word 'Sincerely,'.

Anthony I. Blenkinsop
City Attorney
Enc.

Cc: Service list (via email)

First
First in New Hampshire,
First with You!

**THE STATE OF NEW HAMPSHIRE
SITE EVALUATION COMMITTEE**

IN RE:	SEA-3, INC.) Docket No.: 2015-01
)
	Request for Exemption)

**THE CITY OF DOVER’S OBJECTION TO SEA-3, INC.’S CONTESTED MOTION TO
STRIKE TESTIMONY CONCERNING RAILROAD ISSUES**

The City of Dover, by and through its Office of General Legal Counsel, objects to SEA-3, Inc.’s motion to strike certain testimony of Dover Assistant Fire Chief James Ormond (now substituted by Interim Dover Fire Chief Eric Hagman). In support thereof, the City of Dover states as follows:

1. Via a motion dated October 23, 2105, SEA-3, Inc. asked the Site Evaluation Committee (SEC) to exclude any testimony concerning the railroad from the hearing on its request for an exemption from the SEC review process under RSA 162-H. Most relevant to the City of Dover, SEA-3 requested the exclusion of certain portions of the prefiled testimony of Dover Assistant Chief James Ormond dated August 17, 2015 at questions 12-15 and 21-22. See SEA-3, Inc.’s motion at pp. 2-3.
2. While the specific testimony SEA-3 seeks to exclude from Assistant Chief Ormond/Interim Chief Hagman is entirely unclear from its pleading, it appears that the mere use of the word “rail,” “railroad,” or “transport” in either a question posed or answer given resulted in its inclusion in SEA-3’s request. Given propane is transported to, from, and at the facility, and given some of that transportation to, from, and at the facility is performed by rail, it is difficult to imagine that such words would not appear in proffered testimony.¹
3. The City of Dover objects to excluding any testimony of its witness.
4. The SEC’s receipt of evidence is governed by Site 202.24 and RSA 541-33.

¹ To the extent clarification could have been provided prior to the filing of a motion to strike, Interim Chief Hagman was not asked any questions at the October 14, 2015 Technical Session.

5. As such, the rules of evidence do not apply (RSA 541-A:33, II) and “[a]ll 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.” Site 202.24 (b).
6. Since intervening in this RSA 162-H proceeding, the City of Dover has opposed the requested exemption request primarily due to its fire/life safety and first responder concerns stemming from SEA-3, Inc.’s proposed expansion of its propane transportation and storage facility in Newington.
7. Testimony of Assistant Chief Ormond/Interim Chief Hagman is consistent with that purpose. See Prefiled Testimony of Dover Assistant Chief James Ormond dated August 17, 2015. Specifically, a propane leak or explosion or some other type of catastrophic event at the SEA-3 facility, and/or while in transport to, from, or at the facility, will have serious fire/life safety impacts on first responders and on the populations of the surrounding communities. The SEC should be aware of these fire/life safety impacts and how first responders are able (or potentially unable) to address situations that may arise.
8. Furthermore, the City of Dover is not asking the SEC to directly or indirectly regulate the railroad.² Rather, the testimony Dover seeks to offer is consistent with the unambiguous public health, safety, and welfare purposes of the SEC review process and is therefore relevant to the SEC proceedings. See RSA 162-H:1; see also Green Mountain R.R. Corporation v. Vermont, 404 F.3d 638, 643 (2d Cir. 2005).
9. Given these significant and relevant public health, safety, and welfare issues, and given the broad discretion the SEC has in determining the admissibility of evidence, the SEC should reject SEA-3’s request to exclude certain vaguely described testimony.

Wherefore, the City of Dover respectfully requests that the SEC:

- A. Deny SEA-3, Inc.’s Motion to Strike Testimony Concerning Railroad Issues, specifically as it relates to the testimony of Assistant Chief Ormond/Interim Chief Hagman;
- B. Consider such testimony in its entirety; and
- C. For such other relief as is just and equitable.

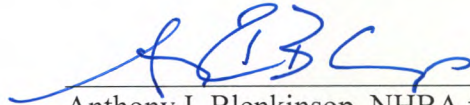
² The City of Dover does not concede to SEA-3, Inc.’s arguments concerning preemption, especially as it relates to public health and safety regulations.

Respectfully submitted

The City of Dover,

By and Through its Legal Counsel

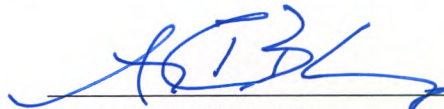
Date: November, 2, 2015



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CERTIFICATE OF SERVICE

I, Anthony I. Blenkinsop, hereby certify that a copy of the foregoing was forwarded via email on November 2, 2015 to all parties of record.



Anthony I. Blenkinsop