

State of New Hampshire  
Site Evaluation Committee  
Docket No. 2015-01

In re:

SEA-3, INC.,  
Request for Exemption

GREAT BAY STEWARDS OBJECTION TO SEA-3'S CONTESTED MOTION TO STRIKE TESTIMONY  
CONCERNING RAILROAD ISSUES

Now comes the Great Bay Stewards (Stewards or GBS) by their undersigned representative, and respectfully objects to the motion of the Applicant, Sea-3, Inc., seeking to exclude evidence that it deems to apply to "railroad issues." (Sea-3, Inc., Contested Motion to Strike Testimony Concerning Railroad Issues, October 23, 2015) Sea-3 asks the Committee to strike nearly all testimony by those opposing an exemption from the certification requirements of RSA 162-H and, as specifically addressed herein, the prefiled testimony of the Great Bay Stewards. In opposing Sea-3's Contested Motion to Strike..., GBS respectfully represents as follows:

1. RSA 162-H requires that "timely consideration of all environmental consequences be provided" and that "the state ensure that the construction and operation of energy facilities is treated as a significant aspect of land use planning in which all environmental, economic and technical issues are resolved in an integrated fashion." (RSA 162-H:1)

2. On May 19, 2015, Sea-3 asked the Committee to deny the GBS motion to intervene "because it relies on the federally preempted issue of railroad regulation which is not before the Committee." (Sea-3, Inc.'s Objection to Motion to Intervene Filed by Great Bay Stewards, May 19, 2015) In denying Sea-3's request and granting GBS's Motion to Intervene the Committee wrote:

"However, we recognize the Great Bay Stewards is a non-profit organization with a mission to preserve and protect Great Bay estuary. In carrying out this mission, the Great Bay Stewards has engaged in environmental preservation and education efforts concerning the Great Bay estuary. Great Bay Stewards asserts that the proposed improvements at the Site will affect the Great Bay estuary in a variety of ways. On the basis of these facts, we find, pursuant to the standards of RSA 541-A:32, II that it is in the interests of justice to permit intervention by Great Bay Stewards. Great Bay Stewards possesses significant information about the estuary and its ecology, which together with the Piscataqua River and Little Bay, are in the vicinity of the Site. The subcommittee may benefit and be better informed as a result of that information and the views to be expressed by the Great Bay Stewards." (Order on Late Filed Motions to Intervene, June 3, 2015)

3. Subsequent to the Committee's approval to Intervene, the GBS has worked to fulfill the Committee's expectations. In the Steward's Prefiled Testimony, local and internationally-recognized experts provided comprehensive facts and data to describe the unique value of the Great Bay estuary and its ecosystem as a natural resource, a major investment of municipal, state and local funds, and a significant driver of the regional economy. It also provided a dispassionate, fact-based assessment of the risks posed by substantial expansion and reconfiguration of the Sea-3 facility. (Great Bay Stewards Pre-filed Testimony and Identification of Witnesses for Adjudicatory Public Hearing, August 17, 2015)

4. The Great Bay Stewards Prefiled Testimony detailed risks related to environmental, health and safety issues with the reconfiguration and substantial expansion of Sea-3 facility and its supply line. Issues related to the facility include the needed upgrade and permitting for a stormwater system, air quality permitting and modeling, and construction of new offloading facilities and accompanying increased accumulation of polycyclic aromatic hydrocarbons. Not included in the testimony, but relevant based on observations made during the subcommittee's Site Inspection is the potential for a catastrophic event at Sea-3 that would damage tanks at Sprague Energy and release fuel or other contaminants in the rapidly flowing tides of the estuary. Sea-3's Contested Motion to Strike GBS testimony based on the federal preemption is inappropriate, illogical or disingenuous.

5. In responding to Sea-3's argument that Counsel for the Public should be denied leave to retain Sebago Technics, the Committee wrote that "Sea-3's position is premature. Only after a factual record is fully developed can the Subcommittee assess whether any particular finding or decision is preempted by federal law." (Order on Pending Motions, August 10, 2015) Nothing has changed. Through its Contested Motion to Strike Testimony..., Sea-3 again attempts to deprive the Committee of a relevant factual record from which to make an informed decision on Sea-3's request for an exemption from the requirements of RSA 162-H.<sup>1</sup> The Great Bay Stewards are the sole source of facts and data concerning the Great Bay estuary and its ecosystem and relative to the potential risks to health and

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<sup>1</sup> In responding, Sea-3 writes that "To the extent preemption presents an issue of ripeness, as previously suggested by Public Counsel, the forbidden fruit is now at hand and the Rail Intervenors are urging this Committee to take a bite." Sea-3, Inc's Memorandum of Law Regarding Federal Preemption of Railroad Operations, Railroad Safety and Transportation of Hazardous Materials, October 23, 2015) The allegorical reference is misguided. Nothing has changed since Sea-3's last request and so the federal preemption issue (related to rail) remains premature. Allowing the exemption at this juncture and/or stifling testimony based upon a *single* issue would ignore a comprehensive analysis that the statute otherwise requires. Moreover, Sea-3 also forgets that the "forbidden fruit" comes from the Tree of Knowledge. It's desire to attain an exemption without a comprehensive analysis is tantamount to cutting down the entire tree due to one alleged bad apple. The New Hampshire legislature found that it is "in the public interest to maintain a balance among ... potential significant impacts and benefits in the siting, construction and operation of energy facilities in New Hampshire". (RSA 162-H:1) The Tree of Knowledge is not the enemy.

human welfare related to Sea-3's operation. If the testimony of GBS's expert witnesses is not permitted, the purpose of RSA 162-H is subverted.<sup>2</sup>

Accordingly, the Great Bay Stewards respectfully request that the Committee deny Sea-3, Inc's motion to strike the GBS prefiled testimony.

Respectfully submitted,  
Great Bay Stewards,  
By its non-attorney representative,



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Certification

I hereby certify that on this 2nd day of November 2015, I emailed a copy of the foregoing Great Bay Stewards Objection to Sea-3's Contested Motion to Strike Testimony... to the persons on the Service List of this Docket.



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<sup>2</sup> Sea-3's Contested Motion to Strike Testimony..., would have the effect of depriving the Committee of a factual record while Sea-3's parent, Trammo Inc., through its engagement of Purple Strategies, works to create a media campaign to support its position.