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Records Access Officer
NYS Public Service Commission
Three Empire State Plaza
Albany, NY 12223-1350

Re: Case 10-T-0139: Request for Confidential Protection in *Application of Champlain Hudson Power Express*

Dear Records Access Officer:

Enclosed please find confidential documents submitted with the Segment 12 Environmental Management and Construction Plan (EM&CP) filed today by CHPE LLC and CHPE Properties, Inc. (together "CHPE" or the "Certificate Holders") with the New York State Public Service Commission (the "Commission"). Certificate Holders are requesting confidential protection of the EM&CP Narrative, which contains information regarding the status of ongoing contract negotiations which, if released publicly, could impair those negotiations; Appendix O, Cultural Resources Management Plan, which contains confidential cultural resources information; and Appendix T, CHPE Overland Rare, Threatened and Endangered Species and Significant Natural Communities, which contains sensitive locational information about rare, threatened and endangered species which are protected from disclosure by law.

Confidential protection is routinely granted to certain documents and data submitted to State agencies and boards, including the Commission, through a suite of statutory and regulatory protections which guard such sensitive information and data from broad public release. As more fully discussed below, these protections are derived from various sources, including the statutory exemptions from disclosure under the New York Freedom of Information Law (FOIL), Public Officers Law (POL) § 87, as well as through each agency's regulations—in this case, 16 NYCRR § 5.8(e) and Part 6. POL § 87(2)(a) grants a FOIL exemption to any information that is specifically identified as protected from disclosure under other provisions of State or federal law. Both the federal and State historic preservation acts contain provisions authorizing agencies to withhold from disclosure information on the location of archaeological sites to protect against possible damage.

In this case, submission of the identified confidential information in Appendix O is required as part of the Certificate Holders' EM&CP submissions. This information is protected from disclosure pursuant to New York State Parks, Recreation and Historic Preservation Law § 14.07, which authorizes the withholding of information on cultural resource sites from the public where sites

“may be damaged by unauthorized investigators if their locations be generally publicized.” See 9 NYCRR § 427.8; see also 54 USC § 307103(a) (authorizing federal agencies to withhold from public disclosure information on the location of historic property if it is determined that disclosure may risk harm to the property). Consistent with these provisions, the Commission has recognized the need to protect the location of archaeological sites from disclosure. *See, e.g.*, Case 12-T-0248, Application of New York State Electric & Gas Corp., Order on Waiver Requests (Sept. 14, 2012). The State has determined that the goals advanced by keeping this information confidential—protecting the locations where sensitive cultural resources may be found to prevent harm to those resources by “unauthorized investigators”—outweighs the public’s general interest in free access to government information. Consistent with the laws identified above, the Records Access Officer should protect this information from disclosure.

Similarly, NY Environmental Conservation Law § 3-0301(2)(r) protects from public release information regarding the location of threatened or endangered species and species habitat which, if released, could jeopardize those protected species. This information is required to be included in the Certificate Holders’ EM&CPs under the Certificate, EM&CP Guidelines and Best Management Practices adopted by the Commission. However, this data was shared with Certificate Holders by NYSDEC under confidential cover, due to the fact that sensitive locational information on protected species is included. By virtue of the statutory protection afforded to this information, it is protected from release under FOIL by POL § 87(2)(a). For these reasons, Appendix T should be exempted from public disclosure.

Pursuant to POL § 87(5)(c) and (d), entities making a submission that contains confidential commercial information, the public release of which would impair ongoing contract negotiations or otherwise result in substantial injury to the competitive position of the entity, may seek exemption from disclosure of that information under FOIL. Here, the information redacted from the EM&CP Narrative contains details about the status of ongoing negotiations with third party utilities and collocated infrastructure owners which, if released publicly, could impair the Certificate Holders’ ability to finalize CI agreements necessary to the construction of the CHPE Project. For these reasons, CHPE submits this information under confidential cover.

For all of the reasons listed above, the items identified by the Certificate Holders should be exempted from public disclosure. Should you have any questions or require anything further in this regard, please feel free to contact us. Thank you.

Sincerely,

/s/ **Laura Bomyea Darling**
Laura Bomyea Darling, Esq.
Young/Sommer LLC
Attorneys for CHPE

Enclosures