

# Young / Sommer LLC

ATTORNEYS AT LAW

EXECUTIVE WOODS, FIVE PALISADES DRIVE, ALBANY, NY 12205  
Phone: 518-438-9907 • Fax: 518-438-9914

[www.youngsommer.com](http://www.youngsommer.com)

Writer's Telephone: 249  
[ldarling@youngsommer.com](mailto:ldarling@youngsommer.com)

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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 Petition to Amend the Certificate 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 and Appendix F, SHPO Submittal, from this submission. These documents should be exempt from public disclosure under FOIL and in accordance with 16 NYCRR § 6-1.4, because they contain sensitive locational information about cultural resources and listed threatened or endangered species 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, a short portion of the EM&CP Narrative has been redacted to protect information about threatened and endangered species and their habitats near the locations discussed in the Petition. 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

Applicant's 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, the redacted portion of the EM&CP Narrative should be exempted from public disclosure.

Furthermore, Appendix F includes information on the location of sensitive archeological resources. 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.

For these reasons, CHPE submits the above documents under confidential cover. Please feel free to reach out to my office with any questions regarding this filing.

Sincerely,

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

Enclosures