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April 18, 2011

Senator Richard Blumenthal
G55 Dirksen Senate Office Building
Washington, DC 20510

**RE: S 715; Collinsville Renewable Energy Promotion Act, and
HR 1353; Collinsville Renewable Energy Promotion Act**

Dear Senator Blumenthal ,

Congratulations on your new position in Washington. I have always highly respected you and am glad you are representing us on Capital Hill. I'd also like to thank you again for helping me in 2005 when you provided a letter clearly defining "renewable energy projects" as including hydropower thus allowing hydropower projects to be eligible for funding under the Connecticut Clean Energy Fund statute which, prior to our efforts, was not included.

I am again asking your assistance in addressing an issue of fundamental fairness. The subject bills, S 715 and HR 1353, propose to reinstate two terminated FERC hydropower licenses (which Summit Hydro originally obtained) and transfer them to the Town of Canton, CT. However, when you look closely at the facts summarized below you will see that the current bills are improper and should be amended. In all fairness the licenses should be reinstated to the original licensee that has invested dearly in these projects; Summit Hydro.

ABSTRACT:

-Summit Hydro has been in business since 1983 with a long history of developing, building, owning operating and maintaining successful and efficient hydroelectric projects. Summit owns and operates two Connecticut hydro projects totaling 2.88 MW. Please see www.summithydro.com

-Beginning in 1988 Summit began the goal of licensing and redeveloping the Collinsville Upper and Lower Hydroelectric Projects.

-On 9/15/1989 Summit submitted license applications to FERC.

-Eleven years later, on 2/23/2001, FERC granted the licenses to Summit.

-Summit has always maintained steadfast diligence on the projects but, due to reasons beyond Summit's control, construction commencement did not occur within FERC's tight deadline thus FERC terminated the licenses on 12/4/2007.

-Even before the licenses were terminated Summit was working with Congressmen Rob Simmons and then Chris Murphy on bills in Washington to extend the deadline and reinstate the licenses back to Summit if terminated.

-Surprisingly, at the request of the First Selectman of Canton, CT, Congressman Murphy's staff abandoned Summit and introduced HR 4451 on 7/15/09 to reinstate Summit's terminated licenses *and transfer them to the Town of Canton, Connecticut, over Summit's strenuous objection.*

-In essence Congressman Chris Murphy's staff was initially working with Summit towards a bill to reinstate the licenses to Summit. Then, when the Congressman got the request from Canton, Summit was shoved to the side and the Congressman introduced the bill to reinstate Summit's licenses and transfer them to Canton.

-HR 4451 and companion bill S 3532 passed the House last year but died in the Senate. I was told that comments received from me and other concerned citizens lent support for small business thus deflating support for the bills. Unfortunately the bills were reintroduced on 4/4/11 and I am back explaining this compelling story to the house and senate.

-Summit had made many attempts, to no avail, to resolve this matter with Canton First selectman Richard Barlow.

-Based on the facts presented herein we respectfully request that the subject bills be amended to allow Summit's licenses to be reinstated back to the original Licensee; Summit Hydro, rather than to the Town of Canton, CT. This can be accomplished by simply removing Section 3 of each bill which transfers the licenses to the Town of Canton.

SUPPORTING FACTS:

(a) Summit deserves these licenses: Summit placed trust in the existing regulatory system by investing heavily in licensing these renewable energy projects. Summit has done nothing wrong. Summit invested considerable time (spanning 15 years) and money (approximately \$300,000) obtaining the Collinsville Upper and Lower Hydroelectric Project licenses from FERC. Therefore, more than any other entity, Summit deserves these licenses.

(b) Summit has always maintained unwavering diligence: Please refer to the attached 'Schedule A' for a detailed chronology that shows Summit's continued diligence from the fall of 1988 to the present. At no time did Summit's efforts to commence construction wane. The amount of work that Summit has expended on these projects is truly impressive including dozens of detailed studies, design drawings, calculations, engineering, instrument surveys, meetings, letters, communications, spread sheets, cash flow analyses, site surveys, including paperwork enough to fill two deep file drawers.

Once the licenses were granted Summit worked attentively towards the goal of initiating construction as soon as possible. There are several major tasks that must be completed prior to putting a

shovel in the ground. The normal pre construction tasks include:

- Satisfy the License articles in the FERC licenses
- Modify project designs based on License article
- Perform detailed site survey
- Prepare final engineering documents
- Prepare, submit and award construction bids
- Prepare, submit and award equipment bids
- Finalize and execute construction contract
- Finalize and execute equipment contract
- Secure ownership in property and rights
- Obtain local permits
- Enter property tax agreement
- Secure construction and long term financing

However, in addition to the normal pre construction tasks above, Summit was faced with three truly unique impediments summarized as follows:

- As mentioned above it took FERC 11 years to grant the licenses to Summit. During this 11 year period many major changes occurred: the electric industry in Connecticut was deregulated, project costs rose, long term power contracts became non existent and the price paid for wholesale electricity dropped. These changes required a complete redesign of the projects, new equipment specs, changed project economics and a completely revamped approach for project financing. All of this took considerable time.
- The property rights associated with the two projects are held by the Connecticut Department of Environmental Protection (DEP). DEP expressed willingness to enter into long-term leases with Summit but required Summit to pass enabling legislation. Summit then, over multiple terms of the State Legislature, advocated for and ultimately (in 2007) secured passage of legislation permitting DEP to lease its rights to a private party. Notably, this was the same year Summit's licenses were terminated. This was a simple bill that had zero opposition but for several years died at the end of the Connecticut legislative sessions before it was finally passed.
- The Connecticut Clean Energy Fund (CCEF) did not initially include hydropower on its list of renewables eligible for funding assistance. In addition, hydropower was not included in the definition of Class I Renewable in CT Statutes for purposes of Renewable Energy Credits (REC's). Specific time consuming efforts were required on both fronts to include

hydropower in the statutes for these two items.

(c) The FERC construction start deadline is too short: It is well known in the hydro industry that the FERC construction start deadline is too short, particularly for complicated projects such as the Collinsville dams. Although it may appear to be ample, four years is actually too short of a period for a complex hydro project to perform all of the pre construction tasks outlined in (b) above. FERC is strict regarding what determines construction commencement. It is relatively common for a license to be terminated and the licensee to seek reinstatement of a license if it is terminated. FERC staff is aware that this time period is too short but it would not be easy for FERC to change it because the Federal Power Act must be amended to do so.

(d) Other bills have aimed at reinstating licenses to summit: Even before the licenses were terminated Summit was working on introducing bills in Washington to extend the construction start dates and, if necessary, reinstate the licenses. Initial efforts were with Congressman Rob Simmons where HR 1074 was introduced in 2003 but it died. In 2005 Congressman Simmons introduced HR 971 in the 109th Congress which passed in the House but was not acted on in the Senate. Summit's latest effort was with Charlotte Newman of Congressman Chris Murphy's office. Then, surprisingly, the Congressman redirected efforts by responding to a request from the First Selectman of Canton, CT. to introduce the subject bill that transfers Summit's former licenses to Canton rather than to Summit.

(e) These bills are unprecedented: According to research conducted by Summit's counsel and by Andrea Spring of Rep. Joe Barton's office a reinstatement of a FERC license and transfer of the license to another party without agreement of the parties is unprecedented.

(f) These bills are anti-small business: In their current form they will set a new precedent and will pose negative policy implications for small renewable energy businesses. Beyond the normal risks in the renewable energy business, which are considerable, this legislation will have a chilling effect on small business as it effectively pirates the hard fought advances made by a renewable energy for another's benefit without due cause. These bills will send signals of unreliability in a licensing process that is already incredibly difficult.

(g) These bills unfairly take Summit's investment: In their current form these bills effectively (if not legally) are a 'taking' of a significant investment made by a small business. At the least it is a taking of Summit's rights to seek reinstatement of the licenses back to Summit.

(h) These bills improperly circumvent due process: The bills would improperly allow an entity to obtain a Federal License without going through the due process. If the bills pass as-is

Canton will receive the licenses while skirting the exhaustive FERC licensing process. This should not be allowed. Summit spent many years going through the FERC licensing process and FERC issued the licenses specifically to Summit. These bills are improper because they allow circumvention of the Federal Power Act as administered by FERC.

(i) The Lower project is not in Canton: The bills transfer the licenses for both projects to Canton yet the lower project is not located in the Town of Canton. The lower project (FERC P-10823) is not physically located in Canton. It is in Avon and Burlington, CT. Transferring the license for the lower project to a municipality that has no jurisdiction in the project area is both highly unusual and improper.

(j) Municipalities are not suited to do hydro projects: The idea of a Town doing a hydro project may sound fitting but in reality it is not. Hydro is one of the most difficult businesses to be successful at. In my opinion, and many local citizens I talk to, towns should not get involved with hydro projects. They should concentrate their limited resources on schools, roads, police departments, and other normal town matters. Several towns have failed miserably at hydro. Examples include Woonsocket, RI and Reading, PA. An experienced hydro development company such as Summit will have a greater chance of building and maintaining a cost effective, efficient project and using less public funding as compared to an inexperienced municipality. This is particularly true for these small projects; each only about 1 MW installed capacity, 3,000,000 kWh annual production, \$250k gross annual revenue. Summit is most capable of getting these small projects on line expeditiously because it is highly experienced, knowledgeable about the sites, has completed engineering designs, has generating equipment, has manpower and has the equity that is necessary.

I realize that these bills have a certain momentum behind them particularly since they are probably viewed as doing well for a municipality and the environment. But that should not cloud the facts and fairness of the matter which should be carefully and impartially considered in proper context.

SUMMIT'S REQUEST:

Based on the information provided herein and on fundamental fairness I respectfully request the following:

- Acknowledge that Summit was the original FERC licensee for both projects;
- Acknowledge that Summit is qualified as a developer and operator of hydropower facilities;
- Acknowledge that Summit has at all times made good faith efforts to advance these two hydropower projects

AND THEREFORE, ON THE BASIS OF FUNDAMENTAL FAIRNESS

Support and pass legislation which:

1. Reinstates both FERC licenses to Summit;
2. Establishes a reasonable time to begin construction.

The above may be accomplished by simply removing Section 3 of the subject bills.

As an alternative Summit would be willing to consider a compromise which would entail modifying the bills such that the Collinsville Upper license is reinstated and transferred to Canton and the Collinsville Lower license is reinstated to Summit.

CLOSING:

Thank you for your time and attention in reviewing this matter. I would be delighted to provide more detail of Summit's efforts and investment to the extent you are interested and would be delighted to discuss this over the phone or in person.

Sincerely,

Duncan Broatch
Summit Hydro, LLC

Attachment: Schedule A

SCHEDULE A

Chronology of Summit Hydro's Efforts Pending Development of the Collinsville Upper and Lower Hydroelectric Projects :

1988 to 1989-

Site Visits; evaluation of civil engineering structures, review documentation; research; economic analysis; preparatory work for FERC License applications, preparation, submittal draft license applications.

1989 to 2001-

Final license applications filed with FERC 9/15/1989

Perform FERC requested Studies and Information Request Responses including:

- 80 Submittals to FERC
- 58 Submittals to Agencies
- 43 Submittals to other stakeholders.

FERC issues Orders Granting Licenses to Summit 2/23/01

2001 - Confirm DEP interest and willingness to lease property.

Pursue Connecticut Clean Energy Fund but identify need to change definition of renewable to include hydro.

Per FERC Licenses - submit reports, project design, price quotes, research energy sale options, begin satisfying FERC license articles, initiate financing.

2002 - Meetings, consultations and communications with CT Energy Action Board regarding Renewable Energy Investment Fund (changed to CT Clean Energy Fund) identify challenge that Fund is not available for hydro since hydro is not defined as a Class I renewable.

Investigations of CT Statutes regarding limiting funding to Class I only.

Provide input on "Strategic framework, efforts to change CCEF opportunities and related hydro legislation 2001-05".

Worked on completing required license articles, submitting reports to FERC, reassessing project design, obtaining price quotations, performing cost estimates, researching energy sales options and rates, running cash flow analyses, pursuing financing.

Commenced efforts to extend FERC construction commencement deadlines.

2003 - Continued discussions with CCEF. Submitted "request for funding consideration" form to CCEF requesting funding for Collinsville hydro projects.

Multiple meetings with newly formed "Hydro Group" stakeholders: organized by Rivers Alliance. Attendees included FRWA, Jane Stahl (Deputy Comm. DEP), Trout Unltd., DPUC, NU, Hydro owners and developers.

Communications with Rivers Alliance and FRWA regarding LIHI, RSB 733, PHB5294 and PHB6027.

Communicated with and met with Terry Backer, Co-Chair Connecticut Energy Committee, Communications with Robert Megna, Dan Sosland (Env.-NE), Rivers Alliance, Brian Keene (Smart Power), Sen. Melodie Peters regarding RSB-773 AAC Revisions to the Electric Restructuring Legislation and PSB-717 and PHB-6027 that relate to the Renewable Energy Investment Fund. Provided written and oral testimony before the Energy Committee 2/19/03.

Initiated communications with DEP regarding drafting Summit/DEP leases for project's property and rights; Brian Emerick, Elizabeth Brothers (DEP land acquisition and management).

Worked on completing required license articles, submitting reports to FERC, reassessing project design, obtaining price quotations, performing cost estimates, researching energy sales options and rates, running cash flow analyses, pursuing financing.

Worked with Jennifer Diggins at Congressman Rob Simmons' office. Bill to extend construction commencement dates and reinstate licenses to Summit if terminated, Bill was introduced but died. FERC provided a letter stating that FERC will not terminate licenses if there is pending (introduced) legislation. JD sent Summit draft of new Bill, introduced it in 108th Congress, HR 1074, referred to subcommittee.

2004 - Communications with Mark Barnett, CCEF regarding funding for Hydro. Sent detailed letters to Lise Dondy, COO, CCEF on 11/1/04, 11/4/04 and 11/30/04. Met with Lise and CCEF counsel and staff to discuss why Hydro is not being funded. Provided written comments on "Draft Solicitation for Project 100." Received letter dated 12/10/04 regarding clarification of legislative intent regarding Hydro in relation to CCEF. Provided written comments on CCEF's "Operational Demonstration Program".

"Proposed amendments to operating procedures."
Continued to pursue all avenues with the goal of having hydro included in CCEF's list of renewables and having hydro included in projects eligible for CCEF funding. Began consultations with CT Attorney General (AG) office; contact was Mike Worthimer. Sent letter to AG. Consulted with State Senator, Dan Pullium.

Met with Hydro Group 2/10/04 at DPUC; 2 DPUC Commissioners, DPUC Staff, Jane Stahl, plus 8 others. Communications with Jane Stahl regarding her comment at above Hydro Group meeting where she said "I consider hydro to be renewable but not green".

Communications with DEP regarding drafting Summit/DEP leases for project's property and rights; Brian Emerick, Elizabeth Brothers. Summit was informed that DEP is affirmative on the project but that legislation would need to be passed first that allows DEP to lease to a private entity.

Communications regarding DPUC Dkt. 04-02-07.

Worked on completing required license articles, submitting studies and reports to FERC, reassessing project design, obtaining price quotations, performing cost estimates, researching energy sales options and rates, running cash flow analyses, pursuing financing.

Continued Efforts with Congressman Rob Simmons regarding bill.

2005 - Worked with Rep Mike Alberts on introducing a bill in CT legislature to include hydro in CCEF funding. Introduced Bill 6031 AAC Hydropower. Referred to Energy and Tech Comm. Provided written and oral testimony. Communicated with other legislators. Bill Number is now SB1118. Sent many letters, many calls. SB1118 morphed into another unrelated bill. Consulted with CT Attorney General (AG). Received letter from AG dated 4/20/05 stating that he agrees with Summit, that hydropower falls within the parameters of Section 16-245n(a) and Hydro should receive CCEF funding. Received letter from CCEF dated 6/13/05 stating that per the letter from the AG, hydropower is now eligible for CCEF funding.

Communications with Rep. Mike Alberts, Sen. Herlihy, Rep Witkos, legislators and other parties. Rep. Alberts, at Summit's request, introduced legislation to allow dep to enter lease agreements with private entities for hydro projects; PSB 595, it would replace sec. 45, subsection (a) of Sec. 22a-6, provided oral and written testimony 2/24/05, went through committees with no opposition but then bill died.

Worked on completing required license articles, submitting studies and reports to FERC, reassessing project design, obtaining price quotations, performing cost estimates, researching energy sales options and rates, running cash flow analyses, pursuing financing.

Worked with Congressman Rob Simmons' office on Bill, HR 971 was introduced 2/17/05, to extend construction commencement deadlines and reinstate licenses if terminated, referred to subcommittee.

2006 - Communications with DPUC and comments filed on Dkt. 06-06-14 regarding glut in Class I renewables causing a severe drop in value of Class I REC's on the market.

Communications with Rep. Mike Alberts, Sen. Herlihy, Rep Witkos, legislators and other parties, Rep. Alberts, at Summit's request, introduced legislation (2nd attempt) to allow Dep to enter lease agreements with private entities for hydro projects; it would replace Sec. 45, Subsection (a) of Sec. 22a-6, went through committees with no opposition but then bill died.

Communications, oral and written testimony on SB211; AAC Renewable Energy, and RB 212 AAC Biomass (regarding plummeting prices of Class I REC's); Sen. Larkin, Bill Short (Ridgewood Energy), Rep. Fontana, Sen. Duff, Roger Koontz, Eric Hammerling, Margaret Minor.

Communications with newly formed "Canton Temporary Energy Task Force Committee" (CTETF), Larry Shine.

Worked on completing required license articles, submitting studies and reports to FERC, reassessing project design, obtaining price quotations, performing cost estimates, researching energy sales options and rates, running cash flow analyses, pursuing financing.

Worked with Shawna Hewes at Congressman Simmons' office, HR 971 regarding the Congressman's testimony given on 9/26/06, communications with following for support on Bill: Sen. Lieberman, Sen. Dodd, DEP, Rivers Alliance, FRWA, Trout Unlimited. Bill passed in House but was not acted on by Senate.

2007 - Communications with Rep. Mike Alberts, Sen. Herlihy, Rep Witkos regarding bills related to hydro; 5214, 7098, 7432. Specifically Rep. Alberts, at Summit's request, introduced legislation (3rd attempt) to allow dep to enter lease agreements with private entities for hydro projects; sec. 45 of bill 7432, it passed, it replaced sec. 45, subsection (a) of sec. 22a-6. in light of bill 7432 passage continued communications with dep regarding drafting summit/dep leases for project's property and rights; Brian Emerick, Elizabeth Brothers.

Presented a PowerPoint presentation to Canton Temporary Energy Task Force on 2/15/07. The committee was supportive and asked if there was anything they could do to move Summit's projects forward.

Communications and testimony on Bill 5597 and Bill 8006 (PA-07-5) regarding depression in value of Class I REC's; Environment Committee, Bill Short, Brooks Campion, Steve Kinney, Keith Stover, Don Williams, Leslie O'Brien, Eileen Schlettgar, Jodi Rell, James Amann, Lawrence Cafero, John McKinney, Fontana, Fonfara, Herlihy.

Worked on completing required license articles, submitting studies and reports to FERC, reassessing project design, obtaining price quotations, performing cost estimates, researching energy sales options and rates, running cash flow analyses, pursuing financing.

Contacted Congressman Chris Murphy's office 7/5/07, communications with legislative aid Charlotte Newman, regarding introduction of Bill to extend construction commencement deadlines and reinstate licenses to Summit if terminated.

Although Summit was as diligent as possible at advancing the projects, given the burdensome changes that occurred during the 11 year licensing process, project financing and property acquisition were not obtained and project construction did not start within FERC's construction start deadline. On December 4, 2007 FERC issued an Order terminating Summit's licenses pursuant to Sec. 13, 16 USC 806; construction was not commenced within the license deadlines due to reasons caused by the long time period taken to issue the licenses to Summit.

2008/2011 - Continued working with Congressman Murphy's Aid Charlotte Newman on introducing a bill to reinstate licenses to Summit.

Met with Canton First Selectman Richard Barlow on 2/7/08 to ask him if he could help pass to reinstate licenses to Summit. He replied "yes".

Learned that Congressman Murphy's office is no longer working towards a bill for Summit but, rather, is now working on introducing a new bill to reinstate Summit's licenses and transfer them to the Town of Canton at the request of the Canton First Selectman.

Ongoing efforts to have licenses reinstated to Summit rather than to the Town of Canton.