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August 23, 2013

Kimberly D. Bose
Secretary
Federal Energy Regulatory Commission
888 First Street, NE
Washington, DC 20246

*Re: Project No.: 405-106 - Maryland Conowingo Hydroelectric Project
Exelon Generation Company*

Dear Secretary Bose:

The Clean Chesapeake Coalition, a coalition of Maryland local governments directly affected by the devastating environmental impact of the Conowingo Dam (the "Coalition"), objects to the reasons underpinning Exelon's request to the Federal Energy Regulatory Commission ("FERC") to extend:

1. The August 30, 2013 deadline for filing a copy of Exelon's request to the Maryland Department of the Environment for water quality certification; and
2. September 30, 2013 deadline for filing interventions, protests, comments, recommendations, preliminary terms and conditions and preliminary fishway prescriptions;

and as grounds for such objection states as follows.

First, if FERC grants the suggested extension, then FERC would officially recognize Exelon's settlement negotiations as part of the Commission's official proceedings. Those settlement negotiations do not comply with the requirements of the National Environmental Policy Act ("NEPA") or Executive Order 13508. Those settlement negotiations are not open to the public. The Maryland Department of the Environment ("MDE") and the Maryland Department of Natural Resources ("MDNR") have refused to inform the elected officials of Coalition members about what is being discussed in such settlement negotiations, those departments have refused to obtain input from the elected officials of Coalition members about the needs and concerns of the local governments, and those departments have refused to coordinate with the elected officials of those local governments. Exelon has refused to invite the elected officials of Coalition members to participate in the settlement negotiations. There is nothing public or open about those settlement negotiations.



Second, Exelon states, “[I]t is prudent to grant the requested time extension in order to allow for the development of additional data from the LSRWA, which will help facilitate a more informed and productive discussion among MDE, MDNR and Exelon on sediment transport and its effects on water quality.” The Lower Susquehanna River Watershed Assessment (“LSRWA”) has not requested input from the local government officials of the Coalition members. LSRWA advised representatives of those local government officials that participation in its proceedings is limited to “those representing agencies (*i.e.*, federal or state agencies), businesses or environmental groups.” LSRWA has failed to honor the request of the Coalition local governments to be reasonably notified in advance of LSRWA meetings. LSRWA has said that Coalition members may send comments. Coalition local governments cannot meaningfully comment when all they are able to comment on is after the fact meeting minutes of the activities of LSRWA published a month or more after a meeting. LSRWA refuses to coordinate with the Coalition local governments and refuses to understand and give consideration to the human, social, economic and environmental concerns of Coalition local governments. LSRWA refuses to coordinate or cooperate with Coalition local governments. The LSRWA study does not comply with the requirements of NEPA, Executive Order 13508 or the Federal Powers Act.

Third, Exelon’s request for an extension until LSRWA’s sediment study can be completed discredits FERC’s licensing process and the sediment study previously submitted by Exelon. A sediment study was a requirement in the initial license application, as outlined when FERC issued the final study plan determination for the Conowingo Project on February 4, 2010. This study required three tasks from Exelon: a review and compilation of existing information (Task 1); a quantitative assessment of sediment-related impacts of the Project on downstream habitat (Task 2); and an evaluation of options to manage sediment at the Project (Task 3). Please observe that in May 2011 Michael J. Langland of USGS sent to Exelon’s contractors responsible for the sediment study details of the inadequacy of the model underpinning the conclusions in that report.¹ In making this second extension request, does Exelon acknowledge that the sediment study it submitted is flawed and, therefore, that its application will not be complete until the LSRWA sediment study is submitted in lieu of the sediment study submitted by Exelon? How can FERC agree to an extension premised on the completion of the LSRWA study unless FERC revokes its ready for environmental analysis determination?

We note that Exelon and its predecessors in interest have financially benefited from the stormwater management pond known as the Conowingo Pond or the Conowingo Reservoir for over eight (8) decades. They have never spent one dime to maintain the pond. Dozens of studies of the nutrients and sediments accumulated behind the dam and the impact of those nutrients and sediments that pass through and are scoured from the floor of the Conowingo Reservoir have been continuously conducted and ongoing since at least as early as 1985.² If the consequences of the sediment scour were not so tragic, the situation would almost be comical – particularly given all the public and private efforts and expenditures throughout the watershed in the name of saving the Chesapeake Bay. Nothing has been done to address the problem for three (3) decades; but the problem has been continuously recognized, documented and studied. It is time

¹ See “Comments of Clean Chesapeake Coalition re the Maryland Conowingo Hydroelectric Project under P-405.” Submittal 20130408-0008.

² See *e.g.*, Exhibit 1 attached hereto. See also the studies cited in the Motion to Intervene of the Clean Chesapeake Coalition.

Kimberly D. Bose, Secretary
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to stop studying the problem and do something meaningful to resolve the problem, as the Coalition has set forth in its Motion to Intervene.

The Coalition local governments remain concerned that there is a lack of procedural due process. There is a failure to comply with the applicable legal requirements. There is a failure to coordinate with the Coalition local governments. There is a failure to give meaningful consideration to the human, social, economic and environmental concerns of the Coalition local governments. There is a lack of transparency to the proceedings underpinning and impacting on the ready for environmental assessment review process. The Coalition requests FERC to address and rectify those deficiencies.

If you have questions and or require additional information regarding this matter, please do not hesitate to contact the undersigned. We thank you in advance for your time and consideration.

Sincerely,

A handwritten signature in blue ink that reads "Ronald H. Fithian" with a stylized flourish at the end. Below the signature, the initials "(RMO)" are written in blue ink.

Ronald H. Fithian
Chairman, Clean Chesapeake Coalition
Commissioner, Kent County, Maryland

cc: John B. Smith, Chief, Mid-Atlantic Branch, Division of Hydropower Licensing
Emily Carter, FERC's Project Coordinator for the Conowingo Project

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 23rd day of August 2013, a copy of the foregoing document was served via the Commission's electronic service system upon each person designated on the official service list compiled by the Secretary in this proceeding that has provided an electronic address.

/s/

Charles D. MacLeod, Esq.



Susquehanna River Basin Commission

a water management agency serving the Susquehanna River Watershed



Lower Susquehanna River Reservoir Sediment Storage Capacity Issue

Chronology of SRBC Involvement

- 1985 SRBC initiates comprehensive monitoring of nutrients and sediments in the Susquehanna River basin, an effort now in its 28th year, which provides important data on annual sediment loads delivered to the reservoir complex behind major hydroelectric dams on the lower Susquehanna River. Funding support for the monitoring program is provided by Pennsylvania through its Chesapeake Bay Program funding allocation.
- 1992 The United States Geological Survey (USGS) releases information from an ongoing study indicating that sediment storage at 3 of 4 dams on the lower Susquehanna River is at a "steady-state" condition and the remaining storage capacity at Conowingo Dam has a life expectancy of approximately 15 years. Implications of the loss of such storage are reported to be a dramatic increase in sediment and phosphorus loads to the Chesapeake Bay.
- 1992 Pennsylvania Delegation of the Chesapeake Bay Commission (CBC) provides \$15,000 grant funding to SRBC to formulate a study titled: "Managing Sediments and Nutrients in the Susquehanna River Basin", resulting in the formation of a Technical Advisory Committee to assist it in the development of a Scope of Study to address, among other things, dredging feasibility and other options for retaining sediment storage capacity behind the dams on the lower Susquehanna River.
- 1993 SRBC releases its Scope of Study and pursues federal funding to support implementation of the study plan, which focuses on sediment transport and sediment storage capacity behind the dams.
- 1994 Deliberations on the sediment management issue continue with the SRBC Technical Advisory Committee, as do efforts to secure federal funding to implement the study plan, which ultimately were unsuccessful.
- 1995 Final study report released by USGS indicating that remaining life of sediment storage capacity in Conowingo Pond is estimated to be 15 to 18 years.
- 1998 USGS releases an updated Fact Sheet (#003-98), titled: "Changes in Sediment and Nutrient Storage in Three Reservoirs in the Lower Susquehanna River Basin and Implications for the Chesapeake Bay." After analysis of the scouring event caused by the January 1996 ice-jam flood on the Susquehanna River, USGS determines that there is approximately 43 million tons of storage capacity remaining in Conowingo Pond, or 17 to 20 years of storage capacity without additional scour.

- 1999 Pennsylvania Delegation of the CBC provides grant funding to SRBC to convene a Sediment Task Force to review the existing science and make management recommendations concerning sediment and the loss of sediment storage capacity on the lower Susquehanna River.
- 2000 SRBC collaborates with Chesapeake Bay Program in the development of the Water Quality Protection and Restoration Goals of *Chesapeake 2000*, which provides as follows: "By 2003, work with the Susquehanna River Basin Commission and others to adopt and begin implementing strategies that prevent the loss of the sediment retention capabilities of the lower Susquehanna River dams."
- 2000 The SRBC Sediment Task Force convenes the Sediment Symposium, bringing together experts to evaluate the state of knowledge with respect to sediment in the Susquehanna River Basin, its policy implications, and management options to address the issue.
- 2000 At the request of the SRBC Sediment Task Force, the Scientific and Technical Advisory Committee (STAC) of the Chesapeake Bay Program convenes a workshop and issues a Workshop Report, titled: "The Impact of Susquehanna Sediments on the Chesapeake Bay." STAC concludes that the loss of retention of sediment storage in the reservoirs behind the lower Susquehanna River dams would have a significant impact on Bay health.
- 2001 The SRBC Sediment Task Force issues its report recommending a series of actions to address the sediment issue, most notably the need to undertake a comprehensive study of the feasibility of managing sediment storage capacity in Conowingo Pond, including an analysis of dredging feasibility.
- 2001 The SRBC engages members of the Susquehanna River Congressional Task Force to support an authorization and appropriation for the Corps to undertake a study of management options for addressing the sediment issue as outlined by the Sediment Task Force report. An expanded authorization and appropriation for the Chesapeake Bay Shoreline Erosion Project is approved as part of the FY2002 federal budget, which includes authorizing language and funds to enable the Corps to proceed with a reconnaissance study on the sediment issue. The authorization and/or appropriation were supported in Congress by United States Senators Paul Sarbanes (MD), Barbara Mikulski (MD), John Warner (VA), George Allen (VA), Arlen Specter (PA), and Rick Santorum (PA), and by Congressmen Wayne Gilchrest (MD-1) and Paul Kanjorski (PA-11).
- 2003 The Corps issues its Interim Reconnaissance Report, Part 1, *Sediment Behind the Dams on the Lower Susquehanna River*. The SRBC and MDE issue letters of intent to the Corps committing to serve as nonfederal partners to the feasibility study outlined in the Phase 1 Report.

- 2003 The Corps, in coordination with SRBC and MDE, issue a Project Management Plan (PMP) to guide initiation of a feasibility study to evaluate sediment management options.
- 2003 The SRBC receives a \$400,000 grant from Pennsylvania to undertake a Sediment Characterization Study of the sediments in storage in the lower Susquehanna River, utilizing USGS, the Maryland Geologic Survey, and the University of Maryland Center for Environmental Studies. The study analyzed the physical, chemical, and biological characteristics of the sediment stored behind Conowingo Dam to determine the water quality implications of dredging, and ultimate disposition, including potential suitability for beneficial use.
- 2004 The SRBC engages members of the Susquehanna River Congressional Task Force to support an appropriation to the Corps to undertake the sediment management study called for in the PMP. Federal funding was not provided.
- 2005 The SRBC re-engages members of the Susquehanna River Congressional Task Force to support an appropriation to the Corps to undertake the sediment management study. Federal funding was not provided.
- 2007 The SRBC hosts a congressional briefing on the sediment issue for Susquehanna River Congressional Task Force offices and interested stakeholder NGO's, providing information on the significance of maintaining sediment storage capacity and the need for federal support for a sediment management study to assess management options.
- 2008 With support from the SRBC, Pennsylvania provides \$95,000 to the USGS to undertake a bathymetry study to provide updated data on the amount of sediment and remaining storage capacity for the reservoir system located in the lower Susquehanna River Basin. Results are released as Scientific Investigations Report 2009-5110, indicating 15-20 years of storage capacity remaining without accounting for statistically expected scouring.
- 2009 The Corps receives funding under the 2009 Omnibus Appropriations Act to sign a Feasibility Cost-Sharing Agreement (FCSA) with a non-federal partner to examine management options to address the Lower Susquehanna River sediment storage issue.
- 2009 As part of the Federal Energy Regulatory Commission (FERC) relicensing process for the relicensing of Conowingo Hydroelectric Facility, SRBC files comments with FERC requesting that the licensee, Exelon Generation Company, LLC (Exelon) be required, during the study phase of the relicensing process, to study the effects of the presence of the dam and operation of the project on sediment and nutrient accumulation upstream of the dam, sediment transport past the dam, and sediment deposition and distribution downstream of the dam, including spatial and temporal sediment distribution into the upper Bay.

- 2010 FERC directs the licensee to undertake a Sediment Introduction and Transport (sediment and nutrient loading) Study and prepare a report which includes a sediment management plan that provides projections of sediment accumulation, benchmarks for potential impacts and actions, and options to manage, mitigate and remove accumulated sediments. FERC also indicates that the licensee may be required to conduct a sediment transport modeling study if the initial study does not adequately characterize the geographic and temporal cumulative effects.
- 2011 The Corps issues a Project Management Plan that outlines the need and scope for a Lower Susquehanna River Watershed Assessment project (LSRWA), which would evaluate, identify and prioritize strategies for reducing sediments and associated nutrients delivered from the Lower Susquehanna River to the Chesapeake Bay. SRBC agrees to participate as a member of the Interagency Study Team organized under the LSRWA project, undertaken pursuant to an FCSA then executed by the Corps and MDE under Section 729 of the Water Resources Development Act of 1986, as amended.
- 2012 Exelon files its Sediment Introduction and Transport Study report with FERC, identifying, among other things, that discrepancies and limitations of existing data reveals the need for a single comprehensive and integrated analysis of the lower Susquehanna River Basin, and points to the LSRWA as the appropriate mechanism for developing an overall sediment management strategy for the lower basin and the Chesapeake Bay.
- 2012 SRBC participates with federal and state resource agencies in a coordinated negotiation with the licensee on potential license conditions, including those for sediment management. Completion of the negotiations is anticipated in 2013.
- 2012 The USGS releases Scientific Investigations Report 2012-5185, which analyses the “Flux of Nitrogen, Phosphorus, and Suspended Sediment from the Susquehanna River Basin to Chesapeake Bay during Tropical Storm Lee, September 2011, as an Indicator of the Effects of Reservoir Sedimentation on Water Quality.” The Study concludes that as sediment storage capacity has decreased over the past decade, the effectiveness of the reservoir system in trapping nutrients and sediments has declined, resulting in increased concentration of nutrients and sediments being discharged during flow events in the range of 100,000 to 200,000 cubic feet per second (cfs). Heretofore, major scour was believed to be triggered at flow events of $\geq 400,000$ cfs. These changes in the deposition/scour reservoir dynamics are now overwhelming the progress being made to reduce upstream loads from the basin.
- 2013 The SRBC continues its participation on the Interagency Study Team assisting with completion of the LSRWA project, which is scheduled for 2014 assuming anticipated funding is provided.

Stephanie L. Stubbs

From: Rose Osborn
Sent: Friday, August 23, 2013 3:36 PM
To: Stephanie L. Stubbs
Subject: FW: FERC Acceptance for Filing in P-405-106

-----Original Message-----

From: eFiling@ferc.gov [mailto:eFiling@ferc.gov]
Sent: Friday, August 23, 2013 3:35 PM
To: Jeff L. Blomquist; efilingacceptance@ferc.gov
Subject: FERC Acceptance for Filing in P-405-106

Acceptance for Filing

The FERC Office of the Secretary has accepted the following electronic submission for filing (Acceptance for filing does not constitute approval of any application or self-certifying notice):

-Accession No.: 201308235120
-Docket(s) No.: P-405-106
-Filed By: Clean Chesapeake Coalition
-Signed By: Jefferson Blomquist
-Filing Type: Comment on Filing
-Filing Desc: Comment of Clean Chesapeake Coalition under P-405- Re:Exelon's request to FERC to extend August 30, 2013 deadline for filing MDE water qual. Cert. and September 30, 2013 deadline for filing interventions, protests, comments, prelim terms and cond, etc -Submission Date/Time: 8/23/2013 2:57:45 PM -Filed Date: 8/23/2013 2:57:45 PM

Your submission is now part of the record for the above Docket(s) and available in FERC's eLibrary system at:

http://elibrary.ferc.gov/idmws/file_list.asp?accession_num=20130823-5120

If you would like to receive e-mail notification when additional documents are added to the above docket(s), you can eSubscribe by docket at:

<https://ferconline.ferc.gov/eSubscription.aspx>

There may be a 10 minute delay before the document appears in eLibrary.

Thank you again for using the FERC Electronic Filing System. If you need to contact us for any reason:

E-Mail: efiling@ferc.gov <mailto:efiling@ferc.gov> (do not send filings to this address) Voice Mail: 202-502-8258.

Stephanie L. Stubbs

From: Rose Osborn
Sent: Friday, August 23, 2013 3:23 PM
To: Stephanie L. Stubbs
Subject: FW: FERC Receipt of Filing in P-405-106

-----Original Message-----

From: efiling@ferc.gov [mailto:efiling@ferc.gov]
Sent: Friday, August 23, 2013 2:59 PM
To: Jeff L. Blomquist; efilingacceptance@ferc.gov
Subject: FERC Receipt of Filing in P-405-106

Confirmation of Receipt

This is to confirm receipt by the FERC Office of the Secretary of the following electronic submission:

-Submission ID: 433627
-Docket(s) No.: P-405-106
-Filed By: Clean Chesapeake Coalition
-Signed By: Jefferson Blomquist
-Filing Desc: Comment of Clean Chesapeake Coalition under P-405-106- Re:Exelon's request to FERC to extend August 30, 2013 deadline for filing MDE water qual. Cert. and September 30, 2013 deadline for filing interventions, protests, comments, prelim terms and cond, etc -Submission Date/Time: 8/23/2013 2:57:45 PM -Filed Date: 8/23/2013 2:57:45 PM

Additional detail about your filing is available via the following link:

<https://ferconline.ferc.gov/SubmissionStatus.aspx?hashcode=M3mAuW2h6NlpCa2CC9X13A>

You will receive an email, shortly, concerning the status of your submission.

Thank you for participating in the FERC Electronic Filing System. If you have any questions, or if you detect errors in your submission or the FERC-generated PDF, please contact FERC at:

E-Mail: efiling@ferc.gov <mailto:efiling@ferc.gov> (do not send filings to this address) Voice Mail: 202-502-8258.