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Via Electronic and Regular Mail

Attn: Regulatory and Customer Service Division Chief
Wetlands and Waterways Protection Program
Water Services Administration
Maryland Department of the Environment
1800 Washington Boulevard, Suite 430
Baltimore, Maryland 21230
conowingo.mde@maryland.gov

Re: Conowingo Hydroelectric Project – FERC Docket No.: P-405-106
Constellation Power Generation, LLC (formerly Exelon) 17-WQC-02 Issued April 2018
Lower Susquehanna River and Upper Chesapeake Bay – Use 1 & 2 Waters
Limited Public Comment Period – WQC Reconsideration

Dear Ladies and Gentlemen:

On behalf of the Clean Chesapeake Coalition (“Coalition”), we respectfully submit the following comments and recommendations regarding the Clean Water Act Section 401 water quality certification (“WQC”) issued by Maryland Department of the Environment (“MDE”) on April 27, 2018 (No. 17-WQC-02) to Constellation Power Generation, LLC (formerly Exelon) (“Constellation”) for the relicensing of Constellation’s Conowingo Hydroelectric Project by the Federal Energy Regulatory Commission (“FERC”) (FERC Project No. 405). This comment letter during MDE’s reconsideration is intended to supplement the Coalition’s previously filed written comments and exhibits regarding the water quality certification for Conowingo Dam relicensing, specifically:

1. Letter to Robert M. Summers, MDE Secretary, October 10, 2014;
2. Letter and exhibits to Elder A, Ghigiarelli, Jr., MDE Deputy Program Administrator, dated August 16, 2017;
3. Coalition testimony during MDE Public Hearing on December 5, 2017;
4. Letter and exhibits to Program Administrator Ghigiarelli, Jr., January 15, 2018; and
5. Letter and exhibits to Deputy Administrator Ghigiarelli, Jr., January 30, 2018.

The WQC issued April 27, 2018 by the State of Maryland for Conowingo Dam relicensing was a bold and historic permitting decision with long-overdue conditions on the operation and maintenance of the Dam and project area (the 14-mile reservoir). It was a watershed moment in the history of Chesapeake Bay restoration, finally addressing one of the most vexing threats to Bay water quality – the Conowingo factor. The Coalition continues to endorse the original April 2018 WQC issued by MDE as minimum conditions for the operation and maintenance of the Dam and reservoir – for the sake of downstream Maryland water quality.

Well-supported by science and enforceable under the law, the original WQC issued in 2018 responsibly embraced the once-in-a-generation opportunity to impose licensing conditions requiring the owner of Conowingo Dam to properly manage the vast quantities of nutrients, sediment and other contaminants that are accumulated in the reservoir above the Dam and scoured into the Bay during major storm events and now with more regularity in equally harmful proportions because of the loss of trapping capacity in the reservoir. Indeed, the EPA Chesapeake Bay Program interim Midpoint Assessment in 2017 (CBP 2017a) confirmed that the 2025 Bay TMDL goals would not be met in part due to the well-documented pollution loading attributable to the infill of Conowingo Dam.

Susquehanna River is the single largest source of pollution loading to the Chesapeake Bay and because all that flows down the Susquehanna flows through the Conowingo Dam, the Dam is a significant point source of sediment and nutrient pollution that negatively impacts Chesapeake Bay. The Dam converted the lower Susquehanna River into the Bay watershed's largest stormwater management pond. Conowingo reservoir has been trapping upstream nutrients, sediments and other contaminants for nearly 95 years. The reservoir has never been dredged or otherwise maintained and, until the 2018 WQC issued by Maryland, **nobody** has been legally responsible to dredge or otherwise maintain it or mitigate its adverse environmental impacts. Since Hurricane Agnes in 1972, the devastating impacts on the Bay from the accumulated nutrients and sediments above the Conowingo Dam when coupled with the forces of Mother Nature have been well-known, well-documented and thoroughly studied.

When Maryland's conditional WQC permit for Conowingo relicensing was issued and a Conowingo specific watershed implementation plan (WIP) was required under the auspices EPA's Chesapeake Bay Program, the Coalition counties felt the stage had been set for regionally addressing the Conowingo factor (instead of Maryland suing EPA to call out Pennsylvania) and we were looking forward to discussing short and long-term strategies, including dredging, that reduce pollution loading into Chesapeake Bay and that make scientific and fiscal sense (not the same old tired and unproven BMPs or relentless blame on farmers and watermen for what ails the Bay). It is perplexing that the recent settlement of the lawsuit filed by Maryland, Virginia, Delaware, District of Columbia, Anne Arundel County, Chesapeake Bay Foundation, and others against EPA to shame and lean on Pennsylvania makes no mention whatsoever of the Conowingo WIP and related regional efforts (i.e., expert panel on dredging) as a means of meaningfully and measurably improving downstream water quality. Likewise, the recent Scientific and Technical Advisory Committee (STAC) report *Knowledge Gaps, Uncertainties, and Opportunities Regarding the Response of the Chesapeake Bay Estuary to Restoration Efforts* (May 2023) makes no mention of the Conowingo WIP; but the STAC report does confirm that in 2017 all the parties responsible for the 2010 Bay TMDL (aka "pollution diet", dubbed "Clean Water Blueprint" by CBF) were on notice that the Blueprint was flawed and the Conowingo factor would thwart the attainment of the 2025 goals.

In FY2022, Bay jurisdictions reported spending an estimated \$1 billion in "watershed restoration" through state programs. The FY2022 Region 3 Chesapeake Bay Program budget



was \$388 million. In July 2023, the U.S. EPA Office of Inspector General confirmed that the 2010 Bay TMDL goals set for 2025 will not be met, observing “nearly 40 years after the Chesapeake Bay Program was established, the bay’s water quality remains degraded.” Why?

In part, because the two largest sources of pollution loading to the Maryland portion of Chesapeake Bay are (1) the Susquehanna River, exacerbated by the loss of trapping capacity in Conowingo reservoir and more frequent and intense storms, and (2) the Baltimore regional WWTPs, deemed operational failures by Maryland Environmental Service and routinely violating State and federal discharge limits, are not being meaningfully addressed. Instead of real action, we get Constellation Power litigating and ducking responsibility for its privileged use of the Susquehanna River’s natural flow to generate electricity for sale and we get a Regional Governance Task Force from the General Assembly to study the abject dysfunction of the State’s largest WWTPs serving the Baltimore region. Another big reason for the Bay being degraded is people, and lots of them in the watershed. And now we have federal legislation introduced to establish a “Chesapeake National Recreation Area” (a federal park designation) intended to bring millions more visitors to an already stressed and out-of-balance ecosystem. Other than commerce over environment and full employment for NGOs, this contrast is hard to square.

Smartly and necessarily, the 2018 WQC permit conditions promote **adaptive management** and reserve to Maryland the ability to re-open the water quality certification as information is learned and/or events occur that may impact the efficacy of the permit. In the case of 50-year license issued by FERC, **re-openers** during the license term are essential for adaptive management. Reopener triggers during the license term should include episodic storm / scouring events, new or improved science, and the availability of regulated nutrient trading/offsets.

Since the issuance of the 2018 WQC, there have been multiple filings by Constellation and FERC in the FERC docket P-405-MD related to Conowingo Dam’s structural integrity, emergency plans, safety audits and Part 12 inspection reports. However, these filings are not accessible to the public. Given its age and state of the reservoir, the structural integrity of the Dam is a concern and downstream plans in the event of a catastrophic failure should be readily available for public review and input. The WQC for Conowingo Dam should require complete transparency in this regard. In its Order granting the new license to Exelon (March 2021), FERC noted the Coalition’s concerns for the stability of the Dam through the license term, having posited to FERC and MDE that the 2017 spillway failure at the Oroville Hydroelectric Project in California (FERC No. 2100) underscores the need to dredge the reservoir to minimize environmental damage downstream and to have reopeners and associated triggers in order to adapt to environmental changes and other new technology (FERC Order Paragraph 181). Footnote 241 of the new license Order sums it up: “Coalition describes the dredge and reopener requirements as a necessary condition of any water quality certification for the project; however, as noted above, the certification is being waived in this proceeding.” FERC’s tendency to grant long-term (50-year) licenses to hydroelectric projects is another compelling reason for reopeners in the State’s WQC.



At a minimum, Chesapeake Bay needs the water quality improvement protections and conditions embodied in the 2018 WQC for Conowingo Dam relicensing. We implore MDE and the State to hold fast. My fellow Clean Chesapeake Coalition local officials and I refuse to accept as the new normal for the Maryland portion of Chesapeake Bay that all the reservoirs in the lower Susquehanna River are full, that enormous amounts of upstream Susquehanna River pollution are no longer being trapped, that more storms and harmful scour are inevitable and that Conowingo reservoir dredging, or Upper Bay sediment management are off the table.

All things considered, given the significance of the State's WQC reconsideration after remand from the Court, and with the passage of time since many stakeholders like the Coalition counties were actively involved in the WQC process for Conowingo Dam relicensing, we respectfully request that a public hearing(s) be conducted as part of MDE's reconsideration process.

Thank you for your attention and consideration of our comments.

Sincerely,



Ronald H. Fithian, *Chairman*
and Kent County Commissioner

cc: Maryland Rural Counties Coalition

