



Maryland
Department of
the Environment

Wes Moore, Governor
Aruna Miller, Lt. Governor

Serena McIlwain, Secretary
Suzanne E. Dorsey, Deputy Secretary

June 1, 2023

Via Electronic Mail and First Class Mail

David W. DeBruin
Jenner & Block, LLP
1099 New York Avenue, NW, Suite 900
Washington, DC 20001

James S. Pew
Earthjustice
1001 G Street, NW, Suite 1000
Washington, DC 20036

Re: Clean Water Act § 401 Water Quality Certification for the Conowingo Hydroelectric Project,
17-WQC-02

Dear Mr. DeBruin and Mr. Pew:

This letter is to inform you that the Maryland Department of the Environment ("MDE" or "Department") will resume the administrative reconsideration of the above-captioned Water Quality Certification ("Certificate"). This reconsideration was initiated by the Protective Petition for Reconsideration and Administrative Appeal submitted by Constellation Energy Generation LLC (formerly Exelon) and the Administrative Appeal of Final Decision To Issue Clean Water Act Section 401 Certification for the Conowingo Hydroelectric Project submitted by Stewards of the Lower Susquehanna, d/b/a Lower Susquehanna Riverkeeper Association, and Waterkeepers Chesapeake ("Waterkeepers"). Both of these submissions requested reconsideration of the Certificate by the Department in accordance with COMAR 26.08.02.10F(4). MDE intends to hold an approximately one-hour status meeting in person at MDE on June 20, 2023 starting at 2:00PM for the parties to the proceeding. In addition, as explained below, MDE will also provide the parties an opportunity to submit supplemental information relevant to the Certificate reconsideration process.

To recap, on September 17, 2018, the parties appeared before MDE and provided presentations in support of their respective requests. On November 2, 2018 and December 6, 2018, Constellation provided supplemental materials in support of its request to the Department, to which Waterkeepers responded on December 6, 2018. The reconsideration proceeding was then paused when MDE and Constellation entered into a comprehensive water quality settlement agreement and FERC issued a license incorporating certain terms and conditions of the settlement, which license was subsequently challenged in the U.S. Court of Appeals for the D.C. Circuit.

David W. DeBruin

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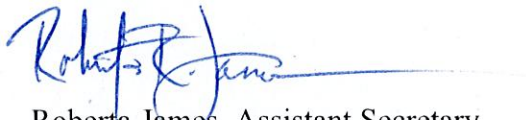
Specifically, on December 20, 2022, the D.C. Circuit ordered that the license be vacated, after finding that FERC had "no authority to issue a license based on a private settlement arrangement entered into by Maryland after the state had issued a certification with conditions but then changed its mind." The D.C. Circuit stated unequivocally that vacating the license "will allow completion of the administrative and judicial review that was interrupted by the settlement agreement." In light of that decision, which is binding on FERC's authority to issue a future license, these requests for administrative review are now actively under consideration by MDE.

As part of the reconsideration process, and since four and one-half years have passed since the parties provided information to MDE, Secretary Serena McIlwain is offering the parties the opportunity to supplement that information by providing any new, updated, or relevant information, which the parties would like the Department to review. If either party has any documents or additional information they wish MDE to consider in making a determination on the reconsideration requests, please submit them in writing to the Department no later than 5:00 p.m. on August 1, 2023. Please submit all such documents in PDF format by email to MDE's counsel, Assistant Attorney General Jonathan May, at the e-mail address below.

Please confirm your acceptance of MDE's invitation to the status meeting on or before 5:00 PM June 6, 2023 by contacting me at bobbie.james@maryland.gov or (443) 759-0583. Regardless of whether you attend the status meeting or submit additional information, MDE will proceed with the reconsideration process.

If you wish to discuss this matter, please contact Mr. May by phone at (410) 537-3058 or by e-mail at jonathan.may@maryland.gov.

Sincerely,



Roberta James, Assistant Secretary
Maryland Department of Environment

cc (via electronic mail only):

Lee Currey, Director, WSA
Jonathan May, MDE OAG
Robin Broder, Waterkeepers Chesapeake
Kathleen Barron, Constellation
Ted Evgeniadis, Lower Susquehanna Riverkeeper