

BEFORE THE MARYLAND DEPARTMENT OF THE ENVIRONMENT
WATER AND SCIENCE ADMINISTRATION

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Clean Water Act Section 401 Certification	*
Conowingo Hydroelectric Project	
FERC Project No. P-405	*
MDE WSA Application No. 17-WQC-02	
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RECONSIDERATION ORDER

WHEREAS, pursuant to its authority under Section 401 of the federal Clean Water Act, Title 9, Subtitle 3 of the Environment Article, Annotated Code of Maryland, and COMAR 26.08.02.10, the Maryland Department of the Environment (“MDE” or the “Department”) granted to Constellation Energy Generation, LLC¹ (“Constellation”) on April 27, 2018, a water quality certification with conditions (the “Certification”) in response to Constellation’s application, submitted on May 17, 2017 (WSA 17-WQC-02), for the Conowingo Hydroelectric Project, which is undergoing relicensing through the Federal Energy Regulatory Commission (“FERC”), FERC Project Number P-405;

WHEREAS, the Certification and COMAR 26.08.02.10F(4) provide that any person aggrieved by the Department’s decision to issue the Certification may appeal such decision by submitting a request for reconsideration within 30 days of the decision;

WHEREAS, on May 25, 2018, Constellation submitted to MDE a document styled Protective Petition for Reconsideration and Administrative Appeal, which requested

¹ Constellation was formerly known as Exelon Generation Company, LLC.

reconsideration and administrative appeal of the Certification (the “Constellation Administrative Proceeding”);

WHEREAS, on June 8, 2018, the Stewards of the Lower Susquehanna, d/b/a Lower Susquehanna Riverkeeper Association, and Waterkeepers Chesapeake (the “Waterkeepers” and, together with Constellation, the “Parties”) submitted to MDE a document styled Administrative Appeal of Final Decision to Issue Clean Water Act Section 401 Certification For the Conowingo Hydroelectric Project, which also requested reconsideration and administrative appeal of the Certification (the “Waterkeepers Administrative Proceeding,” and together with the Constellation Administrative Proceeding, the “Reconsideration”);

WHEREAS, by letter dated August 30, 2018, MDE notified both Constellation and Waterkeepers that Reconsideration was under review by MDE, and offered the parties an opportunity to appear before MDE and make presentations in support of Reconsideration. MDE also offered the parties an opportunity to submit any documents and additional information either party wished MDE to consider in making a determination on the Reconsideration;

WHEREAS, on October 19, 2018, MDE convened a meeting at its offices at 1800 Washington Boulevard, Baltimore, Maryland 21230, and both Constellation and the Waterkeepers appeared before MDE and presented in support of their positions on Reconsideration. MDE thereafter offered the parties an additional opportunity to submit written information;

WHEREAS, in separate litigation instituted by Constellation against MDE to challenge the Certification², the Appellate Court of Maryland ordered the parties to alternative dispute

² Constellation initiated an action in the Maryland state courts by filing a Complaint for Declaratory and Injunctive Relief, and in the Alternative, Petition for Judicial Review and Complaint for Mandamus, in the Circuit Court for Baltimore City, Case No. 24-C-18-003410.

resolution, and Constellation and MDE entered into a confidential mediation agreement on March 21, 2019;

WHEREAS, as a result of alternative dispute resolution before the Appellate Court of Maryland, on October 29, 2019, MDE and Constellation entered into a comprehensive Conowingo Dam Water Quality Settlement Agreement (the “2019 Settlement”), in which each agreed to jointly submit to FERC an offer of settlement with proposed license articles, pursuant to which, if FERC approved the offer of settlement and incorporated all of the proposed license articles into a new FERC license without modification, the State of Maryland would conditionally waive its rights to grant a water quality certification with or without conditions in connection with the FERC license, and Constellation would dismiss all litigation regarding the Certification;

WHEREAS, on or about March 19, 2021, FERC issued an “Order Issuing New License” for the Project, which license incorporated the proposed license articles of the 2019 Settlement Agreement without material change (the “2021 License”), and because FERC found the conditional waiver to be effective the Reconsideration were deemed moot;

WHEREAS, on or about December 20, 2022, in a petition for review of the 2019 License filed by the Waterkeepers, styled as *Waterkeepers Chesapeake, et al. v. FERC*, No. 21-1139 (“2021 License Appeal”), the U.S. Court of Appeals for the D.C. Circuit issued a decision vacating the 2021 License, and concluding that MDE’s conditional waiver was ineffective and that the administrative of the Certification that was interrupted by the 2019 Settlement must continue;

WHEREAS, as a result of the 2021 License Appeal, Reconsideration of the Certification has resumed, and MDE must make a decision on Reconsideration to invalidate the Certification, affirm the Certification, or revise the Certification;

WHEREAS, MDE solicited supplemental briefings from the Parties with respect to the Certification, and, to facilitate resolution of Reconsideration, MDE and the Parties entered into confidential mediation on April 1, 2024, through FERC's Dispute Resolution Service;

WHEREAS, as a result of mediation, MDE and the Parties entered into a new, comprehensive Conowingo Dam Water Quality Settlement Agreement, dated September 26, 2025, which supersedes the 2019 Settlement and in which the Parties acknowledge and agree that MDE would revise the Certification with conditions; and

WHEREAS, pursuant to its authority under Title 9, Subtitle 3 of the Environment Article, Annotated Code of Maryland and COMAR 26.08.02.10F(4), the Department is rendering this Order in determination of Reconsideration.

NOW THEREFORE, upon Reconsideration, and review of all other information, material, and arguments presented in support of Reconsideration as set forth above or otherwise considered by the Department, the Department HEREBY REVISES the Certification with conditions, as evidenced by the Revised Water Quality Certification attached as Exhibit A (the "Revised Certification") to this Order. The Revised Certification is incorporated herein by reference into and is a part of this Order.

October 2, 2025

Date



D. Lee Currey, Director
Water and Science Administration

Approved as to form and legal sufficiency
this 2 day of October, 2025



Jonathan E.C. May
Assistant Attorney General