

IN THE CIRCUIT COURT FOR BALTIMORE CITY, MARYLAND

EXELON GENERATION COMPANY, LLC )  
300 Exelon Way )  
Kennett Square, PA 19348 )

Plaintiff, )

v. )

Civil Action No. \_\_\_\_\_

MARYLAND DEPARTMENT OF )  
THE ENVIRONMENT )  
1800 Washington Boulevard )  
Baltimore, MD 21230 )

**Serve On:** )  
Benjamin H. Grumbles )  
Secretary )  
Maryland Department of the Environment )  
1800 Washington Boulevard )  
Baltimore, MD 21230 )

Defendant. )

PETITION OF )  
EXELON GENERATION COMPANY, LLC )  
300 Exelon Way )  
Kennett Square, PA 19348 )  
Petitioner, )

FOR JUDICIAL REVIEW OF )  
THE DECISION OF THE )  
MARYLAND DEPARTMENT OF )  
THE ENVIRONMENT )  
1800 Washington Boulevard )  
Baltimore, MD 21230 )

IN THE CASE OF )  
CLEAN WATER ACT SECTION 401 )  
CERTIFICATION FOR THE CONOWINGO )  
HYDROELECTRIC PROJECT )  
FERC PROJECT NO. P-405 I )  
MDE WSA APPLICATION NO.17-WQC-02 )

15 OCT 25 PM 12:05  
CIVIL DIVISION

**COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF, AND IN THE  
ALTERNATIVE, PETITION FOR JUDICIAL REVIEW AND  
COMPLAINT FOR MANDAMUS**

Plaintiff Exelon Generation Company, LLC (“Exelon”), by and through its undersigned attorneys, hereby files this consolidated Complaint for Declaratory Relief, Petition for Judicial Review, and Complaint for Mandamus against the Maryland Department of the Environment (“MDE”) seeking declaratory and injunctive relief concerning, or in the alternative, judicial review of, MDE’s *Clean Water Act Section 401 Certification for the Conowingo Hydroelectric Project*, FERC Project No. P-405 I, MDE WSA Application No. 17-WQC-02.

### **Introduction**

1. Exelon is the longstanding owner and operator of the Conowingo Hydroelectric Project (“Conowingo Project”), a dam and electric generating facility on the lower Susquehanna River that generates more renewable electricity than any other facility in Maryland. Because the Project is required to renew its operating license from the Federal Energy Regulatory Commission (“FERC”), Exelon is required by the federal Clean Water Act (“CWA”) to obtain a certification from Maryland that the Project’s discharge will comply with applicable provisions of the CWA and state law. *See* 33 U.S.C. § 1341. On April 27, 2018, the Maryland Department of the Environment (“MDE”) issued a “Clean Water Act Section 401 Certification for the Conowingo Hydroelectric Project” (the “Certification”), in response to Exelon’s application (MDE WSA Application No. 17-WQC-02). It then submitted that Certification to FERC so that its conditions would become conditions on Exelon’s federal license.

2. The Certification is unlawful in many ways. The Certification imposes on Exelon the sole responsibility to remove from the Susquehanna River pollutants that Exelon did not introduce into the river and that flow to the Conowingo Project from upstream pollution sources, or to pay Maryland a fee in lieu of that removal that would exceed \$172 million annually, or more than \$7 billion over the term of the Project’s FERC license. Obligating Exelon to remove

pollution discharged by others into the Susquehanna River is unprecedented, and it exceeds MDE's authority under federal and state law, is unconstitutional, and lacks reasonable support.

3. MDE also acted unlawfully by issuing the Certification as "the Department's Final Decision" and filing it with FERC as such. Under Maryland law, the Certification could not lawfully be issued as a final decision because the contested case hearing that Exelon is entitled to receive — under the governing statutes and regulations, the Federal Constitution, and the Maryland Declaration of Rights — has not yet occurred. But because MDE nonetheless designated the Certification as "final" and filed it as such with FERC, FERC could, at any time, incorporate the Certification's unlawful conditions into Exelon's federal operating license, threatening immediate and irreparable harm to the Conowingo Project and to Exelon.

4. In this action, Exelon seeks declaratory and injunctive relief. In particular, the Court should declare that MDE could not lawfully issue the Certification as a "final decision." Additionally, it should declare that the Certification is void, invalid, and without effect, and issue an injunction forbidding MDE from relying upon the Certification for any purpose and requiring MDE to notify FERC that it is withdrawing the Certification as non-final. MDE's actions were unlawful without regard to the merits of the Certification, and if the Court grants this relief, it need not address the Certification's merits.

5. In the alternative, if the Court determines that the Certification *was* lawfully issued as a "final decision," or is otherwise subject to judicial review on the merits, Exelon asks the Court — in accordance with these consolidated pleadings — to find and declare that the Certification is immediately reviewable and proceed to review, and invalidate, the Certification on its merits. While Exelon is simultaneously seeking reconsideration before MDE, reconsideration is not a prerequisite to judicial review. Moreover, because MDE has filed the

Certification with FERC, which may incorporate the Certification's unlawful conditions into Exelon's operating license at any time, the Certification inflicts immediate and irreparable harm on Exelon, and postponing judicial review would result in irreparable harm. The Court has inherent judicial authority "to review and correct actions by an administrative agency which are arbitrary, illegal, capricious or unreasonable." *Harvey v. Marshall*, 389 Md. 243, 275 (2005) (citations omitted). In particular, and without limitation, the Court may review "orders that impose on a party an immediate impact similar in nature to that of an injunction," as does the Certification. *Holiday Spas v. Montgomery Cty. Human Relations Comm'n*, 315 Md. 390, 397 (1989).

6. The Court should not, and cannot, allow MDE to claim that the Certification is final under Maryland law (and thus could lawfully be filed at FERC), yet still subject to an administrative contested case hearing and not yet ripe for judicial review. The Certification imposes immediate obligations, and immediate irreparable harm, on Exelon. MDE cannot simultaneously impose those obligations and that harm while denying Exelon access to a judicial forum. Instead, MDE must either admit that the Certification was not genuinely a final decision or defend the Certification as a final decision before this Court.

## **COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF**

### **Parties**

7. Plaintiff Exelon Generation Company, LLC is a Pennsylvania limited liability company with its headquarters at 300 Exelon Way, Kennett Square, PA 19348. Exelon is a fully owned subsidiary of Exelon Corporation, a Pennsylvania public corporation with its headquarters in Chicago, Illinois.

8. Defendant Maryland Department of the Environment is an administrative agency of the State of Maryland. It is the Maryland agency that has responsibility for carrying out and enforcing the provisions of Maryland’s Environment Code and the rules and regulations adopted under it, including Code of Maryland Regulations (“COMAR”) 26.08.02.10, which governs Maryland’s process for issuing certifications under CWA Section 401, 33 U.S.C. § 1341.

**Jurisdiction**

9. This Court has jurisdiction over this action pursuant to Sections 1-501 and 3-403 of the Courts and Judicial Proceedings Article of the Annotated Code of Maryland. This Court has jurisdiction pursuant to Md. Code Ann., Cts. & Jud. Proc. §1-501 under the Court’s full common-law and equity powers and all the additional powers and jurisdiction conferred by the Constitution and by law. Pursuant to Md. Code Ann., Cts. & Jud. Proc. §3-403, it is within this Court’s jurisdiction to provide declaratory relief. Further, this Court has jurisdiction under its inherent judicial authority “to review and correct actions by an administrative agency which are arbitrary, illegal, capricious or unreasonable.” *Harvey v. Marshall*, 389 Md. 243, 275 (2005) (citations omitted).

10. While Exelon is also seeking reconsideration of the Certification pursuant to COMAR 26.08.02.10(F)(4), the Certification states that this request “does not stay the effectiveness of the Certification.” Exelon’s request for administrative reconsideration does not deprive the Court of the authority to provide the relief sought herein because:

- a. A request for reconsideration is not a prerequisite for judicial review (*see, e.g.*, COMAR 26.01.02.38).
- b. Exelon has no administrative remedies to exhaust for the unlawful conduct sought to be redressed in this action — namely, MDE’s unlawfully deeming

the Certification a “final decision” before a contested case proceeding has occurred, and MDE’s filing the Certification as such with FERC.

- c. Even where an administrative process is not complete, the Court may review “orders that impose on a party an immediate impact similar in nature to that of an injunction.” *Holiday Spas v. Montgomery Cty. Human Relations Comm’n*, 315 Md. 390, 397 (1989). Here, the Certification’s issuance as a “final decision” has a direct and immediate impact on Exelon, including because FERC may incorporate the Certification’s unlawful conditions into Exelon’s operating license at any time.

### Venue

11. Venue is proper in the Circuit Court for Baltimore City pursuant to Section 6-201 of the Courts and Judicial Proceedings Article of the Annotated Code of Maryland because Defendant carries on regular business and maintains its principal office in Baltimore City.

### Factual Background

#### **The Conowingo Project**

12. Exelon owns and operates the Conowingo Project, a 573-megawatt hydroelectric power plant located on the lower Susquehanna River in Maryland.

13. The Susquehanna River flows for about 450 miles through New York and Pennsylvania and then through Maryland for about 15 miles before emptying into the Chesapeake Bay, North America’s largest estuary. The watershed for the Susquehanna River drains a land area of more than 27,000 square miles and includes over 40,000 miles of waterways in New York, Pennsylvania, and Maryland upstream of the Conowingo Project.

14. The Conowingo Project is located about ten miles upstream of where the Susquehanna River flows into the Chesapeake Bay.

15. Since its construction in 1928, the Conowingo Project has provided multiple benefits to the Chesapeake Bay, surrounding communities, and the State of Maryland.

16. Though never required by law to perform a pollution-reduction function, the Conowingo Project historically has protected the water quality of the lower Susquehanna River and the Chesapeake Bay by trapping some of the nutrient pollution introduced into the River by upstream sources in Pennsylvania and New York, reducing its potential to reach the Bay.

17. The pollutants at issue are generated upstream of the Project.

18. The Conowingo Project also provides benefits to wildlife. It provides breeding, nesting, and foraging grounds for the American Bald Eagle and helps migratory and native fish travel over the dam for spawning in the Susquehanna River, using multimillion-dollar fish lifts.

19. For nearby residents as well as visitors, the Conowingo Project provides opportunities for educational programs and for recreation, including boating, hiking, fishing, and birdwatching. It provides 15 recreational facilities and public-access areas, including boat launches, marinas, and scenic overlooks.

20. The Conowingo Project generates approximately \$273 million in annual economic benefits to Maryland and its local communities by supporting full-time jobs, driving tourism in Cecil and Harford Counties, and contributing to local and state tax revenues.

**FERC Relicensing of the Conowingo Project and State Certification Under Section 401 of the Clean Water Act**

21. Exelon is seeking renewal by FERC of its operating license for the Conowingo Project for a term of 50 years.

22. As part of the relicensing process for federal hydroelectric facilities, applicants are required to seek a state certification under CWA Section 401. That statute provides States the opportunity to review requests by applicants for federal licenses and to certify whether the discharge associated with the activity being licensed will comply with specific CWA provisions. 33 U.S.C. § 1341(a)(1).

23. A State may grant a certification under this Section (“a 401 certification”), either with or without conditions, deny a certification, or waive its power to grant or deny. 33 U.S.C. § 1341(a)(1).

24. In providing a conditional 401 certification, a State may “set forth any effluent limitations and other limitations, and monitoring requirements necessary to assure” that the applicant “will comply” with various limitations under designated CWA provisions, where applicable, “and with any other appropriate requirements of State law.” 33 U.S.C. § 1341(d).

25. Limitations or requirements set forth in a conditional 401 certification “shall become a condition on [the applicant’s] Federal license.” *Id.* FERC believes that it lacks the authority to review the legality of State-imposed conditions and is required to incorporate them in the federal hydroelectric license, even if they are inconsistent with federal law.

26. MDE has promulgated procedural regulations for considering requests for 401 certifications at COMAR 26.08.02.10.

27. MDE first provided a 401 certification to the Conowingo Project in 1975.

28. The 1975 Certification contained a single condition pursuant to Section 401(d). It required the Conowingo Project to “be operated at all times in such a manner as to conform to the requirements contained in State Permit No. 75-DP-0491 attached hereto.”

29. The 1975 Certification has never been withdrawn and remains valid today.



30. The State has continuously renewed State Permit No. 75-DP-0491, with the most recent renewal occurring in 2014 and numbered State Permit No. 10-DP-0491.

31. State Permit No. 10-DP-0491 remains valid and does not expire until September 30, 2019.

#### **Exelon's Application to MDE for 401 Certification**

32. On January 31, 2014, Exelon submitted a request to MDE for a 401 certification in connection with the FERC relicensing of the Conowingo Project.

33. In response to the application, MDE asked Exelon to conduct an additional study to understand the impacts of sediment transport on water quality in the Susquehanna River and the Chesapeake Bay ("Sediment Study").

34. While Exelon believed its application was complete and that no additional study was required for MDE to issue a 401 certification for the Conowingo Project, in December 2014 Exelon entered into an agreement with MDE to work with Maryland agencies, the U.S. Army Corps of Engineers, the U.S. Geological Survey, the University of Maryland Center for Environmental Science, and the U.S. Environmental Protection Agency ("EPA") to design and conduct a multi-year Sediment Study to provide additional information to MDE.

35. States must act on applications for 401 certifications within one year, but the Sediment Study would not be completed within that time. On December 4, 2014, cognizant of MDE's desire for additional study, Exelon provided MDE with more time by withdrawing its application for a 401 certification and then timely refiled.

36. Exelon refiled its application for a 401 certification on March 3, 2015, and withdrew that application on February 5, 2016, pending conclusion of the Sediment Study.

37. Exelon again refiled its application on April 25, 2016, and withdrew that application on February 17, 2017.

38. Each time Exelon withdrew and refiled its application, it did so to cooperate with MDE's stated desire for more time to study the 401 certification request.

39. On March 13, 2017, MDE indicated that it expected to receive Exelon's resubmission no later than May 18, 2017, and would, upon receiving the resubmission, initiate its review of the water-quality impacts associated with the Conowingo Project.

40. On May 17, 2017, Exelon submitted another request to MDE for a 401 certification in connection with the relicensing of the Conowingo Project.

41. MDE held a public hearing on Exelon's application on December 5, 2017.

42. The studies that Exelon submitted to MDE as part of its request and the information in the record before MDE demonstrate that the Conowingo Project is not the source of pollution entering the Susquehanna River. They also demonstrate that the Project is meeting all applicable state water-quality standards in waters immediately downstream.

#### **MDE's Issuance of the Present 401 Certification**

43. On April 27, 2018, MDE issued the Certification to Exelon. A copy of the Certification is attached as **Exhibit A**.

44. The Certification asserts that "[t]his is a final decision on the Application."

45. The Certification states that Exelon may file a "request for reconsideration," and that after MDE's "decision on the request for reconsideration, a contested case hearing shall be available in accordance with the applicable provisions of State Government Article, § 10-201, et

seq.” Yet it also states that any such “request ... does not stay the effectiveness of this Certification.”

46. MDE published the Certification in the *Maryland Register* on May 11, 2018. In a departure from the State’s previous 401 certifications and previous recognition by the State and others of the Conowingo Project’s benefits to the Bay, the Certification asserts that “the Project adversely impacts water quality in the State of Maryland.”

**FERC’s Imminent Incorporation of the Certification into Exelon’s Operating License**

47. Under Section 401(d), the conditions of a 401 certification “shall become a condition on any Federal license or permit” to which the 401 certification pertains. As soon as certification conditions are incorporated by FERC into a license or permit, they become binding and enforceable.

48. Because MDE has labeled the Certification as a “final decision,” submitted the Certification to FERC, and stated that it will not stay the “effectiveness” during any further administrative consideration, FERC could incorporate the Certification’s conditions into the Conowingo Project’s license at any time pursuant to Section 401(d).

49. The incorporation of the Certification into the FERC license will cause immediate harm to Exelon. Exelon will be subject to obligations that are unlawful, arbitrary and capricious, not supported by substantial evidence, an abuse of discretion, and in violation of the U.S. and Maryland Constitutions.

50. Exelon is challenging the Certification before this Court as well as through the reconsideration process set forth by MDE and before the United States District Court for the District of Columbia, so that the unlawful conditions cannot be imposed on Exelon.

## The Unlawfulness of the Certification's Conditions

51. To grant Exelon the relief it principally requests, the Court need not consider the merits of the Certification's conditions or address whether the Certification's conditions are substantively unlawful.

52. To the extent the Court deems it necessary or helpful for Exelon to identify the legal errors in the Certification, Exelon's Protective Petition for Reconsideration and Administrative Appeal is attached as **Exhibit B** and incorporated here by reference.<sup>1</sup> Exelon further alleges as follows:

53. The Certification makes Exelon, as the Conowingo Project's owner, responsible for cleaning up pollution that it did not create and has no reasonable way to remove.

54. The Certification purports to impose a requirement that the Project "shall annually reduce" by millions of pounds the amount of nitrogen and phosphorus discharged into the Susquehanna River by upstream sources (the "Required Nutrient Reductions"). MDE is demanding that the Conowingo Project remove from the Susquehanna River nutrients that were not added to the river by the Conowingo Project, but already are present in the Susquehanna River before the river water reaches the Project.

55. MDE has not identified effective or reasonable means for achieving the Required Nutrient Reductions at the Conowingo Project. Rather than suggest a plausible path forward, MDE seeks payment from Exelon in lieu of the Required Nutrient Reductions in excess of \$172 million annually — more than \$7 billion over the term of the Project's FERC license — while continuing to fail to address pollution at its source. This fee for pollution that Exelon did not create amounts

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<sup>1</sup> Exelon has not attached the exhibits to the Protective Petition for Reconsideration and Administrative Appeal.

to nearly a half-million dollars per day, each day, for more than 40 years. This amount exceeds, by orders of magnitude, the economic value of the Conowingo Project as an operating asset.

56. Additionally, the Certification requires the Project to remove “all” visible trash and debris from the Susquehanna River, regardless of where that trash entered the river along its 464-mile course, or who deposited it.

57. The Certification also requires the Project to take onerous measures to stop invasive species of fish from moving upstream, even though the dam does not contribute to the upstream migration of invasive fish species, but instead helps block such migration.

58. This unprecedented shifting of responsibility away from the pollution sources and onto Exelon exceeds MDE’s authority under state and federal law.

59. MDE has unilaterally imposed this obligation on Exelon rather than working collaboratively through EPA’s Chesapeake Bay Program, which requires that sources of pollution be held accountable and that responsibility for improving the Bay’s water quality be equitably allocated across the Bay’s entire watershed. MDE faced the risk that EPA would allocate much of the responsibility for reducing pollution in the watershed to the State of Maryland, which in turn would have been required to regulate in-state polluters more stringently.

Claims for Relief

COUNT I:

**DECLARATORY JUDGMENT THAT  
MDE DID NOT LAWFULLY ISSUE A “FINAL DECISION”**

60. Exelon repeats and incorporates by reference every allegation in the preceding paragraphs.

61. On May 17, 2017, Exelon submitted a request to MDE for a 401 certification in connection with the relicensing of the Conowingo Project.

62. On April 27, 2018, MDE issued the Certification as a “final decision.”

63. The Certification states that “[t]his is a final decision on [Exelon’s] Application” and that “[a]ny request for an appeal does not stay the effectiveness of this Certification.”

64. On May 8, 2018, MDE submitted the Certification to FERC by filing it in the docket for the Conowingo Project’s license renewal.

65. Under Section 401(d) of the Clean Water Act, the conditions of a 401 certification “shall become a condition on any Federal license” to which the certification pertains. 33 U.S.C. § 1341(d).

66. The Certification, however, could not lawfully be issued as a “final decision.”

67. MDE’s issuance of the Certification as a “final decision” violated Exelon’s statutory rights by issuing a “final decision” before the contested case hearing that MDE recognizes “shall be available in accordance with the applicable provisions of State Government Article, § 10-201, et seq., Annotated Code of Maryland.”

68. Under State Government Article, § 10-202(d)(2), contested case procedures apply, and a “final decision” cannot lawfully issue until the contested case hearing is complete, when an agency “regulation expressly, or by clear implication, requires the hearing to be held in accordance with this subtitle.” Here, COMAR 26.08.02.10(F)(4)(b) does so by recognizing Exelon’s entitlement to review “in accordance with the applicable provisions of State Government Article, § 10-201 et seq., Annotated Code of Maryland” — *i.e.*, the contested case procedures.

69. Under State Government Article, § 10-201, *et seq.*, an agency’s “final decision” is the decision that comes *after* the contested case hearing, not the nonfinal decision that precedes this hearing.

70. In addition, under State Government Article, § 10-202(d), contested case procedures apply, and a “final decision” cannot lawfully issue until the contested case hearing is complete, to proceedings involving “the grant, denial, renewal, revocation, suspension, or amendment of a license,” or “a right, duty, statutory entitlement, or privilege of a person,” that “is required by statute *or constitution* to be determined *only after* an opportunity for an agency hearing” (emphasis added).

71. Here, due process entitles Exelon to a hearing prior to issuance of a final decision, because the Certification effects a deprivation of liberty or property:

- a. Exelon has a protected property interest as the Conowingo Project’s owner and in the Conowingo Project’s economically beneficial use as a generation facility;
- b. Exelon has a protected property interest in continuing to operate the Conowingo Project under State Permit No. 10-DP-0491;
- c. Exelon has a protected property interest in the renewal of the Conowingo Project’s 401 certification, as is required for the renewal of the Conowingo Project’s operating license. “If [MDE] determines the proposed activities will not cause a violation of applicable State water quality standards, the Department *shall issue* the water quality certification.” COMAR 26.08.02.10(E)(1) (emphasis added). Exelon thus has a legitimate claim of entitlement to a lawful 401 certification.
- d. Due process generally “requires a *predeprivation* hearing before the State interferes with any liberty or property interest enjoyed by its citizens.” *Parratt v. Taylor*, 451 U.S. 527, 537 (1981) (emphasis added), *overruled in part on other grounds by Daniels v. Williams*, 474 U.S. 327 (1986).

72. Accordingly, the Certification cannot lawfully constitute a “final decision” under State Government Article, § 10-202(d), and so cannot be lawfully transmitted to FERC for incorporation into Exelon’s operating license.

73. Separately, the issuance of the Certification as a “final decision” also violated the CWA and its implementing regulations because several of the Certification’s provisions, including Sections 2 and 7, contain conditions that provide for planning, additional studies, reopening, and modification by MDE and would allow MDE to impose as-yet-unknown additional requirements on the Conowingo Project.

74. Because MDE has labeled the Certification a “final decision,” has submitted the Certification to FERC, and has stated that it will not stay the Certification’s effectiveness during any appeals, FERC could incorporate the Certification’s conditions into the Conowingo Project’s license at any time under Section 401(d).

75. The incorporation of the Certification into the FERC license will cause immediate harm to Exelon, as Exelon will be subject to obligations that are unlawful, arbitrary and capricious, not supported by substantial evidence, an abuse of discretion, and in violation of the U.S. and Maryland Constitutions.

76. Exelon is entitled to a declaratory judgment that, despite MDE’s issuance of the Certification as a “final decision,” the Certification was not lawfully issued as a final decision and that the Certification is void, invalid, and without effect.

77. Exelon is also entitled to an injunction enjoining MDE from relying upon the Certification for any purpose and requiring MDE to withdraw the Certification from FERC.



**Prayer for Relief**

78. WHEREFORE, Exelon respectfully requests that the Court enter a judgment in its favor and against Defendant, and provide to Plaintiff the following relief:

- a. A declaratory judgment and decree that that MDE could not lawfully issue the Certification as a “final decision.”
- b. A declaratory judgment and decree that the Certification is void, invalid, and without effect.
- c. An injunction forbidding MDE from relying upon the Certification for any purpose and requiring MDE to notify FERC that it is withdrawing the Certification.
- d. A stay of the Certification while this action is pending.
- e. An award of attorneys’ fees and costs pursuant to 42 U.S.C. § 1988.
- f. Such other legal or equitable relief as this Court deems just and proper.

**PETITION FOR JUDICIAL REVIEW AND COMPLAINT FOR MANDAMUS**

To the extent that the Certification was properly issued as a “final decision,” or is otherwise subject to judicial review, Petitioner Exelon, by its undersigned counsel and pursuant to Maryland Rules 7-202 and 7-402, COMAR 26.08.02.10, and State Government Article, § 10-201 *et seq.*, hereby requests judicial review of the Maryland Department of Environment’s *Clean Water Act Section 401 Certification for the Conowingo Hydroelectric Project, FERC Project No. P-405 I, MDE WSA Application No. 17-WQC-02* (the “Certification”). Exelon seeks such review via a Petition for Judicial Review to the extent that judicial review is authorized by statute, and via mandamus to the extent that judicial review is not expressly authorized by law. Exelon was a party to the administrative proceeding for which judicial review is requested. Moreover, Exelon is adversely affected by the Certification, which will impose billions of dollars in burdens on Exelon when it is incorporated into the operating license for the Conowingo Hydroelectric Project by the Federal Energy Regulatory Commission.

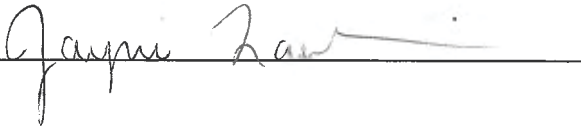
WHEREFORE, Exelon respectfully requests that this Honorable Court review the Certification and declare it invalid.

Respectfully submitted,

Dated: May 25, 2018

David W. DeBruin  
(*pro hac vice* application to be filed)  
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A handwritten signature in black ink, appearing to read "Jayni Lanham", is written over a horizontal line.

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