UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

In the Matter of	)	
	)	Project No. 405-106
Exelon Generating Company, LLC	)	

MOTION TO INTERVENE OF STEWARDS OF THE LOWER SUSQUEHANNA, THE LOWER SUSEQUEHANNA RIVERKEEPER, AND WATERKEEPERS CHESAPEAKE

Pursuant to 18 C.F.R. § 385.214(a)(3), Stewards of the Lower Susquehanna, Inc., ("SOLS"), the Lower Susquehanna Riverkeeper ("Riverkeeper"), and Waterkeepers Chesapeake move to intervene in this proceeding, which addresses the relicensing of Exelon Generation Company, LLC's Conowingo Hydroelectric Project. The Conowingo Hydroelectric Project ("Conowingo Dam") dams the Susquehanna River about 10 miles upstream of the river's outlet to the Chesapeake Bay. As discussed below, Movants both have and represent interests that may be directly affected by the outcome of this proceeding, and their participation is in the public interest.[1] Movants support relicensing of the Dam so long as the final license includes adequate plans to mitigate the environmental and recreational impacts caused by the Dam.

DESCRIPTION OF INTERVENORS

SOLS is a non-profit environmental advocacy organization headquartered in Wrightsville, Pennsylvania. Established in 2005, SOLS has more than 100 individual and organization members, and its mission is to protect and improve the ecological and aesthetic integrity of the Lower Susquehanna Watershed and Chesapeake Bay. The Lower Susquehanna Riverkeeper leads SOLS' work in advocating for strong environmental standards and policies

[1] SOLS previously moved to intervene in this proceeding by motion filed September 7, 2012. No one filed an opposition. Under FERC's regulations, SOLS is thus already a party. 18 C.F.R. § 385.214(c)(1). SOLS files this motion both as a precautionary measure in light of FERC's Federal Register notice announcing the project and soliciting motions to intervene, 78 Fed. Reg. 26,343 (May 6, 2013), and to add new contacts to the service list.

that protect and serve the public interest. Both SOLS and the Riverkeeper participated actively in earlier phases of the Dam's relicensing process, including by filing comments. *E.g.*, SOLS & Lower Susquehanna Riverkeeper, Comments on Exelon's Initial Study Reports (FERC Accession No. 20120321-5173, Mar. 20, 2012).

Waterkeepers Chesapeake is a coalition of 18 independent Waterkeeper programs operating throughout the Chesapeake and Delmarva Coastal Bays Watersheds.[2] The coalition works to protect and improve the health of the Chesapeake Bay and the waterways in the region, including the Lower Susquehanna. Waterkeepers Chesapeake aims to amplify the voices of the individual Waterkeeper groups, and to work together on campaigns to stop pollution throughout the region that affects the Chesapeake.

SOLS and the Lower Susquehanna Riverkeeper's geographic focus begins at the Susquehanna River's confluence with the West Branch at Sunbury, Pennsylvania, and reaches downstream to the Chesapeake Bay at Havre de Grace, Maryland. In total, the territory stewarded by SOLS and the Riverkeeper encompasses over 140 miles of the Susquehanna River and approximately 9,200 square miles in the Lower Susquehanna sub-basin, including the area immediately around the Dam. Waterkeepers Chesapeake's geographic sweep includes the Lower Susquehanna River watershed, as well as the Chesapeake and Coastal Bays and their tributaries and shorelines.

[2] The members are Anacostia Riverkeeper, Assateague Coastkeeper, Baltimore Harbor Waterkeeper, Chester Riverkeeper, Choptank Riverkeeper, Gunpowder Riverkeeper, Lower James Riverkeeper, Lower Susquehanna Riverkeeper, Miles-Wye Riverkeeper, Patuxent Riverkeeper, Potomac Riverkeeper, Sassafras Riverkeeper, Severn Riverkeeper, Shenandoah Riverkeeper, South Riverkeeper, Upper James Riverkeeper, Virginia Eastern Shorekeeper, and West/Rhode Riverkeeper. They are themselves membership organizations dedicated to protecting and enhancing their watersheds' environment and their members' enjoyment of it.

SOLS and the Riverkeeper's mailing address and phone number are 2098 Long Level Rd., Wrightsville, PA 17368, and (717) 252-6777. Waterkeepers Chesapeake's mailing address and phone number are 1625 Primrose Road, NW, Washington, DC 20012, and (202) 423-0504. The following people should be added to the service list for this proceeding:

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GROUNDS FOR INTERVENTION

SOLS members and the Riverkeeper use the Lower Susquehanna watershed for fishing, hunting, boating, domestic uses, and for its scenic and historic value. Many of SOLS' more than 100 members live, work, and recreate along the Susquehanna River and its tributaries in Lancaster, York, and Dauphin counties in Pennsylvania, and in Cecil and Harford counties, in Maryland. The Riverkeeper and SOLS members who use watershed resources of the Lower Susquehanna north of the Dam have an interest in protecting themselves from inappropriate, irresponsible, or adverse conditions adopted in a final Dam license that affect those resources. So too do the Riverkeeper and members residing and utilizing watershed resources in Cecil and Harford counties, the area directly adjacent to the Dam. In addition, because this relicensing proceeding affects the Chesapeake Bay, as described below, Waterkeepers Chesapeake's interests and its members' interests will be directly affected by it.

Conowingo Dam has impacts that are of particular interest to Movants and their members in three areas. First, this proceeding is vital for determining what will be done about the Dam's impoundment and release of large amounts of pollutants—especially sediment—that affect

Movants' recreational and aesthetic interests. Sediment is a water pollutant that both carries other pollutants, like phosphorous and nitrogen, and reduces the clarity of the water in the Chesapeake Bay, thus degrading water quality and vegetation in the Bay. *See* EPA, *Chesapeake Bay Total Maximum Daily Load for Nitrogen, Phosphorous and Sediment* 2-7 (Dec. 29, 2010), *available at* epa.gov/reg3wapd/pdf/pdf_chesbay/FinalBayTMDL/CBayFinalTMDLExecSumSection1through3_final.pdf. The Susquehanna is the largest source of sediment to the Chesapeake Bay. *Id.* at 4-3 to -4 & fig.4-5, *available at* epa.gov/reg3wapd/pdf/pdf_chesbay/FinalBayTMDL/CBayFinalTMDLSection4_final.pdf.

At present, the Dam traps sediment present within the water column in Conowingo Pond, thus typically limiting average annual loading of sediment to the Bay. Although Conowingo Pond still has some sediment-trapping capacity left, it is quite near—and continues to approach—a state of "equilibrium," under which the average annual amount of sediment passing the Dam generally will equal the amount trapped by the Dam. Robert M. Hirsch, U.S. Geological Survey, Scientific Investigations Report 2012-5185, *Flux of Nitrogen, Phosphorus, and Suspended Sediment from the Susquehanna River Basin to the Chesapeake Bay during Tropical Storm Lee, September 2011, as an Indicator of the Effects of Reservoir Sedimentation on Water Quality* 2-4 (2012), *available at* http://pubs.usgs.gov/sir/2012/5185/pdf/sir2012-5185-508.pdf (explaining that other dams and upper portion of Conowingo Pond have reached equilibrium and that deposition in rest of Conowingo Pond "is asymptotically approaching" Pond's capacity). As it approaches equilibrium, the Dam traps less and less sediment. *Id.* at 12. Further, during major storms, a portion of this previously trapped sediment is "scoured" to create individual pollution events that carry higher quantities of sediment, phosphorus, and nitrogen into the Bay than would have occurred if the Dam were not present. *See id.* at 13 ("The concentrations of total nitrogen,

total phosphorus, and suspended sediment measured in samples collected at discharges greater than about 100,000 or 200,000 cubic feet per second currently (2012) are substantially higher than they were 10 to 15 years ago.").

Exelon seeks a new license that will last until 2060, which is well after equilibrium will be reached at Conowingo Dam, to say nothing of the changes that have already occurred and will only worsen. *See* Exelon Generation Company, LLC's Final License Application for the Conowingo Hydroelectric Project and Request for Waiver of the Requirement to Include a Draft Biological Assessment 1, 28-29, 32 (FERC Accession No. 20120830-5174, Aug. 30, 2012); Hirsch, *supra*, at 13 ("the predicted changes are not just a theoretical issue for future consideration, but are already underway."). Thus, it is important to address in this relicensing proceeding the long-term ecological consequences and impacts on human uses of the affected water bodies caused by sediment impoundment and discharge by Conowingo Dam. Because of the importance of this proceeding for water quality in the Susquehanna and the Chesapeake Bay, which Movants and their members use and enjoy, Movants intend to press strongly on FERC and Exelon to implement meaningful remediation and/or mitigation conditions concerning sediment impoundment and discharge from Conowingo Dam.

Second, Conowingo Dam has a powerful, negative effect on the American eel population the Susquehanna, in which Movants have interests. A catadromous fish, the American eel spends key periods of its life in rivers. Historically, the Susquehanna was one of those rivers, but the Dam effectively reduces historic eel range to just the lower 10 miles of the Susquehanna River. *See, e.g.*, Susquehanna River Anadromous Fish Restoration Cooperative, *Migratory Fish Management and Restoration Plan for the Susquehanna River Basin* 12 (2010), *available at* www.fish.state.pa.us/pafish/shad/susq/SRAFRC-RestorationPlan.pdf. Bringing eels back in large

numbers to the Susquehanna is important for the eel and the Susquehanna River's ecosystem. *See, e.g.*, U.S. Fish & Wildlife Service, Comments on Exelon's Draft License Application 2 (FERC Accession No. 20120706-5063, July 5, 2012) ("The Service considers the restoration of migratory fish to the Susquehanna River a priority during the relicensing of Conowingo Hydroelectric and other projects upstream."); Steven P. Minkkinen *et al.*, *Experimental Stocking of American Eels in the Susquehanna River Watershed: 2011 Annual Report* 2 (2012?), *available at* fws.gov/northeast/marylandfisheries/reports/2011%20Sunbury%20Mitigation%20Annual%20Report%20FINAL.pdf.

Also, reviving the largely extirpated American eel population in a large section of the Susquehanna is likely to improve water quality in the Susquehanna watershed, and will thus doubly enhance the integrity and sustainability of the ecological systems. The American eel is the best host species for the glochidia—the larvae—of the Eastern elliptio freshwater mussel, historically abundant in the Susquehanna. William A. Lellis *et al.*, *Newly Documented Host Fishes for the Eastern Elliptio Mussel* Elliptio complanata, 4 J. Fish & Wildlife Mgmt. 75, 79 (2013). These mussels are effective natural filters of river water. Minkkinen, *supra*, at 3. They are prevalent in other rivers that are not dammed, like the Delaware, but they are not nearly as common in the Susquehanna. *Id.* The presence of more American eel, and in turn more elliptio mussels, in the Susquehanna equates to better water quality in the Susquehanna watershed. SOLS members and the Riverkeeper live, work, and recreate along the Susquehanna, and have aesthetic and recreational interests in a fully functional, cleaner Susquehanna River ecosystem that includes historical levels of American eel.

Finally, Conowingo Dam has a catwalk that historically was accessible to the public for recreational fishing. In the name of security, access to the catwalk was cut off after September 11, 2001, an arbitrary decision considering that several other comparable "security risks" remain apparently unaddressed. These include trucks driving on the Dam, which forms part of U.S. Highway 1, and the fact that other FERC projects on the Lower Susquehanna River still allow for access similar to what the catwalk used to afford the public. Fishing from the catwalk provides an experience different from—and in key respects better than— the alternatives now provided. SOLS members would like to regain access to the catwalk so they can recreationally fish from it as originally promised by the Dam's builders and operators to the public decades ago. Movants will press FERC to require Exelon to identify options for addressing security while also restoring access to the catwalk.

Movants and their members use the Lower Susquehanna and have recreational and aesthetic interests in it. As described above, those interests will be directly affected in this proceeding. Movants thus satisfy FERC's requirements for intervention. 18 C.F.R. § 385.214(b)(2)(ii).

Further, as well as being justified based on their direct interests, Movants' intervention should be granted because their participation serves the public interest. Movants are neither governmental actors nor private businesses, but are, or are composed of, individual citizens with strong interests in environmental issues affected by the Dam's relicensing. They will bring a new perspective to this proceeding because their interests and goals for this project are different from those of governmental actors and private businesses, which are the only types of parties on the service list addressing the issues described above. Thus, intervention should also be granted

because Movants' participation will serve the public interest by providing a new perspective, enhancing FERC's decision-making. *Id.* § 385.214(b)(2)(iii).

CONCLUSION

For the foregoing reasons, FERC should grant this motion to intervene.

DATED: July 17, 2013

Respectfully Submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on this 17th day of July, 2013, I have served the foregoing document upon each person designated on the official service list compiled by the Secretary in this proceeding.

/s/Jennifer C. Chavez
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Document Content(s)