

**UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION**

Exelon Generation Company, LLC)
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Docket No. P-405-106
Docket No. P-405-121

**JOINT OFFER OF SETTLEMENT AND EXPLANATORY STATEMENT
OF EXELON GENERATION COMPANY, LLC AND
THE MARYLAND DEPARTMENT OF THE ENVIRONMENT**

Pursuant to Rule 602 of the Rules of Practice and Procedure¹ of the Federal Energy Regulatory Commission (“FERC” or the “Commission”), Exelon Generation Company, LLC (“Exelon”) and the Maryland Department of the Environment (“MDE” and, together with Exelon, the “Settling Parties”) jointly request, through their respective undersigned counsel, that the Commission approve this Joint Offer of Settlement and incorporate the Proposed License Articles (defined below), without modification or expansion, into the new license for the Conowingo Hydroelectric Project (“Conowingo” or the “Project”) (collectively, the “Proposed Settlement”). If approved, the Proposed Settlement will resolve all claims of the Settling Parties in the captioned proceeding.

As explained more fully below and as supported by the record in these proceedings, the Proposed Settlement contains protection, mitigation, and enhancement measures that address ecological, recreation, and water quality resources affected by the Project, while carefully balancing the need to maintain the Project as a source of low-cost and reliable power. The Proposed Settlement will also avoid protracted and adversarial litigation, allowing the Settling

¹ 18 C.F.R. § 385.602.

Parties to work collaboratively on environmental protection, mitigation, and enhancement measures that will benefit the Susquehanna River (the “River”) and the Chesapeake Bay (the “Bay”). Moreover, the Proposed License Articles are fully supported by the record in this proceeding, including the Final Environmental Impact Study (the “EIS”)² and the relicensing studies undertaken by Exelon in consultation with resource agencies and other stakeholders. Consequently, the Settling Parties believe the public interest will best be served if the Commission approves this Joint Offer of Settlement, incorporates the Proposed License Articles into the new license without modification or expansion, and issues a new license for a fifty (50) year term.

1. Background

Exelon formally initiated the relicensing process for Conowingo with the filing of a Notice of Intent and Pre-Application Document (“PAD”) on March 12, 2009.³ In the PAD, Exelon indicated it would use the Integrated Licensing Process (“ILP”) to relicense Conowingo. Throughout the relicensing process, Exelon conducted or funded numerous resource studies and engaged in stakeholder outreach with state and Federal resource agencies, non-governmental organizations, local municipalities, recreational users, and other persons with interest in the Project. On August 31, 2012, Exelon filed an application with the Commission for a new license for the Project (the “License Application”).⁴ Information gained from the relicensing studies and stakeholder input informed the License Application for Conowingo and the terms and conditions of this Proposed Settlement.

² Final Multi-Year Environmental Impact Statement for Hydropower Licenses-Susquehanna River Hydroelectric Projects, Docket Nos. P-405-106, P-1888-030, and P-2355-018 (issued Mar. 11, 2015).

³ Pre-Application Document for the Conowingo Hydroelectric Project, Docket No. P-405 (filed Mar. 12, 2009).

⁴ Application for New License for Major Water Power Project-Existing Dam, Docket No. P-405 (filed Aug. 31, 2012).

In March 2015, FERC issued the EIS for Conowingo and two other projects pursuant to the National Environmental Policy Act of 1969 (“NEPA”)⁵ and FERC’s regulations implementing NEPA.⁶

In April 2016, Exelon entered into a settlement agreement with the United States Department of the Interior (“DOI”), which resolved all then-pending issues between Exelon and DOI pertaining to the fishway prescription required by section 18 of the Federal Power Act⁷ for the Project (the “Fish Passage Settlement Agreement”).⁸ The Fish Passage Settlement Agreement is still pending before FERC.

On April 27, 2018, MDE issued a water quality certification for the Project pursuant to Section 401 of the Clean Water Act (the “CWA”)⁹ and related state laws and regulations (the “Certification”).¹⁰ Shortly thereafter, Exelon challenged the Certification through an administrative appeal and litigation in state and Federal courts.¹¹ On February 28, 2019, Exelon also filed a Petition for Declaratory Order (the “PDO”) with the Commission,¹² asking the

⁵ 42 U.S.C. § 4321 *et seq.*

⁶ 18 C.F.R. Part 380.

⁷ 16 U.S.C. § 811.

⁸ Conowingo Hydroelectric Project Relicensing Offer of Settlement and Explanatory Statement, Docket No. P-405-106 (filed May 12, 2016).

⁹ 33 U.S.C. § 1341.

¹⁰ Clean Water Act Section 401 For the Conowingo Hydroelectric Project, Docket No. P-405-106 (filed May 8, 2018).

¹¹ *See* Lodging of Filings Regarding Clean Water Act Section 401 Certification, Docket No. P-405-106 (filed May 25, 2018). Exelon’s administrative appeal is currently pending before MDE. Exelon’s federal case, *Exelon Generation Company, LLC v. Grumbles et al.* (case number 1:18-cv-01224), is currently pending in the United States District Court for the District of Columbia. Exelon’s state case, *Exelon Generation Company, LLC v. Maryland Department of the Environment* (case number 24-C-18-003410) was dismissed on October 9, 2018, but Exelon has appealed the dismissal to the Maryland Court of Special Appeals (Sep. term 2018, case number 2908). The appeal is pending.

¹² Petition for Declaratory Relief of Exelon Generation Company, LLC, Docket No. P-405-121 (filed Feb. 28, 2019).

Commission to declare that Maryland waived its right to issue a certification under Section 401 of the Clean Water Act, in light of the recent decision of the U.S. Court of Appeals for the District of Columbia Circuit in the *Hoopa Valley Tribe* case.¹³ MDE has denied the allegations asserted by Exelon in the litigation and the PDO.

2. The Settlement Agreement and Proposed License Articles

Guided by FERC precedent and policy guidance regarding settlements, the Settling Parties have entered into a settlement agreement that addresses both licensing and non-licensing issues, which is attached hereto as Exhibit No. 1 (the “Agreement”). The licensing issues are exclusively addressed in the proposed license articles in Attachment A to the Agreement (the “Proposed License Articles”), which the Settling Parties hereby request the Commission incorporate into the new license for the Project without modification or expansion. The remainder of the Agreement addresses non-licensing issues, and these commitments should not be incorporated into the new license.

Pursuant to its commitments in the Agreement, on both licensing and non-licensing issues, Exelon will invest more than \$200 million in environmental protection, mitigation, and enhancement measures over the 50-year term of the new license.

3. Conditional Waiver by MDE

In accordance with the Agreement, but subject to the other provisions of this paragraph, MDE hereby conditionally waives any and all rights it had or has to issue a water quality certification under Section 401 of the Clean Water Act for the relicensing of the Project pursuant to the License Application. The foregoing waiver will be effective immediately and automatically upon, but only upon, the approval by FERC of this Offer of Settlement and the incorporation by

¹³ *Hoopa Valley Tribe v. FERC*, 913 F.3d 1099 (D.C. Cir. 2019).

FERC of the Proposed License Articles, without modification or expansion, into the new license. The foregoing conditional waiver by MDE is given for the purposes of securing important environmental benefits pursuant to the Agreement and avoiding protracted litigation, but it is not an admission by MDE as to the truth of any allegation or the validity of any claim or defense asserted by Exelon.

4. Conditional Withdrawal of Petition by Exelon

In accordance with the Agreement, but subject to the other provisions of this paragraph, Exelon hereby conditionally withdraws the PDO. The foregoing withdrawal will be effective immediately and automatically upon, but only upon, the approval by FERC of this Offer of Settlement and the incorporation by FERC of the Proposed License Articles, without modification or expansion, into the new license. The foregoing conditional withdrawal by Exelon is given for the purposes of securing important environmental benefits pursuant to the Agreement and avoiding protracted litigation, but it is not an admission by Exelon as to the truth of any allegation or the validity of any claim or defense asserted by MDE.

JOINT EXPLANATORY STATEMENT

This Joint Explanatory Statement summarizes the principal provisions of the Proposed License Articles and the Agreement. In all cases, this Joint Explanatory Statement is qualified by reference to the actual text of the Proposed License Articles and the Agreement.

A. Commitments Related to Licensing Issues.

A.1 Fish Passage.

The Fish Passage Settlement Agreement requires Exelon to modify the Project's East Fish Lift (the "EFL") to provide an attraction flow of 900 cubic feet per second

(“cfs”).¹⁴ However, in order to best optimize fish passage at the EFL, Exelon has agreed to make modifications to the EFL to achieve the greatest possible balance of increased attraction flow (up to 900 cfs) and improved internal hydraulic performance.¹⁵ These modifications will be developed in consultation with, and subject to approval by, MDE and USFWS, in addition to FERC.¹⁶ The Settling Parties are consulting with DOI regarding the proposed enhancements to the East Fish Lift.

A.2 Eel Passage.

a. Description of Eel Measures

The American Eel is a catadromous fish species that migrate to the Sargasso Sea to spawn. American Eel serve as hosts to the larval stage (known as glochidia) of several freshwater mussels, allowing for the dispersion of mussels to upstream areas. These mussel species in turn provide important ecosystem services, including filtration and transformation of sediment and nutrient pollution.¹⁷ Very few juvenile eels (elvers) are passed upstream of the Project, because fish lifts are generally not effective at passing elvers.¹⁸ Exelon has agreed to take a variety of actions to improve eel passage at the Project,¹⁹ including the following:

(i). Exelon will develop an “Eel Passage and Restoration Plan” that will (i) provide for modification of the EFL to accommodate a temporary eel trapping facility in the EFL stilling basin (the “Temporary Eel Trapping Facility”); (ii) contain details regarding

¹⁴ Fish Passage Settlement Agreement § 12.6.1.

¹⁵ Proposed License Articles, Fish Passage, paragraph (b).

¹⁶ Proposed License Articles, Fish Passage, paragraph (b).

¹⁷ Biological and Engineering Studies of American Eel at Conowingo Project, RSP 3.3.

¹⁸ EIS at 116.

¹⁹ Proposed License Articles, Eel Passage.

the operation and maintenance of all existing and proposed eel fishways at the Project, including continued use of the EFL for eel passage after shad and herring season has ended; and (iii) establish attraction flow speed and volume, slopes of ramps, matting, and methods to reduce predation.²⁰

(ii). Exelon will consult at least annually with MDE to review eel passage efficiency at the EFL.²¹ After Exelon has operated the Temporary Eel Trapping Facility for ten years, if MDE determines, in consultation with the Eel Passage Advisory Group,²² that the Temporary Eel Trapping Facility has been successful, Exelon will design, install, and operate a permanent eel trapping facility at the EFL.²³

(iii). Exelon will maintain the upstream eel trap-and-transport program required by the Fish Passage Settlement Agreement through 2035.²⁴ After 2035, the Fish Passage Settlement Agreement will govern Exelon's obligations with respect to upstream trap-and-transport of eels. Exelon has agreed to conduct trap-and-transport operations in accordance with certain parameters that are intended to minimize eel mortality.²⁵

²⁰ Proposed License Articles, Eel Passage, paragraph (b).

²¹ Proposed License Articles, Eel Passage, paragraph (h).

²² The Water Quality Certification issued under section 401 of the CWA by the Pennsylvania Department of Environmental Protection ("PaDEP") for the Muddy Run Pumped Storage Project required Exelon to establish an "Eel Passage Advisory Group" consisting of representatives from PaDEP, USFWS, the Maryland Department of Natural Resources, the Susquehanna River Basin Commission, and the Pennsylvania Fish and Boat Commission. Water Quality Certification for Muddy Run Pumped Storage Project and Related Mitigation (Clarified Version), Docket No. P-2355-018, Appendix 1 (filed Dec. 15, 2014).

²³ Proposed License Articles, Eel Passage, paragraph (i).

²⁴ Proposed License Articles, Eel Passage, paragraph (k).

²⁵ Proposed License Articles, Eel Passage, paragraph (n).

b. Relationship to Eel Measures in the DOI Prescription

There are three key differences between the eel passage measures set forth in the 2016 Department of the Interior Modified Prescription²⁶ and the eel passage measures agreed to between the Settling Parties. The Settling Parties believe, however, that the eel passage measures agreed to by the Settling Parties are additive to, and will not materially conflict with, DOI's Modified Prescription.

First, the Proposed License Articles require Exelon to operate eel fishways on the west side of the Conowingo Dam from May 1 to when fall mean daily River temperature below the Conowingo Dam is ten (10) degrees Celsius or less for three (3) consecutive days. In practice, this means Exelon will operate the west side eel fishways until mid-to-late November. In contrast, the DOI Prescription only requires the west side eel fishway to operate until September 15 of each year.²⁷

Second, the Proposed License Articles require Exelon to operate an upstream eel passage trap and truck program through 2035; the DOI Prescription only requires the trap and truck program to operate through 2030, at which time it is contemplated that volitional passage would be implemented.²⁸ The Proposed License Articles would extend trap and truck operations, and delay volitional passage, for five years.

Third, the Proposed License Articles require Exelon to operate a temporary eel facility at the East Fish Lift for 10 years. If, subject to certain defined metrics in the Proposed

²⁶ *Offer of Settlement and Explanatory Statement of Exelon Generation Company, LLC*, P-405 (filed May 12, 2016) (“DOI Modified Prescription”).

²⁷ DOI Prescription § 12.3.

²⁸ DOI Prescription § 12.6.1.

License Articles,²⁹ data demonstrates that the location of the temporary eel facility is productive then the eel trapping facility at the East Fish Lift will become permanent. The Proposed License Articles also clarify that Exelon is “not required to maintain and operate more than two permanent eel traps ... at any time”³⁰; thus, if the temporary eel trapping facility at the East Fish Lift becomes permanent, any other eel facility on the east side would likely be terminated in favor of permanent eel passage facilities at the West Fish Lift and the East Fish Lift. The Settling Parties are consulting with DOI regarding these eel passage measures.

A.3 Invasive Species.

Operation of the Conowingo fish lifts provide for volitional passage of both resident and migratory fish species past the Project.³¹ Aquatic invasive species (“AIS”) passing the Project have the potential to suppress native species, alter the food web, and reduce biodiversity. The Proposed License Articles include an Invasive Species Mitigation plan,³² pursuant to which Exelon has agreed to monitor for AIS, remove AIS collected in the Project’s fish lifts under certain circumstances, and notify the Maryland Department of Natural Resources (“MDNR”) and USFWS when AIS are collected in the Project’s fish lifts or passed into the Conowingo Pond at the EFL.³³

²⁹ The Proposed License Article states, in relevant part: “If, after ten years of operation, the East Fish Lift, as modified by the EFL Eel Temporary Modifications, has a ten (10) year average annual catch greater than or equal to fifty (50) percent of the comparable ten (10) year average catch of eels at the West Eel Fishway, the licensee shall design, install, and operate a permanent eel trapping facility at this location . . .” Proposed License Articles, Eel Passage, paragraph (i).

³⁰ Proposed License Articles, Eel Passage, paragraph (i).

³¹ Biological and Engineering Studies of the East and West Fish Lifts, RSP 3.9.

³² Proposed License Articles, Invasive Species Mitigation.

³³ Proposed License Articles, Invasive Species Mitigation.

A.4 Flow.

The Project peaking operations alter flow on an intra-daily timeframe in the approximately four mile non-tidal reach below the Dam. Peaking operation of the Project can result in substantial changes in the flow and stage of the River below the Project.³⁴ Exelon conducted various studies to identify potential impacts of the Project's flow regime on a variety of environmental resources. These studies were specifically designed to gauge the impacts of Project operations on aquatic communities,³⁵ migratory fish reproduction,³⁶ stranding,³⁷ littoral habitat,³⁸ tributary access,³⁹ and the emergent aquatic vegetation (EAV)/submerged aquatic vegetation (SAV) community.⁴⁰

To help mitigate any potential impacts, Exelon has agreed to a two-phased operational flow regime. During the first phase, for the first three years of the new license, Conowingo will operate under its existing flow regime with adjustments such as eliminating short periods (i.e., 6-hour intervals) of zero minimum flow⁴¹ in December through February and increasing the minimum flow in the first half of June, as recommended by FERC Staff in the EIS to provide additional protection for downstream aquatic habitat.⁴² During this three-year period,

³⁴ Instream Flow Habitat Assessment below Conowingo Dam, RSP 3.16.

³⁵ Characterization of Downstream Aquatic Communities, RSP 3.18; Freshwater Mussel Characterization Study below Conowingo Dam, RSP 3.19.

³⁶ Impact of Plant Operation on Migratory Fish Reproduction, RSP 3.21.

³⁷ Downstream Flow Ramping and Stranding Study, RSP 3.8

³⁸ Water Level Management Study, RSP 3.12.

³⁹ Study to Assess Tributary Access in Conowingo Pond, RSP 3.13.

⁴⁰ Downstream EAV/SAV Study, RSP 3.17.

⁴¹ Although no operational releases are made from Conowingo during these periods, there is leakage flow from dam of approximately 800 cfs that is provided to the river reach.

⁴² EIS at 412.

Exelon will coordinate implementation of the second phase of the flow regime with PJM Interconnection LLC (“PJM”), the regional transmission organization (“RTO”) that operates energy and capacity markets in the mid-Atlantic region of the United States. This three-year transition period is necessary to allow Exelon sufficient time to work with PJM to ensure that the protocols currently employed by the RTO to dispatch Conowingo and the Muddy Run Project can be modified and adapted to Conowingo’s phase-two flow regime without jeopardizing reliability or causing adverse impacts to the power markets administered by PJM.

After the third (3rd) year of the new license, Exelon will implement the second phase of the operational flow regime, which will include increased minimum flow requirements and include restrictions on up-ramping, down-ramping, and maximum flow, all of which are focused on the spring fish migratory season.⁴³ This flow regime will provide additional benefits and protection by reducing the potential for fish stranding, improving upstream movement of migratory fish species, and reducing adverse impacts on the downstream aquatic system.

Because the Conowingo Pond is a source of water for other important needs, such as cooling water for the Peach Bottom Atomic Power Station and drinking water for the City of Baltimore,⁴⁴ Exelon can deviate from the required flow regime to avoid triggering violations or breaches of applicable laws, licenses, contracts, and tariffs, or to avoid flooding or a public safety hazard.⁴⁵ Exelon can also deviate for very limited periods of time during certain months of the year.⁴⁶

⁴³ Proposed License Articles, Operational Flow Regime, paragraph (b). *See* EIS at 149 (“Enhancing flows during the spring period has the potential to provide increases in the production of ... anadromous species without unnecessarily constraining project operation in other seasons....”).

⁴⁴ EIS at 88.

⁴⁵ Proposed License Articles, Operational Flow Regime, paragraphs (e), (f), (g).

⁴⁶ Proposed License Articles, Operational Flow Regime, paragraph (i).

Exelon has also agreed to perform a study of installing real-time flow telemetry at the stream gage in the dam's tailrace, and if the study concludes it is feasible to do so, to install such real-time flow telemetry.⁴⁷ Real-time telemetry will provide a more accurate means of monitoring tailrace flows and Exelon's compliance with the agreed-upon flow regime included in the Proposed License Articles.

A.5 Trash and Debris.

The presence of debris in the Conowingo Pond can present safety and aesthetic hazards.⁴⁸ Given the size of the River's watershed, the amount of debris arriving at the Project from upstream can be significant.⁴⁹ Exelon has historically undertaken debris removal at the Project.⁵⁰ To address impacts related to debris accumulation, Exelon has agreed to employ clamming, skimming, or other equally effective means of debris removal, up to the level of debris removal undertaken by Exelon in 2018.⁵¹ Exelon has agreed to remove debris blocking drinking water intakes and recreational facilities within the Project boundary as soon as safely possible.⁵² In addition, Exelon will sponsor at least two annual community-based cleanup events at or near the Project.⁵³

⁴⁷ Proposed License Articles, Monitoring Stream Flows in the Tailrace.

⁴⁸ EIS at 293.

⁴⁹ EIS at 293.

⁵⁰ Debris Management Study, RSP 3.14.

⁵¹ Proposed License Articles, Trash and Debris, paragraph (a). In 2018, Exelon removed approximately 450 twenty-yard dumpster loads of debris at the Project, which is used to establish Exelon's maximum debris-removal obligation under the Proposed License Articles.

⁵² Proposed License Articles, Trash and Debris, paragraph (d).

⁵³ Proposed License Articles, Trash and Debris, paragraph (c).

A.6 Dissolved Oxygen Monitoring.

Dissolved oxygen (“DO”) is the measure of how much oxygen is available to living aquatic organisms in water. The Conowingo Pond has been shown to exhibit DO stratification (i.e., higher DO levels in near-surface waters, and lower DO levels at depth), resulting in the potential for entrainment of lower DO level waters through low-level intakes at the Project.⁵⁴ From 1989 to 2008, Exelon implemented turbine venting as well as the installation of aerating turbine runners at the Project, which significantly improved DO levels in the tailrace.⁵⁵ Because fish kills can be an indicator of DO deficiency, Exelon has agreed to develop and implement a plan to monitor for, and inform MDE about, large-scale fish kills that occur in the Conowingo Pond or the tailrace.⁵⁶

A.7 Shoreline Management.

Effective shoreline management is important, as upland and shoreline conditions can have a direct impact on water quality. Exelon undertook a number of studies to evaluate the Project’s benefits and effects on the numerous environmental resources and uses that relate to the Project’s shoreline. These studies contributed to the development of a Shoreline Management Plan (“SMP”),⁵⁷ a comprehensive plan for the management of the Project shoreline over the new license term. The SMP provides a framework for, the management of Project lands and river shoreline areas consistent with broader local, regional, state, and federal regulations,

⁵⁴ Seasonal and Diurnal Water Quality in Conowingo Pond and below Conowingo Dam, RSP 3.1.

⁵⁵ Application for New License for Major Water Power Project-Existing Dam, Volume 1, page E-86, Docket No. P-405 (filed Aug. 31, 2012).

⁵⁶ Proposed License Articles, Dissolved Oxygen.

⁵⁷ Application for New License for Major Water Power Project-Existing Dam, Volume 3, Docket No. P-405 (filed Aug. 31, 2012).

initiatives, and planning guidelines.⁵⁸ In addition, the SMP provides for the protection of aquatic and terrestrial resources and habitat on Project lands by requiring all activities undertaken by Exelon or its permittees to incorporate Best Management Practices (“BMPs”) to minimize or eliminate sediment and nutrient delivery to Project waters.

As originally proposed, the SMP gives Exelon the flexibility to unilaterally modify the SMP as facts dictate from time to time.⁵⁹ In the EIS, FERC Staff recommended that the Commission accept the SMP, and also added a provision that Exelon update the SMP every 10 years after consultation with interested parties. The Commission concluded that “[c]onsultation with the appropriate agencies and other stakeholders as part of periodic review would ensure that multiple interests and needs are addressed.”⁶⁰ Accordingly, Exelon has agreed to consult with MDE regarding, and in some cases seek MDE’s approval for changes that could affect shoreline conditions, including non-Project use of Project lands, modifications to shoreline vegetation, and changes in use of Project lands that may affect sensitive aquatic resources.⁶¹

A.8 Turtle Management.

Two important turtle species inhabit the Project area: (i) the bog turtle (*Clemmys muhlenbergii*), which is considered “threatened”⁶² under both the Federal Endangered

⁵⁸ Application for New License for Major Water Power Project-Existing Dam, Volume 3, page i, Docket No. P-405 (filed Aug. 30, 2012). *See also* EIS at 297.

⁵⁹ EIS at 300.

⁶⁰ EIS at 300.

⁶¹ Proposed License Articles, Shoreline Management Plan. During the NEPA process, the United States Department of the Interior recommended similar conditions, i.e., that Exelon be required to prepare and implement shoreline management plans that address, *inter alia*, use of Project lands, shoreline vegetation management, and sensitive natural resources overlays. EIS at 298.

⁶² Endangered and Threatened Wildlife and Plants; Final Rule to List the Northern Population of the Bog Turtle as Threatened and the Southern Population as Threatened Due to Similarity of Appearance, 62 Fed. Reg. 59,605 (Nov. 4, 1997).

Species Act of 1973 (“ESA”)⁶³ and Maryland’s Nongame and Endangered Species Conservation Act (“NESCA”);⁶⁴ and (ii) the northern map turtle (*Graptemys geographica*) (the “Map Turtle”), which is considered “endangered” under NESCA.⁶⁵ In the EIS, FERC staff recommended that Exelon develop a bog turtle management plan that includes restrictions on mowing wetlands documented to support bog turtles, invasive and woody plant control, and limits on public access in wetlands documented to support bog turtles.⁶⁶ In the Proposed License Articles, Exelon has agreed to develop and implement such a bog turtle management plan.⁶⁷

Exelon has previously undertaken research to better understand and protect the Map Turtle population in the Project area, which indicated the need for further research, particularly with respect to nesting sites and basking platforms.⁶⁸ Under the Proposed License Articles, Exelon would develop and implement a Map Turtle Plan, which would include (i) monitoring the Map Turtle population in the Project area; (ii) studying the need for, and location of artificial basking platforms; and (iii) nest management and protection measures.⁶⁹

A.9 Waterfowl Nesting.

During field surveys conducted during relicensing, it was determined that the zone of fluctuation along a majority of the Conowingo shoreline is too narrow to provide quality nesting sites for waterfowl.⁷⁰ Waterfowl typically prefer broader areas, such as delta and

⁶³ 16 U.S.C. § 1531 *et seq.*

⁶⁴ Md. Code Ann., Nat. Res. § 10-2A-01 *et seq.*

⁶⁵ Md. Code Regs. 08.03.08.04C(7)(d).

⁶⁶ EIS at 413.

⁶⁷ Proposed License Articles, Turtle Management Plans, paragraph (a).

⁶⁸ Application for New License for Major Water Power Project-Existing Dam, E-256, Docket No. P-405 (filed Aug. 31, 2012).

⁶⁹ Proposed License Articles, Turtle Management Plans, paragraph (b).

⁷⁰ Water Level Management Study, RSP 3.12.

point bar wetlands. Foraging habitat is available within Conowingo Pond for waterfowl; however, these areas are not impacted by the water fluctuation of the pond.

Nonetheless, FERC determined that a waterfowl nesting protection plan would be valuable in identifying areas where waterfowl nesting habitat is affected by inundation or dewatering due to Project operation.⁷¹ According to the EIS, such a plan “would benefit nesting waterfowl by allowing Exelon to determine if Conowingo is affecting waterfowl nesting habitat, identifying which species of nesting waterfowl the project is affecting, and establishing appropriate protection or mitigation measures.”

Exelon has agreed to develop and implement such a waterfowl nesting protection plan.⁷² MDE believes this plan is particularly important for assessing the impact, if any, of the new flow regime contemplated by the Proposed License Articles⁷³ on waterfowl nesting success.⁷⁴

A.10 Sturgeon.

The shortnose sturgeon (*Acipenser brevirostrum*)⁷⁵ and the Atlantic sturgeon (*Acipenser oxyrinchus oxyrinchus*)⁷⁶ are both considered “endangered” under the ESA. The most recent sighting of Atlantic sturgeon was in 1987, near the mouth of the Susquehanna,

⁷¹ EIS at 249.

⁷² Proposed License Articles, Waterfowl Nesting Protection Plan.

⁷³ See § A.4, *supra*.

⁷⁴ See EIS at 249 (“If specific, project-related effects on waterfowl nesting are identified, then such a plan would then allow appropriate protection or mitigation measures to be established.”)

⁷⁵ Endangered Species, 32 Fed. Reg. 4001 (Mar. 11, 1967).

⁷⁶ Endangered and Threatened Wildlife and Plants; Marine and Anadromous Taxa: Additions, Removal, Updates, and Corrections to the List of Endangered and Threatened Wildlife, 79 Fed. Reg. 42687 (Jul. 23, 2014).

and the most recent sighting of shortnose sturgeon was in the Conowingo tailrace in 1986.⁷⁷ Because sturgeon have only been documented occasionally, there is some question as to whether or not the River supports a spawning population of either species.⁷⁸ Exelon has agreed to provide an annual report to MDE and MDNR regarding sturgeon observed at the Project, to assist those agencies in assessing the existence of sturgeon populations in the lower River.⁷⁹

B. The Proposed License Terms and Conditions Serve the Public Interest.

The settlement commitments set forth above, as reflected in the Proposed License Articles, establish terms and conditions in the new license that will address impacts directly or indirectly related to Conowingo Project operations. These protection, mitigation, and enhancement measures will provide significant benefits to aquatic, terrestrial, and wildlife resources in the Susquehanna River basin.

Specifically, the Proposed License Articles addressing the operational flow regime of the Conowingo Project will, within three years of license issuance, significantly increase minimum flow releases at the project. These increased flows will provide additional aquatic habitat downstream of Conowingo Dam. Additionally, the limitations on ramping will reduce the potential for fish stranding, improve conditions for fish migrating upstream, and reduce impacts to spawning. The improvements to the East Fish Lift and the eel passage measures required by the Proposed License Article will provide significant benefits to migratory and resident fish. Barriers to upstream passage will be reduced significantly for American shad, river herring, and American eel, likely leading to increases in population for all of these species. Similarly, the Proposed

⁷⁷ Shortnose and Atlantic sturgeon life history studies, RSP 3.22.

⁷⁸ EIS at 156.

⁷⁹ Proposed License Articles, Sturgeon Protection.

License Articles requiring active control of invasive species and compliance with dissolved oxygen standards will protect against adverse impacts to resident and migratory fish populations above and below Conowingo Dam.

Additionally, the Proposed License Articles that address trash and debris removal will improve water-based recreational activities at the Project and enhance aesthetic resources. License conditions related to shoreline management activities and stream flow monitoring will enhance water quality, and the turtle management and waterfowl nesting plans will provide significant benefits to, and important data about, resources in the vicinity of the Project. Finally, the Proposed License Article regarding sturgeon will provide important data to resource agencies regarding the presence of endangered species below Conowingo Dam.

Collectively, these measures provide for substantial environmental and recreational enhancements in the Susquehanna River, and would mitigate potential impacts from Project operations. Accordingly, the public interest would be well-served if the Proposed License Articles are incorporated into the new license without modification or expansion.

C. Commitments Related to Non-Licensing Issues.

This section C pertains to non-licensing issues. In combination with the commitments Exelon has made in the Proposed License Articles, these additional settlement commitments will provide significant, self-sustaining ecosystem services in the River and Bay through the restoration of natural aquatic habitat and aquatic species. The Proposed License Articles and additional settlement commitments are designed to work in concert to achieve these goals. While the commitments made by Exelon on these issues are substantial and will provide valuable support to MDE and MDNR for important environmental projects, the Settling Parties are not proposing that these provisions be included in the new license.

C.1 Resolution of Pending Disputes.

Exelon has agreed to dismiss its challenges to the Certification, including the administrative appeal, the federal lawsuit, and the state lawsuit, and release the claims it asserted in those proceedings.⁸⁰ Those dismissals and releases will be effective upon the effective date of the new license.

C.2 Mussel Restoration.

The eastern elliptio mussel provides important ecosystem services, including filtration and transformation of sediment and nutrient pollution.⁸¹ A significant mussel restoration initiative is needed to re-establish the eastern elliptio population in the lower River. Exelon has agreed to support MDE's efforts to undertake such an initiative by providing (i) at least five acres of land within the Project boundary for MDE to construct a mussel hatchery at least 40,000 square feet in size; (ii) \$4.5 million in funding during the first three years after the effective date of the new license to assist with the cost of constructing the hatchery and developing the restoration program; and (iii) \$250,000 per year thereafter for the remainder of the term of the new license, to support the operation and maintenance costs of the mussel restoration initiative.⁸²

C.3 Resiliency Initiatives.

Exelon has agreed to provide MDE with financial support for projects to make the River and the Bay more resilient to severe weather events. This financial support will consist of (i) \$3.25 million during the first three years after the effective date of the new license, and (ii) \$500,000 per year thereafter for the remainder of the term of the new license.⁸³ MDE

⁸⁰ Agreement § 3.2(a)(2)-(5).

⁸¹ See § A.2, *supra*.

⁸² Agreement § 2.2(a).

⁸³ Agreement § 2.3(a).

intends to use these funds for projects such as submerged aquatic vegetation restoration, oyster restoration, clam restoration, aquaculture, and living shoreline creation.

C.4 Funding for Other Water Quality Projects.

Exelon has agreed to provide MDE with financial support for other water quality improvement projects, including forest buffers and agricultural projects such as cover crops. This financial support will consist of (i) \$1.5 million to be paid within 30 days after the effective date of the new license, and (ii) \$200,000 per year beginning on the second anniversary the effective date of the new license for the remainder of its term.⁸⁴

C.5 Eel Passage Research and Projects.

Exelon has agreed to provide MDNR with \$1 million to fund research and projects related to eels and eel passage.⁸⁵

C.6 Sediment Disposal Study.

Exelon has agreed to provide MDE with \$500,000 to fund a feasibility study of dredge material disposal options within, and in close proximity to, the Project.⁸⁶

C.7 Tailrace Gage Funding.

Until such time as real-time telemetry is implemented at the tailrace gage,⁸⁷ Exelon has agreed to continue providing a certain level of funding to the U.S. Geological Survey or the Maryland Geological Survey to maintain the existing tailrace gage (USGS #01578310).⁸⁸

⁸⁴ Agreement § 2.4(a).

⁸⁵ Agreement § 2.4(b).

⁸⁶ Agreement § 2.4(c).

⁸⁷ See § A.4, *supra*.

⁸⁸ Agreement § 2.4(e).

C.8 Hopper Fullness Measurements.

If technology becomes available to do so, Exelon has agreed to implement technology to monitor the fullness of each fish lift hopper, subject to certain cost limitations.⁸⁹

C.9 Chlorophyll-A Monitoring.

Exelon has agreed to develop and implement a plan for monitoring chlorophyll-A levels in the Maryland portion of the Conowingo Pond, subject to certain cost limitations.⁹⁰

C.10 Reimbursement of MDE Expenses and Oversight Costs.

Exelon has agreed to reimburse certain costs incurred by MDE and certain oversight costs MDE and MDNR are expected to incur in the future with respect to the Proposed License Articles.⁹¹

C.11 Cooperation, Access, and Recordkeeping.

Exelon has agreed to cooperate with activities undertaken by MDE and other resources agencies in connection with mussel restoration, SAV restoration and other resiliency projects,⁹² to give MDE and other resource agencies access to Project lands in connection with those activities,⁹³ and to maintain certain records relating to the Proposed License Articles.⁹⁴

⁸⁹ Agreement § 2.4(f).

⁹⁰ Agreement § 2.4(g).

⁹¹ Agreement § 2.5(f).

⁹² Agreement § 2.5(a).

⁹³ Agreement § 2.5(a).

⁹⁴ Agreement § 2.5(i).

C.12 Web Portal.

Exelon and MDE believe the public interest is served by keeping the public informed about the environmental protection, mitigation, and enhancement measures Exelon will undertake pursuant to the Proposed License Articles. Accordingly, Exelon has agreed to maintain a public web site containing plans, data, and reports related to those protection, mitigation, and enhancement measures.⁹⁵

D. Request for a 50-year License Term

On October 19, 2017, the Commission issued a “Policy Statement on Establishing License Terms for Hydroelectric Projects” (Policy Statement).⁹⁶ The Policy Statement establishes a 40-year default license term for new licenses but allows for a longer term if significant measures are required in the new license or a longer term is generally supported by a comprehensive settlement.⁹⁷

The measures Exelon will undertake during the new license reflect a combination of measures proposed by Exelon, fish passage measures prescribed by the Department of the Interior resulting from a settlement executed between Exelon and DOI,⁹⁸ and the measures agreed upon by MDE and Exelon as incorporated into the Proposed License Articles. Taken together, these measures total a nominal investment of at least \$700 million over the term of the new license. In recognition of this substantial investment, MDE and Exelon support the issuance of a new

⁹⁵ Agreement § 2.5(h).

⁹⁶ Policy Statement on Establishing License Terms for Hydroelectric Projects, 161 FERC ¶ 61,078 (2017).

⁹⁷ *Id.* at PP 14-16.

⁹⁸ *Offer of Settlement and Explanatory Statement of Exelon Generation Company, LLC*, P-405 (filed May 12, 2016) (“DOI-Exelon Fish Passage Settlement Agreement”).

license for a term of 50 years. This mirrors the settlement provision in the DOI-Exelon Fish Passage Agreement which also supports a 50-year term.⁹⁹

Establishing a license term of 50 years for the Conowingo Project is consistent with the Policy Statement. The protection, mitigation, and enhancement measures in the new license will be significant, both in scope and cost. Among other things, Exelon will make substantial investments to construct and operate new fish passage facilities for American shad, herring, and American eel; improve recreation facilities; improve water quality; and protect endangered species. Exelon also has agreed to increase minimum flows and modify its ramping operations to enhance downstream aquatic habitat. The costs associated with all of these measures will need to be recovered over a 50-year license term, and a 50-year license provides the regulatory certainty needed to ensure these investments can be made over the life of the license without jeopardizing the economic viability of the project. Additionally, a 50-year license term would implement a key provision of the settlement agreements that Exelon has negotiated with two key stakeholders, the state water quality agency and DOI. For these reasons, the Settling Parties request the Commission issue a new license for a term of 50 years.

E. Conclusion

This Joint Offer of Settlement represents the successful culmination of a lengthy negotiation process between Exelon and MDE, which resolves several costly and time-consuming disputes. Implementing this settlement will allow Exelon to focus its time and resources on delivering safe, reliable power, and MDE to focus its time and resources on the protection of the River and the Bay. Exelon and MDE believe implementation of this settlement is in the public interest.

⁹⁹ DOI-Exelon Fish Passage Settlement Agreement at pgs. 10-11

For the foregoing reasons, Exelon and MDE respectfully request that the Commission determine that this Joint Offer of Settlement is in the public interest, approve this Joint Offer of Settlement, and incorporate the Proposed License Articles, without modification or expansion, into a new license for the Project having a 50-year term.

Respectfully submitted,

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October 29, 2019

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October 29, 2019

CERTIFICATE OF SERVICE

I hereby certify that I have this 29th day of October, 2019, served the foregoing document upon each person designated on the official service list compiled by the Commission in Docket Nos. P-405-106 and P-405-121.

/s/ David W. DeBruin
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Exhibit No. 1

Settlement Agreement

**CONOWINGO DAM
WATER QUALITY
SETTLEMENT AGREEMENT**

by and between

**STATE OF MARYLAND,
DEPARTMENT OF THE ENVIRONMENT**

and

EXELON GENERATION COMPANY, LLC

Dated October 29, 2019

**FERC Project No. P-405
MDE WSA Application No. 17-WQC-02**

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Attachments:

- A Proposed License Articles
- B Form of Notice of Dismissal
- C Form of Stipulation of Dismissal
- D Form of Property Access Agreement
- E Form of Acknowledgement of Payment Operative Date
- F Form of SRBC Support Letter

CONOWINGO DAM WATER QUALITY SETTLEMENT AGREEMENT

THIS CONOWINGO DAM WATER QUALITY SETTLEMENT AGREEMENT (this “Agreement”) is made as of October 29, 2019 (the “Settlement Date”) by and between the STATE OF MARYLAND, DEPARTMENT OF THE ENVIRONMENT (“MDE”) and EXELON GENERATION COMPANY, LLC, a Pennsylvania limited liability company (“Exelon” and, together with MDE, the “Parties”).

WHEREAS, Exelon owns and operates the Conowingo Hydroelectric Project, which bears Federal Energy Regulatory Commission (“FERC”) Project Number P-405 (the “Project”);

WHEREAS, Exelon submitted an Application for New License for Major Water Power Project-Existing Dam to FERC on or about August 9, 2012 (as amended, supplemented or modified, the “FERC Application”), seeking a new license from FERC for the Project (the “New License”), under FERC Project Number P-405-106 (collectively, the “FERC Relicensing Proceeding”);

WHEREAS, on April 27, 2018, MDE issued a water quality certification for the Project (the “Certification”) pursuant to Section 401 of the Federal Water Pollution Control Act, as amended, 33 U.S.C. §1341 et seq. (the “CWA”), Title 9, Subtitle 3 of the Environment Article of the Annotated Code of Maryland, and Section 26.08.02 of the Code of Maryland Regulations;

WHEREAS, on or about May 25, 2018, Exelon submitted a Protective Petition for Reconsideration and Administrative Appeal to MDE, seeking an administrative reconsideration and appeal of the Certification (the “Exelon Administrative Proceeding”);

WHEREAS, on or about May 25, 2018, Exelon filed a lawsuit challenging the Certification in the Circuit Court for Baltimore City, Maryland, styled as *Exelon Generation Company, LLC v. Maryland Department of the Environment*, case number 24-C-18-003410 (the “State Lawsuit”);

WHEREAS, the State Lawsuit was dismissed on October 9, 2018, which dismissal Exelon has appealed to the Maryland Court of Special Appeals in case number 2908, September Term 2018 (the “State Appeal”);

WHEREAS, on or about May 25, 2018, Exelon filed a lawsuit challenging the Certification in the United States District Court for the District of Columbia, styled as *Exelon Generation Co. v. Grumbles, et al.*, case number 1:18-cv-01224 (the “Federal Lawsuit”);

WHEREAS, on or about February 28, 2019, Exelon filed a petition for declaratory order challenging the Certification with FERC, under FERC Project Number P-405-121 (the “FERC Declaratory Action” and, together with the Exelon Administrative Proceeding, the State Lawsuit, the State Appeal, and the Federal Lawsuit, the “Contested Matters”);

WHEREAS, to avoid the expense and uncertainty of protracted litigation, and to accelerate the pace of environmental improvements at the Project, the Parties have agreed to submit to FERC an Offer of Settlement (as defined herein) with Proposed License Articles (as defined herein), pursuant to which, if FERC approves the Offer of Settlement and incorporates all of the Proposed

License Articles into the New License without modification, the State of Maryland shall waive its rights to issue a CWA Section 401 certification in connection with the New License, the Parties shall dismiss the Contested Matters, and the Parties shall resolve their disputes relating to the Project, on the terms and conditions set forth herein; and

WHEREAS, MDE has determined that this Agreement is in the best interests of and will benefit the Chesapeake Bay and the citizens of the State of Maryland.

NOW THEREFORE, in consideration of the foregoing recitals (which are incorporated into and made a part of this Agreement) and other good and valuable consideration, the receipt and sufficiency of which are acknowledged, the Parties agree as follows:

1. DEFINITIONS AND INTERPRETIVE PROVISIONS

1.1 Definitions. As used herein, the following capitalized terms have the respective meanings set forth below:

“Access Agreement” has the meaning provided in Section 2.5(a).

“Affiliate” means, with respect to Exelon, each and every Person directly or indirectly controlling, controlled by, or under common control with Exelon, where “control” means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting securities, by contract, or otherwise.

“Agreement” has the meaning provided in the preamble of this Agreement.

“Approval” means any applicable license, permit, approval, consent, exemption or authorization of any Person.

“Business Day” means any day other than Saturday, Sunday, or a day on which offices of the government of the State of Maryland are closed.

“Certification” has the meaning provided in the recitals of this Agreement.

“cfs” means cubic feet per second.

“Challenge” has the meaning provided in Section 4.1.

“Chlorophyll-A Monitoring Plan” has the meaning provided in Section 2.4(g).

“Claimant” has the meaning provided in Section 8.6(a).

“Clean Water Fund” means the Maryland Clean Water Fund, created pursuant to Md. Code Ann., Environment §9-320.

“Collateral Proceeding” has the meaning provided in Section 3.6(a).

“Conditional Waiver” has the meaning provided in Section 3.2(a)(1).

“Conowingo WIP” has the meaning provided in Section 3.6(a).

“Contested Matters” has the meaning provided in the recitals of this Agreement.

“CPI” means the Consumer Price Index for All Urban Consumers (CPI-U; U.S. City Average; all items, not seasonally adjusted; 1982-84=100 reference base) published from time to time by the U.S. Bureau of Labor Statistics.

“Curative Amendment” has the meaning provided in Section 3.2(b)(1).

“CWA” has the meaning provided in the recitals of this Agreement.

“Dam” means the Conowingo Dam.

“Dispute” has the meaning provided in Section 8.6(a).

“Dispute Notice” has the meaning provided in Section 8.6(a).

“DNR” means the Maryland Department of Natural Resources.

“DOI Settlement Agreement” has the meaning provided in Section 3.5.

“Effective Date” means the effective date of the New License.

“Exelon” has the meaning provided in the preamble of this Agreement.

“Exelon Administrative Proceeding” has the meaning provided in the recitals of this Agreement.

“Extended Negotiation Period” has the meaning provided in Section 3.2(b)(2)(B)(ii).

“FERC” has the meaning provided in the recitals of this Agreement.

“FERC Application” has the meaning provided in the recitals of this Agreement.

“FERC Declaratory Action” has the meaning provided in the recitals of this Agreement.

“FERC Relicensing Proceeding” has the meaning provided in the recitals of this Agreement.

“Federal Lawsuit” has the meaning provided in the recitals of this Agreement.

“Fish Passage Prescription” means DOI’s Modified Prescription for Fishways Pursuant to Section 18 of the Federal Power Act for the Project, dated June 8, 2016.

“Flow Regime” means the operational flow regime that is required to be implemented beginning on the third (3rd) anniversary of the Effective Date pursuant to the Proposed License Articles.

“Government Entity” means any federal, state or local government, political subdivision thereof, or any department, agency, authority, unit or other entity thereof.

“Hatchery Site” has the meaning provided in Section 2.2(b).

“Holtwood” means the Holtwood Hydroelectric Project, FERC Project Number 1881.

“Incorporated License Articles” means the Proposed License Articles, to the extent incorporated by FERC into the New License.

“Initial Negotiation Deadline” has the meaning provided in Section 3.2(b)(2)(A).

“Laws” means applicable laws, statutes, regulations, rules, administrative orders, and judicial orders.

“MDE” has the meaning provided in the preamble of this Agreement.

“Muddy Run” means the Muddy Run Pumped Storage Project, FERC Project Number 2355.

“New License” has the meaning provided in the recitals of this Agreement.

“Offer of Settlement” has the meaning provided in Section 3.1.

“Parties” has the meaning provided in the preamble of this Agreement.

“Payment Operative Date” means the date established by Section 3.2(a), 3.2(b)(1), 3.2(b)(2)(A)(i), 3.2(b)(2)(A)(ii), 3.2(b)(2)(B)(ii), or 3.2(b)(2)(B)(iii), as the case may be.

“Person” means any individual, corporation, limited liability company, partnership, trust, association, Government Entity or other entity.

“PIA” has the meaning provided in Section 3.3.

“PIA Requests” has the meaning provided in Section 3.3.

“Plan” has the meaning provided in Section 2.5(g).

“Project” has the meaning provided in the recitals of this Agreement.

“Proposed License Articles” has the meaning provided in Section 3.1.

“Reservoir” means the water impounded by the Dam, which is sometimes referred to as the Conowingo Pond or Conowingo Pool.

“Respondent” has the meaning provided in Section 8.6(a).

“Rights-of-Way” has the meaning provided in Section 2.2(b).

“River” means the Susquehanna River.

“Safe Harbor” means the Safe Harbor Hydroelectric Project, FERC Project Number 1025.

“SAV” means submerged aquatic vegetation.

“Secretary” means the Secretary of the Environment of the State of Maryland.

“Settlement Date” has the meaning provided in the preamble of this Agreement.

“SRBC” means the Susquehanna River Basin Commission.

“State Appeal” has the meaning provided in the recitals of this Agreement.

“State Lawsuit” has the meaning provided in the recitals of this Agreement.

“Term” has the meaning provided in Section 8.1.

“Web Portal” has the meaning provided in Section 2.5(h).

1.2 Construction and Interpretation. All references herein to Sections or Attachments are references to Sections or Attachments to this Agreement, unless otherwise indicated. All Attachments to this Agreement are deemed to be incorporated by reference and made a part of this Agreement. All documents incorporated by reference into this Agreement that are not attached hereto are qualified by the provisions, requirements and conditions of this Agreement. Whenever the words “include,” “includes,” or “including” are used in this Agreement, they shall be deemed to be followed by the words “without limitation.” The Table of Contents and Section headings contained in this Agreement (including the Attachments hereto and documents incorporated herein by reference) are for convenience only and shall not in any way affect the meaning or interpretation of this Agreement. All references herein to “days” are calendar days unless otherwise noted. All references herein to Government Entities are to such Government Entities and any successor(s) thereto.

2. ENVIRONMENTAL BENEFIT OBLIGATIONS

2.1 Payments, Generally. Unless otherwise specified herein, all payments Exelon has agreed to make as set forth hereunder shall be made in accordance with such written payment instructions as MDE shall provide to Exelon from time to time. Where this Agreement requires Exelon to make payments to a particular fund or payee, MDE may designate a different fund or payee in its sole discretion from time to time by giving written notice of such designation to Exelon. Neither MDE nor any other payee shall have any obligation to submit invoices to Exelon for payments required by this Agreement. As between MDE and Exelon, MDE shall have the sole right to determine how funds paid by Exelon hereunder are utilized. Payments made by Exelon

under the Agreement are not being made in relation to the violation of any law or the investigation or inquiry into the potential violation of any law.

2.2 Mussel Restoration

(a) **Financial Support.** Exelon shall make payments into the Clean Water Fund, which MDE intends to use to implement mussel restoration projects, as follows:

- (1) Two Million Dollars (\$2,000,000) within thirty (30) days after the Payment Operative Date;
- (2) Two Million Dollars (\$2,000,000) no later than the second (2nd) anniversary of the Payment Operative Date;
- (3) Five Hundred Thousand Dollars (\$500,000) no later than the third (3rd) anniversary of the Payment Operative Date; and
- (4) a base payment of Two Hundred Fifty Thousand Dollars (\$250,000) (adjusted annually in accordance with Section 2.7) no later than each anniversary of the Payment Operative Date, beginning on the fourth (4th) anniversary of the Payment Operative Date and continuing through the end of the Term.

(b) **Land.** As soon as reasonably practicable after the Payment Operative Date (but in any event no later than the first anniversary of the Payment Operative Date), the Parties will endeavor in good faith to identify an area of land owned by Exelon or an Affiliate of Exelon, consisting of at least five (5) acres, located in or reasonably close to the Project area, which would be suitable for the construction of a mussel hatchery of at least 40,000 square feet (the "Hatchery Site"). In the event the Parties are unable in good faith to identify a Hatchery Site, the Parties shall engage in dispute resolution proceedings set forth in Section 8.6. If a Hatchery Site is identified by the Parties, MDE shall have the option (subject to any approvals, if necessary, from FERC if the Hatchery Site is located in the FERC-designated Project boundary) to either:

- (1) Purchase the Hatchery Site from Exelon (or its Affiliate, if applicable) for One Dollar (\$1.00), in exchange for which Exelon shall convey to the State of Maryland good and marketable title to the Hatchery Site, free and clear of all liens and encumbrances, other than matters of record as of the Settlement Date; or
- (2) Ground lease (or designate a lessee to ground lease) the Hatchery Site from Exelon (or its Affiliate, if applicable) for a period of ninety-nine (99) years, for total net rent of One Dollar (\$1.00).

In addition, Exelon shall grant to the State of Maryland, subject to any approvals, if necessary, from FERC to the extent it involves land within the FERC-designated Project boundary), such easements and rights-of-way over property of Exelon and/or its Affiliates (the "Rights-of-Way") as may be reasonably necessary for the efficient use of the Hatchery Site, including easements for access, utilities, and a system to circulate River water to and from the

hatchery. All costs related to the sale or lease, as the case may be, of the Hatchery Site pursuant to this Section 2.2(b), shall be paid by the Party incurring such costs, other than transfer and recordation fees and taxes (if any), which shall be paid one-half (1/2) by MDE and one-half (1/2) by Exelon.

2.3 Resiliency Initiatives.

(a) ***Financial Support.*** Exelon shall make payments into the Clean Water Fund, which MDE intends to use to implement resiliency projects in the River and the Chesapeake Bay, such as SAV restoration, aquaculture, clam and oyster restoration, and living shoreline creation, as follows:

- (1) Five Hundred Thousand Dollars (\$500,000) within thirty (30) days after the Payment Operative Date;
- (2) Two Million Dollars (\$2,000,000) no later than the third (3rd) anniversary of the Payment Operative Date; and
- (3) a base payment of Two Hundred Fifty Thousand Dollars (\$250,000) (adjusted annually in accordance with Section 2.7) no later than each anniversary of the Payment Operative Date, beginning on the fourth (4th) anniversary of the Payment Operative Date and continuing through the end of the Term.

(b) ***Payments to Aid Mitigation of Scour Events.*** Exelon shall make annual payments into the Clean Water Fund, which MDE intends to use to mitigate the impact of high-flow events that may result in scour of sediment impounded behind the Dam (including restoration of SAV or other resiliency projects, or trash and debris cleanup), in the amount of Two Hundred Fifty Thousand Dollars (\$250,000) (adjusted annually in accordance with Section 2.7) no later than each anniversary of the Payment Operative Date, beginning on the first anniversary of the Payment Operative Date and continuing through the end of the Term.

2.4 Financial Support for Other Projects.

(a) ***Other Projects.*** Exelon shall make payments into the Clean Water Fund, which MDE intends to use to support other projects that will have benefits to water quality, including agricultural practices such as cover crops and forest buffers, as follows:

- (1) One Million Five Hundred Thousand Dollars (\$1,500,000) within thirty (30) days after the Payment Operative Date; and
- (2) a base payment of Two Hundred Thousand Dollars (\$200,000) (adjusted annually in accordance with Section 2.7) no later than each anniversary of the Payment Operative Date, beginning on the second (2nd) anniversary of the Payment Operative Date and continuing through the end of the Term.

(b) ***Eel Passage Research.*** No later than thirty (30) days after the Payment Operative Date, Exelon shall pay One Million Dollars (\$1,000,000) to the Power Plant Research Program of DNR, for the purpose of funding research and projects related to eels and eel passage. In accordance with the Access Agreement, Exelon shall provide DNR and its contractors with access to the Project for the purpose of conducting research and projects relating to eels and eel passage.

(c) ***Sediment Disposal Study.*** No later than thirty (30) days after the Payment Operative Date, Exelon shall pay Five Hundred Thousand Dollars (\$500,000) into the Clean Water Fund, which MDE intends to use to conduct, or cause to be conducted, a feasibility study of dredge material disposal options within, and in a close proximity to, the Project.

(d) ***Expense Reimbursement.*** No later than thirty (30) days after the Payment Operative Date, Exelon shall pay Two Hundred Fifty Thousand Dollars (\$250,000) into the Wetlands and Waterways Program Fund, to reimburse expenses incurred by MDE in connection with the Contested Matters.

(e) ***Tailrace Gage Funding.*** Until such time as the re-design and installation of best available real-time flow telemetry at the stream gage is completed, Exelon shall continue to provide funding to the Maryland Geological Survey or the United States Geological Survey for the existing Tailrace gage (USGS #01578310), up to Sixteen Thousand Four Hundred Dollars (\$16,400) per year; *provided*, that the foregoing maximum amount shall be adjusted for inflation on July 1, 2020 and on July 1 of each year thereafter, based on the cumulative change in the CPI.

(f) ***Hopper “Fullness” Measurements.*** If technology becomes available to quantify the bucket “fullness” of each fish lift hopper, then after a written request from MDE, Exelon shall (1) incorporate this technology, provided that if the cost of installation is reasonably expected to exceed \$40,000, Exelon shall use its best efforts to implement as much of the technology as possible for \$40,000; and (2) not be required to expend more than \$10,000 per year on the cost of operating and maintaining such technology, *provided* that the \$40,000 cap and the \$10,000 operation and maintenance cap amount shall each be adjusted for inflation on July 1, 2020 and on July 1 of each year thereafter, based on the cumulative change in the CPI.

(g) ***Chlorophyll-A Levels in the Reservoir.***

(1) No later than one hundred eighty (180) days after the Effective Date, Exelon shall submit to MDE for approval a plan for monitoring chlorophyll-A levels in the Maryland portion of the Reservoir (the “Chlorophyll-A Monitoring Plan”). The Chlorophyll-A Monitoring Plan shall provide for collection of three (3) years of data on chlorophyll-A levels in the Maryland portion of the Reservoir between May 1 and September 30, in accordance with a monitoring protocol to be provided by MDE no later than thirty days after approval of the Chlorophyll-A Monitoring Plan by MDE, and shall be designed to determine with a high level of statistical confidence whether chlorophyll-A WQS are exceeded in the Maryland portion of the Reservoir between May 1 and September 30 in any particular year. Exelon shall be required to expend no more than a maximum of \$40,000 per year in connection with the costs of the Chlorophyll-A Monitoring Plan and any associated annual reporting as described below. Exelon shall comply with the Chlorophyll-A Monitoring Plan after it is approved by MDE.

(2) Pursuant to the Chlorophyll-A Monitoring Plan, Exelon shall provide MDE with (a) annual reports of all measured chlorophyll-A levels and dates and locations of monitoring in the Maryland portion of the Reservoir by December 31 of the year in which the monitoring occurred; and (b) a final report that analyzes and presents the results of all chlorophyll-A monitoring completed by June 30 of the year after the final year of monitoring.

2.5 Access and Cooperation.

(a) ***Property Access Agreement.*** Promptly after the execution of this Agreement, the Parties will execute and deliver a Property Access Agreement in the form attached hereto as Attachment D (the “Access Agreement”). Exelon shall cooperate in all reasonable respects with activities undertaken or proposed to be undertaken by MDE and other resource agencies in connection with the mussel restoration, SAV restoration, and other resiliency projects contemplated by Sections 2.2 and 2.3. MDE or its designee shall be responsible for obtaining all Approvals of Government Entities necessary for such Projects, but Exelon shall cooperate with MDE in all reasonable respects in connection with obtaining such Approvals, including by applying for such Approvals if necessary under applicable Law.

(b) ***Relicensing Proceedings for Holtwood and Safe Harbor.*** In future relicensing proceedings for Safe Harbor and Holtwood, MDE and Exelon shall actively advocate for: (1) downstream flows that will allow the Project to meet the numeric minimum flow requirements as prescribed in the Flow Regime; (2) hourly-flow releases at Holtwood to be publicly reported so that the Project can readily identify inflow conditions; and (3) Holtwood and Safe Harbor to bear a proportionate share of the costs of the trap and transport program.

(c) ***Report of Deviations.*** If FERC adopts but allows deviations from the Flow Regime, and requires the Project to prepare a report of any such deviations, Exelon agrees to provide a copy of any such report to MDE. No later than January 31 of each year, Exelon shall provide a report to MDE of all deviations from the Flow Regime taken by Exelon pursuant to the Proposed License Articles.

(d) ***MDE Right of Entry.*** In addition to any other right of entry provided for by law, MDE, or its authorized representatives, shall have the right to enter at reasonable times the premises or property that is the subject of the Incorporated License Articles (including the Reservoir and all land within Project boundaries) or where any records are required to be kept under the provisions, requirements, and conditions of this Agreement or the Incorporated License Articles. Upon arrival, MDE, or its authorized representatives, shall provide reasonable notice to Exelon or its representatives of the purpose of the visit and any activities that may be conducted. This right of entry shall include the right to:

(1) Access and copy, at reasonable times, any records that are required to be kept under the provisions, requirements, and conditions of this Agreement or the Incorporated License Articles;

(2) Inspect, at reasonable times, any monitoring equipment or monitoring method required in this Agreement or the Incorporated License Articles;

(3) Inspect, at reasonable times, any discharge facilities subject to the Incorporated License Articles;

(4) Conduct sampling, at reasonable times, of any discharge or of the water column in the River or Reservoir;

(5) Take soil or sediment borings or core samples, at reasonable times, in the bed of the River or the Reservoir; and

(6) Take photographs.

(e) ***Duty to Provide Information.*** Exelon shall submit to MDE, upon request, copies of any records required to be kept by this Agreement or the Incorporated License Articles. Subject to the Maryland Public Information Act, all information submitted to MDE or collected as a condition of this Agreement may be made publicly available.

(f) ***Reimbursement of Oversight Costs.*** As reimbursement for costs related to the administration and oversight of the Project's compliance with this Agreement and the Incorporated License Articles, no later than each January 1 of each year after the Effective Date until the end of the Term, Exelon shall pay Seventy-Five Thousand Dollars (\$75,000) per year to MDE and Seventy-Five Thousand Dollars (\$75,000) per year to DNR, *provided*, that each of the foregoing amounts shall be adjusted for inflation in accordance with Section 2.7.

(g) ***Procedure for Approval of Plans.*** Where Exelon is required by this Agreement or the Incorporated License Articles to submit to MDE for review, approval or agreement any plans, reports, or other documents, including the Fish Kill Monitoring Plan (as defined in the Proposed License Articles); the Chlorophyll-A Monitoring Plan; any amendment to Licensee's Shoreline Management Plan dated August 2012, included in Volume 3 of the FERC Application; the Bog Turtle Plan (as defined in the Proposed License Articles); the Map Turtle Plan (as defined in the Proposed License Articles); the Waterfowl Plan (as defined in the Proposed License Articles); the Tailrace Gage Plan (as defined in the Proposed License Articles); and the Eel Passage and Restoration Plan (as defined in the Proposed License Articles) (each, a "Plan"), the procedures in this Section 2.5(g) shall apply, unless otherwise specified in this Agreement or the Incorporated License Articles. MDE's review of a Plan shall only be deemed to be complete, and MDE's approval of or agreement with a Plan shall only be deemed to have been given, when MDE has approved the Plan pursuant to this Section 2.5(g).

(1) Exelon will submit to MDE for review a draft of any Plan in advance of Exelon's submittal of said Plan to FERC.

(2) During the review period, MDE may request additional information as well as solicit public comments and may hold, or require Exelon to hold, one or more public hearings or meetings with respect to any Plan submitted by Exelon. MDE may consult and share relevant information with, and may require Exelon to consult and share relevant information with, other Government Entities or third parties having particular expertise in connection with the review, implementation, and/or oversight of any Plan, including DNR, the United States Fish and Wildlife Service, the National Marine Fisheries Service, and the Susquehanna River Basin Commission. In connection with each proposed Plan, Exelon shall provide MDE with (a)

documentation regarding consultation with other Government Entities and third parties, (b) an explanation of how the proposed Plan addresses comments or recommendations from Government Entities or third parties, and (c) an explanation of why any such comments or recommendations are not addressed in the proposed Plan.

(3) Each Plan shall include (a) periodic reporting by Exelon to MDE at such intervals as MDE deems reasonably necessary; and (b) a timeline for implementation of the Plan.

(4) Exelon shall (a) provide all data and reports, including monitoring results, collected or developed pursuant to any Plan to MDE in electronic format, (b) make all such data and reports publicly available on the Web Portal, (c) make all Plans publicly available on the Web Portal contemporaneously with submission thereof to MDE, and (d) make all approved Plans publicly available on the Web Portal.

(5) MDE may approve any Plan, in whole or in part, and such approval shall not be withheld arbitrarily or capriciously. If MDE expressly disapproves a plan, MDE's written disapproval shall be sent as a Dispute Notice, which shall be resolved in accordance with Section 8.6. If Exelon alleges MDE is withholding approval of any Plan arbitrarily and capriciously, Exelon shall send a Dispute Notice, which shall be resolved in accordance with Section 8.6.

(6) Notwithstanding the above, Exelon shall have the right to file any Plan with FERC as may be required to comply with the New License or applicable Law; *provided*, if MDE has not yet approved such Plan pursuant to this Section 2.5(g), Exelon shall (i) first exhaust all opportunities to seek extensions of time for the filing of such Plan with FERC, as necessary to enable the Parties to fully comply with this Section 2.5(g); and (ii) clearly state in any such filing with FERC that MDE has not yet approved the Plan.

(7) With respect to any particular Plan(s), MDE may delegate its authority under this Section 2.5(g) to another governmental unit of the State of Maryland that MDE determines to have relevant expertise.

(8) Exelon shall take all actions reasonably necessary to expeditiously obtain all Approvals necessary to implement the approved Plans and the Incorporated License Articles.

(h) Web Portal. Exelon shall maintain at all times during the Term a web site or page specifically designed to provide the public with access to the information contemplated by Section 2.5(g)(4) (the "Web Portal").

(i) Record Keeping. All records and information resulting from the monitoring, sampling, record keeping, inspection, and reporting activities required by this Agreement, the Incorporated License Articles or any Plan shall be retained during the Term, plus 5 years. For any measurements or sampling taken to satisfy the requirements of this Agreement, the Incorporated License Articles or any Plan, Exelon shall record (a) the exact place, date, and time of sampling or measurement; (b) the person(s) who performed the sampling or measurement; (c) the dates and times the analyses were performed; (d) the person(s) who performed the analyses;

(e) the analytical techniques or methods used; and (f) the results of all required analyses. The sampling and analytical methods used to shall conform to procedures for the analysis of pollutants as identified in 40 CFR Part 136 - "Guidelines Establishing Test Procedures for the Analysis of Pollutants" unless otherwise specified by MDE in writing.

(j) **Notices of Violations.** For any violations of the provisions, requirements, or conditions of the Incorporated License Articles or any Plan, Exelon shall (a) provide contemporaneously to MDE a copy of the notice of violations that Exelon is obligated to provide to FERC pursuant to Section 31(c) of the Federal Power Act, 16 U.S.C. § 823(b); Rule 1503 of the FERC Rules of Practice, 18 C.F.R. § 1503(a)(2); and the 1988 Settlement Agreement to report flow deviations that was approved by FERC and is incorporated into the Project's license; and (b) within five (5) days after the first occurrence of this violation, Exelon shall provide MDE with the following information in writing: (i) a description of the violation, including the date, time, location, and estimated discharge volume (if applicable), and impact on receiving water; (ii) the cause of the violation, to the extent known; (iii) the anticipated time the cause of the violation is expected to continue, or, if the condition has been corrected, the duration of the period of the violation; (iv) steps taken by Exelon to eliminate or correct the violation; (v) steps planned or implemented by Exelon to prevent the recurrence of the violation; and (vi) a description of Exelon's accelerated or additional monitoring to determine the nature of any impact or harm caused by the violation.

2.6 Adaptive Management. (a) MDE may seek to modify the New License to achieve compliance with any applicable effluent limitation, other limitations, or water quality standards or requirements issued or approved under Sections 301, 302, 303, 306, and 307 of the CWA or applicable State Law if the limitation, standard, or requirement so issued or approved contains different conditions or is otherwise more stringent than any requirements of the Incorporated License Articles. This includes:

(1) additional requirements or conditions are necessary to address adverse or potentially adverse Project effects on water quality or designated or achieved uses that did not exist or were not reasonably apparent on the Settlement Date;

(2) there is a change in the Project or its operations that was not contemplated by MDE on the Settlement Date that might adversely affect water quality or designated or achieved uses; or

(3) MDE obtains any information providing a sound, science-based rationale for modifying any Plans or any requirements or conditions in the Incorporated License Articles, including information pertaining to climate change.

(b) Notwithstanding Section 2.6(a), MDE will not petition FERC to modify the Incorporated License Articles to:

(1) modify the Flow Regime, except pursuant to Section 3.6;

(2) impose fish passage measures that are additive to, or different from, the requirements of the Fish Passage Prescription;

(3) impose additional nutrient or sediment-related measures or nutrient or sediment funding requirements associated with nutrients or sediment originating from sources outside the Project; or

(4) impose any additional requirements related to PCBs or chlorophyll-a associated with pollution originating from sources outside of the Project.

(c) Exelon expressly reserves the right to object, on any available grounds, to any action by MDE seeking to modify the New License.

2.7 Inflation Adjustment for Recurring Payments. The base payments required by Sections 2.2(a)(4), 2.3(a)(3), 2.3(b), and 2.4(a)(2), and the reimbursement of oversight costs required by Section 2.5(f), shall be adjusted annually for inflation on each anniversary of the Settlement Date, beginning on the fifth (5th) anniversary of the Payment Operative Date, based on the cumulative change in CPI.

3. RESOLUTION OF CONTESTED MATTERS

3.1 Proposed License Articles and FERC Offer of Settlement. The Parties agree that the Proposed License Articles set forth in Attachment A (the “Proposed License Articles”) shall be submitted by the Parties to FERC as an offer of settlement of terms and conditions to be incorporated by FERC into the New License in accordance with FERC’s discretionary authority under the Federal Power Act, which shall be consistent with this Agreement and in form and substance satisfactory to the Parties (the “Offer of Settlement”).

3.2 FERC’s Action on Offer of Settlement.

(a) Effect of Approval by FERC of Proposed License Articles and Incorporation into New License. If FERC approves the Offer of Settlement and incorporates the Proposed License Articles into the New License without modification, the Effective Date shall be the Payment Operative Date, and the Parties agree as follows:

(1) Waiver of Certification. As set forth in the Offer of Settlement, the State of Maryland shall waive its rights to issue a CWA Section 401 certification in connection with the New License (the “Conditional Waiver”).

(2) FERC Declaratory Action. As set forth in the Offer of Settlement, the FERC Declaratory Action shall be deemed to have been withdrawn by Exelon.

(3) Administrative Proceedings. The Parties acknowledge and agree that, in light of the Conditional Waiver, the Exelon Administrative Proceeding, and all other pending administrative challenges to the Certification are moot.

(4) State Lawsuit and State Appeal. Within ten (10) Business Days after the Payment Operative Date, Exelon agrees to take, and cause its counsel to take, all actions necessary to cause the State Appeal to be dismissed, including filing with the Maryland Court of Special Appeals a Notice of Dismissal of the State Appeal pursuant to Maryland Rule 8-601 in the form attached hereto as Attachment B. Exelon further agrees that, so long as there is not a

successful Challenge to the Conditional Waiver, Exelon fully, forever, irrevocably, and unconditionally releases, waives and discharges the State of Maryland, including MDE and all other governmental units of the State of Maryland, from any and all claims, demands, and causes of action of every kind, nature and description, whether currently known or unknown, relating to the Certification that were or could have been raised in the State Lawsuit or State Appeal. If, as a result of a Challenge to the Conditional Waiver, the Certification were to be imposed on the Project in whole or in part, Exelon reserves its rights to challenge the Certification, including to assert any and all claims, demands, and causes of action of every kind, nature and description, whether currently known or unknown, relating to the Certification that were or could have been raised in the State Lawsuit or State Appeal.

(5) Federal Lawsuit. Within ten (10) Business Days after the Payment Operative Date, Exelon agrees to take, and cause its counsel to take, all actions necessary to cause the Federal Lawsuit to be dismissed, including filing with the United States District Court for the District of Columbia a Stipulation of Dismissal pursuant to Federal Rule of Civil Procedure 41(a)(1)(A)(ii) in the form attached hereto as Attachment C. Exelon further agrees that, so long as there is not a successful Challenge to the Conditional Waiver, Exelon fully, forever, irrevocably, and unconditionally releases, waives and discharges the State of Maryland, including MDE and all other governmental units of the State of Maryland, from any and all claims, demands, and causes of action of every kind, nature and description, whether currently known or unknown, relating to the Certification that were or could have been raised in the Federal Lawsuit. If, as a result of a Challenge to the Conditional Waiver, the Certification were to be imposed on the Project in whole or in part, Exelon reserves its rights to challenge the Certification, including to assert any and all claims, demands, and causes of action of every kind, nature and description, whether currently known or unknown, relating to the Certification that were or could have been raised in the Federal Lawsuit.

(6) Acknowledgement of Payment Operative Date. Upon the occurrence of the Payment Operative Date, the Parties shall execute an acknowledgement in the form attached hereto as Attachment E.

(b) *Effect of FERC Failure to Approve the Proposed License Articles in Full.* If FERC fails to approve the Offer of Settlement and incorporate all of the Proposed License Articles into the New License without modification, the Parties agree as follows:

(1) FERC Allows Response Before Issuing New License. If, in rendering its decision on the Offer of Settlement, FERC allows the Parties to respond before FERC issues the New License, then the Parties shall negotiate in good faith in an attempt to amend this Agreement as may be necessary to, as closely as reasonably practicable, implement the original intent of the Parties with respect to the subject matter of the portion of the Proposed License Articles that FERC failed to approve or modified (a “Curative Amendment”). If the Parties execute a Curative Amendment, then (A) the Parties shall advise FERC that they will accept FERC’s decision on the Offer of Settlement, the Conditional Waiver shall be effective, and the FERC Declaratory Action shall be deemed to have been withdrawn by Exelon, (B) the effective date of the Curative Amendment shall be the Payment Operative Date, and (C) the Parties shall take the actions described in Sections 3.2(a)(4)-(6). If the Parties are unable to agree on a Curative Amendment, the Parties shall proceed in accordance with Section 3.2(b)(2).

(2) FERC Issues New License Before Allowing Response. If, in rendering its decision on the Offer of Settlement, FERC issues the New License without allowing the Parties to respond, the Parties shall proceed as follows:

(A) The Parties shall negotiate in good faith in an attempt to reach agreement, on or before the 15th day before the deadline to seek rehearing of FERC's order issuing the New License (the "Initial Negotiation Deadline"), to execute a Curative Amendment and/or jointly seek rehearing of FERC's order issuing the New License.

(i) If, on or before the Initial Negotiation Deadline, the Parties execute a Curative Amendment, the effective date of the Curative Amendment shall be the Payment Operative Date and the Parties shall take the actions described in Sections 3.2(a)(4)-(6).

(ii) If, on or before the Initial Negotiation Deadline, the Parties agree to jointly seek rehearing of FERC's order issuing the New License, then the Parties shall file such joint petition for rehearing. If the joint petition for rehearing is successful and all of the Proposed License Articles are incorporated into the New License without modification, the date on which FERC issues its decision on the petition for rehearing shall be the Payment Operative Date, and the Parties shall take the actions described in Sections 3.2(a)(4)-(6). If the petition for rehearing is not successful, the Parties may further attempt to reach agreement on a Curative Amendment, but, failing to reach such agreement, the rights and obligations of the Parties shall be as set forth in Section 3.2(b)(2)(B).

(B) If the Parties are unable to agree on or before the Initial Negotiation Deadline to either execute a Curative Amendment, and/or jointly seek rehearing of FERC's order issuing the New License, then the rights and obligations of the Parties shall be as follows:

(i) Either Party may unilaterally seek rehearing of FERC's order issuing the New License.

(ii) The Parties shall continue to negotiate in good faith, for a period of up to an additional 75 days after the Initial Negotiation Deadline (the "Extended Negotiation Period"), in an attempt to reach agreement on a Curative Amendment. If the Parties are able to reach agreement on a Curative Amendment within the Extended Negotiation Period, the effective date of the Curative Amendment shall be the Payment Operative Date and the Parties shall take the actions described in Sections 3.2(a)(4)-(6).

(iii) If the Parties are not able to reach agreement on a Curative Amendment within the Extended Negotiation Period, then for thirty (30) days after the end of the Extended Negotiation (1) MDE shall have the right to terminate this Agreement by delivering written notice of termination to Exelon; and (2) if FERC finds that the State of Maryland did not waive its rights to issue a CWA Section 401 certification and incorporates the Certification into the New License, Exelon shall have the right to terminate this Agreement by delivering written notice of termination to MDE. If this Agreement is not terminated in accordance with the preceding sentence, the Parties agree not to further challenge the terms and conditions of the New

License, the thirty-first (31st) day after the end of the Extended Negotiation Period shall be the Payment Operative Date, and the Parties shall take the actions described in Sections 3.2(a)(4)-(6).

3.3 Public Information Act Requests. Exelon hereby withdraws, and shall cause its counsel to withdraw, all outstanding requests made to MDE, DNR, the Maryland Energy Administration, and the Maryland Environmental Service pursuant to the Maryland Public Information Act, (“PIA”), Md. Code Ann., Gen. Prov. §4-101 et seq., relating to the Project or the Conowingo Sediment Characterization and Innovative Reuse and Beneficial Reuse Pilot Project (collectively, the “PIA Requests”). Exelon fully, forever, irrevocably, and unconditionally releases, waives, and discharges the State of Maryland, including MDE, DNR, the Maryland Energy Administration, the Maryland Environmental Service, and all other governmental units of the State of Maryland from any and all claims, demands, and causes of action, whether currently known or unknown, which Exelon may now have, or hereafter discover, arising from the PIA Requests. Exelon has no present intention or need to refile the PIA Requests or make any other future PIA requests, but Exelon preserves its rights to make any such requests under the PIA.

3.4 SRBC Proceeding. Within five (5) Business Days after the Settlement Date, MDE shall submit written support to SRBC for SRBC’s Approval in connection with SRBC docket number 2016-031, in substantially the form attached hereto as Attachment F. MDE shall not oppose, appeal, or otherwise challenge the issuance of such Approval by SRBC.

3.5 Fish Passage Prescription. Exelon hereby waives, and agrees not to assert, all rights pursuant to Section 1.10 of that certain Settlement Agreement effective as of April 21, 2016 by and between Exelon and the United States Department of the Interior Fish and Wildlife Service (the “DOI Settlement Agreement”) to unilaterally withdraw from the DOI Settlement Agreement on the basis that any provision of this Agreement or the Proposed License Articles is additive to or inconsistent with any term of the DOI Settlement Agreement.

3.6 SRBC, Conowingo WIP, Chesapeake Bay TMDL, and Similar Proceedings.

(a) Collateral Proceedings. As part of this Settlement Agreement and throughout its Term, MDE agrees that it shall not seek to impose upon Exelon, as part of (1) any SRBC proceeding, the Conowingo Watershed Implementation Plan (or “Conowingo WIP”), the Chesapeake Bay TMDL or any proceedings related thereto including proceedings of the Chesapeake Bay Program partnership (each, a “Collateral Proceeding”), or (2) any NPDES permit for the Dam, any State Discharge Permit for the Dam, any modification of the New License throughout its Term, any new CWA Section 401 water quality certification issued in connection with a federal permit requirement for any construction related to the FERC Relicensing Proceeding, or any similar proceedings: (i) flow requirements different from the Flow Regime as set forth in the Proposed License Articles, unless there is a change to the flow requirements at Holtwood or Safe Harbor that would permit the achievement of greater minimum flows at the Dam than the minimum flows set forth in the Flow Regime, and then only as subject to the limitations set forth in the following paragraph; (ii) fish passage measures that are additive to, or different from, the requirements of the Fish Passage Prescription; (iii) any additional nutrient or sediment-related measures or nutrient or sediment funding requirements associated with nutrients or sediment originating from sources outside the Project; (iv) any additional requirements related to PCBs or chlorophyll-a associated with pollution originating from sources outside of the Project;

or (v) any additional requirements related to removal of trash or debris originating from upstream sources than as set forth in the Proposed License Articles. MDE will represent in any Collateral Proceedings that Exelon's compliance with this Agreement and the New License satisfy Exelon's obligations under applicable water quality standards with respect to the matters described in clauses (i) through (v) of the preceding sentence.

(b) Flow Modification Proposals. Within ninety (90) days after publication of the final FERC license or any license amendment for Holtwood or Safe Harbor indicating that the flow requirements at Holtwood or Safe Harbor have changed or will change, Exelon shall deliver a notice (a "Flow Modification Proposal") to MDE stating (1) whether or not the changed flow requirements at Holtwood or Safe Harbor would permit the achievement of greater minimum flows at the Dam than the minimum flows set forth in the Flow Regime, and if not, why not; (2) the greatest increase in minimum flows at the Dam that can be achieved without causing a Detrimental Economic Impact (defined below) (the "Improved Minimum Flows"); and (3) reasonable explanations for Exelon's conclusions, including calculations of the Unmodified Present Value (defined below) and the Modified Present Value (defined below). The Flow Modification Proposal shall be based upon publicly available energy price forecasts and discount rates, and Exelon shall provide sufficient supporting documentation to explain the Flow Modification Proposal.

(c) Improved Minimum Flows. Within ninety (90) days after receiving a Flow Modification Proposal, MDE shall notify Exelon that it either accepts or objects to the Flow Modification Proposal. If MDE objects to the Flow Modification Proposal, the dispute shall be resolved in accordance with Section 8.6. Before the Improved Minimum Flows, either as set forth in a Flow Modification Proposal accepted by MDE, or as determined through dispute resolution in accordance with Section 8.6, are incorporated into the New License, they must be submitted to and approved by FERC.

(d) Detrimental Economic Impact. A "Detrimental Economic Impact" shall be deemed to exist if the Modified Present Value is less than the Unmodified Present Value. "Unmodified Present Value" means a good faith projection, based on publicly available energy price forecasts and discount rates, of the pre-tax present value of combined energy revenues that Conowingo and Muddy Run would expect to receive through the remainder of the Term of the New License (excluding any annual extensions) if no modification was made to the Flow Regime and the minimum flows at Holtwood are the same as on the Settlement Date. "Modified Present Value" means, with respect to any proposed change in the minimum flows in the Flow Regime, a good faith projection, based on publicly available energy price forecasts and discount rates, of the pre-tax present value of combined energy revenues that Conowingo and Muddy Run would expect to receive through the remainder of the Term of the New License (excluding any annual extensions), if such change to the minimum flows in the Flow Regime was made based on the new minimum flow regime at Holtwood.

3.7 No Admission of Liability

(a) By MDE. This Agreement is not and shall not be construed as an admission by MDE of the truth of any allegation or the validity of any claim or defense asserted by Exelon in the Contested Matters, or of any liability with respect to any of the Contested Matters.

(b) **By Exelon.** This Agreement is not and shall not be construed as an admission by Exelon of the truth of any allegation or the validity of any claim or defense asserted by MDE in the Contested Matters, or of any liability with respect to any of the Contested Matters.

(c) **Non-Admissibility as Evidence.** None of the terms of this Agreement may be offered or received in evidence or in any way referred to in any civil, criminal, or administrative action, other than proceedings that may be necessary to consummate or enforce this Agreement.

4. DEFENSE; SEVERABILITY

4.1 Duty to Cooperate. If any Person brings any action (a “Challenge”) to seek reconsideration of, appeal, seek a contested case hearing regarding, set aside, invalidate, void, or otherwise challenge this Agreement or the Conditional Waiver, in whole or in part, MDE shall defend against such Challenge, and Exelon shall provide reasonable cooperation, at Exelon’s expense, with MDE and MDE’s counsel in the defense of such Challenge, which cooperation may include furnishing records, information, and testimony and attending conferences and proceedings. Exelon shall not take any position adverse to MDE in any Challenge.

4.2 Adverse Determinations; Severability. If any term of this Agreement is found to be invalid, illegal, or incapable of being enforced, or is modified by a court of competent jurisdiction, in whole or in part, (i) such original term shall be excluded from this Agreement to the extent of such invalidity, illegality, unenforceability, or modification; (ii) all other terms of this Agreement shall remain in full force and effect; and (iii) the Parties shall negotiate in good faith to promptly amend this Agreement as may be necessary to, as closely as reasonably practicable, implement the original intent of the Parties with respect to the subject matter of any such term.

5. ENFORCEMENT

5.1 Enforcement. This Agreement is a contract enforceable in a judicial forum pursuant to applicable federal and state Law.

6. OTHER COVENANTS

6.1 Reservation of Rights by the Parties. Apart from what MDE has agreed as part of this Agreement, nothing in this Agreement shall otherwise be construed to limit the authority of MDE to issue any order or to take any action it deems necessary to protect public health or the environment, or to limit any authority MDE now has or may hereafter be delegated, or to limit the right of Exelon to object to any such order or action issued or taken by MDE.

6.2 Agreement Not a Permit. This Agreement is not a permit and by itself does not authorize any activity.

6.3 Waiver of Appraisal of Real Property. Exelon fully, forever, irrevocably, and unconditionally waives any and all rights it may have under applicable Law, including the Real Property Acquisition Policies Act of 1970, 42 U.S.C. §4651 et seq. and Title 12, Subtitle 2 of the Real Property Article of the Annotated Code of Maryland, to have the value of the Hatchery Site and/or the Rights-of-Way determined by an appraisal. Exelon acknowledges and agrees that the

foregoing waiver, the conveyance or lease of the Hatchery Site pursuant to Section 2.2(b), and the grant of the Rights-of-Way pursuant to Section 2.2(b) are each voluntary on Exelon's part, are not the result any threat of condemnation made by the State of Maryland, and are the result of negotiations in which Exelon was represented by attorneys of its choosing and was fully informed of its rights.

7. REPRESENTATIONS AND WARRANTIES

7.1 Representations and Warranties of Exelon. Exelon is a limited liability company, duly organized, validly existing and in good standing under the laws of each of the Commonwealth of Pennsylvania. Exelon has (a) all necessary limited liability company power and authority to execute, deliver and perform its obligations under this Agreement; and (b) taken or caused to be taken all necessary organizational action to authorize the execution and delivery of this Agreement and the performance of its obligations under this Agreement. No Approval of any Person is required for the execution and delivery of this Agreement by Exelon, or the performance by Exelon of its obligations under this Agreement. This Agreement constitutes a legal, valid and binding obligation of Exelon, enforceable against Exelon in accordance with its terms. Exelon has provided to MDE true and complete copies of all agreements in effect as of September 1, 2019 between Exelon or any of its Affiliates and the Chester Water Authority, the York Energy Center, or Old Dominion Electric Cooperative. The tariffs and other requirements of the PJM Interconnection Regional Transmission Organization in effect as of September 1, 2019 are available on the PJM website.

7.2 Representations and Warranties of MDE. No Approval of any Person is required for the execution and delivery of this Agreement on behalf of MDE, the State of Maryland, and all other executive branch governmental units of the State of Maryland. This Agreement constitutes a legal, valid and binding obligation of MDE and the State of Maryland, enforceable against MDE and the State of Maryland in accordance with its terms.

8. GENERAL PROVISIONS

8.1 Term. This Agreement shall be effective on the Settlement Date and shall continue in effectiveness through the expiration of the New License or the end of FERC's jurisdiction over the Project, whichever is earlier, or if any annual licenses are issued by FERC thereafter, until the expiration of the last such annual license (the "Term").

8.2 Entire Agreement; Joint Drafting; Amendments; Waivers.

(a) *Entire Agreement; Joint Drafting.* This is the entire agreement of the Parties with respect to the subject matter hereof, and supersedes all prior and contemporaneous agreements, arrangements, understandings, negotiations, communications, and promises regarding such subject matter, whether written or oral. This Agreement has been jointly drafted by the Parties and shall not be construed against either Party on account that it was the drafter hereof.

(b) *Amendments; Waivers.* This Agreement may be amended or modified only by a written agreement executed and delivered by duly authorized representatives of the Parties. Except as otherwise provided in this Agreement, any failure of any Party to comply with any

obligation, covenant, agreement or condition herein may be waived by Exelon or MDE, as applicable, only by a written instrument signed by Exelon or MDE, as applicable, granting such waiver, but such waiver or failure to insist upon strict compliance with such obligations, covenant, agreement or condition shall not operate as a waiver of, or estoppel with respect to, any subsequent or other failure, or operate as a waiver of any rights or privileges hereunder, except to the extent expressly waived in such written instrument.

8.3 Assignment; Binding Effect; Third Party Beneficiaries

(a) **Assignment and Transfers.** Under applicable law, Exelon may not transfer the New License to another entity without obtaining approval from FERC, which must find that the transferee is financially able to fulfill the obligations of Exelon. To the extent Exelon seeks to assign or delegate this Agreement in connection with a transfer of the New License, Exelon agrees that the obligations of this Agreement must be considered in determining whether the transferee is financially able to fulfill the obligations of Exelon. Exelon shall not assign or delegate this Agreement, or any rights or obligations hereunder, without providing MDE, at least fifteen (15) days prior to the consummation of the proposed transfer, an agreement in form and substance reasonably satisfactory to MDE evidencing the transferee's agreement to be bound by this Agreement.

(b) **Binding Effect; No Third Party Beneficiaries, Generally.** This Agreement shall be binding upon and inure to the benefit of each Party and its successors and permitted assigns and, except as provided in Section 8.3(c), nothing in this Agreement, express or implied, is intended to or shall confer upon any other Person any rights, benefits or remedies of any nature whatsoever under or by reason of this Agreement. Nothing in this Agreement, nor any act of performance by the Parties, shall collaterally estop MDE in any other proceeding with any Person other than Exelon.

(c) **Express Third Party Beneficiaries.** Notwithstanding anything herein to the contrary, the Parties agree that the United States is an express third party beneficiary of Section 3.5, with the full power and authority to enforce Section 3.5 as if it were a party hereto with the same rights hereunder as MDE.

8.4 Notices. All notices, requests, demands and other communications under this Agreement shall be in writing and if delivered in hand shall be deemed to have been duly given when delivered personally, if sent by United States certified mail, return receipt requested, with postage prepaid, shall be deemed duly given on delivery by United States Postal Service, or if sent by overnight courier services with a mandatory request for a delivery receipt shall be deemed duly given on the Business Day of delivery if delivered prior to 5:00 p.m. local time or on the following Business Day if delivered after 5:00 p.m. local time or on a non-Business Day, addressed to the respective Parties as follows:

To Exelon:

General Counsel
Exelon Corporation
10 S. Dearborn St., 54th Floor
Chicago, IL 60603

To MDE:

Secretary of the Environment
Maryland Department of the Environment
1800 Washington Boulevard
Baltimore, Maryland 21230

With a copy (which shall not
constitute notice) to:

Office of the Attorney General
Maryland Department of the Environment
1800 Washington Boulevard, Suite 6048
Baltimore, Maryland 21230
Attn: Principal Counsel

or to such other address as the Party to whom notice is given previously may have furnished to the other in writing in the manner set forth above.

8.5 Governing Law. This Agreement is governed by, and shall be interpreted, construed and enforced in accordance with, the laws of the State of Maryland without regard to conflicts of laws principles.

8.6 Dispute Resolution

(a) ***Negotiations.*** If any dispute arises out of or relates to this Agreement (a “Dispute”), before submitting the dispute to judicial dispute resolution, the Parties shall undertake the procedures in this Section 8.6(a). Either Party (the “Claimant”) may invoke this Section 8.6(a) by sending a written notice of dispute (a “Dispute Notice”) to the other Party (the “Respondent”) in accordance with Section 8.4, which Dispute Notice shall (1) contain the words “NOTICE OF DISPUTE UNDER CONOWINGO DAM WATER QUALITY SETTLEMENT AGREEMENT” in the subject line thereof; (2) state, in reasonable detail, the Claimant’s position with respect to the Dispute; and (3) state the Claimant’s proposed resolution of the Dispute. Within thirty (30) days after the Dispute Notice is deemed given in accordance with Section 8.4, representatives of the Parties having authority to resolve the Dispute alleged in the Dispute Notice shall meet in-person at least once for the purpose of engaging in good faith negotiations to resolve such Dispute.

(b) ***Jurisdiction and Venue.*** Any Dispute that cannot be resolved by the Parties pursuant to Section 8.6(a) shall be heard and determined exclusively in either the Circuit Court for Baltimore City, Maryland or the United States District Court for the District of Maryland (Baltimore Division). The Parties submit to, and waive any defense or objection to, the jurisdiction and venue of such courts in any such dispute.

(c) ***JURY TRIAL WAIVER.*** EACH PARTY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY LAW, ANY RIGHT TO HAVE A TRIAL BY JURY IN ANY PROCEEDING DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS AGREEMENT.


8.7 Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. Signatures to this Agreement may be transmitted by facsimile or by PDF e-mail attachment.

* * *


The remainder of this page is left blank intentionally. Signatures follow.

IN WITNESS WHEREOF, the Parties have executed this Conowingo Dam Water Quality Settlement Agreement as of the Settlement Date.

**STATE OF MARYLAND,
DEPARTMENT OF THE ENVIRONMENT**

By: 
Name: BEN GRUMBLES
Title: SECRETARY
Date: OCTOBER 29, 2019

Approved as to form and legal sufficiency this
29 day of October, 2019.


Jonathan E.C. May
Assistant Attorney General

EXELON GENERATION COMPANY, LLC

By: _____
Name: _____
Title: _____
Date: _____

IN WITNESS WHEREOF, the Parties have executed this Conowingo Dam Water Quality Settlement Agreement as of the Settlement Date.

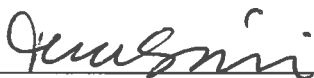
**STATE OF MARYLAND,
DEPARTMENT OF THE ENVIRONMENT**

By: _____
Name: _____
Title: _____
Date: _____

Approved as to form and legal sufficiency this
____ day of _____, 2019.

Assistant Attorney General

EXELON GENERATION COMPANY, LLC

By: 
Name: Thomas O'Neill
Title: SVP & General Counsel / Secretary
Date: October 29, 2019

ATTACHMENT A

ATTACHMENT A

PROPOSED LICENSE ARTICLES

ARTICLE XX. OPERATIONAL FLOW REGIME

(a) The licensee shall operate the Project in accordance with the following operational flow regime until the third (3rd) anniversary of the effective date of the new license.

Date	Minimum Flow
September 15 - March 31	3,500 cfs or natural inflow, whichever is less
April 1-30	10,000 cfs or natural inflow, whichever is less
May 1- June 15	7,500 cfs or natural inflow, whichever is less
June 16 - September 14	5,000 cfs or natural inflow, whichever is less

(b) Licensee shall operate the Project in accordance with the following operational flow regime beginning on the third (3rd) anniversary of the effective date of the new license:

Date	Minimum Flow	Down Ramping Rate	Upramping Rate	Maximum Flow
January 1-31	4,000 cfs or natural inflow, whichever is less	Up to 12,000 cfs/hour if Conowingo Discharge is less than 30,000 cfs	None	None
February 1-28	4,000 cfs or natural inflow, whichever is less	Up to 12,000 cfs/hour if Conowingo Discharge is less than 30,000 cfs	None	None
March 1-15	13,100 cfs or natural inflow, whichever is less	Up to 12,000 cfs/hour if Conowingo Discharge is less than 30,000 cfs	Up to 40,000 cfs/hour	None
March 16-31	18,200 cfs or natural inflow, whichever is less	Up to 12,000 cfs/hour if Conowingo Discharge is less than 30,000 cfs	Up to 40,000 cfs/hour	None
April 1-30	18,200 cfs or natural inflow, whichever is less	Up to 12,000 cfs/hour if Conowingo Discharge is less than 30,000 cfs	Up to 40,000 cfs/hour	None
May 1-31	18,200 cfs or natural inflow, whichever is less	Up to 12,000 cfs/hour if Conowingo Discharge is less than 30,000 cfs	Up to 40,000 cfs/hour	75,000 cfs
June 1-15	10,000 cfs or natural inflow, whichever is less	Up to 12,000 cfs/hour if Conowingo Discharge is less than 30,000 cfs	Up to 40,000 cfs/hour	75,000 cfs
June 16-30	7,500 cfs or natural inflow, whichever is less	Up to 12,000 cfs/hour if Conowingo Discharge is less than 30,000 cfs	Up to 40,000 cfs/hour	75,000 cfs

July 1-31	5,500 cfs or natural inflow, whichever is less	Up to 12,000 cfs/hour if Conowingo Discharge is less than 30,000 cfs	Up to 40,000 cfs/hour	79,000 cfs
August 1-31	4,000 cfs or natural inflow, whichever is less	Up to 12,000 cfs/hour if Conowingo Discharge is less than 30,000 cfs	Up to 40,000 cfs/hour	79,000 cfs
September 1-30	4,000 cfs or natural inflow, whichever is less	Up to 12,000 cfs/hour if Conowingo Discharge is less than 30,000 cfs	Up to 40,000 cfs/hour	79,000 cfs
October 1-31	4,000 cfs or natural inflow, whichever is less	Up to 12,000 cfs/hour if Conowingo Discharge is less than 30,000 cfs	Up to 40,000 cfs/hour	None
November 1-30	4,000 cfs or natural inflow, whichever is less	Up to 12,000 cfs/hour if Conowingo Discharge is less than 30,000 cfs	None	None
December 1-31	4,000 cfs or natural inflow, whichever is less	Up to 12,000 cfs/hour if Conowingo Discharge is less than 30,000 cfs	None	None

- (c) Natural inflow will be measured at the Marietta U.S. Geological Survey gage (No. 01576000). If, upon issuance by FERC of a new license for the Holtwood Hydroelectric Project (Project No. 1881), there is a provision for reported hourly-flow releases at the Holtwood Hydroelectric Project such that the licensee can readily identify inflow conditions, the minimum flows at the Conowingo Dam shall be based on the minimum flows prescribed above or inflow as measured at Holtwood, whichever is less.
- (d) Maximum flow restrictions shall only apply when the flow measured at the Marietta U.S. Geological Survey gage (No. 01576000) is less than 86,000 cfs.
- (e) If compliance with the prescribed flows would cause licensee or any of its affiliates to violate or breach any law, any applicable license, permit, approval, consent, exemption or authorization from a federal, state, or local governmental authority, including the Nuclear Regulatory Commission license for the Peach Bottom Atomic Power Station, the FERC license for the Muddy Run Project (FERC Project No. 2355), any agreement with the City of Baltimore or other governmental entity, or any tariff or other requirement of the PJM Interconnection Regional Transmission Organization or their assigns, licensee may deviate from the prescribed flows to the least degree necessary in order to avoid such violation or breach.
- (f) If compliance with the prescribed flows would cause licensee or any of its affiliates to violate any agreement in effect as of September 1, 2019 with the Chester Water Authority, Old Dominion Electric Cooperative, or the York Energy Center, licensee may deviate from the prescribed flows to the least degree necessary in order to avoid such violation or breach.
- (g) If compliance with the prescribed flows would cause or exacerbate flooding or a similar public safety hazard, licensee may deviate from the prescribed flows to the least degree necessary in order to avoid such flooding or public safety hazard.

- (h) Within one week of any authorized or unauthorized deviation from the prescribed flows, licensee shall file with FERC a written report detailing the events that necessitated the deviation, describing the actual flows provided during the deviation period, the duration of the deviation period, and any observed adverse impacts to aquatic life (*e.g.*, fish kills, additional observed delays in migratory fish reaching the fishlifts, etc.).
- (i) Not including the authorized deviations in sections (e), (f), and (g) of this license article, licensee shall have the flexibility to deviate from the upramping, downramping and maximum flow restrictions according to the following limits during each month:
- January, February: eight (8) total permitted hours of deviation/month
 - March, April, May, and that portion of June during which the EFL is in operation: no deviations allowed
 - June after East Fish Lift operation has ceased: eight (8) total permitted hours of deviation/month of which no more than fifty (50) percent will be allocated to downramping and upramping
 - July, August: twenty-six (26) total permitted hours of deviation/month of which no more than fifty (50) percent will be allocated to downramping and upramping
 - September: thirty-two (32) total permitted hours of deviation/month of which no more than fifty (50) percent will be allocated to downramping and upramping
 - October: fourteen (14) total permitted hours of deviation/month
 - November, December: eight (8) total permitted hours of deviation/month

When licensee deviates from the downramping or upramping restrictions of the operational flow regime, the amount of time applied against the limits set forth above shall be two (2) hours per event, regardless of the actual amount of time it takes licensee to complete the actual downramping or upramping event. Licensee shall maintain complete and accurate records of all permitted deviations that occur pursuant to this section and shall report such deviations to FERC.

ARTICLE XX. FISH PASSAGE

- (a) Licensee shall implement and comply with all provisions of the United States Department of the Interior's Modified Prescription for Fishways issued pursuant to Section 18 of the Federal Power Act for the Project, dated June 8, 2016.
- (b) The Licensee shall modify the East Fish Lift to achieve the greatest possible balance of increased attraction flow (up to 900 cfs) and internal hydraulic performance. The Maryland Department of the Environment and the U.S. Fish and Wildlife Service will be

consulted in the design process and will have approval authority over the final design. The schedule for completion of these physical improvements will be developed in consultation with the Maryland Department of the Environment and the U.S. Fish and Wildlife Service and submitted, within sixty (60) days of FERC issuance of the new license, to the Maryland Department of the Environment, the U.S. Fish and Wildlife Service and FERC for their approval. The licensee shall complete these physical improvements within 18 months of the later of (i) MDE, USFWS, and FERC approval of such schedule; and (ii) the issuance of all applicable permits.

- (c) Licensee shall index through visual observations, for every lift of each fish lift hopper, the “fullness” of the hopper. Licensee shall consult with the Maryland Department of the Environment regarding the process for such visual observations and indexing.

ARTICLE XX. EEL PASSAGE

- (a) Licensee shall construct, operate, and maintain eel fishways at the Conowingo Dam to pass upstream migrating American eels that arrive at the Conowingo Dam in a safe, timely, and efficient manner, and the Conowingo Dam shall also be operated to provide safe, timely, and effective downstream passage of American eels.
- (b) Within thirty (30) days of the issuance of the new license, the licensee shall submit to the Maryland Department of the Environment, the Pennsylvania Department of Environmental Protection, the Pennsylvania Fish and Boat Commission, the Susquehanna River Basin Commission, the U.S. Fish and Wildlife Service, and the Maryland Department of Natural Resources an “Eel Passage and Restoration Plan.” The Eel Passage and Restoration Plan shall include (i) detailed plans for modifications to the East Fish Lift to specifically accommodate a temporary eel trapping facility at a location within the East Fish Lift stilling basin in the vicinity of the foot of the spillway (“EFL Eel Temporary Modifications”); (ii) details regarding the annual operation and maintenance of all current and proposed eel fishways; and (iii) proposed attraction flow speed and volume, slopes of the ramps, matting, and methods to reduce predation. In the event that the Maryland Department of the Environment, in consultation with the Pennsylvania Department of Environmental Protection, the Pennsylvania Fish and Boat Commission, the Susquehanna River Basin Commission, U.S. Fish and Wildlife Service, or the Maryland Department of Natural Resources, determines that additional information, revisions, modifications, or amendments are necessary to the Eel Passage and Restoration Plan, then within 60 days of receipt of written notice, Exelon shall submit such information, revisions or amendments to the agencies listed above. After consultation with the agencies is completed, the licensee shall submit the Eel Passage and Restoration Plan to FERC for approval. Upon FERC approval the Eel Passage and Restoration Plan becomes a requirement of the license, and the licensee shall implement the Eel Passage and Restoration Plan.
- (c) Licensee shall implement the EFL Eel Temporary Modifications within twelve (12) months of completion of construction of the improvements to the EFL required by Section 12.6.1 of the United States Department of the Interior’s Modified Prescription for

Fishways issued pursuant to Section 18 of the Federal Power Act for the Project, dated June 8, 2016 or such additional time as may be: (i) mutually agreed by the Maryland Department of the Environment and U.S. Fish and Wildlife Service; and (ii) approved by FERC.

- (d) If the number of American eels attempting to migrate within the East Fish Lift exceeds the maximum capacity of American eels per unit of ramp area, licensee shall redesign and construct the EFL Eel Temporary Modifications to reduce crowding. Licensee shall also ensure the collection tank has continuous temperature, dissolved oxygen, and water flow exchange monitoring devices. Upon observation, licensee shall remove, enumerate and report dead American eels. The collection tank shall be designed and operated to hold American eels at densities not exceeding 10 elvers per liter unless otherwise agreed by licensee, the Maryland Department of the Environment, and the U.S. Fish and Wildlife Service. If deemed necessary by the Maryland Department of the Environment, the U.S. Fish and Wildlife Service, or FERC, licensee will provide aeration to the collection tanks. Licensee shall provide daily reports on collection activities to the Maryland Department of the Environment, the Maryland Department of Natural Resources, and any other resource agency designated by FERC.
- (e) Licensee shall operate all current and proposed eel fishways on the west side of the Conowingo Dam from May 1 to when fall mean daily River temperature below the Conowingo Dam is ten (10) degrees Celsius or less for three (3) consecutive days.
- (f) Licensee shall operate all current and proposed eel fishways on the east side of the Conowingo Dam from the date that is ten (10) days after East Fish Lift American shad operations cease until the date when fall mean daily River temperature below the Dam is ten (10) degrees Celsius or less for three (3) consecutive days.
- (g) The eel fishways shall be operated twenty-four (24) hours per day, seven (7) days per week regardless of whether the eel fishways are operated as a trap or a volitional fishway. Water temperatures shall be monitored by licensee hourly at Station 643 located approximately 0.6 miles downstream of Conowingo Dam unless licensee and the Maryland Department of the Environment agree upon, and FERC approves, some other location.
- (h) Upon implementation of the EFL Eel Temporary Modifications and thereafter as necessary, licensee shall consult at least yearly by February 1 with the Maryland Department of the Environment and the U.S. Fish and Wildlife Service concerning: (i) modifications and adjustments to the temporary passage facility to improve its operation and efficiency; and (ii) the previous year's data.
- (i) If, after ten years of operation, the East Fish Lift, as modified by the EFL Eel Temporary Modifications, has a ten (10) year average annual catch greater than or equal to fifty (50) percent of the comparable ten (10) year average catch of eels at the West Eel Fishway, the licensee shall design, install, and operate a permanent eel trapping facility at this location in accordance with a schedule agreed upon by the Maryland Department of the

Environment and the U.S. Fish and Wildlife Service and approved by FERC. The average shall be determined based on comparable dates of operation, as the EFL Eel Temporary Modifications will operate a shorter period of time than the eel trapping facility at the West Fish Lift. Licensee is required to maintain and operate the eel trapping facility at the West Fish Lift for the term of the new license but is not required to maintain and operate more than two permanent eel traps (this includes the eel trapping facility at the West Lift and either an eel trapping facility at the location of the EFL temporary modifications or Octoraro Creek (or comparable facility required under the Muddy Run License)) at any time and, in no case, shall any temporary or permanent eel ramps be required to be constructed in the Conowingo Dam spillway area.

- (j) Licensee shall not make any modifications, undertake any construction, or make any changes to the operation of any eel fishway without the agreement of the Maryland Department of the Environment and the U.S. Fish and Wildlife Service and obtaining approval from FERC.
- (k) Licensee shall maintain through 2035 the upstream American eel passage trap and transport program required by Section 12.6.1 of the U.S. Department of the Interior's Modified Fish Passage Prescription for Fishways issued pursuant to Section 18 of the Federal Power Act for the Project, dated June 8, 2016.
- (l) If the upstream American eel trap and transport and periodic evaluation program continues beyond 2035, licensee shall continue to provide access to the Maryland Department of the Environment and the U.S. Fish and Wildlife Service to the Conowingo eel collection facilities for as long as the program continues.
- (m) Licensee shall submit a plan to the Maryland Department of the Environment, the Pennsylvania Department of Environmental Protection, the Maryland Department of Natural Resources, the Susquehanna River Basin Commission, and the Pennsylvania Fish and Boat Commission by February 1 of each year identifying proposed stocking locations for collected eels. Licensee shall incorporate any comments received by these agencies into its stocking plan, including any comments regarding the stocking locations for collected eels, and shall implement such plan.
- (n) Licensee's transport of juvenile American eels upstream shall occur as necessary based on the capacity of holding tank(s) at the licensee's eel fishways. The holding tank(s) shall have continuous temperature, dissolved oxygen, and flow water exchange monitoring devices with alarms that sound in a daily staffed location if levels of any parameter are outside of established limits. All American eels shall be moved within one week of capture. American eels from the holding tank(s) shall be transferred to a transport vehicle equipped with insulated transport container(s) that shall be covered and aerated. The transport vehicle(s) shall be designed and operated to the extent possible to hold American eels at densities not exceeding 10 juvenile Eels per liter. Eels shall be trucked to appropriate release locations on the same day of removal from holding. Upon observation, dead Eels shall be removed, enumerated, and reported.

ARTICLE XX. INVASIVE SPECIES MITIGATION

- (a) Commencing ninety (90) days after the effective date of the new license, licensee shall notify the Maryland Department of Natural Resources and the U.S. Fish and Wildlife Service if an aquatic invasive species is: (i) collected in the West Fish Lift; (ii) collected in the East Fish Lift; or (iii) passed from the East Fish Lift into the Conowingo Reservoir.
- (b) During operation of the East Fish Lift, licensee shall view the hopper dumping into the fish exit trough. If an aquatic invasive species is viewed in the hopper or chute, licensee shall close the gate at the viewing window immediately, and institute a draw-down to remove the aquatic invasive species from the trough before releasing the remaining fish into the Conowingo Reservoir. Licensee shall also remove any aquatic invasive species that are observed while conducting tagging operations in the East Fish Lift trough.
- (c) Licensee shall remove any invasive species that are collected during the operation of the West Fish Lift.
- (d) For all aquatic invasive species collected at the Project, the licensee shall kill or dispatch the aquatic invasive species and place it in a freezer for disposal by the Maryland Department of Natural Resources or the U.S. Fish and Wildlife Service. If freezer space for storage of aquatic invasive species becomes limited, licensee shall notify the Maryland Department of Natural Resources and the Maryland Department of the Environment. If freezer space for storage of aquatic invasive species is not limited, licensee shall send the frozen aquatic invasive species to the Van Dyke Hatchery at the end of the fish passage season and notify the Maryland Department of Natural Resources and the Maryland Department of the Environment as to the number and type of frozen aquatic invasive species sent to the Van Dyke Hatchery.
- (e) If an aquatic invasive species is captured and removed or passed in a fish lift, licensee shall notify the Maryland Department of Natural Resources and the U.S. Fish and Wildlife Service within twenty-four (24) hours. Notification shall include: (i) species name and number observed/collected; (ii) disposition of the aquatic invasive species observed/collected; (iii) approximate size of aquatic invasive species observed/collected; (iv) date and time of passage; and (v) estimated flow through the Conowingo Dam at time of passage.

ARTICLE XX. DISSOLVED OXYGEN

- (a) No later than one hundred eighty (180) days after the effective date of the new license, licensee shall submit a plan to the Maryland Department of Natural Resources addressing the monitoring and reporting of any fish kills exceeding fifty (50) fish in the Conowingo Reservoir and/or the Conowingo Tailrace (the "Fish Kill Monitoring Plan"). The Fish Kill Monitoring Plan shall include data collection procedures, analysis methods, and reporting commitments. After consultation with the Maryland Department of Natural Resources, licensee shall submit the Fish Kill Monitoring Plan to FERC for approval. Upon FERC approval the Fish Kill Monitoring Plan becomes a requirement of the license, and the licensee shall implement the Fish Kill Monitoring Plan.

ARTICLE XX. TRASH AND DEBRIS

- (a) Licensee shall employ clamming, one or more skimmer barges, or any other equally or more effective measure of its choosing to remove as much floating and water surface trash and debris that accumulates in the Reservoir behind the Conowingo Dam as is reasonably practicable, but in any event no less than fifty (50) loads nor more than four hundred fifty (450) loads of trash and debris per year, where a “load” consists of the maximum volume of trash and debris that can be safely transported in a standard twenty (20) yard dumpster. Licensee shall monitor and record the duration of the clamming/trash and debris removal events (number of hours), and the amount of debris and trash removed and subsequently disposed of during each clamming/trash and debris removal event (in cubic yards). Licensee shall submit these data to the Maryland Department of the Environment each year by November 30.
- (b) In response to any complaint from a marina operator, or public boat ramp “monitor” such as the Maryland Department of Natural Resources, relating to accumulated trash and debris at licensee’s facilities interfering with recreational uses in the Conowingo Reservoir, licensee shall timely respond by removing, to the extent reasonably practicable and safe, any accumulated trash and debris that is interfering with recreational uses during the recreational season between Memorial Day and Labor Day and properly disposing of removed materials. Licensee shall maintain, for review by the Maryland Department of the Environment, records of complaints filed (name, date, time, location, nature of the trash and/or debris issue and amount) and corrective actions taken (date, time, description of action, and, amount of trash and/or debris removed).
- (c) Licensee shall sponsor at least two annual community-based cleanups of the Conowingo Reservoir, tributaries upstream of the Project that feed the Conowingo Reservoir, and the Susquehanna River and tributaries downstream of the Project. Licensee shall advertise each event, provide all needed supplies, and be responsible for the disposal of collected materials.
- (d) After any storm event which results in trash and debris blocking water supply intakes in the Susquehanna River downstream of the Conowingo Dam, licensee shall ensure that the trash and debris blocking downstream water supply intakes is removed as soon as it is safe to enter the water.

ARTICLE XX. SHORELINE MANAGEMENT PLAN

- (a) Licensee shall comply with the Shoreline Management Plan as approved by FERC. Prior to submitting an amendment to the Shoreline Management Plan to FERC, licensee shall submit to the Maryland Department of the Environment for review and comment all proposed modifications, including an assessment of the impacts of deleted, revised, or new measures on water quality.
- (b) Prior to submitting an application to FERC for a non-Project use of Project land, licensee shall: (i) prepare, or require the third-party requesting the non-Project use of Project land to prepare, a written assessment of the impacts on water quality of the proposed use; (ii)

provide this assessment to the Maryland Department of the Environment for review to determine whether the proposed use is consistent with Maryland water quality standards, including designated and achieved uses; and (iii) consult with the Maryland Department of the Environment regarding the proposed use.

- (c) Prior to making any modifications to shoreline vegetation for viewshed maintenance and development and recreation access within the Project boundary, licensee shall: (i) prepare a written assessment of the impacts on water quality of the proposed modifications; (ii) provide this assessment to the Maryland Department of the Environment for a determination regarding whether the proposed modifications are consistent with Maryland water quality standards, including designated and achieved uses; and (iii) not undertake any such modifications until the Maryland Department of the Environment notifies the licensee in writing that it has no objections to the proposed modifications.
- (d) Licensee shall consult with the Maryland Department of the Environment regarding any proposed modification of an existing use of Project lands in cases where such use may affect any sensitive aquatic resource identified by licensee in the “sensitive resources overlays” included in licensee’s Shoreline Management Plan.

ARTICLE XX. TURTLE MANAGEMENT PLANS

- (a) Licensee shall, no later than the first anniversary of the effective date of the new license, submit to the Maryland Department of the Environment for its review a plan for the protection and enhancement of the bog turtle population associated with Project lands (the “Bog Turtle Plan”). The Bog Turtle Plan shall provide for (a) the restriction of mowing in the wetlands within the Project boundaries that are documented to support bog turtles; (b) invasive plant and woody plant control, particularly red maples and reed canary grass, in the areas around the wetlands within the Project boundaries that are documented to support bog turtles; (c) limits on public access to the wetlands within the Project boundaries that are documented to support bog turtles without advertising the reason; and (d) an assessment of the impacts, if any, of the specific measures planned to be implemented on Maryland water quality standards, including designated and achieved uses. After consultation with the Maryland Department of the Environment, the licensee shall submit the Bog Turtle Plan to FERC for approval. Upon FERC approval the Bog Turtle Plan becomes a requirement of the license, and the licensee shall implement the Bog Turtle Plan.
- (b) Licensee shall, no later than the first anniversary of the effective date of the new license, submit to the Maryland Department of the Environment for its review a plan for the protection and enhancement of the northern map turtle population associated with Project lands (the “Map Turtle Plan”). The Map Turtle Plan shall provide for (a) annual monitoring of the northern map turtle population at the Project for 10 years, followed by population monitoring every 5 years; (b) a study to determine the amount of artificial basking habitat needed over the normal range of generation flows to support current and future populations of northern map turtles within the Conowingo Reservoir and all areas of the Susquehanna River downstream of the Conowingo Dam affected by generation flows; (c) a study to determine the proper locations for deployment of artificial basking platforms; (d) nest management and protection measures; (e) annual monitoring of the use and success of both

the mitigation and protection measures; (f) an assessment of the northern map turtle's response to changes in operating practices at the Project that are required by the new license; and (g) methods of altering or amending protection and mitigation measures as a result of the monitoring, in consultation with the Maryland Department of the Environment. After consultation with the Maryland Department of the Environment, the licensee shall submit the Map Turtle Plan to FERC for approval. Upon FERC approval the Map Turtle Plan becomes a requirement of the license, and the licensee shall implement the Map Turtle Plan

ARTICLE XX. WATERFOWL NESTING PROTECTION PLAN

Licensee shall, no later than the first anniversary of the effective date of the new license, submit to the Maryland Department of the Environment for its review a waterfowl nesting protection plan (the "Waterfowl Plan"). The Waterfowl Plan shall: (i) identify specific Project-related effects on nesting waterfowl, such as flooding during the nesting season; (ii) identify which species of nesting waterfowl (including the black-crowned night heron) are affected by the Project, if any; (iii) if Project-related effects are identified, describe appropriate protection or mitigation measures; and (iv) provide an assessment of the impacts of such protection and mitigation measures on water quality. After consultation with the Maryland Department of the Environment, the licensee shall submit the Waterfowl Plan to FERC for approval. Upon FERC approval the Waterfowl Plan becomes a requirement of the license, and the licensee shall implement the Waterfowl Plan.

ARTICLE XX. MONITORING STREAM FLOWS IN THE TAILRACE

No later than the first anniversary of the effective date of the new license, licensee shall perform and submit to the Maryland Department of the Environment a study regarding the feasibility of redesigning, installing, and maintaining best available real-time flow telemetry at the stream gage in the Project tailrace (USGS Station Gage #01578310). If such study concludes that it is feasible, licensee shall, no later than one hundred eighty (180) days after submission of such feasibility study, submit to the Maryland Department of the Environment for its review a plan for the redesign, installation, and maintenance of best available real-time flow telemetry at the stream gage in the Tailrace (USGS Station Gage #01578310) (the "Tailrace Gage Plan"). The Tailrace Gage Plan shall provide for the licensee to submit monitoring results from the Tailrace Gage to the Maryland Department of the Environment no less than annually, by December 31 of each year, which results shall be included in the Minimum Stream Flow Operation Plan annual report. After consultation with the Maryland Department of the Environment regarding the Tailrace Gage Plan, licensee shall submit the Tailrace Gage Plan to FERC for approval. Upon FERC approval the Tailrace Gage Plan becomes a requirement of the license, and the licensee shall implement the Tailrace Gage Plan.

ARTICLE XX. STURGEON PROTECTION

No later than January 31 of each year, the licensee shall report to the Maryland Department of the Environment and the Maryland Department of Natural Resources the number of

Atlantic and shortnose sturgeon observed by the licensee and its contractors at the Conowingo Dam during the preceding calendar year.

ATTACHMENT B

ATTACHMENT B

FORM OF NOTICE OF DISMISSAL

IN THE COURT OF SPECIAL APPEALS OF MARYLAND

EXELON GENERATION
COMPANY, LLC,

*

Appellant,

*

v.

*

No. 2908, September Term 2018

MARYLAND DEPARTMENT OF *
THE ENVIRONMENT,

*

Appellee.

*

* * * * *

NOTICE OF DISMISSAL

Appellant Exelon Generation Company, LLC, pursuant to Maryland Rule 8-601, hereby dismisses the above-captioned appeal.

Respectfully submitted,

David W. DeBruin
Jenner & Block LLP
1099 New York Avenue, N.W.
Washington, D.C. 20001
Telephone: (202) 639-6000
E-mail: ddebruin@jenner.com

*Counsel to Exelon Generation
Company, LLC*

ATTACHMENT C

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

EXELON GENERATION COMPANY, LLC,)
)
Plaintiff,)
)
v.)
) Civil Action No. 1:18-cv-01224-RMC
BENJAMIN H. GRUMBLES, *et al.*,)
)
Defendants.)

**STIPULATION OF DISMISSAL PURSUANT TO
FEDERAL RULE OF CIVIL PROCEDURE 41(a)(1)(A)(ii)**

Plaintiff Exelon Generation Company, LLC and Defendants Benjamin H. Grumbles and D. Lee Curry, through undersigned counsel, hereby stipulate to dismiss this action pursuant to Federal Rule of Civil Procedure 41(a)(1)(A)(ii).

Respectfully submitted,

By: /s/ David W. DeBruin

By: /s/ Jonathan E.C. May

David W. DeBruin
Sam Hirsch
JENNER & BLOCK LLP
1099 New York Ave., NW
Washington, DC 20001
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ddebruin@jenner.com
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Counsel for Plaintiff

Brian E. Frosh
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scott.strauss@spiegelmc.com
peter.hopkins@spiegelmc.com

Counsel for Defendants

ATTACHMENT D

ATTACHMENT D

FORM OF PROPERTY ACCESS AGREEMENT

THIS PROPERTY ACCESS AGREEMENT (this “Agreement”) is made of as of _____, 2019 (the “Effective Date”) by and between the STATE OF MARYLAND, DEPARTMENT OF THE ENVIRONMENT (“MDE”) and EXELON GENERATION COMPANY, LLC, a Pennsylvania limited liability company (“Exelon” and, together with MDE and all other Grantees who join this Agreement pursuant to Section 1 below, the “Parties”).

WHEREAS, prior to the execution of this Agreement, MDE and Exelon executed and delivered that certain Conowingo Dam Water Quality Settlement Agreement, dated October 29, 2019 (the “Settlement Agreement”), and this Agreement is the “Access Agreement” contemplated by the Settlement Agreement;

WHEREAS, MDE desires to secure for itself, other governmental units of the State of Maryland, and their respective contractors the right to enter upon and use certain lands and waters of Exelon located in and around Conowingo Pond in Harford and Cecil Counties, Maryland, as more particularly outlined in red on the plan attached hereto as Exhibit A (the “Premises”),¹ for the Permitted Uses (defined below); and

WHEREAS, Exelon is willing to grant access to the Premises on the terms and conditions set forth herein.

NOW, THEREFORE, in consideration of the foregoing recitals (which are incorporated into and made a part of this Agreement) and other good and valuable consideration, the receipt and sufficiency of which are acknowledged, the Parties agree as follows:

1. Joinders and Acknowledgements. From time to time during the Term, other governmental units of the State of Maryland may join this Agreement, with MDE’s consent, by executing a joinder agreement in the form attached hereto as Exhibit B (a “Joinder”). All governmental units of the State of Maryland that execute such joinder agreements and MDE are interchangeably and collectively referred to herein as “Grantees”. All bidders, contractors, and subcontractors of Grantees requiring access to the Premises to perform work on behalf of Grantees (“Contractors”) shall execute an acknowledgement in the form attached hereto as Exhibit C (an “Acknowledgement”) prior to using the Premises. To be effective, executed Joinders and Acknowledgements shall be delivered to Exelon pursuant to Section 12 hereof, but need not be countersigned by Exelon. The obligations of the Grantees hereunder are several, not joint, and no Grantee shall be responsible for the obligations or liabilities of any other Grantee.

2. Permission and Use. Exelon hereby gives each Grantee and each Contractor conditional permission to enter upon and use the Premises for the purposes of (i) implementing mussel restoration projects; (ii) performing scientific and technical research and studies, including

¹ “Premises” should exclude Hatchery Site and Rights-of-Way contemplated by the Settlement Agreement.

the collection of samples; and (iii) verifying Exelon's compliance with the Settlement Agreement and the Incorporated License Articles (as defined in the Settlement Agreement) (the "Permitted Uses"). In addition, Grantees and Contractors may use the roads highlighted on Exhibit A to access the Premises.

3. Use of the Premises. All Grantees and Contractors shall comply with all reasonable and applicable procedures of Exelon related to use of the Premises, provided that Exelon has given the Grantees written notice of such procedures in advance. The Grantees shall cause their respective Contractors to take all commercially reasonable measures and exercise commercially reasonable effort to prevent damage to Exelon's property. In the event a Contractor damages the Premises or Exelon's facilities, the applicable Grantee shall instruct said Contractor to restore said Premises or facilities to the same or as similar a condition as reasonably possible. Use of the Premises by Grantee and Contractors shall not interfere with Exelon's full use, operation, and maintenance of the Premises for its corporate purposes. Grantees shall not permit the Premises, or any part thereof, to be used except as herein specifically provided. In the event of an emergency, Grantees shall cease, and shall cause their Contractors to cease, activities on the Premises immediately after notice from Exelon until Exelon notifies the Grantees that the emergency is over.

4. Exelon's Facilities; Waiver and Release. Grantees understand and acknowledge that the business of Exelon involves the construction, maintenance, operation, and use of structures, fixtures, and facilities with appurtenances, now or which may hereafter be erected or installed on, over, under, across, and along the Premises and property adjacent thereto which are used or useful in connection with the generation, conversion, transmission, or distribution of electricity, gas, and communications services, including without limitation a 35kV above-ground and submerged transmission line. Grantees and Contractors shall not touch, handle, tamper with, or contact, directly or indirectly, any of the structures, fixtures, or facilities of Exelon. Each Grantee and Contractor hereby releases and waives any and all claims against Exelon for injury or damages occurring upon the Premises or arising out of this Agreement, other than those caused by the negligent or willful acts of Exelon.

5. Indemnification of Exelon. (a) Subject to subsection (b) of this Section, and to the extent permitted by and in accordance with the Maryland Tort Claims Act, each Grantee agrees to indemnify and hold harmless Exelon from and against all claims, actions, damages, liability, loss, costs and expenses, including reasonable attorneys' fees ("Losses"), as a result of or arising out of:

- (i) loss of life or personal injury caused by or arising during the term of this Agreement from any Grantee's use of the Premises, provided such Losses arise from the acts or omissions of Grantee or its employees; and
- (ii) any damage to facilities of Exelon caused by any Grantee or Contractor.

(b) No obligation of any Grantee to pay any amount to Exelon under subsection (a) of this Section shall arise until money has been appropriated to that Grantee for that purpose and remains unspent.

(c) Notwithstanding anything herein to the contrary, nothing herein constitutes a waiver of any governmental immunity which may exist in any Action against a Grantee.

(d) This Section 5 shall survive any termination or expiration of this Agreement.

6. Insurance. (a) Grantees shall be covered through the State of Maryland's self-insurance program.

(b) Each Grantee agrees to cause its Contractor(s) to carry and maintain, in each case with an insurance company or companies reasonably acceptable to Exelon:

- (i) commercial general liability insurance (with coverage consistent with ISO Form CG 0001 (12/04)) providing bodily injury, property damage and personal/advertising injury coverage (including, but not limited to, coverage for claims against Exelon for injuries to Contractor employees) with limits of not less than Four Million Dollars (\$4,000,000) per occurrence, and shall include blanket contractual liability coverage for Contractor's obligations under this Agreement;
- (ii) pollution liability insurance allowing Exelon to make a claim for coverage in its own right, having coverage applicable to bodily injury, property damage (including loss of use of damaged property that has not been physically injured or destroyed), investigation and cleanup costs, natural resource damage, defense costs, including costs and expenses incurred in investigation, expert witnesses, defense and settlement of all claims, with a limit of not less than Five Million Dollars (\$5,000,000) per occurrence (such pollution policy shall include coverage for pollution conditions caused or exacerbated on the Premises or off-Premises, or during transport, as a result of activities performed under this Agreement); and
- (iii) automobile pollution liability coverage at least as broad as that provided under ISO pollution liability (broadened coverage for covered auto endorsement (CA 99 42) shall be provided, and the Motor Carrier Act Endorsement (MCS 90) shall be attached.

(b) Each Contractor shall name Exelon and its officers, agents and employees as additional insureds.

(c) Each Contractor shall furnish to Exelon, upon Exelon's request, a certificate evidencing the policies of insurance held by such Contractor to meet the requirements of this Section 6.

(d) Exelon agrees to consider and, where appropriate, reduce the amounts of insurance required by this section based upon a particular Contractor's scope of work.

7. Compliance With Laws; Permits. (a) Each Grantee shall undertake, and shall require its Contractors to undertake, all activities on the Premises in accordance with all applicable laws, statutes, regulations, rules, administrative orders, and judicial orders ("Laws").

(b) As between Exelon, on one hand, and Grantees and Contractors, on the other hand, Grantees and Contractors shall be responsible for obtaining all licenses, permits, approvals, consents, exemptions and authorizations ("Approvals") needed from any federal, state or local government, political subdivision thereof, or any department, agency, authority, unit or other entity thereof ("Government Entities"); provided, however, that Exelon shall cooperate with Grantees and Contractors in all reasonable respects in connection with obtaining such Approvals, including by applying for such Approvals if necessary under applicable Laws.

8. Liens. If any lien is filed against the Premises by any Contractor for work done on the Premises, the Grantee engaging such Contractor for such work shall cause the same to be discharged or satisfied within a reasonable time after receiving notice of same. Each Grantee shall indemnify and hold harmless Exelon against all costs and expenses (including reasonable attorneys' fees) arising out of liens filed against the Premises by such Grantee's Contractors, provided that money has been appropriated to that Grantee for that purpose and remains unspent.

9. Term and Termination. This Agreement, and Grantees' access to the Premises, shall terminate as of the ninetieth (90th) day after the termination of the Settlement Agreement (the "Termination Date"). No later than the Termination Date, each Grantee shall remove all property belonging to it or its Contractors from the Premises, and restore the Premises in at least as good a condition as at the time of execution of this Agreement. If any Grantee fails to restore and vacate the Premises and/or fails to remove its or its Contractors' property from the Premises by the Termination Date, (a) title to any property of such Grantee or its Contractors remaining on the Premises may, at Exelon's option, automatically be and become vested in Exelon without any further action on the part of Exelon, and Exelon shall have the right to remove and dispose of such property as Exelon deems appropriate; and (b) Exelon may restore the affected Premises to their condition at the time of execution of this Agreement at the sole cost and expense of such Grantee, which cost and expense such Grantee shall pay to Exelon no later than thirty (30) days after written demand to do so from Exelon.

10. Waiver of Appraisal of Real Property. Exelon fully, forever, irrevocably, and unconditionally waives any and all rights it may have under applicable Law, including the Real Property Acquisition Policies Act of 1970, 42 U.S.C. §4651 et seq. and Title 12, Subtitle 2 of the Real Property Article of the Annotated Code of Maryland, to have the value of the Premises determined by an appraisal. Exelon acknowledges and agrees that the foregoing waiver and the grant of access to the Premises pursuant to this Agreement are each voluntary on Exelon's part,

are not the result any threat of condemnation made by the State of Maryland, and are the result of negotiations in which Exelon was represented by attorneys of its choosing and was fully informed of its rights.

11. Hazardous Materials. No Grantee shall cause or permit, as a result of any act or omission on the part of such Grantee, the release, placement, or presence on the Premises of any hazardous substance, flammable or other forms of explosives, radioactive materials, hazardous wastes or toxic substances, asbestos or any material containing asbestos, or any other substance or material defined as a hazardous substance by any Law now existing or hereafter enacted (“Hazardous Materials”). If a Grantee receives notice from any governmental authority regarding Hazardous Materials on, from, or affecting the Premises, such Grantee shall immediately notify Exelon.

12. Notices. All notices, requests, demands and other communications under this Agreement shall be in writing and if delivered in hand shall be deemed to have been duly given when delivered personally, if sent by United States certified mail, return receipt requested, with postage prepaid, shall be deemed duly given on delivery by United States Postal Service, or if sent by overnight courier services with a mandatory request for a delivery receipt shall be deemed duly given on the Business Day of delivery if delivered prior to 5:00 p.m. local time or on the following Business Day if delivered after 5:00 p.m. local time or on a non-Business Day, addressed to the respective Parties as follows:

<i>To Exelon:</i>	Exelon Generation Company, LLC General Counsel 10 S. Dearborn St., 54th Floor Chicago, IL 60603
<i>To MDE:</i>	Secretary of the Environment Maryland Department of the Environment 1800 Washington Boulevard Baltimore, Maryland 21230
<i>With a copy (which shall not constitute notice) to:</i>	Office of the Attorney General Maryland Department of the Environment 1800 Washington Boulevard, Suite 6048 Baltimore, Maryland 21230 Attn: Principal Counsel
<i>To any other Grantee:</i>	As set forth in such Grantee’s Joinder.

13. Miscellaneous. (a) *Entire Agreement; Joint Drafting.* This is the entire agreement of the Parties with respect to the subject matter hereof, and supersedes all prior and contemporaneous agreements, arrangements, understandings, negotiations, communications, and promises regarding such subject matter, whether written or oral. This Agreement has been jointly drafted by the Parties and shall not be construed against either Party on account that it was the drafter hereof.

(b) *Amendments; Waivers.* This Agreement may be amended or modified only by a written agreement executed and delivered by duly authorized representatives of Exelon and MDE. Except as otherwise provided in this Agreement, any failure of any Party to comply with any obligation, covenant, agreement or condition herein may be waived by Exelon or MDE, as applicable, only by a written instrument signed by Exelon or MDE, as applicable, granting such waiver, but such waiver or failure to insist upon strict compliance with such obligations, covenant, agreement or condition shall not operate as a waiver of, or estoppel with respect to, any subsequent or other failure, or operate as a waiver of any rights or privileges hereunder, except to the extent expressly waived in such written instrument.

(c) *Assignment; Binding Effect; No 3rd Party Beneficiaries.* No Grantee may assign this Agreement without the prior written consent of the Grantor, except to another governmental unit of the State of Maryland, with written notice thereof to Exelon. This Agreement shall be binding upon and inure to the benefit of each Party and its successors and permitted assigns. Nothing in this Agreement, express or implied, is intended to or shall confer upon any other Person any rights, benefits or remedies of any nature whatsoever under or by reason of this Agreement. Exelon acknowledges and agrees that while conducting activities at the Property, the Grantees are acting pursuant to their respective statutory and regulatory authority on behalf of the public at large, including the protection of public health and safety and the natural resources of the State, and that no Grantee acts for the specific benefit of any particular group, person, or property, including, but not limited to, Exelon and the Premises.

(d) *Negation of Relationships.* Nothing contained in this Agreement shall be construed to create, either expressly or by implication, any relationship of agency, partnership, or joint venture between Exelon and any Grantee. Neither Exelon nor any Grantee is authorized to act on behalf of the other in any manner, and neither shall be liable for acts, errors, or omissions of the other entered into, committed or performed with respect to or in the performance of this Agreement.

(e) *Governing Law.* This Agreement is governed by, and shall be interpreted, construed and enforced in accordance with, the laws of the State of Maryland without regard to conflicts of laws principles.

(f) *Jurisdiction; Venue; Jury Trial Waiver.* Any Dispute that cannot be resolved by the Parties amicably shall be heard and determined exclusively in either the Circuit Court for Baltimore City, Maryland or the United States District Court for the District of Maryland (Baltimore Division). The Parties submit to, and waive any defense or objection to, the jurisdiction and venue of such courts in any such dispute. EACH PARTY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY LAW, ANY RIGHT TO HAVE A TRIAL BY JURY IN ANY PROCEEDING DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS AGREEMENT.

(g) *Counterparts.* This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same

instrument. Signatures to this Agreement may be transmitted by facsimile or by PDF e-mail attachment.

* * *

The remainder of this page is left blank intentionally. Signatures follow.

IN WITNESS WHEREOF, the Parties have executed this Property Access Agreement as of the Effective Date.

**STATE OF MARYLAND,
DEPARTMENT OF THE ENVIRONMENT**

By: _____
Name: _____
Title: _____
Date: _____

Approved as to form and legal sufficiency this
____ day of _____, 2019.

Assistant Attorney General

EXELON GENERATION COMPANY, LLC

By: _____
Name: _____
Title: _____
Date: _____

EXHIBIT A
TO PROPERTY ACCESS AGREEMENT

PREMISES

[To be inserted]

EXHIBIT B
TO PROPERTY ACCESS AGREEMENT

JOINDER AGREEMENT TO PROPERTY ACCESS AGREEMENT

THIS JOINDER AGREEMENT TO PROPERTY ACCESS AGREEMENT (this “Joinder”) is made as of _____, 20__ by _____ (“Grantee”). Reference is made to that certain Property Access Agreement (the “Agreement”), effective October 29, 2019, by and between State of Maryland, Department of the Environment and Exelon Generation Company, LLC, a Pennsylvania limited liability company (“Exelon”). Grantee desires to become a party to the Agreement for the purpose of securing the right to enter upon and use certain lands of Exelon, on the terms and conditions set forth in the Agreement.

NOW, THEREFORE, in consideration of the foregoing recitals (which are incorporated into and made a part of this Agreement) and other good and valuable consideration, the receipt and sufficiency of which are acknowledged, Grantee agrees as follows:

1. By executing this Joinder, Grantee becomes a party to the Agreement, with all the rights and obligations of a “Grantee” thereunder. Grantee (a) represents and warrants that it has received and reviewed a copy of the Agreement (together with all amendments thereto, if any); and (b) understands and agrees to be bound by the terms and conditions of the Agreement.

2. For purposes of Section 12 of the Agreement, Grantee’s contact information for notices is as follows:

Attn: _____

With a copy (which shall not constitute notice) to:
Office of the Attorney General

Attn: _____

3. Grantee acknowledges and agrees that amendments to the Agreement may be executed by the State of Maryland, Department of the Environment (“MDE”) on behalf of all Grantees, and Grantee hereby appoints MDE as its agent for the limited purpose of executing such amendments.

IN WITNESS WHEREOF, Grantee has executed this Joinder as of the date first set forth above.

Approved as to form and legal sufficiency this
___ day of _____, 20__.

Assistant Attorney General

[_____]

By: _____
Name: _____
Title: _____
Date: _____

EXHIBIT C
TO PROPERTY ACCESS AGREEMENT

CONTRACTOR / BIDDER ACKNOWLEDGEMENT

Pursuant to that certain Property Access Agreement (the "Agreement"), effective October 29, 2019, by and between Exelon Generation Company, LLC ("Exelon"), State of Maryland, Department of the Environment, and the other governmental units of the State of Maryland that become parties thereto from time to time, the undersigned person or entity (the "Access Party") desires to enter Exelon's Premises (as defined in the Agreement) for the purpose of performing, or bidding to perform, work for [*insert name of governmental unit*] ("Grantee") or a contractor of Grantee. In consideration of being granted access to the Premises pursuant to the Agreement:

1. Access Party represents and warrants that (i) it has received and reviewed a copy of the Agreement (together with all amendments thereto, if any), which is incorporated herein by reference; and (ii) it has the insurance coverages required by Section 6 of the Agreement. Access Party understands and agrees to be bound by the terms and conditions of the Agreement, and agrees to be responsible for its employees, agents and contractors compliance with the terms and conditions of the Agreement.

2. Access Party agrees that it shall (i) only enter those portions of the Premises designed by Grantee; (ii) cause as little disturbance as possible to the Premises and other persons using the Premises; (iii) ensure that any watercraft it uses at the Premises are in good condition and do not discharge oil or other pollutants into water; and (iv) launch watercraft only at a marina, public landing, or other launch point designated by Grantee with Exelon's consent.

3. Access Party agrees to indemnify and hold harmless Grantee, Exelon, and their respective successors, assigns, owners, officers, directors, employees and agents from and against all claims, causes of action, suits, demands, charges, arbitrations, and investigations, whether civil, criminal or administrative ("Actions"), that are asserted against, and all losses, liabilities, damages, judgments, penalties, interest, costs and expenses (including, without limitation, reasonable attorneys' fees) ("Losses") that are incurred by Grantee or Exelon as a result of or arising out of (a) any release of hazardous substances caused by or arising during the term of this Agreement from Access Party's use of the Premises, provided such Actions and/or Losses arise from the acts or omissions of Access Party or its employees or contractors; or (b) any damage to facilities of Exelon caused by Access Party or its employees or contractors. This Section 3 shall survive any termination or expiration of the Agreement.

IN WITNESS WHEREOF, Grantee has executed this Acknowledgement as of the date set forth below.

[_____]

By: _____
Name: _____
Title: _____
Date: _____

ATTACHMENT E

ATTACHMENT E

FORM OF ACKNOWLEDGEMENT OF PAYMENT OPERATIVE DATE

ACKNOWLEDGEMENT

Reference is made to that certain Conowingo Dam Water Quality Settlement Agreement (the “Agreement”), dated October 29, 2019, by and between State of Maryland, Department of the Environmental (“MDE”), and Exelon Generation Company, LLC, a Pennsylvania limited liability company (“Exelon”). MDE and Exelon hereby acknowledge and agree that the Payment Operative Date (as defined in the Agreement) occurred on *[insert date]*.

IN WITNESS WHEREOF, the Parties have executed this Acknowledgement as of the Payment Operative Date.

**STATE OF MARYLAND,
DEPARTMENT OF THE ENVIRONMENT**

By: _____
Name: _____
Title: _____
Date: _____

EXELON GENERATION COMPANY, LLC

By: _____
Name: _____
Title: _____
Date: _____

ATTACHMENT F

October 29, 2019

Andrew D. Dehoff, P.E.
Executive Director
Susquehanna River Basin Commission
4423 North Front Street
Harrisburg, PA 17110

**RE: Conowingo Hydroelectric Project
SRBC Docket 2016-031**

Dear Mr. Dehoff:

Exelon Generation Company, LLC (Exelon) and the Maryland Department of the Environment (MDE) have entered into a settlement agreement (Settlement Agreement) resolving all issues between MDE and Exelon regarding the relicensing of the Conowingo Hydroelectric Project (Conowingo). Exelon and MDE have jointly filed an “Offer of Settlement” with the Federal Energy Regulatory Commission (FERC) requesting that FERC incorporate, without modification or expansion, mutually agreed-upon draft license articles into Conowingo’s new license.¹

Pursuant to the Settlement Agreement, Exelon will undertake or fund substantial protection, mitigation, and enhancement (PM&E) measures that will improve conditions in the Susquehanna River basin. In particular, the Settlement Agreement requires Exelon to increase minimum flows and imposes restrictions on up-ramping, down-ramping and maximum flow during the spring migratory season.

MDE understands that Exelon intends to file an application with the Susquehanna River Basin Commission (SRBC) in Docket 2016-031 on or before [within 60 days of Water Quality Settlement Agreement date], which should reflect the water quality measures set forth in the Settlement Agreement, as well as the American eel, American shad, and herring measures set forth in the settlement agreement executed between Exelon and the United States Department of the Interior in April 2016.

When considering Exelon’s application, MDE requests that SRBC accept the flow regime set forth in the Settlement Agreement. MDE encourages SRBC to expeditiously act on Exelon’s application in Docket 2016-031, taking into account the substantial PM&E measures to which Exelon has already committed. By doing so, SRBC will enable Exelon to move forward and work with regional resource agencies to rapidly implement measures that will significantly enhance the Susquehanna River basin and the Chesapeake Bay.

¹ The Offer of Settlement, including the draft license articles, were provided to the SRBC by electronic mail on October 29, 2019.

Sincerely,

[MDE Signature Block]

Cc: [Commissioners]