TESTIMONY OF KATHLEEN BARRÓN OF EXELON CORPORATION

BEFORE THE ENVIRONMENT AND TRANSPORTATION COMMITTEE OF THE MARYLAND HOUSE OF DELEGATES

ANNAPOLIS, MARYLAND

SENATE BILL 540 – OPPOSED

FEBRUARY 22, 2021

Chairman Pinsky, Vice Chair Kagan, and Members of the Committee: As Exelon Corporation's Senior Vice President of Governmental and Regulatory Affairs and Public Policy, I want to thank you for the opportunity to submit written testimony about Senate Bill 540, the Conowingo Hydroelectric Project, and the historic settlement agreement that the Project's owner and operator, Exelon Generation Company LLC, executed in October 2019 with the Maryland Department of the Environment. MDE's and Exelon's October 2019 agreement, which settled substantial disputes under Section 401 of the federal Clean Water Act that would have remained in litigation for years with no benefits to the Bay, will both protect the long-term health of the Chesapeake Bay and preserve Maryland's largest source of clean, renewable energy.

Through Exelon Generation and its utility subsidiaries, Exelon generates and delivers electricity to a majority of Maryland homes and businesses. Our company is committed to supporting the environmental goals of all our customers. Foremost among those goals in Maryland is to restore clean water in the Chesapeake Bay. The Chesapeake Bay is one of the world's largest and most biologically productive estuaries, an American treasure, and essential to Maryland's identity. Exelon has been, and remains, committed to operating the Conowingo Hydroelectric Project in a manner that is environmentally responsible in all respects. Exelon Generation agreed to settle its disputes with MDE in October 2019 because we believe settling, as opposed to pursuing litigated outcomes, is not only in our best interest but is in the best interest of the Bay, in the best interest of the people of Maryland, and—at a time when the existential threat of climate change must be met with carbon-free sources of energy—in the best interest of our planet.

SB 540, the bill under consideration, purports to prohibit Maryland from entering into any agreement that waives the State's authority under Section 401 of the federal Clean Water Act to place conditions on the Federal Energy Regulatory Commission (FERC) relicensing of the Conowingo Hydroelectric Project. We strongly urge you to reject this bill because it could jeopardize three sets of benefits that the Chesapeake Bay and the people of Maryland would otherwise enjoy as a result of this settlement for decades to come. Those three sets of benefits flow, first, from the Dam's continued operations as Maryland's largest source of clean, renewable energy; second, from the proposed license conditions that MDE and Exelon agreed to in October 2019 when we settled our dispute under Section 401 of the Clean Water Act; and third, from additional, off-license commitments that Exelon made as part of that settlement agreement. In my testimony today, I will briefly summarize all three sets of benefits.

Benefits from Conowingo's Continued Generation of Clean, Renewable Energy

The Conowingo Project has been and remains Maryland's largest source of clean, carbon-free, renewable energy. The Project is a 573-megawatt hydroelectric power plant located on the lower Susquehanna River in Cecil and Harford Counties, about ten miles upstream from the River's confluence with the Chesapeake Bay. Conowingo generates safe, reliable power for about 165,000 homes in the region.

As a source of renewable electricity, Conowingo's operation does not produce any air pollution and contributes significantly to our collective struggle against climate change. Compared to a coal facility of similar size, the Conowingo Project avoids the release of 6.5 million tons of greenhouse-gas emissions annually. Indeed, the Project is a larger source of renewable energy than all other sources in Maryland combined. By keeping Conowingo in operation, the settlement agreement between MDE and Exelon (if approved by FERC) will allow the Project to continue supporting the State's long-term renewable and clean electricity goals, while minimizing air pollution.

The Conowingo Project also benefits marine and wildlife habitats. It provides breeding, nesting, and foraging grounds for the American Bald Eagle and helps migratory and native fish travel over the Dam for spawning in the Susquehanna River, using multimillion-dollar fish lifts. These benefits will be further enhanced under the settlement agreement, as I will explain shortly.

In addition to its positive impacts on climate change, air pollution, and fish and wildlife habitats, the Conowingo Project delivers economic, recreational, tourism, and community benefits. Specifically, it generates about $273 million in annual economic benefits to Maryland and its local communities by supporting 265 full-time-equivalent jobs, attracting 365,000 recreational tourist visits per year, and contributing more than $20 million to Cecil and Harford Counties' annual tax revenues. For nearby residents as well as visitors, the Conowingo Project provides opportunities for educational programs and for recreation, including boating, hiking, fishing, and birdwatching. It provides 15 recreational facilities and public-access areas, including boat launches, marinas, and scenic overlooks.

One of the Project's most important benefits is too often misunderstood or mischaracterized: Conowingo has been for nearly a century and remains today a positive influence on downstream water quality in the lower Susquehanna River and the Chesapeake Bay. Since its construction in 1928, the Dam has benefitted the Bay by trapping harmful pollutants (such as nitrogen, phosphorus, and sediment) discharged into the Susquehanna River by others, largely in Pennsylvania and New York, and preventing these pollutants from reaching the Bay. Conowingo Dam continues to do so, but its ability to trap pollutants is not unlimited, and the Reservoir behind the Dam is essentially full. More of what comes downstream in the River therefore passes into the Bay. But the Dam has never been the source of these pollutants, and no resolution of Conowingo's federal relicensing could hold the Dam responsible for a problem it did not cause and cannot control.

In a recent peer-reviewed paper, a team of scientists from the University of Maryland Center for Environmental Science (UMCES) referred to Conowingo's presence as "an unintended watershed BMP [best management practice]." Their study found that the Conowingo Dam slows the River's flow and thereby increases "denitrification" (the escape of dissolved nitrogen into the air). As a result, the amount of dissolved nitrogen flowing away from the Dam and toward the Bay is usually less than the amount flowing toward the Dam from Pennsylvania. This net decrease in dissolved nitrogen is why a

joint study by MDE and the U.S. Army Corps of Engineers found that the Bay's dissolved-oxygen level—a key positive indicator of the Bay's health, attributable to reductions in dissolved nitrogen flowing downstream—is "uniformly higher" with the Conowingo Dam and Reservoir in place than it would be without them. And even with regard to the phenomenon known as "scour," the recent UMCES study found that because the particulate (non-dissolved) nutrients that rest on the bottom of the Conowingo Reservoir and that may get "scoured" during large storms are relatively biologically inert (and thus not readily bioavailable for algal consumption), "scouring" has only a negligible impact on the Bay's dissolved-oxygen levels. Furthermore, although the region has seen serious storms in recent years, none has resulted in a "scour" event at Conowingo since Tropical Storm Lee in 2011.

Benefits from the New License Conditions that Maryland Negotiated with Exelon

As a major part of the settlement with MDE, Exelon agreed to significant changes in the Conowingo Project's flow regime, far beyond what was found to be necessary in FERC's environmental impact statement. The changes represent a significant portion of the changes to the flow regime that MDE had sought to impose in the original Section 401 certification that MDE issued in 2018. Though they will reduce the company's ability to generate electricity and reduce revenue over the license period, these changes will enhance habitat for aquatic species like American shad and river herring, which reside downstream of the Dam, and submerged aquatic vegetation, which trap sediment, remove pollution, and serve as a vital habitat to spawning and rearing fish.

As an example, March is an important month for fish migration and spawning. FERC's environmental impact statement for the Project concluded that requiring Exelon to maintain a minimum river flow of 3,500 cubic feet per second (cfs) throughout the month of March was adequate to protect water quality, fish habitat, and fish migration. Yet Exelon agreed for purposes of the settlement with MDE to maintain minimum river flows of 13,100 cfs from March 1 to 15 (almost four times the FERC rate) and 18,200 cfs from March 16 to 31 (more than five times the FERC rate).

In addition, although the FERC environmental impact statement did not find any upramping rate, down-ramping rate, or maximum flow restrictions to be necessary to protect water quality and fish habitat, Exelon agreed in the settlement to constraints in each of these areas, which parallel the requirements that The Nature Conservancy sought. These substantial (and, to Exelon, costly) changes in the Project's flow regime were a major focus of MDE in the settlement discussions, as MDE contended they will reduce the potential for fish stranding, improve upstream movement of migratory fish species, and reduce adverse impacts to spawning. The settlement provides that these flow-regime changes must be accepted by FERC and incorporated into the Project's license; if FERC does not do so, MDE retains the right to modify or potentially withdraw from the settlement.

The settlement agreement also has other provisions that MDE required to be accepted by FERC and incorporated into the Project's license (or again MDE has the right to modify or potentially withdraw from the agreement), which again echo provisions that MDE had sought to impose in the original Section 401 certification. For example, freshwater eastern elliptio mussels serve as an important natural "filter" for the river water flowing into the Bay. In addition to substantial off-license investments in a mussel hatchery (which are described further below), Exelon agreed as part of the settlement to include in its FERC license significant changes in the Project's support for the upstream transport of juvenile American eels, which are critical for expanding mussel populations. Specifically, Exelon agreed to three changes beyond other agreements reached with the U.S. Fish and Wildlife Service as part of an earlier

settlement: first, Exelon will extend the operation of an existing eel "fishway" or ladder from September 15 until mid-to-late November, which involves additional operational costs designed to allow passage of more eels above the Dam; second, Exelon will extend a separate upstream eel-passage "trap and truck" program from 2030 to 2035; and third, Exelon will construct and operate a second eel fishway for at least ten years. Exelon valued the cost of these eel-passage improvements, which will help facilitate mussel restoration and thus reduce pollution, at $11 million. Exelon also has pledged to continue its significant commitments, valued at $41 million, to address the accumulation in the Conowingo Reservoir of trash and debris that float down from New York and Pennsylvania. These license conditions will improve water-based recreational activities at the Project and enhance aesthetic resources.

Finally, the settlement agreement's license conditions include shoreline-management and stream-flow-monitoring plans that will enhance water quality, as well as turtle-management and waterfowl-nesting plans that will provide significant benefits to, and scientific data about, natural resources in and near the Project.

Benefits from Exelon's Off-License Commitments

Exelon's dedication to the Susquehanna River and the Chesapeake Bay is further reflected in a series of off-license funding commitments that Exelon agreed to during its settlement negotiations with MDE. These commitments will be funded from the Conowingo Project's earnings and will establish and support ecosystem services and projects to enhance the water quality of the Bay and offset the harmful effects of pollutants deposited in the River by others. Exelon's commitments include the following:

- **Climate Resiliency:** Exelon will fund more than $45 million in climate resiliency projects, including submerged aquatic vegetation, aquaculture, clam and oyster restoration projects, and living shoreline creation. These projects will help improve habitat diversity, protect water quality, reduce wave intensity, and make the Susquehanna River and the Chesapeake Bay more resilient to severe weather events.

- **Water-Quality Improvement:** Exelon will fund roughly $19 million to support water-quality improvement projects, including forest buffers and agricultural projects such as cover crops to reduce runoff pollution. These projects will help absorb nitrogen and trap phosphorus-laden sediment before they can enter the Susquehanna River. And Exelon has committed $3 million more to chlorophyll-A monitoring and reporting, to prevent impacts on the supply of drinking water drawn from the Conowingo Reservoir. Exelon also has committed more than $12 million to support MDE and Maryland Department of Natural Resources staff who oversee efforts to protect the Chesapeake Bay.

- **Mussel Restoration and Eel Passage:** As noted earlier, freshwater mussels, carried upstream by American eels, serve as pollution filters in the Susquehanna River. Exelon has committed to contribute acres of land and to fund more than $25 million to construct, operate, and maintain a 40,000-square-foot mussel hatchery that will significantly increase the River's mussel population. In addition to the $15 million worth of eel-passage improvements under the new FERC license (described earlier), Exelon has made an off-license commitment to contribute $1 million to eel-passage research.

- **Dredging Studies:** Exelon will fund a $500,000 feasibility study for dredge-material disposal options, which will help determine whether the Reservoir's sediment-trapping capacity can be expanded.

- **Transparency:** Exelon has agreed to maintain a public website containing plans, data, and reports related to the new license conditions that are designed to protect, mitigate damage to, and enhance fish and wildlife, the protection of recreational opportunities, and the preservation of other aspects of environmental quality.

***

All these benefits from the Exelon/MDE settlement, both the new license conditions and the off-license commitments, are in addition to changes Exelon agreed to make to Project operations in a 2016 settlement with the United States Fish and Wildlife Service (FWS), as part of this same Project re-licensing process. That earlier settlement also covered the same water-quality and fish-protection issues that are important to MDE and the State of Maryland. In its 2016 settlement with FWS, Exelon agreed to make major physical modifications to its fish and eel lifts and to take other actions to significantly expand fish and eel passage above the Dam. The total cost to Exelon of these settlement provisions with FWS over the term of the license was up to $300 million. Although MDE shared the same interests as FWS, MDE chose not to participate in the Exelon/FWS settlement. And MDE now has negotiated yet further license changes and off-license commitments that are valued at an additional roughly $225 million over the term of the license. In addition to these settlement benefits, FERC's Final Environmental Impact Statement recommended that the final license include roughly $175 million of other obligations relating to recreational facilities and rare, threatened, and endangered species. In total, Exelon thus will undertake up to $700 million worth of improvements that will directly benefit citizens, water quality, and aquatic life in the state of Maryland, none of which will occur if the Exelon/MDE settlement does not proceed. The Exelon/MDE settlement agreement, if approved by FERC, will launch a critical and concrete step forward for Chesapeake Bay restoration efforts and will contribute significantly to improving water quality, fish and eel passage, aquatic habitat, and debris removal. And the settlement agreement will preserve Maryland's largest source of clean, renewable energy, which generates safe, reliable power for tens of thousands of Maryland families. In short, the settlement agreement robustly serves the public interest. We therefore urge you to reject SB 540 and any other attempt to thwart or delay this settlement.