



## **Federal Court Overturns Conowingo Dam License December 2022**

On March 18, 2021, the Federal Energy Regulatory Commission (FERC) issued a new 50-year license to Exelon Generation Company, LLC's Conowingo Hydroelectric Project, located on the Susquehanna River in Lancaster and York Counties, Pennsylvania, and Cecil and Harford Counties, Maryland. Soon after, the Waterkeepers Chesapeake, Lower Susquehanna Riverkeeper, ShoreRivers, and CBF filed a Petition for Review with the U.S. District Court of Appeals for the D.C. Circuit seeking to reverse FERC's decision to grant the license that would allow the power company to operate the dam. Oral argument was held in October, 2022 and on December 20, 2022 the Court published its [opinion](#) vacating the Dam's license and remanding it back to FERC for further review.

In 2018, after initially granting a Clean Water Act § 401(a)(1) certification, Maryland attempted to withdraw it and waive its authority as part of a settlement with the dam's operator, which FERC then used as the basis for the Conowingo license. When the new license was issued in 2021, the environmental groups argued that FERC exceeded its authority by approving a license based on Maryland's after-the-fact withdrawal and "waiver" of its Water Quality Certification granted for the Dam.

Here, the court noted that FERC's authority to issue a license is limited to two circumstances: (1) where a state has granted certification; or (2) where the state has waived its authority to certify by failing or refusing to act. There is no authority to issue a license based on a private settlement arrangement entered into by the State after it issued a certification with conditions but then changed its mind. The District Court found that by issuing a license under such circumstances, FERC exceeded its authority. It therefore vacated the license and remanded it back to FERC for further action.