



gas | electric | steam | telecom

Commissioners:  
Neil J. Moriarty, Jr.  
Francis J. Hoey, III  
Robert H. Griffin  
  
Manager:  
James M. Lavelle

April 6, 2004

Ms. Magalie Roman Salas, Secretary  
Federal Energy Regulatory Commission  
888 First Street, N.E.  
Washington, DC 20426

Re: Holyoke Project (FERC No. 2004)  
Supplement to Offer of Settlement

Dear Ms. Salas:

On March 12, 2004, the City of Holyoke Gas & Electric Department ("HG&E") filed the Settlement Agreement and supporting Appendices A through H and Figures ("Settlement") on behalf of itself and the U.S. Fish and Wildlife Service; the National Oceanic and Atmospheric Administration, National Marine Fisheries Service; the Commonwealth of Massachusetts Department of Environmental Protection ("MADEP"); the Commonwealth of Massachusetts Department of Fish and Wildlife; Trout Unlimited; the Connecticut River Watershed Council; and the Town of South Hadley (referred to herein as "Settling Parties"). As indicated in the cover letter for that Settlement filing, HG&E had not yet received the signature page to the Settlement Agreement from the MADEP and would file it when received. The MADEP delayed sending its signature page in order to complete the execution of an Administrative Consent Order ("ACO") by HG&E and the MADEP relative to the Settlement and MADEP's Water Quality Certification issued in 2001. That ACO has now been executed by HG&E and MADEP.

Therefore, attached hereto for filing are an original and eight copies of the MADEP signature page and a supplement to Appendix B to the Settlement inserting the ACO. These documents do not modify the Settlement Agreement as previously filed; therefore, HG&E requests that the Commission find that no notice of this supplement is required, or grant a waiver of such a notice if required.

Ms. Magalie Roman Salas, Secretary  
Holyoke Project, No. 2004

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HG&E has served a copy of this letter and the enclosed documents on all parties on the official service list in these proceedings, including all Settling Parties. If there are any questions concerning this matter, please contact the undersigned.

Respectfully submitted,



Paul S. Ducheneay  
Superintendent of Hydro Operations

Enclosures

- cc: R. Fletcher (FERC) (w/ encls.)
- D. Desmond (MADEP) (w/ encls.)
  - R. Kubit (MADEP) (w/ encls.)
  - C. Slater (MADFW) (w/ encls.)
  - J. Warner (USFWS) (w/ encls.)
  - J. Crocker (NOAA Fisheries) (w/ encls.)
  - C. Lynch (NOAA) (w/ encls.)
  - J. Williams (NOAA) (w/ encls.)
  - P. Scida (NOAA Fisheries) (w/ encls.)
  - D. Pugh (TU) (w/ encls.)
  - T. Miner (CRWC) (w/ encls.)
- 
- N. Skancke (GKRSE) (w/ encls.)
  - F. Szufnarowski (Kleinschmidt) (w/ encls.)
  - K. Schaeffer (Kleinschmidt) (w/ encls.)

Agreed and accepted to by U.S. Department of the Interior,  
through the U.S. Fish and Wildlife Service

By \_\_\_\_\_

Dated: \_\_\_\_\_

Agreed and accepted to by U.S. Department of Commerce,  
National Oceanic and Atmospheric Administration,  
National Marine Fisheries Service,

By \_\_\_\_\_

Dated: \_\_\_\_\_

Agreed and accepted to by Commonwealth of Massachusetts,  
Department of Environmental Protection,

By Cynthia Ailes, Asst. Commissioner

Dated: 03/10/04

Agreed and accepted to by Commonwealth of Massachusetts,  
Department of Fisheries and Wildlife,

By \_\_\_\_\_

Dated: \_\_\_\_\_

***Holyoke Project, FERC No. 2004  
Supplemented Appendix B to Settlement Agreement  
2001 Water Quality Certification  
(and related documents)***

2001 Water Quality Certification:

Commonwealth of Massachusetts, Department of Environmental Protection,  
Final Water Quality Certification, issued February 14, 2001 (pursuant to settlement of state  
administrative appeal of the 1999 Water Quality Certification).

Letters from MADEP:

Letter dated January 10, 2003, from Brian D. Harrington, Acting Deputy Regional Director,  
Bureau of Resource Protection, Massachusetts, Department of Environmental Protection, to  
Paul S. Duchenev, City of Holyoke Gas & Electric Department.

Letter dated October 6, 2003, from Brian D. Harrington, Acting Deputy Regional Director,  
Bureau of Resource Protection, Massachusetts, Department of Environmental Protection, to  
Paul S. Duchenev, City of Holyoke Gas & Electric Department.

Letter dated January 21, 2004, from Brian D. Harrington, Acting Deputy Regional Director,  
Bureau of Resource Protection, Massachusetts, Department of Environmental Protection, to  
Paul S. Duchenev, City of Holyoke Gas & Electric Department.

Letters from HG&E:

Letter dated December 18, 2003, from Paul S. Duchenev, City of Holyoke Gas & Electric  
Department, to Brian D. Harrington, Acting Deputy Regional Director, Bureau of Resource  
Protection, Massachusetts, Department of Environmental Protection.

Letter dated December 26, 2003, from Paul S. Duchenev, City of Holyoke Gas & Electric  
Department, to Brian D. Harrington, Acting Deputy Regional Director, Bureau of Resource  
Protection, Massachusetts, Department of Environmental Protection.

Administrative Consent Order:

In the Matter of The City of Holyoke Gas & Electric Department,  
File No. ACO-WE-04-6W003.



COMMONWEALTH OF MASSACHUSETTS  
EXECUTIVE OFFICE OF ENVIRONMENTAL AFFAIRS  
DEPARTMENT OF ENVIRONMENTAL PROTECTION  
WESTERN REGIONAL OFFICE

436 Dwight Street • Springfield, Massachusetts 01103 • (413) 784-1100 • FAX (413) 784-1149

MITT ROMNEY  
Governor

ELLEN ROY HERZFELDER  
Secretary

KERRY HEALEY  
Lieutenant Governor

ROBERT W. GOLLEDGE, Jr.  
Commissioner

APR 02 2004

James M. Lavelle, Manager  
City of Holyoke Gas & Electric Department  
99 Suffolk Street  
Holyoke, MA 01040-5082

Re: Holyoke, Holyoke Dam,  
FERC Settlement Agreement  
& ACO-WE-04-6W003,  
Holyoke Gas & Electric  
Department

Dear Mr. Lavelle:

Please find enclosed the Department's Final Administrative Consent Order, ACO-WE-04-6W003, ("the Order") as issued relative to the above referenced project, and the § 401 Water Quality Certification issued by this office on February 14, 2001. Please review carefully the terms of the Order, specifically Section III Disposition, and Order, and comply with the requirements stated therein.

If you have any questions, please do not hesitate to contact Robert Kubit at 508-767-2854, or Robert J. McCollum at 413-755-2138.

Enclosures

Sincerely,

Brian Harrington  
Deputy Regional Director  
Bureau of Resource Protection

**CERTIFIED MAIL # 7003 0500 0005 5444 2333, return receipt requested**

**CC:**

**Paul Ducheney, HG&E  
Nancy Skancke, GKRSE  
Paul Hogan, DEP, DWM  
Robert Kubit, DEP, DWM  
Deirdre Desmond, DEP, OGC  
Caleb Slater, MDF&G  
John Warner, USF&WS  
Donald Pugh, TU  
Tom Miner, CRWC  
Patricia Vinchesi, South Hadley**

COMMONWEALTH OF MASSACHUSETTS  
EXECUTIVE OFFICE OF ENVIRONMENTAL AFFAIRS  
DEPARTMENT OF ENVIRONMENTAL PROTECTION

\_\_\_\_\_  
In the Matter of: )  
 )  
The City of Holyoke Gas & )  
Electric Department )  
\_\_\_\_\_ )  
ADMINISTRATIVE CONSENT ORDER  
File No. ACO-WE-04-6W003

**I. The Parties**

1. The Department of Environmental Protection (Department or DEP) is a duly constituted agency of the Commonwealth of Massachusetts. The Department maintains its headquarters office at One Winter Street, Boston, Massachusetts 02108, and maintains a regional office at 436 Dwight Street, Springfield, Massachusetts, 01103.

2. The City of Holyoke Gas & Electric Department (HG&E) is a duly formed municipal light plant under Chapter 164 of the General Laws of Massachusetts with its offices located at 99 Suffolk Street, Holyoke, MA 01040.

3. The Department and HG&E have agreed to enter into this Administrative Consent Order because they agree that it is in their interests, and in the public interest, to proceed promptly with the actions called for herein rather than expend additional time and resources litigating the allegations set forth below. HG&E enters into this Administrative Consent Order without admitting liability or agreeing with the allegations set forth herein. However, HG&E agrees not to contest the allegations set forth herein for the purposes of the issuance and enforcement of this Administrative Consent Order.

**II. Statement of Law and Facts**

4. The Department is responsible for implementing and enforcing the provisions of the Massachusetts Clean Waters Act, G.L. c. 21, §§ 26-53 and the regulations promulgated thereunder at 314 CMR 4.00 (the Massachusetts Surface Water Quality Standards) and 314 CMR 9.00 (the 401 Water Quality Certification Regulations). The Department is authorized to assess civil administrative penalties by G.L. c. 21A, § 16 and the regulations promulgated thereunder at 310 CMR 5.00.

5. The Massachusetts Clean Waters Act, G.L. c. 21, § 27, places the duty and responsibility on the Department to enhance the quality and value of water resources and further requires the Department to:

(1)"Take all action necessary or appropriate to secure to the commonwealth the benefits of the Federal Water Pollution Control Act..."

(5)"Adopt standards of minimum water quality which shall be applicable to the various waters or portions of waters of the commonwealth."

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(6)"Prescribe effluent limitations, permit programs, and procedures applicable to the management and disposal of pollutants, including, where appropriate, prohibition of discharges."

6. The Federal Clean Water Act, 33 U.S.C. § 1341 provides:

"Any applicant for a Federal license or permit to conduct any activity including, but not limited to, the construction or operation of facilities, which may result in any discharge into the navigable waters, shall provide the licensing or permitting agency a certification from the State in which the discharge originates or will originate..., that any such discharge will comply with the applicable provisions sections 1311, 1312, 1313, 1316, and 1317 of this title."

7. The 401 Water Quality Certification Regulations at 314 CMR 9.09 provide in relevant part:

"The Department will certify in writing to the appropriate federal agency and to the applicant whether or not the proposed project will meet applicable water quality standards and minimize environmental impacts through compliance with 314 C.M.R. 4.00 as implemented and supplemented by 314 C.M.R. 9.00 ... The certification or denial will contain: ... any conditions deemed necessary by the Department to insure maintenance or attainment of water quality, minimization of any damage to the environment which may result from the project, or compliance with any applicable provisions of Massachusetts law which the Department is authorized administer ..."

8. The 401 Water Quality Certification Regulations at 314 CMR 9.11 provide that failure to comply with 314 CMR 9.00 or a 401 Water Quality Certification shall be enforced as provided in G.L. c. 21, §§ 42 and 44, G.L. c. 21, § 16A and 310 CMR 5.00.

9. The Department issued a combined 401 Water Quality Certification (WQC) to competing applicants for a FERC new license for the Holyoke Dam Hydroelectric Power Project No. 2004 (Project) to Northeast Utilities Service Co. as agent for Holyoke Water Power (HWP) and HG&E, among other entities, on July 28, 1999.

10. On August 18, 1999, HWP filed a Request for An Adjudicatory Hearing on the WQC.

11. On August 20, 1999 FERC issued a new license to HWP incorporating the July 28, 1999 WQC. In September of 1999 several requests for rehearing of the new FERC license were filed.

12. On February 14, 2001, the Department issued a final WQC (2001 WQC) for the Holyoke Project based on settlement reached by all parties involved in the state administrative appeal. The 2001 WQC for the Project was filed at FERC on March 19, 2001.

13. On September 20, 2001, FERC issued an order approving transfer of the license for the Project from HWP to HG&E. To date, requests for rehearing on the new license are pending at FERC (note that certain requests were withdrawn as part of the transfer of the license for the Project from HWP to HG&E) and FERC has not yet acted on the Department's 2001 WQC.

14. The Department has participated in settlement negotiations with HG&E and the parties on the pending requests for rehearing (hereinafter the parties involved in the settlement



Holyoke Gas & Electric Department  
Administrative Consent Order

negotiations, including the Department, collectively referred to as the "Settlement Parties"). In addition, the Department has issued letters granting extensions of time to HG&E under the 2001 WQC dated January 10, 2003; October 6, 2003; and January 21, 2004.

15. The Settlement Parties executed a Settlement Agreement for the Project that HG&E filed with FERC on March 12, 2004 (Settlement Agreement). The Settlement Agreement resolves all issues presented in the requests for rehearing of the FERC license and addresses many requirements contained in the 2001 WQC.

16. The Department alleges that HG&E has not completed the following requirements within timeframes established by the relevant 2001 WQC conditions, but HG&E's December 26, 2003 written request to extend the stated due dates is pending at the Department: (i) submission of a Permanent Bypass Flow Plan to the Department on or before September 15, 2003 (Condition 11(d)(2)); (ii) modification of both fishlift facilities for operation to 40,000 cfs on or before November 30, 2003 (Condition 14(a)(1)); (iii) submission of a Louver Effectiveness Study Report to the Department on or before January 31, 2003 (Condition 14(c)(1)); and (iv) submission of a plan for downstream passage of Shortnose Sturgeon to the Department before December 31, 2003 (Condition 14(k)).

17. The Department alleges that HG&E's failure to complete the actions listed above as required by the 2001 WQC is a violation of the Massachusetts Clean Waters Act, G.L. c. 21, §§ 26-53 and the 401 Water Quality Certification Regulations, 314 CMR 9.09 and 314 CMR 9.11.

### **III. Disposition and Order**

18. Based upon the foregoing Statement of Facts and Law, and pursuant to its authority under G.L. c. 21, §§ 26-53 and the regulations promulgated thereunder at 314 CMR 4.00, 314 CMR 9.00, and G.L. c. 21A, § 16 and the regulations promulgated thereunder at 310 CMR 5.00, the Department hereby issues, and HG&E hereby consents to the following order:

19. As stated in HG&E's pending request for extension of time and consistent with the Settlement Agreement, HG&E shall submit: (i) the Permanent Bypass Flow Plan to the Department on or before December 31, 2004 (Condition 11(d)(2)); (ii) complete modification of both fishlift facilities for operation 40,000 cfs on or before April 5, 2005 (Condition 14(a)(1)); (iii) submit the Louver Effectiveness Study Report to the Department on or before July 1, 2004 (Condition 14(c)(1)); and (iv) submit plans for downstream passage of Shortnose Sturgeon as required by Section 4.7 and Appendix F of the Settlement Agreement.

20. HG&E shall comply with all of the terms and conditions of the Settlement Agreement (that refer to, relate to or otherwise implement requirements contained in the 2001 WQC) and shall comply with all of the terms and conditions of the 2001 WQC that have not been extended or otherwise addressed by the Department in writing on January 10, 2003, October 6, 2003 and January 21, 2004, or through this Administrative Consent Order. Attached is a copy of Appendix B to the Settlement Agreement which illustrates the correlation between the Conditions in the 2001 WQC and the provisions of the Settlement Agreement.

21. In addition to being an Administrative Consent Order, this Order is also a Notice of Noncompliance issued pursuant to G.L. c. 21A, § 16 for HG&E's noncompliance with the Massachusetts Clean Waters Act, G.L. c. 21, §§ 26-53 and the 401 Water Quality Certification Regulations, as identified in Article II above. However, the Department agrees not to pursue civil

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administrative or any other penalties for any such noncompliance listed in Article II above or for any past noncompliance with respect to requirements in the 2001 WQC to the extent such requirements are specifically addressed in the Settlement Agreement provided HG&E fully complies with this Administrative Consent Order. Future violations of the 2001 WQC or the Settlement Agreement (to the extent that any such violation of the Settlement Agreement refers to, relates to or otherwise implements requirements contained in the 2001 WQC), including any subsequent modifications of the 2001 WQC and/or the Settlement Agreement (that refer to, relate to or otherwise implement requirements contained in the 2001 WQC) agreed to in writing by the Department, or of this Administrative Consent Order may result, without limitation, in the assessment of civil administrative penalties for each day, or portion thereof, each such violation occurs or continues.

22. Submittals required by this Administrative Consent Order shall be considered delivered upon receipt by the Department. All submissions required by this Administrative Consent order shall be submitted to:

Robert Kubit  
FERC Coordinator  
Division of Watershed Management  
Department of Environmental Protection  
Central Regional Office  
627 Main Street  
Worcester, Massachusetts 01608  
&  
Robert J. McCollum  
Wetland Program Chief  
Department of Environmental Protection  
Western Regional Office  
436 Dwight Street  
Springfield, Massachusetts 01103

23. HG&E admits to the jurisdiction and authority of the Department to issue this Administrative Consent Order. HG&E understands and hereby waives its right to an adjudicatory hearing before the Department on, and judicial review of, the issuance and/or terms of this Administrative Consent Order and to notice of any such rights of review.

24. Except as expressly provided in this Order, nothing in this Administrative Consent Order shall be construed or operate as barring, diminishing, adjudicating, or in any way affecting: (1) any legal or equitable right of the Department to issue any future order with respect to the subject matter covered by this Administrative Consent Order, or (2) any other legal or equitable right of the Department to pursue any claim, action, suit, cause of action, demand or right to relief that the Department may have with respect to the subject matter covered by this Administrative Consent Order. This Administrative Consent Order shall not be construed as or operate as barring, diminishing, or adjudicating or in any way affecting any legal or equitable right of the Department with respect to any subject matter not covered by this Administrative Consent Order.

25. This Administrative Consent Order shall apply to and be binding upon HG&E, its officers, employees, agents, consultants, contractors, successors, and assigns. HG&E shall not violate this Administrative Consent Order and shall not allow or suffer its officers, employees, agents, consultants, contractors, successors, or assigns to violate this Administrative Consent

Holyoke Gas & Electric Department  
Administrative Consent Order

Order. A violation of this Administrative Consent Order by any of the foregoing shall constitute a violation of this Administrative Consent Order by HG&E.

26. Except as provided herein, this Administrative Consent Order does not relieve HG&E or any other person of the necessity of complying with all applicable federal, state, and local statutes, regulations and approvals while performing activities pursuant to this Administrative Consent Order. Except as provided herein, any noncompliance with the foregoing shall constitute a violation of this Administrative Consent Order.

27. Failure on the part of the Department to complain of action or inaction on the part of HG&E shall not constitute a waiver by the Department of any rights under this Administrative Consent Order, nor shall a waiver by the Department of any provision of this Administrative Consent Order be construed as a waiver of any other provision of this Administrative Consent Order.

28. This Administrative Consent Order may be modified only by the written agreement of the parties. This Administrative Consent Order and the obligations hereunder may not be assigned by HG&E, except with the written consent of the Department.

29. In addition to all other inspection rights of the Department, HG&E shall allow Department personnel to enter and inspect the area where it is performing any work under this Administrative Consent Order and/or any work required by the 2001 WQC for the Project at reasonable times and with reasonable notice for the purpose of assessing HG&E compliance with this Administrative Consent Order, the Massachusetts Clean Waters Act, the Massachusetts Surface Water Quality Standards, and the 401 Water Quality Certification Regulations. In addition the Department shall have the right to inspect and copy documents related to work required by the Administrative Consent Order and/or the 2001 WQC at reasonable times, during normal business hours, and without notice for the purpose of assessing HG&E compliance with this Administrative Consent Order, the Massachusetts Clean Waters Act, the Massachusetts Surface Water Quality Standards, and the 401 Water Quality Certification Regulations. Whether any documents which are copied by the Department would be exempt from the requirements of M.G.L. Chapter 66, Section 10 (the "Public Records Law") shall be determined in accordance with the provisions of the Public Records Law, 310 CMR 3.00 and all other applicable laws and regulations.

30. The provisions of this Administrative Consent Order are severable and if any provision of this Administrative Consent Order or the application thereof is held invalid or unenforceable, such invalidity or unenforceability shall not affect the validity or enforceability of any other provision of this Consent Order which shall be given full effect without the invalid or unenforceable provision provided, however, that the Department may, in its sole discretion, elect to void the entire Administrative Consent Order in the event of such invalidity or unenforceability.

31. This Administrative Consent Order constitutes the entire understanding and agreement between the Department and HG&E with regard to HG&E obligations arising out of the subject matter of this Administrative Consent Order.

32. The undersigned represent that he/she has the authority to sign this Administrative Consent Order and to legally bind himself/herself and/or the party on whose behalf such

Holyoke Gas & Electric Department  
Administrative Consent Order

representative is signing. This Administrative Consent Order shall take effect on the date that it is signed by the Department.

33. This Administrative Consent Order may be executed in one or more counterparts, all of which shall be considered one and the same Administrative Consent Order.

**CONSENTED TO:**

**City of Holyoke Gas & Electric Department**

By: James M. Lavelle  
Typed Name: James M. Lavelle  
Title: Manager

Date: 4/2/04

HG&E Federal Employer Identification  
Number: 504-600-1393

**SO ORDERED:**

**Department of Environmental Protection**

By: Michael J. Gorski  
Typed Name: Michael J. Gorski  
Title: Regional Director

Date: 4/2/04

Holyoke Gas & Electric Department  
 Administrative Consent Order  
 Attachment

***Holyoke Project, FERC No. 2004  
 Appendix B to Settlement Agreement  
 Illustrating the Correlation Between the Conditions in 2001 Water  
 Quality Certification and Provisions of the Settlement Agreement***

<b>2001 WQC Condition No.</b>	<b>2001 WQC Provision</b>	<b>Parallel Provision in the Settlement Agreement</b>
WQC 1-8	Compliance	No change in Settlement
WQC 9	Run-of-River	Section 4.1
WQC 10	Rubber Dam	Installed 11/01; no change in Settlement
WQC 11	Bypass Reach Flows	Section 4.2
WQC 12	Project Flows	Section 4.4
WQC 13	Canal Operations	Sections 4.3 and 4.6
WQC 14	Fish Passage Facilities	Sections 4.5 and 4.6 [upstream fish passage]; Section 4.7 [downstream fish passage]; Section 4.8 [eel passage]; Section 4.9 [construction plans]; Sections 4.3(f)-(g) [full depth louvers and exclusion racks]
WQC 15	Holyoke Fishway Monitoring Scope of Work	Section 4.6(e)
WQC 16	Access to the Project	Not to be addressed in Settlement
WQC 17	Cooperative Research/Management Activities	Not to be addressed in Settlement
WQC 18	Moratorium	See Sections 4.6 and 4.7, otherwise not to be addressed in Settlement
WQC 19	Riparian Management Plan	Section 4.11(h).
WQC 20	Sale of Land Within Riparian Zone	Not to be addressed in Settlement
WQC 21	Additional Plans	Section 4.11(c) [Threatened and Endangered Species Plan]; Section 4.11(d) [Invasive Species Monitoring Plan]
WQC 22	Water Sampling Standard Operating Procedures	Section 4.11(b) [Water Quality Monitoring Plan]
WQC 23	Force Majeure	See Section 9.1, otherwise not to be addressed in Settlement

Submission Contents

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