

1 A. I will use the following information: (1) WVAWC's level of O&M expenses which is
2 \$37,249,000; (2) WVAWC's total amount of long-term debt which is \$198,802,000;
3 (3) the ratio of WVAWC's O&M expenses to AWW's water O&M expenses which is
4 $\$37,249,000 / \$551,443,000 = 6.8\%$; (4) the ratio of WVAWC's net income to AWW's
5 corporate net income which is $\$10,463,000 / \$161,061,000 = 6.5\%$; and (5) the ratio of
6 WVAWC customers to the total number of AWW customers in states where there is a
7 formal proceeding regarding the approval of this transaction, which is $156,000 /$
8 $1,871,000 = 8.5\%$ as I show on Schedule SJR-3.

9 Q. PLEASE DISCUSS THE FIVE METHODS THAT YOU HAVE USED TO ALLOCATE SYNERGY
10 SAVINGS TO WVAWC.

11 A. **{begin confidential**

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end confidential}

21 Q. BASED ON THOSE FIVE METHODS OF ESTIMATING SAVINGS, WHAT DO YOU RECOMMEND?

22 A. I recommend that the Commission allocate at least \$2.5 million in savings to the
23 customers of WVAWC. This is not a precise calculation, but it reflects my judgment of a

1 reasonable estimate of savings given the range of \$2.1 million to \$6.5 million set forth
2 above.

3 Q. HOW DO YOU RECOMMEND THAT THESE SAVINGS BE PROVIDED TO WVAWC'S
4 CUSTOMERS?

5 A. There are a number of ways in which these benefits could be provided to WVAWC's
6 customers. The most obvious way, of course, is to order a reduction in WVAWC's rates
7 in that amount as of the date the transaction closes and to require the reduction to remain
8 in place for an extended period of time. Other options might include requiring WVAWC
9 to expand existing programs or implement new programs for low-income consumers.
10 Similarly, substantial benefits for consumers also could be achieved by requiring
11 WVAWC to refrain from filing another base rate proceeding for an extended period of
12 time, or by some combination of these actions.

13 Q. DO YOU HAVE AN ULTIMATE RECOMMENDATION ON THE SAVINGS ISSUE?

14 A. Yes. I recommend that the Commission require WVAWC to reduce its base rates by
15 \$2.5 million within 5 business days after the transaction closes and to keep that reduction
16 in place for at least 24 months. This would be achieved by prohibiting WVAWC from
17 filing for a base rate increase before the transaction closes, and by extending that
18 prohibition for at least 14 months after the transaction closes. (The 24 months during
19 which the \$2.5 million reduction is in effect is made up of the 14 months after closing
20 when WVAWC is prohibited from filing for a base rate increase, plus the 10 months
21 during which that rate increase request would be suspended by the Commission.) As I
22 mentioned above, there are other ways in which similar value can be provided to
23 WVAWC's customers and I recognize that other parties might prefer one option over

1 another. My personal preference is to provide these benefits in a way that is readily
2 apparent to consumers and that is easily quantifiable. If the Commission finds that other
3 methods should be used to pass on these savings to consumers, I would strongly
4 recommend that the Commission provide a specific quantification of the benefits that
5 would be received by consumers, so that the public can easily understand and verify the
6 magnitude of benefits they are receiving from this acquisition.

7 Q. WHY IS IT IMPORTANT FOR THE PUBLIC TO UNDERSTAND THE MAGNITUDE OF THE BENEFITS
8 THEY ARE RECEIVING FROM THIS TRANSACTION?

9 A. The only public information, at this point, about the proposed acquisition of AWW
10 concerns the benefits that would be received by AWW's stockholders, officers, and high-
11 level employees. The public knows that AWW's stockholders would receive a benefit in
12 excess of \$1 billion because the \$46 per share paid by RWE exceeds the market value of
13 AWW's common stock prior to the public reports of the transaction by at least \$10 per
14 share (and probably closer to \$15 per share). The public also is aware of the benefits that
15 would be received by AWW's officers and high-level employees, amounting to \$15
16 million in retention bonuses plus millions of dollars more if any officers subject to
17 change in control agreements leave the company. In addition, certain officers will
18 receive millions of dollars in cash in exchange for unexercised stock options, as well as
19 cashing out their own stock holdings.

20 It is important, therefore, for the public to see and understand that this transaction
21 is not taking place solely to enrich the stockholders and officers of AWW; that there also
22 is a significant benefit to the customers of AWW in general and WVAWC in particular.

23 In my opinion, the best way to do that is to reduce rates for consumers

1 immediately upon the closing of the transaction. As I stated earlier, there are other ways
2 to provide benefits to consumers, and I recognize that various parties may prefer other
3 ways to provide those benefits. Whatever method is chosen, however, I believe it is very
4 important to specifically quantify the benefits in a manner that the public can understand
5 and appreciate.

6 Q. IN YOUR OPINION, IS IT IN THE BEST INTERESTS OF WVAWC'S CUSTOMERS FOR THE
7 COMMISSION TO ALLOW THAMES TO PURCHASE AWW?

8 A. In my opinion, it would not be in the best interests of WVAWC's customers for the
9 Commission to approve this transaction unless the transaction is conditioned as I
10 recommend. Specifically, the Commission should adopt the conditions summarized in
11 Section VII of my testimony. In addition, the Commission should require WVAWC to
12 provide at least \$2.5 million in savings to its customers. If the Commission fails to adopt
13 the conditions that I recommend, and thereby fails to protect consumers from the
14 increased risks and other potential adverse effects of the acquisition, then consumers
15 would be better off if this transaction did not occur. Similarly, if the Commission fails to
16 require that significant savings are provided to consumers, such that essentially all of the
17 benefits from the acquisition flowed to the shareholders, officers, and key employees of
18 AWW, then WVAWC's consumers would be better off if this transaction did not occur.

19 Q. DOES THIS CONCLUDE YOUR DIRECT TESTIMONY?

20 A. Yes, it does.

Appendix A

Scott J. Rubin

Attorney • Consultant

3 Lost Creek Drive • Selinsgrove, PA 17870

Current Position

Public Utility Attorney and Consultant, Selinsgrove, PA. 1994 to present. I provide legal, consulting, and expert witness services to various organizations interested in the regulation of public utilities.

Previous Positions

Lecturer in Computer Science, Susquehanna University, Selinsgrove, PA. 1993 to 2000.

Senior Assistant Consumer Advocate, Office of Consumer Advocate, Harrisburg, PA. 1990 to 1994.

I supervised the administrative and technical staff and shared with one other senior attorney the supervision of a legal staff of 14 attorneys.

Assistant Consumer Advocate, Office of Consumer Advocate, Harrisburg, PA. 1983 to 1990.

Associate, Laws and Staruch, Harrisburg, PA. 1981 to 1983.

Law Clerk, U.S. Environmental Protection Agency, Washington, DC. 1980 to 1981.

Research Assistant, Rockville Consulting Group, Washington, DC. 1979.

Current Professional Activities

Member, American Bar Association, Public Utility Law Section.

Member, American Water Works Association.

Admitted to practice law before the Supreme Court of Pennsylvania, the New York State Court of Appeals, the United States District Court for the Middle District of Pennsylvania, the United States Court of Appeals for the Third Circuit, and the Supreme Court of the United States.

Previous Professional Activities

Member, American Water Works Association, Rates and Charges Subcommittee, 1998-2001.

Member, Federal Advisory Committee on Disinfectants and Disinfection By-Products in Drinking Water, U.S. Environmental Protection Agency, Washington, DC. 1992 to 1994.

Chair, Water Committee, National Association of State Utility Consumer Advocates, Washington, DC. 1990 to 1994; member of committee from 1988 to 1990.

Member, Board of Directors, Pennsylvania Energy Development Authority, Harrisburg, PA. 1990 to 1994.

Member, Small Water Systems Advisory Committee, Pennsylvania Department of Environmental Resources, Harrisburg, PA. 1990 to 1992.

Member, Ad Hoc Committee on Emissions Control and Acid Rain Compliance, National Association of State Utility Consumer Advocates, 1991.

Member, Nitrogen Oxides Subcommittee of the Acid Rain Advisory Committee, U.S. Environmental Protection Agency, Washington DC. 1991.

Education

J.D. with Honors, George Washington University, Washington, DC. 1981.

B.A. with Distinction in Political Science, Pennsylvania State University, University Park, PA. 1978.

Publications and Presentations

“Quality of Service Issues,” a speech to the Pennsylvania Public Utility Commission Consumer Conference, State College, PA. 1988.

K.L. Pape and S.J. Rubin, “Current Developments in Water Utility Law,” in *Pennsylvania Public Utility Law* (Pennsylvania Bar Institute). 1990.

Presentation on Water Utility Holding Companies to the Annual Meeting of the National Association of State Utility Consumer Advocates, Orlando, FL. 1990.

“How the OCA Approaches Quality of Service Issues,” a speech to the Pennsylvania Chapter of the National Association of Water Companies. 1991.

Presentation on the Safe Drinking Water Act to the Mid-Year Meeting of the National Association of State Utility Consumer Advocates, Seattle, WA. 1991.

“A Consumer Advocate's View of Federal Pre-emption in Electric Utility Cases,” a speech to the Pennsylvania Public Utility Commission Electricity Conference. 1991.

Workshop on Safe Drinking Water Act Compliance Issues at the Mid-Year Meeting of the National Association of State Utility Consumer Advocates, Washington, DC. 1992.

Formal Discussant, Regional Acid Rain Workshop, U.S. Environmental Protection Agency and National Regulatory Research Institute, Charlotte, NC. 1992.

S.J. Rubin and S.P. O'Neal, “A Quantitative Assessment of the Viability of Small Water Systems in Pennsylvania,” *Proceedings of the Eighth NARUC Biennial Regulatory Information Conference*, National Regulatory Research Institute (Columbus, OH 1992), IV:79-97.

“The OCA's Concerns About Drinking Water,” a speech to the Pennsylvania Public Utility Commission Water Conference. 1992.

Member, Technical Horizons Panel, Annual Meeting of the National Association of Water Companies, Hilton Head, SC. 1992.

M.D. Klein and S.J. Rubin, “Water and Sewer -- Update on Clean Streams, Safe Drinking Water, Waste Disposal and Pennvest,” *Pennsylvania Public Utility Law Conference* (Pennsylvania Bar Institute). 1992.

Presentation on Small Water System Viability to the Technical Assistance Center for Small Water Companies, Pa. Department of Environmental Resources, Harrisburg, PA. 1993

- "The Results Through a Public Service Commission Lens," speaker and participant in panel discussion at Symposium: "Impact of EPA's Allowance Auction," Washington, DC, sponsored by AER*X. 1993.
- "The Hottest Legislative Issue of Today -- Reauthorization of the Safe Drinking Water Act," speaker and participant in panel discussion at the Annual Conference of the American Water Works Association, San Antonio, TX. 1993.
- "Water Service in the Year 2000," a speech to the Conference: "Utilities and Public Policy III: The Challenges of Change," sponsored by the Pennsylvania Public Utility Commission and the Pennsylvania State University, University Park, PA. 1993.
- "Government Regulation of the Drinking Water Supply: Is it Properly Focused?," speaker and participant in panel discussion at the National Consumers League's Forum on Drinking Water Safety and Quality, Washington, DC. 1993. Reprinted in *Rural Water*, Vol. 15 No. 1 (Spring 1994), pages 13-16.
- "Telephone Penetration Rates for Renters in Pennsylvania," a study prepared for the Pennsylvania Office of Consumer Advocate. 1993.
- "Zealous Advocacy, Ethical Limitations and Considerations," participant in panel discussion at "Continuing Legal Education in Ethics for Pennsylvania Lawyers," sponsored by the Office of General Counsel, Commonwealth of Pennsylvania, State College, PA. 1993.
- "Serving the Customer," participant in panel discussion at the Annual Conference of the National Association of Water Companies, Williamsburg, VA. 1993.
- "A Simple, Inexpensive, Quantitative Method to Assess the Viability of Small Water Systems," a speech to the Water Supply Symposium, New York Section of the American Water Works Association, Syracuse, NY. 1993.
- S.J. Rubin, "Are Water Rates Becoming Unaffordable?," *Journal American Water Works Association*, Vol. 86, No. 2 (February 1994), pages 79-86.
- "Why Water Rates Will Double (If We're Lucky): Federal Drinking Water Policy and Its Effect on New England," a briefing for the New England Conference of Public Utilities Commissioners, Andover, MA. 1994.
- "Are Water Rates Becoming Unaffordable?," a speech to the Legislative and Regulatory Conference, Association of Metropolitan Water Agencies, Washington, DC. 1994.
- "Relationships: Drinking Water, Health, Risk and Affordability," speaker and participant in panel discussion at the Annual Meeting of the Southeastern Association of Regulatory Commissioners, Charleston, SC. 1994.
- "Small System Viability: Assessment Methods and Implementation Issues," speaker and participant in panel discussion at the Annual Conference of the American Water Works Association, New York, NY. 1994.

- S.J. Rubin, "How much should we spend to save a life?," *Seattle Journal of Commerce*, August 18, 1994 (Protecting the Environment Supplement), pages B-4 to B-5.
- S. Rubin, S. Bernow, M. Fulmer, J. Goldstein, and I. Peters, *An Evaluation of Kentucky-American Water Company's Long-Range Planning*, prepared for the Utility and Rate Intervention Division, Kentucky Office of the Attorney General (Tellus Institute 1994).
- S.J. Rubin, "Small System Monitoring: What Does It Mean?," *Impacts of Monitoring for Phase II/V Drinking Water Regulations on Rural and Small Communities* (National Rural Water Association 1994), pages 6-12.
- "Surviving the Safe Drinking Water Act," speaker at the Annual Meeting of the National Association of State Utility Consumer Advocates, Reno, NV. 1994.
- "Safe Drinking Water Act Compliance -- Ratemaking Implications," speaker at the National Conference of Regulatory Attorneys, Scottsdale, AZ. 1995. Reprinted in *Water*, Vol. 36, No. 2 (Summer 1995), pages 28-29.
- S.J. Rubin, "Water: Why Isn't it Free? The Case of Small Utilities in Pennsylvania," *Utilities, Consumers & Public Policy: Issues of Quality, Affordability, and Competition, Proceedings of the Fourth Utilities, Consumers and Public Policy Conference* (Pennsylvania State University 1995), pages 177-183.
- S.J. Rubin, "Water Rates: An Affordable Housing Issue?," *Home Energy*, Vol. 12 No. 4 (July/August 1995), page 37.
- Speaker and participant in the Water Policy Forum, sponsored by the National Association of Water Companies, Naples, FL. 1995.
- Participant in panel discussion on "The Efficient and Effective Maintenance and Delivery of Potable Water at Affordable Rates to the People of New Jersey," at The New Advocacy: Protecting Consumers in the Emerging Era of Utility Competition, a conference sponsored by the New Jersey Division of the Ratepayer Advocate, Newark, NJ. 1995.
- J.E. Cromwell III, and S.J. Rubin, *Development of Benchmark Measures for Viability Assessment* (Pa. Department of Environmental Protection 1995).
- S. Rubin, "A Nationwide Practice from a Small Town in Pa.," *Lawyers & the Internet – a Supplement to the Legal Intelligencer and Pa. Law Weekly* (February 12, 1996), page S6.
- "Changing Customers' Expectations in the Water Industry," speaker at the Mid-America Regulatory Commissioners Conference, Chicago, IL. 1996, reprinted in *Water* Vol. 37 No. 3 (Winter 1997), pages 12-14..
- "Recent Federal Legislation Affecting Drinking Water Utilities," speaker at Pennsylvania Public Utility Law Conference, Pennsylvania Bar Institute, Hershey, PA. 1996.
- "Clean Water at Affordable Rates: A Ratepayers Conference," moderator at symposium sponsored by the New Jersey Division of Ratepayer Advocate, Trenton, NJ. 1996.

- “Water Workshop: How New Laws Will Affect the Economic Regulation of the Water Industry,” speaker at the Annual Meeting of the National Association of State Utility Consumer Advocates, San Francisco, CA. 1996.
- E.T. Castillo, S.J. Rubin, S.K. Keefe, and R.S. Raucher, “Restructuring Small Systems,” *Journal American Water Works Association*, Vol. 89, No. 1 (January 1997), pages 65-74.
- J.E. Cromwell III, S.J. Rubin, F.C. Marrocco, and M.E. Leevan, “Business Planning for Small System Capacity Development,” *Journal American Water Works Association*, Vol. 89, No. 1 (January 1997), pages 47-57.
- “Capacity Development – More than Viability Under a New Name,” speaker at National Association of Regulatory Utility Commissioners Winter Meetings, Washington, DC. 1997.
- E. Castillo, S.K. Keefe, R.S. Raucher, and S.J. Rubin, *Small System Restructuring to Facilitate SDWA Compliance: An Analysis of Potential Feasibility* (AWWA Research Foundation, 1997).
- H. Himmelberger, *et al.*, *Capacity Development Strategy Report for the Texas Natural Resource Conservation Commission* (Aug. 1997).
- Briefing on Issues Affecting the Water Utility Industry, Annual Meeting of the National Association of State Utility Consumer Advocates, Boston, MA. 1997.
- “Capacity Development in the Water Industry,” speaker at the Annual Meeting of the National Association of Regulatory Utility Commissioners, Boston, MA. 1997.
- “The Ticking Bomb: Competitive Electric Metering, Billing, and Collection,” speaker at the Annual Meeting of the National Association of State Utility Consumer Advocates, Boston, MA. 1997.
- Scott J. Rubin, “A Nationwide Look at the Affordability of Water Service,” *Proceedings of the 1998 Annual Conference of the American Water Works Association*, Water Research, Vol. C, No. 3, pages 113-129 (American Water Works Association, 1998).
- Scott J. Rubin, “30 Technology Tips in 30 Minutes,” *Pennsylvania Public Utility Law Conference*, Vol. I, pages 101-110 (Pa. Bar Institute, 1998).
- Scott J. Rubin, “Effects of Electric and Gas Deregulation on the Water Industry,” *Pennsylvania Public Utility Law Conference*, Vol. I, pages 139-146 (Pa. Bar Institute, 1998).
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- “Consumer Advocacy for the Future,” speaker at the Age of Awareness Conference, Changes and Choices: Utilities in the New Millennium, Carlisle, PA. 1999.
- Keynote Address, \$1 Energy Fund, Inc., Annual Membership Meeting, Monroeville, PA. 1999.

- Scott J. Rubin, "Assessing the Effect of the Proposed Radon Rule on the Affordability of Water Service," prepared for the American Water Works Association. 1999.
- Scott J. Rubin and Janice A. Beecher, *The Impacts of Electric Restructuring on the Water and Wastewater Industry, Proceedings of the Small Drinking Water and Wastewater Systems International Symposium and Technology Expo* (Phoenix, AZ 2000), pp. 66-75.
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- Janice A. Beecher and Scott J. Rubin, "Deregulation Impacts and Opportunities," a presentation at the Annual Conference and Exhibition of the American Water Works Association, Denver, CO. 2000.
- Scott J. Rubin, "Estimating the Effect of Different Arsenic Maximum Contaminant Levels on the Affordability of Water Service," prepared for the American Water Works Association. 2000.
- Janice A. Beecher and Scott J. Rubin, *Deregulation! Impacts on the Water Industry*, American Water Works Association Research Foundation, Denver, CO. 2000.
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- Scott J. Rubin, *Consumer Issues in the Water Industry*, NARUC Annual Regulatory Studies Program, East Lansing, MI. 2000.
- "Be Utility Wise in a Restructured Utility Industry," Keynote Address at Be UtilityWise Conference, Pittsburgh, PA. 2000.
- Scott J. Rubin, Jason D. Sharp, and Todd S. Stewart, "The Wired Administrative Lawyer," *5th Annual Administrative Law Symposium*, Pennsylvania Bar Institute, Harrisburg, PA. 2000.
- Scott J. Rubin, "Current Developments in the Water Industry," *Pennsylvania Public Utility Law Conference*, Pennsylvania Bar Institute, Harrisburg, PA. 2000.
- Scott J. Rubin, "Viewpoint: Change Sickening Attitudes," *Engineering News-Record*, Dec. 18, 2000.
- Janice A. Beecher and Scott J. Rubin, "Ten Practices of Highly Effective Water Utilities," *Opflow*, April 2001, pp. 1, 6-7, 16.
- Scott J. Rubin, "Pennsylvania Utilities: How Are Consumers, Workers, and Corporations Faring in the Deregulated Electricity, Gas, and Telephone Industries?" *Keystone Research Center*, May 2001.

Scott J. Rubin, "Guest Perspective: A First Look at the Impact of Electric Deregulation on Pennsylvania," *LEAP Letter*, May-June 2001, pp. 2-3.

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Pa. Public Utility Commission v. Pennsylvania Gas and Water Co. - Water Division, Pa. Public Utility Commission, Docket R-00922404. 1992. Concerning rate design, on behalf of the Pa. Office of Consumer Advocate.

Pa. Public Utility Commission v. Shenango Valley Water Co., Pa. Public Utility Commission, Docket R-00922420. 1992. Concerning cost allocation, on behalf of the Pa. Office of Consumer Advocate

Pa. Public Utility Commission v. Pennsylvania Gas and Water Co. - Water Division, Pa. Public Utility Commission, Docket R-00922482. 1993. Concerning rate design, on behalf of the Pa. Office of Consumer Advocate

Pa. Public Utility Commission v. Colony Water Co., Pa. Public Utility Commission, Docket R-00922375. 1993. Concerning rate design, on behalf of the Pa. Office of Consumer Advocate

Pa. Public Utility Commission v. Dauphin Consolidated Water Supply Co. and General Waterworks of Pennsylvania, Inc., Pa. Public Utility Commission, Docket R-00932604. 1993. Concerning rate design and cost of service, on behalf of the Pa. Office of Consumer Advocate

West Penn Power Co. v. State Tax Department of West Virginia, Circuit Court of Kanawha County, West Virginia, Civil Action No. 89-C-3056. 1993. Concerning regulatory policy and the effects of a taxation statute on out-of-state utility ratepayers, on behalf of the Pa. Office of Consumer Advocate

Pa. Public Utility Commission v. Pennsylvania Gas and Water Co. - Water Division, Pa. Public Utility Commission, Docket R-00932667. 1993. Concerning rate design and affordability of service, on behalf of the Pa. Office of Consumer Advocate

Pa. Public Utility Commission v. National Utilities, Inc., Pa. Public Utility Commission, Docket R-00932828. 1994. Concerning rate design, on behalf of the Pa. Office of Consumer Advocate

An Investigation of the Sources of Supply and Future Demand of Kentucky-American Water Company, Ky. Public Service Commission, Case No. 93-434. 1994. Concerning supply and demand planning, on behalf of the Kentucky Office of Attorney General, Utility and Rate Intervention Division.

The Petition on Behalf of Gordon's Corner Water Company for an Increase in Rates, New Jersey Board of Public Utilities, Docket No. WR94020037. 1994. Concerning revenue requirements and rate design, on behalf of the New Jersey Division of Ratepayer Advocate.

Re Consumers Maine Water Company Request for Approval of Contracts with Consumers Water Company and with Ohio Water Service Company, Me. Public Utilities Commission, Docket No. 94-352. 1994. Concerning affiliated interest agreements, on behalf of the Maine Public Advocate.

In the Matter of the Application of Potomac Electric Power Company for Approval of its Third Least-Cost Plan, D.C. Public Service Commission, Formal Case No. 917, Phase II. 1995. Concerning Clean Air Act implementation and environmental externalities, on behalf of the District of Columbia Office of the People's Counsel.

- In the Matter of the Regulation of the Electric Fuel Component Contained within the Rate Schedules of the Dayton Power and Light Company and Related Matters*, Ohio Public Utilities Commission, Case No. 94-105-EL-EFC. 1995. Concerning Clean Air Act implementation (case settled before testimony was filed), on behalf of the Office of the Ohio Consumers' Counsel.
- Kennebec Water District Proposed Increase in Rates*, Maine Public Utilities Commission, Docket No. 95-091. 1995. Concerning the reasonableness of planning decisions and the relationship between a publicly owned water district and a very large industrial customer, on behalf of the Maine Public Advocate.
- Winter Harbor Water Company, Proposed Schedule Revisions to Introduce a Readiness-to-Serve Charge*, Maine Public Utilities Commission, Docket No. 95-271. 1995 and 1996. Concerning standards for, and the reasonableness of, imposing a readiness to serve charge and/or exit fee on the customers of a small investor-owned water utility, on behalf of the Maine Public Advocate.
- In the Matter of the 1995 Long-Term Electric Forecast Report of the Cincinnati Gas & Electric Company*, Public Utilities Commission of Ohio, Case No. 95-203-EL-FOR, and *In the Matter of the Two-Year Review of the Cincinnati Gas & Electric Company's Environmental Compliance Plan Pursuant to Section 4913.05, Revised Cost*, Case No. 95-747-EL-ECP. 1996. Concerning the reasonableness of the utility's long-range supply and demand-management plans, the reasonableness of its plan for complying with the Clean Air Act Amendments of 1990, and discussing methods to ensure the provision of utility service to low-income customers, on behalf of the Office of the Ohio Consumers' Counsel.
- In the Matter of Notice of the Adjustment of the Rates of Kentucky-American Water Company*, Kentucky Public Service Commission, Case No. 95-554. 1996. Concerning rate design, cost of service, and sales forecast issues, on behalf of the Kentucky Office of Attorney General.
- In the Matter of the Application of Citizens Utilities Company for a Hearing to Determine the Fair Value of its Properties for Ratemaking Purposes, to Fix a Just and Reasonable Rate of Return Thereon, and to Approve Rate Schedules Designed to Provide such Rate of Return*, Arizona Corporation Commission, Docket Nos. E-1032-95-417, et al. 1996. Concerning rate design, cost of service, and the price elasticity of water demand, on behalf of the Arizona Residential Utility Consumer Office.
- Cochrane v. Bangor Hydro-Electric Company*, Maine Public Utilities Commission, Docket No. 96-053. 1996. Concerning regulatory requirements for an electric utility to engage in unregulated business enterprises, on behalf of the Maine Public Advocate.
- In the Matter of the Regulation of the Electric Fuel Component Contained within the Rate Schedules of Monongahela Power Company and Related Matters*, Public Utilities Commission of Ohio, Case No. 96-106-EL-EFC. 1996. Concerning the costs and procedures associated with the implementation of the Clean Air Act Amendments of 1990, on behalf of the Ohio Consumers' Counsel.
- In the Matter of the Regulation of the Electric Fuel Component Contained within the Rate Schedules of Cleveland Electric Illuminating Company and Toledo Edison Company and Related Matters*, Public Utilities Commission of Ohio, Case Nos. 96-107-EL-EFC and 96-108-EL-EFC. 1996.

Concerning the costs and procedures associated with the implementation of the Clean Air Act Amendments of 1990, on behalf of the Ohio Consumers' Counsel.

In the Matter of the Regulation of the Electric Fuel Component Contained within the Rate Schedules of Ohio Power Company and Columbus Southern Power Company and Related Matters, Public Utilities Commission of Ohio, Case Nos. 96-101-EL-EFC and 96-102-EL-EFC. 1997. Concerning the costs and procedures associated with the implementation of the Clean Air Act Amendments of 1990, on behalf of the Ohio Consumers' Counsel.

An Investigation of the Sources of Supply and Future Demand of Kentucky-American Water Company (Phase II), Kentucky Public Service Commission, Docket No. 93-434. 1997. Concerning supply and demand planning, on behalf of the Kentucky Office of Attorney General, Public Service Litigation Branch.

In the Matter of the Regulation of the Electric Fuel Component Contained within the Rate Schedules of Cincinnati Gas and Electric Co. and Related Matters, Public Utilities Commission of Ohio, Case No. 96-103-EL-EFC. 1997. Concerning the costs and procedures associated with the implementation of the Clean Air Act Amendments of 1990, on behalf of the Ohio Consumers' Counsel.

Bangor Hydro-Electric Company Petition for Temporary Rate Increase, Maine Public Utilities Commission, Docket No. 97-201. 1997. Concerning the reasonableness of granting an electric utility's request for emergency rate relief, and related issues, on behalf of the Maine Public Advocate.

Testimony concerning H.B. 1068 Relating to Restructuring of the Natural Gas Utility Industry, Consumer Affairs Committee, Pennsylvania House of Representatives. 1997. Concerning the provisions of proposed legislation to restructure the natural gas utility industry in Pennsylvania, on behalf of the Pennsylvania AFL-CIO Gas Utility Caucus.

In the Matter of the Regulation of the Electric Fuel Component Contained within the Rate Schedules of Cleveland Electric Illuminating Company and Toledo Edison Company and Related Matters, Public Utilities Commission of Ohio, Case Nos. 97-107-EL-EFC and 97-108-EL-EFC. 1997. Concerning the costs and procedures associated with the implementation of the Clean Air Act Amendments of 1990, on behalf of the Ohio Consumers' Counsel.

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Bangor Gas Company, L.L.C., Petition for Approval to Furnish Gas Service in the State of Maine, Maine Public Utilities Commission, Docket No. 97-795. 1998. Concerning the standards and public policy concerns involved in issuing a certificate of public convenience and necessity for a new natural gas utility, and related ratemaking issues, on behalf of the Maine Public Advocate.

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In the Matter of Petition of Pennsgrove Water Supply Company for an Increase in Rates for Water Service, New Jersey Board of Public Utilities, Docket No. WR98030147. 1998. Concerning the revenue requirements, level of affiliated charges, and rate design for a water utility, on behalf of the New Jersey Division of Ratepayer Advocate.

In the Matter of Petition of Seaview Water Company for an Increase in Rates for Water Service, New Jersey Board of Public Utilities, Docket No. WR98040193. 1999. Concerning the revenue requirements and rate design for a water utility, on behalf of the New Jersey Division of Ratepayer Advocate.

In the Matter of the Regulation of the Electric Fuel Component Contained within the Rate Schedules of Ohio Power Company and Columbus Southern Power Company and Related Matters, Public Utilities Commission of Ohio, Case Nos. 98-101-EL-EFC and 98-102-EL-EFC. 1999. Concerning the costs and procedures associated with the implementation of the Clean Air Act Amendments of 1990, on behalf of the Ohio Consumers' Counsel.

In the Matter of the Regulation of the Electric Fuel Component Contained within the Rate Schedules of Dayton Power and Light Company and Related Matters, Public Utilities Commission of Ohio, Case No. 98-105-EL-EFC. 1999. Concerning the costs and procedures associated with the implementation of the Clean Air Act Amendments of 1990, on behalf of the Ohio Consumers' Counsel.

In the Matter of the Regulation of the Electric Fuel Component Contained within the Rate Schedules of Monongahela Power Company and Related Matters, Public Utilities Commission of Ohio, Case No. 99-106-EL-EFC. 1999. Concerning the costs and procedures associated with the

implementation of the Clean Air Act Amendments of 1990, on behalf of the Ohio Consumers' Counsel.

County of Suffolk, et al. v. Long Island Lighting Company, et al., U.S. District Court for the Eastern District of New York, Case No. 87-CV-0646. 2000. Submitted two affidavits concerning the calculation and collection of court-ordered refunds to utility customers, on behalf of counsel for the plaintiffs.

Northern Utilities, Inc., Petition for Waivers from Chapter 820, Maine Public Utilities Commission, Docket No. 99-254. 2000. Concerning the standards and requirements for defining and separating a natural gas utility's core and non-core business functions, on behalf of the Maine Public Advocate.

Notice of Adjustment of the Rates of Kentucky-American Water Company, Kentucky Public Service Commission, Case No. 2000-120. 2000. Concerning the appropriate methods for allocating costs and designing rates, on behalf of the Kentucky Office of Attorney General.

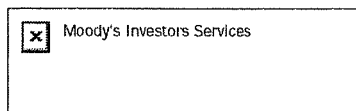
In the Matter of the Petition of Gordon's Corner Water Company for an Increase in Rates and Charges for Water Service, New Jersey Board of Public Utilities, Docket No. WR00050304. 2000. Concerning the revenue requirements and rate design for a water utility, on behalf of the New Jersey Division of Ratepayer Advocate.

Testimony concerning Arsenic in Drinking Water: An Update on the Science, Benefits, and Costs, Committee on Science, United States House of Representatives. 2001. Concerning the effects on low-income households and small communities from a more stringent regulation of arsenic in drinking water.

In the Matter of the Application of The Cincinnati Gas & Electric Company for an Increase in Gas Rates in its Service Territory, Public Utilities Commission of Ohio, Case No. 01-1228-GA-AIR, *et al.* 2002. Concerning the need for and structure of a special rider and alternative form of regulation for an accelerated main replacement program, on behalf of the Ohio Consumers' Counsel.

Pennsylvania State Treasurer's Hearing on Enron and Corporate Governance Issues. 2002. Concerning Enron's role in Pennsylvania's electricity market and related issues, on behalf of the Pennsylvania AFL-CIO.

An Investigation into the Feasibility and Advisability of Kentucky-American Water Company's Proposed Solution to its Water Supply Deficit, Kentucky Public Service Commission, Case No. 2001-00117. 2002. Concerning water supply planning, regulatory oversight, and related issue, on behalf of the Kentucky Office of Attorney General.



Global Credit Research
Rating Action
22 MAR 2002

Rating Action: RWE AG

MOODY'S DOWNGRADES RWE TO A1, NEGATIVE OUTLOOK, PLACES INNOGY'S Baa1 UNDER REVIEW FOR UPGRADE FOLLOWING INNOGY ACQUISITION ANNOUNCEMENT

London, 22 March 2002 -- Moody's Investors Service has today downgraded to A1 from Aa3 the long term senior unsecured ratings of RWE AG (RWE) and its guaranteed subsidiary, RWE Finance BV. The outlook is negative. The P-1 short term rating is confirmed. The ratings of Thames Water, linked to those of RWE, have also been downgraded by one notch. The Baa1/P-2 ratings of Innogy plc have been placed under review for possible upgrade. This follows the announcement that RWE is to acquire 100% of Innogy shares for a total cash transaction value of Eur 8.8 billion (Eur 5 billion of equity plus Eur 3.8 billion of assumed debt). This transaction is due to close by the end of June 2002.

The downgrade reflects the weaker financial profile of RWE as a result of this acquisition with debt protection measures more consistent with an A1 rating category. RWE targets EBITDA/ interest expense coverage of between 5.5x and 4.5x. The downgrade also takes into account the recent acquisition of 97% of Transgas and stakes in six distribution companies in the Czech Republic for an enterprise value of Eur 4 billion which was announced in December 2001, which had reduced RWE's financial flexibility at the Aa3 rating level.

Moody's maintains a negative outlook on the A1 rating. Whilst Moody's recognises that RWE's management have confirmed that they are entering a consolidation phase of the group's development, Moody's believes that further medium-sized acquisitions in Europe or the US cannot be fully excluded in the intermediate term, and that smaller acquisitions are likely, if interesting opportunities arise. The company should, however, have some financial flexibility for these acquisitions if the planned divestment of non-core assets proceeds as expected, although market developments will influence timing and actual proceeds. At the same time, RWE may face integration challenges given the speed and scale of its recent acquisitions although the company plans to use existing management expertise and knowhow where possible which should help smooth the integration process.

The A1 rating also recognises the strength of RWE's leading positions within its identified core utility and energy businesses in Europe which will be reinforced by these recent acquisitions. Innogy makes an attractive addition to RWE's portfolio due to its balanced and flexible generation portfolio, its strong customer base (it is currently the leading electricity supplier and second largest gas supplier in the UK) and its well-developed customer service skills. At the same time RWE may be able to exploit some limited cross-selling opportunities within its water and electricity operations in the UK.

On the negative side, Innogy does not own distribution activities with their more stable cash flows and is therefore exposed to the competitive generation and supply markets. Wholesale power prices have been falling since mid 2001 and whilst Innogy is largely protected due to a volume hedge between the company's generation portfolio and its retail and commercial customer base, increasing competition may lead to pressure on the current relatively generous retail supply margins in the UK. Moody's believes that Innogy is a well run company and while RWE will benefit from the expertise of the management team they hope to retain, there is limited scope for RWE to improve the performance of Innogy's business.

The following ratings have also been affected. They carry a negative outlook:

Thames Water Plc : long term issuer rating downgraded to A2 from A1

Thames Water Finance BV: senior unsecured debt rating of 6.375% US\$150 million bonds due 2004 guaranteed by Thames Water PLC downgraded to A2 from A1

The senior unsecured bonds and notes of Thames Water Utilities Finance Plc under the guarantee of Thames Water Utilities Ltd downgraded from Aa3 to A1

The one notch differential between the ratings of Thames Water Plc and its UK subsidiary reflects the structural subordination of the senior unsecured creditors of Thames Water Plc to those of Thames Water Utilities Limited.

The following ratings are put under review for possible upgrade:

The Baa1 issuer and senior unsecured ratings of Innogy Plc

The P-2 short term rating of Innogy Plc

Headquartered in Essen, Germany, RWE AG is a multi-utility/multi-energy company with core activities in electricity, gas, water and waste water, and waste and recycling activities. It also holds significant financial investments in other activities including petrol, construction and printing. As at FYE 2000/01, it had a turnover of EUR62.9 billion and shareholders' funds of EUR10.8 billion.

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I/M/O the Joint Petition of New Jersey-American Water Company, Inc. and
Thames Water Aqua Holdings GmbH for Approval of Change in Control
of New Jersey-American Water Company, Inc.
BPU Docket No. WM01120833

REQUEST OCE-3

Page 1 of 1

Q. Discuss how RWE/Thames would unwind the transaction in the event that it did not meet financial and/or growth expectations of the parent company. How will RWE measure whether the acquisition has been successful? Discuss how RWE will allocate capital among its various operations worldwide. Explain how a change in the investment climate in Europe versus the United States would influence the capital allocation process. Discuss the effect of the acquisition on the free cash flow of RWE. Would RWE consider selling parts of its United States' acquisitions to other parties? Explain.

A. The financial and growth targets of the business are as identified in the investment advisor reports referenced in response to request OCE-1. RWE is confident that these targets will be achieved and will support the Americas management in achievement of these goals. Because it is not anticipated that the financial and growth targets will not be met, RWE and Thames have not analyzed how the transaction would be unwound.

RWE will allocate capital among its various operations worldwide in order to meet the obligations imposed on such subsidiaries, including in the case of NJAWC, the regulatory and service obligations of NJAWC. By acquiring NJAWC, RWE undertakes the legal responsibility to provide safe and reliable service pursuant to applicable statutes. RWE/NJAWC will undertake the capital investments necessary to satisfy these obligations, assuming that the Board continues to provide NJAWC with a opportunity to achieve a reasonable return on investment. It is anticipated that the proposed transaction will generate positive cash flows.

A change in the investment climate in Europe versus the United States would influence the capital allocation process only to the extent that RWE has discretionary investment opportunities.

RWE is committed to growing its four core utility divisions. Therefore, there are no current plans to divest any of the water division acquisitions in the US. As publicly stated non-core assets such as Turner Construction and Heidelberg Press are being considered for disposal.

**American Water Works Corp.
Customers in States Where Merger is Contested (including Citizens)**

State	Customers	% of Total
AZ	84,000	4.5%
CA	176,000	9.4%
IL	255,000	13.6%
KY	102,000	5.5%
MD	5,000	0.3%
NJ	346,000	18.5%
NM	14,000	0.7%
NY	74,000	4.0%
PA	606,000	32.4%
VA	53,000	2.8%
WV	<u>156,000</u>	8.3%
Total	1,871,000	

Notes:

AZ Appl. para. 1 - 5,000 customers; plus 79,000 from Citizens (145,000 for AZ+CA per AWW3/28/02 10K; 66,000 in CA per Kelleher CA testimony Q.8)

CA Petition para. 12; Kelleher test. Q.8

IL Gloriod test. pp. 5-6

KY Mundy test. pp. 4-5

MD Petition para. 1

NJ http://www.amwater.com/awpr/njaw/about_us/aboutus.html

NM Stephenson test. p. 5

NY Petition para. 1

PA AWW 3/28/02 10K, Exh. 13, p. 7

VA As of 12/31/00 per AWW 2000 annual report

WV Petition para. 2

**PUBLIC SERVICE COMMISSION
OF WEST VIRGINIA
CHARLESTON**

At a session of the PUBLIC SERVICE COMMISSION OF WEST VIRGINIA in the City of Charleston on the 23rd day of October, 2002.

CASE NO. 01-1691-W-PC

**WEST VIRGINIA-AMERICAN WATER COMPANY and
THAMES WATER AQUA HOLDINGS GMBH**

Joint petition for consent and approval of the acquisition of the outstanding common stock of American Water Works Company, Inc., the parent Company and Controlling Shareholder of West Virginia-American Water Company, to Thames Water Aqua Holdings GmbH.

COMMISSION ORDER

The Commission held an evidentiary hearing in this case on July 25, 2002. Prior to the hearing, the parties submitted a settlement of all the issues in the case which, if approved, would authorize the acquisition of American Water Works Company, Inc. by Thames Water Aqua Holdings GmbH.

Background

On December 20, 2001, West Virginia-American Water Company (WVAWC) and Thames Water Aqua Holdings GmbH (Thames) (collectively, petitioners) filed a joint petition for Commission consent and approval of the acquisition of the outstanding common stock of American Water Works Company, Inc. (AWW), the parent company and controlling shareholder of WVAWC, by Thames.

On January 4, 2002, the Commission's Consumer Advocate Division (CAD) petitioned to intervene.

On January 28, 2002, Commission Staff (Staff) filed an initial memorandum noting that significant protests (approximately 600) had been filed to the joint petition. Staff further opined that Thames' parent RWE Aktiengesellschaft (RWE) proposed to

pay a premium for AWW's stock and expressed concern that RWE might raise rates in the future to enable it to recoup its substantial investment. Staff recommended that the Commission order the parties to publish notice and set this case for hearing. Staff recommended that the Commission handle this case on an expedited basis.

On February 5, 2002, the petitioners filed a letter agreeing with Staff's recommendation that this matter be processed expeditiously. In response to Staff's concern regarding the premium RWE appeared to be ready to pay for AWW stock, counsel stated that Thames/RWE "have no intention of seeking a return or other favorable cost of service treatment of any portion of the acquisition premium through the ratemaking process." As to the filed protest letters, counsel noted that a substantial number of the protestants did not appear to be customers of the Company.

By Order issued March 20, 2002, the Commission required the petitioners to file notice of this proceeding, and the Commission adopted a procedural schedule for public comment hearings, the filing of pre-filed testimony, and an evidentiary hearing.

The petitioners have filed affidavits of publication reflecting that the required notice has been published in all counties in which the Company provides utility service.

On May 1, 2002, the petitioners filed a Joint Motion for Protective Order. Attached to the Joint Motion was Appendix A, consisting of excerpts of documents produced by the Joint Petitioners in the course of discovery. The petitioners requested that the contents of Appendix A be accorded confidential treatment and be protected from public disclosure. The Joint Motion represented that the Kentucky Public Service Commission ruled, after an extensive *in camera* review, and after a hearing, that each of the confidential excerpts (with a few limited exceptions) is confidential and exempt from public disclosure under Kentucky's freedom of information law. The petitioners requested that the West Virginia Public Service Commission accord the same treatment as did Kentucky.

On May 8, 2002, RWE/Thames filed the separate Direct Testimony of Michael Carmedy and Andrew Chapman.

Also on May 8, 2002, WVAWC filed the separate Direct Testimony of Chris E. Jarrett and Tom S. Witt.

On May 21, 2002, RWE/Thames filed a letter indicating that James McGivern would be adopting and sponsoring the earlier filed Direct Testimony of Michael

Carmedy, at the hearing. RWE/Thames explained that Mr. Carmedy had a conflict with the hearing dates.

By Order issued May 29, 2002, the Commission approved the protective agreement executed by the petitioners and CAD. The Commission deferred its decision whether to issue a protective order over Appendix A until it received the information required by the next paragraph. The Commission returned Appendix A to the petitioners without retaining a copy of the same.

The Commission required the petitioners to re-file Appendix A after highlighting the specific words, sentences, numerical information, or other information, on each document included in Appendix A that the petitioners assert is confidential. The Order explained that in the event an entire document is deemed confidential, then highlighting of the entire document shall not be necessary, and a highlighted notation at the top of the document that the entire document is deemed confidential would suffice.

The Commission also required the petitioners to file a statement of the specific FOIA exemption applicable to each document included in Appendix A.

On June 3, 2002, the Commission issued a press release announcing the five public hearings to be held in this case.

On June 5, 2002, the CAD filed both the public and proprietary versions of the *Direct Testimony of Scott J. Rubin*.

Also on June 5, 2002, Staff filed the *Direct Testimony of Paul Stewart*.

On June 10, 2002, the petitioners filed a letter seeking clarification of the May 29, 2002, Order. The petitioners believe they had already identified the confidential portions of the 16 documents contained in Appendix A, through a complex identification process. The petitioners explained that they did not request *confidential treatment of the entirety* of each of the 16 documents contained in Appendix A. The petitioners stated that they had *already provided the information requested in the Commission's May 29, 2002, Order*.

The public comment hearings were held as scheduled at 6 p.m. on June 10, 2002, Princeton, West Virginia; June 11, 2002, Huntington, West Virginia; June 24, 2002, Weston, West Virginia; June 25, 2002, Fayetteville, West Virginia; and July 15, 2002, at the Public Service Commission, in Charleston, West Virginia. The public comments from those hearings are summarized below.

On June 12, 2002, WVAWC and RWE/Thames filed the Rebuttal Testimonies of Chris E. Jarrett, James McGivern, and William D. Paterson.

On July 22, 2002, the Commission issued a protective order granting confidential treatment of the Appendix A excerpts, with the exception of excerpt 2-18, for purposes of the evidentiary hearing. The Commission stated that it would rule on the future confidentiality of the excerpts in Appendix A when it issued the final order in this case.

On July 24, 2002, the parties filed a Joint Stipulation proposing resolution of all of the issues in this case. A copy of the Joint Stipulation, without exhibits (Stipulation) is attached hereto as Appendix A.

Summary of public comments received at public comment hearings:

Mr. Steve Cornwell of Barboursville, West Virginia, stated that he represents the Utility Workers Union of America and is President of Local 176, and that he supports the acquisition of AWW by RWE/Thames as an employee of WVAWC and as a customer. (June 10, 2002, Tr. p. 22; June 11, 2002, Tr. p. 25; June 25, 2002, Tr. p. 28; July 15, 2002, Tr. p. 49). Mr. Paul Canterbury of Princeton, West Virginia believes there would be no benefit to ratepayers if the transaction is approved. He believes that the only persons to benefit will be the shareholders. He opposes ownership by an overseas company. (June 10, 2002, Tr. p. 22-23). Ms. Loretta Young of Princeton, West Virginia, who is the Associate Vice President for Development at Concord College spoke in favor of the acquisition. Ms. Young believes RWE/Thames will be a good corporate citizen and will maintain good local communication with the communities. (*Id.*, p. 23-25).

Mr. Al Gannon disapproved of RWE/Thames intention to pay more than market value for the stock of AWW. (June 25, 2002, Tr. p. 24). Mr. Gannon does not like AWW's centralized call center because the operators seem not to realize that West Virginia is not a part of the state of Virginia. (*Id.*, p. 24-25). Mr. John Witt praised WVAWC for its participation in public private partnerships that have resulted in the provision of water to previously unserved communities in Fayette County. (*Id.*, p. 28-29). Mr. Witt is concerned that if personnel of WVAWC changes as a result of this acquisition, that the same community cooperation will not exist. (*Id.*, p. 30).

Ms. Carolyn DelGrande of Charleston, West Virginia is opposed to the sale of "our water" to a foreign corporation. She is concerned that water quality may diminish if the transaction is approved. Ms. DelGrande noted that Allegheny Power's purchase of Mountaineer has not been as profitable as hoped, and employees are being let go. She also noted a water dispute taking place between Mexico and the state of Texas. She believes

the Commission should exercise extreme caution in considering this acquisition. (July 15, 2002, Tr. p. 35-36). Mr. Gaylord Martin is concerned that the concerns and complaints of West Virginia customers will not matter to a multi-national corporation. (Id. p. 36-39). Ms. Mary Duffield of St. Albans, West Virginia, stated that many people believe it is a bad idea to allow the sale of the water company to a foreign entity and allow control to be out of the country. She believes we are "setting ourselves up for some kind of biological or chemical disaster." (Id. p. 39-40).

Mr. Jim Duffield of St. Albans, West Virginia worries about foreign control, and the possibility of rate increases. He worries that a foreign corporation could begin exporting our water overseas where water quality is poor. (Id. p. 40-43). Ms. Wilma Davis of Cross Lanes, West Virginia stated she is worried about safety and security of the water supply as well as rate increases. She cannot believe that elected leaders or the Commission would allow our water to be owned by a foreign interest. (Id. p. 44-46). Ms. Roberta Levine from Charleston, West Virginia, stated that West Virginia's water is very good compared to other parts of the country. She has read that the world's water supplies are diminishing and believes that we should maintain local control over our water supplies. *The existing ownership and management of WVAWC have done a good job and can continue to do so.* (Id. p. 46-48). Ms. Ellen Freer of Charleston, West Virginia stated that she is a stockholder of AWW but opposes the acquisition. She questioned whether a foreign owner would bottle up our water for export to Europe. She does not believe any public utilities should be foreign-owned. (Id. p. 50).

Summary of Joint Petitioners' Pre-filed Testimony:

James McGivern, adopting testimony filed by Andrew Carmedy.

The purpose of Mr. McGivern's pre-filed testimony is to provide the Commission with information as to how WVAWC will be managed and operated after the acquisition. The transaction will have no adverse impact on WVAWC's operations, employees, customer rates, safety or reliability of the system. Thames will preserve and build upon the excellent reputation of the WVAWC.

AWW will become a wholly-owned subsidiary of Thames Holdings which, in turn, is a wholly-owned subsidiary of RWE. WVAWC will continue to be a subsidiary of AWW and will continue to exist as a West Virginia public utility subject to the jurisdiction and regulation of the PSC. Each share of WVAWC common stock, par value \$1.25 per share, of AWW, not owned by Thames, Acquisition Corp. or AWW, other than shares owned by any holder who invokes appraisal rights under Delaware law, shall be converted into the right to receive cash in consideration of \$46 per share. Prior to the acquisition, AWW will redeem each outstanding share of Preferred Stock at a redemption

price of \$25.25 per share, plus full cumulative dividends thereon, and each outstanding share of Preference Stock at a redemption price of \$25.00 per share, plus full cumulative dividends thereon. The current authorized capital stock of AWW consists of (1) 300 million shares of common stock; (2) 1,770,000 shares of Preferred Stock, par value \$25.00 per share; and (3) 3 million shares of Preferential Stock, par value \$25.00 per share. The redemptions have already occurred. Upon the closing of the acquisition, each share of AWW Common Stock owned by Thames, Apollo Acquisition Corp. (Acquisition Corp.) or AWW shall be automatically cancelled and cease to exist and no consideration shall be paid for such shares. The Agreement does not affect WVAWC's debts or liabilities. Nor does the Agreement affect WVAWC's assets.

After the WVAWC acquisition, WVAWC will continue to exist in the same corporate form as it does today and will continue to be a subsidiary of AWW. It will remain a public utility subject to the PSC's jurisdiction. Instead of AWW's stock being held by many individual stockholders, Thames will acquire AWW's common stock, and AWW will become a wholly-owned subsidiary of Thames which, in turn, is a wholly-owned subsidiary of RWE.

There will be no adverse affect on day-to-day operations of WVAWC. Headquarters will remain in Charleston. AWW's headquarters in New Jersey will be expanded to manage all of Thames' operations in North, Central and South America. Reliability will be maintained. Thames will carry out a comprehensive security plan.

The transaction will not result in any change in the existing management and officers of WVAWC. All collective bargaining agreements will be honored. There will be no layoffs of any WVAWC or AWW employees prior to March 2004. Nor does Thames plan lay-offs after that date.

The transaction will not affect WVAWC rates.

The books and records of RWE and/or Thames will be available to the Commission to the extent necessary for the auditing of costs incurred by either that are allocated to WVAWC for recovery in rates.

The financial resources of RWE and Thames will enhance WVAWC's and AWW's access to capital markets. This will allow the continued maintenance of a reasonable cost structure.

The following benefits are expected to flow from the acquisition: Enhanced security; enhanced environmental conservation and regulatory compliance; maintenance

of excellent service standards; improved customer service; enhanced research and development; continued community service.

Andrew M. Chapman, President of Elizabethtown Water Company and of E'town Corporation.

The purpose of his testimony is to provide the Commission with an overview of the value received by Elizabethtown's customers and employees as a result of the acquisition by RWE/Thames. The acquisition has given Elizabethtown greater technical resources and more sophisticated management techniques. Thames has implemented new construction contract terms which have resulted in cost savings, allowing Elizabethtown to perform additional main cleaning and lining. Elizabethtown has reorganized customer service and implemented a new customer information system. Thames introduced Elizabethtown to the ISO quality management system, and on March 22, 2002, Elizabethtown successfully completed the ISO 9001 registration audit for its surface water treatment plants and lab. Mr. Chapman believes that Elizabethtown is the first water utility in the U.S. to do so. Elizabethtown expects to receive ISO 14001 certification for its environmental management system this year. These efforts will result in higher quality service to customers at a lower cost.

Elizabethtown has been working with Thames to develop new processes called Framework Agreements, for the procurement from suppliers. Mr. Chapman expects the processes to result in better working relationships with suppliers and lower costs to benefit customers.

The acquisition has increased employees' exposure to different practices worldwide and has increased the opportunity to showcase Elizabethtown's strengths worldwide. There has been increased investment in employee training and career development. Elizabethtown's good relations with labor unions have improved.

Elizabethtown has benefitted from Thames' experience with security matters.

Elizabethtown is now able to raise capital at a lower cost than before. Specifically, the Company was able to refinance approximately \$50 million of debt utilizing a lower, floating interest rate, thus reducing its cost of capital. These savings were passed through to customers.

RWE/Thames continues to recognize and provide management support for the capital investment needs of Elizabethtown. Over the past 18 months, the Company placed into service more than \$90 million of facilities to improve service to customers.

Elizabethtown is a more effective organization as a direct result of the Thames' acquisition.

Dr. Tom S. Witt, describes himself as a professional economist, and consultant for WVAWC. Mr. Witt states that over the past 15 years the State has been working hard to attract venture and other start-up capital investment from a variety of sources including investment from within the State, from other states and from foreign investors.

Foreign affiliates are present in the State and employ 26,300 persons, with a gross property, plant and equipment valuation of \$7.4 billion. Globalization has led to the merger or acquisition of various existing U.S. companies by foreign investors and the similar acquisition abroad by U.S. companies. Examples of foreign investment in West Virginia include Toyota, NGK Spark Plug Mfg., RWE's investment in Consolidation Coal Co., Rhone-Poulenc-AG Co.'s investment in the former Union Carbide facilities, and Pechiney's investment in the former Ravenswood Aluminum. In the tourism industry, West Virginia has had Intravel's nearly \$100 million dollar investment in Snowshoe resort.

The State should not be reluctant to encourage foreign investment. If the public accepts the premise that adding facilities, jobs, income and wealth through investment of capital in West Virginia is in the best interest of the State, then the origin of that capital should be irrelevant. An additional benefit of foreign investment is the access to technology and "best practices" which enable West Virginia firms and employees to be more competitive.

The State has invested its funds globally as well. For example the West Virginia Investment Management Board (pension funds) have invested in an equity pool, 25% of which (approximately \$753,261,000) is targeted to international investments. The State has trade offices in three foreign countries and conducts trade missions. The State has offered tax incentives, work force development and other inducements to foreign investment to locate in this State.

Dr. Witt does not believe that foreign investment in the public utility industry will result in foreign manipulation of the public utility business, due to the nature of the product produced and the substantial capital investment in fixed plant and equipment. Furthermore, the public utility will continue to be subject to State regulation.

Dr. Witt does not believe that foreign ownership increases the chances of a terrorist attack on the public water system. Operation of the systems will continue in the same hands that operate the system today. WVAWC's employees will continue to be as loyal to the provision of good service after the acquisition as they are today. Furthermore, the

future owners will have an enormous investment in WVAWC after the acquisition, and will have no reason to allow their newly acquired assets, or customers to be harmed.

There is no economic reason to prohibit foreign investment. The State has a policy of encouraging foreign investment, and a decision to disallow the sale of stock on the basis of nationality would be contrary to that policy. The public cannot ignore that we live in a global economy. If foreign investors perceive that their investment is not wanted in West Virginia, these investments and related jobs will go elsewhere. Also domestic investors could consider an anti-foreign investment policy as a detriment because their own investments will be considered less-liquid, in that the number of potential buyers is reduced.

An anti-foreign investment decision in this case could have a chilling economic impact on the State. Foreign investment helps us to understand our increasingly international economy and prepare future West Virginians for a larger leadership role in the world economy.

Chris E. Jarrett, President of WVAWC. The purpose of Mr. Jarrett's testimony is to describe the transaction, explain the factors motivating AWW to pursue the transaction, explain the related challenges, and the related benefits to customers, employees and the State.

WVAWC serves 166,000 customers, or 450,000 people in portions of 17 counties in West Virginia.

Pursuant to the acquisition, AWW's shareholders will sell stock resulting in the merger of AWW with an entity called Apollo Acquisition Co. Apollo is a Delaware corporation, and a wholly-owned subsidiary of Thames Aqua Holdings GmbH (Thames Holdings), and has been formed for the purpose of implementing the merger acquisition of AWW. Thames Holdings, is a subsidiary of RWE. AWW will be the survivor of the merger with Apollo and will be a subsidiary of Thames as a result of that merger. AWW will continue its corporate existence under Delaware law as a wholly-owned subsidiary of Thames.

There will be no adverse impact on existing rates. There will be only positive impacts such as increased access to capital markets, opportunities for enhanced research and development and increase the opportunities for growth. Security measures will be enhanced by the acquisition. Mr. Jarrett expects no change in policies with respect to customers, employees, operations, financing, accounting, capitalization, rates, depreciation, maintenance, services and any other matters affecting the public interest or utility operations. There will no change to any collective bargaining agreements.

The challenges facing the water utility industry in the next two or three decades include the need to replace infrastructure; investment in plant and increases in operating and maintenance costs because of more rigorous standards and requirements of the Safe Drinking Water Act and Clean Water Act. Infrastructure investment needs in West Virginia are estimated at \$873 million. Those needs nationwide are estimated at \$325 billion.

Significant new or additional expenses will be necessary to enhance security. The fragmentation of the water utility industry poses problems to meeting the security goals.

These and other challenges have led to an ongoing restructuring of the water industry through consolidations, mergers and acquisitions, as well as increasing interest in privatization of government-owned systems. These challenges have led to significant investment in U.S. water companies by international corporations such as Thames, in Elizabethtown Water Co.; by the French company, Ondeo (Suez), in United Water Resources; by Kelda, also a British company, in Aquarion; by Vivendi in Philadelphia Suburban Water Corp.; and by Nuon, a Dutch company, in Utilities, Inc.

The policies of AWW and of WVAWC to pursue consolidation through mergers and acquisitions are essential to fulfill the companies' responsibilities to customers and shareholders. WVAWC's motivations to acquire other water utilities and to enter into public/private partnerships have been to achieve more effective economies of scale in order to provide high quality water service in a cost effective manner. Because of West Virginia's terrain and the lack of customer density, the only way that state of the art quality water service can be brought to many parts of West Virginia is through the extension of water lines from regional plants and the economics that can be achieved by avoiding the cost of replacing or renovating many of the smaller plants when they reach the end of their useful lives. Also, consolidation is necessary to protect and increase long-term shareholder value.

This acquisition will further the goals of consolidation by allowing WVAWC to operate more efficiently, and acquire skills and "best practices" from Thames. RWE, Thames, and WVAWC will be in a better position to: (1) expand and accelerate acquisition of small West Virginia water and wastewater systems; (2) increase infrastructure needs driven by aging plant, technology changes and rigorous water quality requirements; (3) improve security; and (4) give employees opportunities for professional development and career path enhancements such as international assignments.

Summary of CAD Pre-Filed Testimony:

Scott J. Rubin, Consultant to CAD - attorney practicing public utility law. Mr. Rubin also serves as a consultant to public advocates in Kentucky, New Jersey and Pennsylvania.

RWE, through its subsidiary Thames, is acquiring all of the common stock of AWW at the price of \$46 per share, payable in cash. At year-end 2001, AWW had approximately 100 million shares of common stock outstanding, resulting in a purchase price of approximately \$4.6 billion. Also, RWE will assume AWW's debt, estimated at \$3.0 billion at the time of closing. Thames will be the purchaser with funds supplied by RWE. RWE will obtain the purchase price by issuing U.S. bonds.

In discussing whether the acquisition poses a risk of a change in WVAWC's management, Mr. Rubin notes that the following employees of WVAWC will obtain retention bonuses: Chris Jarrett (President) - \$300,000; James Hamilton (Director, Business Development) - \$67,000; and Daniel Bickerton (Director, Business Development) - \$67,950. Also 18 other employees of AWW will receive bonuses totaling \$2,975,000.

The bonus payments should not be included in WVAWC's cost of service. The petitioners state that the bonuses will not be included in WVAWC's cost of service and will be paid by RWE. Mr. Rubin believes that the Commission's approval of the acquisition should be conditioned as follows: *"Condition 1 Prohibit WVAWC from including in its rates, in any fashion, any portion of the costs associated with the retention bonus program."*

In this case, the retention bonuses only guarantee that the key management personnel will remain with the company for six months. Wholesale changes in management can lead to periods of inaction, loss of focus, and even a failure to meet company responsibilities. Mr. Rubin recommends that the Commission's approval be conditioned as follows: *"Condition 2 Require WVAWC to notify the Commission and intervenors within five business days if any of its officers, managers, or key employees leaves the employ of the company. (I would define "key employee" as anyone who receives a retention bonus payment." The notification should include an explanation of the reasons why the employee is leaving the company and the plans for replacing the employee. I recommend that this requirement remain in place for two years after the acquisition is closed. I also would extend this notification requirement to officers of American and to officers, managers, and key employees of those American subsidiaries that supply essential services to WVAWC, which are American Water Works Service Co.; American Water Capital Corp.; and American Water Resources, Inc."*

RWE is paying a premium of approximately 2.6 times book value for AWW's common stock. This is a concern for customers because no one knows how Thames will

achieve a reasonable return on investment to ensure its financial health. This is a particular concern with AWW because nearly all of its business is regulated.

The problem of a utility being purchased for more than book value is illustrated with the following example. Assume a utility has a book value of \$1,000 and its overall cost of capital is 10%. That means that its investors anticipate receiving a return of \$100 on the \$1,000 invested in rate base. If another company buys the utility for \$2,600, and rates continue to be set based on historical cost or book value, then the utility will still earn a return of just \$100. This represents a return to new investors of just 3.8%, which is well below their cost of capital. In order to earn a 10% return on the purchase price, the return would have to be \$260.

In a regulated business where purchase price exceeds book value, the purchaser might achieve a reasonable return by:

(1) funding the purchase price with capital that is less costly than the weighted cost of capital. If regulators do not reduce the authorized cost of capital to reflect this fact, then the purchaser can achieve a return that more closely matches the cost of capital that it invested in the purchase. For example, if the purchaser in my example is able to borrow the entire purchase price at a 5% interest rate, then its cost of capital would be 5% x \$2,600, or \$130.

(2) the purchaser can find ways to make the utility more efficient. Then, if the utility can avoid recognizing all of the efficiency savings in its rates, then it can come closer to receiving its cost of capital. Similarly, the new purchaser may decide to defer maintenance or otherwise reduce expenditures in an attempt to come closer to achieving its desired return.

(3) the purchaser may be able to leverage the utility's assets to provide unregulated services, which might allow the purchaser to receive a return higher than the regulated return. If the costs associated with these unregulated operations are not properly allocated to the unregulated business, then it can further increase the opportunity of the purchaser to achieve its required return on the full purchase price.

(4) the purchaser may sell some of the assets that it acquired. This may have the effect of achieving an immediate return of some of the capital that it invested, reducing its debt burden, and providing an opportunity to reinvest that capital in an attempt to achieve its desired rate of return.

(5) the purchaser may attempt to include some of the acquisition adjustment (or goodwill) in rate base, allowing it to increase the rates charged to utility customers.

In this case, RWE has not specified how it will earn a reasonable return after paying the premium, but RWE has provided indications of the strategy it will pursue, as follows:

(A) issue bonds to raise \$4.6 billion needed to purchase AWW stock.

(B) improve AWW's efficiency.

(C) use AWW's assets to grow through additional acquisitions; growing its rate base, increasing the provision of O&M services to municipally owned water systems, and providing wastewater services in areas where it currently provides regulated water service.

(D) identify current and future surplus property and dispose of it. This may include the sale of \$100 million in land holdings.

(E) Although the petitioners state that they will not attempt to charge any of the acquisition premium or goodwill to WVAWC, they do "reserve the right to point out in briefs or testimony that this transaction represents a major investment in AWW, and that investment is being made at a substantial cost to RWE. To the extent that others seek to pass on savings produced because of this transaction to ratepayers, it would only appear appropriate to recognize the considerable costs being incurred by RWE to make this investment . . ."

There are several customer risks arising from the acquisition. The issuance of new debt increases risks for customers because the company may need to take measures to generate sufficient cash flow to meet its debt payments. This is particularly the case in light of RWE's recently announced acquisitions of Transgas (a Czech gas utility) and Innogy (a British electric utility), which also will be financed solely with new debt. Apparently as a result of the significant planned increase in debt, Moodys' downgraded RWE's bond rating to a single A rating.

If RWE must raise cash, it could reduce spending on needed capital expenditures at WVAWC or other regulated subsidiaries. It could also reduce expenditures on preventative maintenance, reduce levels of customer service, or engage in more risky ventures. In the past few months, other utility companies' bonds have been downgraded as a result of increased risk of operations, i.e. Indianapolis Power & Light Co., (due to parent company's financial problems resulting from increased debt); Monongahela Power (due to increased risk of parent's, Allegheny Energy's, unregulated operations); Utilicorp (due to poor performance and increased risk of unregulated operations).

The fact that this acquisition is in cash, rather than a merger of stock, creates concerns. Whereas in a stock merger, the stockholders and management are expressing confidence in the abilities of the purchaser, in an all-cash deal, those owners are simply cashing out. Their only concern is whether the buyer can come up with the cash to meet the purchase price. CAD's data requests revealed that in conducting the due-diligence which led up to the acquisition agreement in this case, AWW did not concern itself with the overall financial health of RWE.

Mr. Rubin's opinion is that RWE is a riskier company than is AWW. RWE has substantial financial exposure to the decommissioning of nuclear power plants in Europe. It also has sizeable coal market holdings in both the U.S. and Europe, which carry risks related to more stringent environmental regulations. Moodys' has identified future decommissioning and environmental liabilities as causes for concern. One example of impending liability is the fact that Germany intends to decommission all nuclear facilities within the next 20 years. RWE's future liabilities for nuclear waste disposal and decommissioning are approximately equal to its total shareholders equity.

Mr. Rubin does not necessarily believe that AWW's ability to raise capital will be enhanced by this acquisition, because that access to capital will depend on RWE's willingness to provide the capital. Just because a parent has a good credit rating, does not mean the parent will be investing the needed capital to upgrade subsidiary facilities and otherwise ensure safety and reliability of service. AWW has been willing to issue debt to finance its operations. Mr. Rubin is not so certain of RWE's willingness to issue debt. Currently RWE's cash and marketable securities exceed its debt level. Regulators must look carefully at a company that is not using much debt to fund its operations because that could indicate that it will be difficult for subsidiaries to obtain the capital necessary to maintain and upgrade facilities.

Regulators should be aware of a parent's other subsidiaries that may have a first call on available capital. Such as coal and nuclear subsidiaries with substantial needs to fund decommissioning and coal mine restoration. Within a large, multinational corporation like RWE, each subsidiary must compete with the others for access to capital, and the parent may judge the subsidiary on its ability to produce a return for the parent.

Also the financial health of the parent has a direct impact on that of the subsidiaries. When RWE's bond rating was recently downgraded, Thames was as well. Whereas AWW is a company that operates exclusively in the low-risk water industry, RWE is involved in electricity, natural gas, coal, nuclear fuel, energy trading, waste disposal, water and wastewater, among other lines of business. Two aspects of RWE's business, coal and nuclear, carry substantial future liabilities. If RWE were to fail to

adequately anticipate or fund those liabilities, there could be serious financial impact on RWE and WVAWC.

Mr. Rubin is not aware of any RWE binding commitment to adequately capitalize WVAWC. In New Jersey, RWE responded to a data request issued by the Staff of the Board of Public Utilities as follows, "RWE will allocate capital among its various operations worldwide in order to meet the obligations imposed on such subsidiaries, including in the case of NJAWC, the regulatory and service obligations of NJAWC. By acquiring NJAWC, RWE undertakes the legal responsibility to provide safe and reliable service pursuant to applicable statutes. RWE/NJAWC will undertake the capital investments necessary to satisfy these obligations, assuming that the Board continues to provide NJAWC with an opportunity to achieve a reasonable return on investment. . ."

Mr. Rubin proposes the following conditions to protect against financial risks,

Condition 3 Require WVAWC to disclose all uses made of WVAWC personnel, assets, and equipment for any unregulated purpose. The disclosure should be made within 30 days after the use of such personnel, assets, or equipment and should specifically describe the activities; identify the personnel, assets or equipment involved; and estimate the fully allocated cost of such personnel, assets and equipment."

Condition 4 Require WVAWC to obtain a certificate of public convenience from the Commission prior to the sale or transfer by WVAWC of any land in West Virginia, regardless of book value of the land.

Condition 5 Prohibit WVAWC from including in its rates, in any fashion, any portion of the acquisition premium or goodwill associated with this transaction.

Condition 6 Prohibit WVAWC from including in its rates, in any fashion, any portion of the costs associated with analyzing, negotiating, consummating, or seeking approval of this transaction.

Condition 7 Prohibit WVAWC, American, Thames, or RWE or any of their subsidiaries from pledging any of the assets of WVAWC or the stock of WVAWC for any purpose without first having obtained a certificate of public convenience from the Commission.

Condition 8 Require WVAWC to include in its Annual Report to the Commission copies of its requested and approved construction budgets for

the then-current year (for example, the report filed in the Spring of 2005 for the year ending December 31, 2004, would include the requested and approved construction budgets for the year 2005). Included should be an explanation of the reasons why the budget was not funded to the full extent proposed by WVAWC and whether the budget as approved will impose any limitation on WVAWC's ability to provide safe, adequate, and reliable service to its customers.

Condition 9 Require WVAWC to report to the Commission within five business days any downgrading of the bonds of RWE, Thames, American, or any subsidiary of American, including a full English-language copy of the report issued by the bond rating agency.

Condition 10 Require WVAWC's Annual Report to the Commission to include a complete, English-language copy of the annual reports of RWE and Thames.

Condition 11 Require RWE, Thames, and American to commit that no capital investment shall have a higher priority than the capital requirements, including working capital, of WVAWC.

Condition 12 Require WVAWC to maintain a capital structure that contains at least 35% common equity and prohibit WVAWC from paying any dividend to its parent company that would reduce WVAWC's equity ratio to less than 35%, without the Commission's prior approval.

Condition 13 Prohibit WVAWC from paying any dividend to its parent company that exceeds more than 80% of its earning attributable to common equity in the then-current year.

Although conditions 11-13 deal with the way in which WVAWC is capitalized, these type of restrictions are becoming increasingly common as utilities become part of ever larger holding companies.

Mr. Rubin is concerned that adding additional layers of ownership in this acquisition will make the regulated utility, WVAWC, more difficult for the Commission to understand and regulate. One area of concern is the Commission's ability to regulate changes in ownership and control of WVAWC, and the Commission's access to information about WVAWC's owners. RWE's stock is not traded in the U.S. and RWE does not file its annual reports and other documents with Securities and Exchange Commission. RWE is not subject to US accounting standards and instead complies with

International Accounting Standards (IAS). After the acquisition, both AWW and WVAWC will be required to convert their financial reporting and accounting systems to comply with IAS. Furthermore, there will be differences in language and currency to contend with, which will make it more difficult for the Commission and other interested persons to monitor WVAWC's owner's activities.

Mr. Rubin recommends the following conditions to safeguard continued regulation:

Condition 14. Require WVAWC to file an application requesting Commission approval of any transaction that would change the entity that ultimately owns or controls the common stock of WVAWC or American. Included in this condition is a waiver by WVAWC of any arguments it may have that limit the Commission's jurisdiction over changes in control above the parent level.

Condition 15 Require that whenever WVAWC is requested to provide documents to the Commission, or in any proceeding before the Commission, concerning the operations of RWE or any other subsidiaries or holdings of RWE, that those documents be provided in English. If the original document is not in English, then WVAWC must certify the accuracy of the English-language translation.

Condition 16 Require that whenever WVAWC is requested to provide documents to the Commission, or in any proceeding before the Commission, concerning the operations of RWE or any other subsidiaries or holdings of RWE, that all financial statement be provided in their original currency and in US dollars (converted as of the date of the financial statement). For example, RWE's financial statements as of December 31, 2001, would be required to be provided in US dollars using the conversion rate between dollars and euros on December 31, 2001.

The acquisition poses risks to quality of service because the new owner may pressure WVAWC to reduce costs. While Mr. Rubin does not doubt the petitioners' good intentions, he believes that quality of service could be harmed by changes in management personnel, or a failure to identify the consequences of cost-cutting.

To safeguard against a degradation in quality of service, Mr. Rubin proposes the following conditions:

Condition 18 Require WVAWC to use its best efforts to maintain all applicable water quality standards and to maintain or improve water

service standards including, but not limited to, the following: water service related interruptions and employee response time thereto; and customer complaint and customer inquiry response time.

Condition 19 For the annual reports covering the years 2002 through 2008, require WVAWC to include in its annual report to the Commission a table that shows each water quality standard, the number of water service interruptions, the average employee response time to water service interruptions, the number of customer complaints, and the customer inquiry response time for each year from 2000 through the then-current year. For example, the annual report for the year ending December 31, 2004 would include a table showing data for the years 2000, 2001 2002, 2003, and 2004.

Condition 20 Require WVAWC to continue to protect and safeguard the condition of all of its watershed land holdings surrounding its surface water and groundwater supplies in West Virginia.

Mr. Rubin believes that synergies, or economies of scale, will be realized by the purchaser, AWW, and WVAWC. RWE does not wish to quantify the savings it expects because it fears that regulators will attempt to require those savings to be passed on to customers.

Summary of Staff Pre-filed Testimony:

Paul P. Stewart, Jr., Utilities Analyst Manager for the Public Service Commission. The purpose of his testimony is to present Staff's views of the benefits and/or detriments of the proposed acquisition.

Mr. Stewart believes there may be some public benefits, but that they are speculative and of potentially limited value to West Virginians. He believes the potential detriments outweigh the benefits and that customers should be protected. The Commission should be concerned with the premium that RWE will pay for the AWW stock. Reasonable regulation of WVAWC will ensure that RWE will not earn a reasonable return on its investment. RWE either misunderstands rate base regulation, or intends to circumvent regulation in some way.

RWE will have strong incentives to generate excessive returns from its AWW properties to achieve a reasonable return. This incentive may lead to tension between the regulated utility, the parent, and the Commission. Results could be a reduced commitment to upgrade West Virginia utility facilities, a reduced commitment to cooperate in helping

troubled water utilities in the State, reduced commitment to expand into unserved areas, more frequent rate increase requests, pressure to reduce costs and pressure to transfer depreciation and deferred expense cash flows from West Virginia operations to RWE.

To protect customers, Staff recommends an extended rate moratorium be required.

Staff distinguishes Thames' acquisition of Elizabethtown Water on the basis that AWW is much larger than Elizabethtown was, and therefore, may have fewer inefficiencies, and fewer areas that could be improved by access to Thames/RWE expertise. Also, the Elizabethtown acquisition was too recent to permit an analysis of any detrimental results of cost cutting and efficiency measures that have occurred.

Staff does not believe that access to Thames/RWE security expertise is a benefit that outweighs the financial and corporate structure concerns that arise with this acquisition. He has the same view of access to research and development expertise and customer service practices. He notes that WVAWC already has a centralized customer service facility.

While its great that Thames does not plan to move the headquarters of WVAWC from Charleston, Staff takes no comfort in the promise of no lay-offs until March 2004.

As for RWE's access to capital markets, Mr. Stewart noted Moodys' recent downgrade of RWE's bond rating, as well as the known fact that companies in aggressive acquisition mode can develop cash flow problems meeting debt service. Mr. Stewart opined that RWE has a higher risk profile than AWW.

Staff is also concerned that secrecy is a part of RWE's corporate culture and that RWE will be reluctant to provide Staff and the Commission with access to its books and records.

Staff is concerned that RWE/Thames will not permit local management the same relative freedom it has enjoyed to acquire small systems which require significant investment to bring them up to standards, and require long payback periods. Staff fears RWE will be more interested in generating positive cash flow in the near-term to service its \$4.6 billion debt incurred to by the AWW stock. To do so, RWE is likely to glean savings from consolidations and reductions in work force and, at the same time, delaying regulators from "clawing back" synergy savings.

While Mr. Stewart agrees that foreign investment in West Virginia is great, RWE really isn't investing in West Virginia. Its purchase of the parent's stock makes its "investment" both accidental and incidental. It is buying WVAWC only because it

happens to be one of the companies owned by AWW, the holding company. This is not like Toyota locating in Putnam County. Rather than this acquisition resulting in new facilities being built, with employees being hired, this acquisition will eventually result in fewer WVAWC employees. Mr. Stewart notes that it is common sense that a purchaser will attempt to recover the premium it pays for the company, by layoff of employees, closing facilities and wringing every possible expense and investment dollar out of budgets, particularly when the large debt cannot be recovered in regulated rates.

Mr. Stewart noted that the Kentucky Public Service Commission approved this transaction with 56 conditions. One Commissioner dissented on grounds that the acquisition was not in the public interest. Staff would encourage this Commission to adopt many of the Kentucky conditions, as follows:

1. *WVAWC's books and records will be maintained and housed in West Virginia.*
2. *RWE, Thames, [AWW] and WVAWC will not assert in any Commission proceeding that Commission review of the reasonableness of any cost has been or is preempted by a United Kingdom, Federal Republic of Germany, European Community, or other foreign regulator.*
3. *RWE, Thames, [AWW] and WVAWC will not assert in any judicial or administrative proceeding that the Commission lacks for rate-making purposes jurisdiction over WVAWC's capital structure, financing, cost of capital and dividend practices.*
4. *Neither WVAWC nor its ratepayers, directly or indirectly will incur any additional costs, liabilities, or obligations in conjunction with Thames' and RWE's acquisition of [AWW].*
5. *WVAWC will not incur any additional indebtedness, issue any additional securities, or pledge any assets to finance any part of the purchase price paid by Thames for [AWW] stock.*
6. *The payment for [AWW] stock will be recorded on Thames' books and not on those of WVAWC.*
7. *The premium that Thames pays for [AWW] stock, as well as all transaction-related costs, will not be "pushed down" to WVAWC and will not be recovered from WVAWC's ratepayers.*

8. *Thames' acquisition of [AWW] will not affect the accounting and rate-making treatments of WVAWC's excess deferred income taxes.*

9. *No early termination costs, change in control payments, or retention bonuses paid to a WVAWC or [AWW] employees as a result of the proposed transaction will be allocated to WVAWC or recovered from WVAWC ratepayers.*

10. *WVAWC will not bear any costs incurred to comply with any law, regulation, standard or practice of the U.K., Federal Rep. of Germany, or European Community necessary to complete the proposed transaction.*

11. *For at least five years from the date of the consummation of the transaction, RWE, Thames, [AWW] or WVAWC will notify the commission in writing within 10 days of any changes in WVAWC's corporate officers and management personnel.*

12. *Following the consummation of the proposed transaction, RWE, Thames, [AWW] and WVAWC will submit written reports to the Commission annually on the adoption and implementation of best practices at WVAWC.*

13. *WVAWC will not be the employer or purchaser of last resort for employees, assets, and products associated with any failed or troubled RWE, Thames, or [AWW] venture.*

14. *Unless the Commission requests otherwise, all documents filed with the Commission on behalf of RWE or any RWE subsidiary or affiliate will be in English and all financial statements will be stated in their original currency and in US dollars (converted as of the date of the financial statement).*

15. *RWE, Thames, and WVAWC will obtain Commission approval prior to WVAWC's payment of any dividend or transfer of any funds representing more than 5% of WVAWC's retained earnings to RWE, Thames or any other entity related to RWE.*

16. *RWE, Thames, [AWW] or WVAWC will file the following reports with the Commission: RWE's quarterly interim reports to its shareholders; and RWE's, Thames', [AWW's], and WVAWC's annual audit reports.*

17. RWE, Thames, [AWW] and WVAWC will file with the Commission, no later than March 31, of each year, a detailed organization chart showing all subsidiaries and affiliates of RWE as of the end of the previous calendar year.

18. RWE, Thames, [AWW] and WVAWC will adequately fund and maintain WVAWC's treatment, transmission, and distribution systems; comply with all applicable West Virginia statutes and administrative regulations; and supply the service needs of WVAWC customers.

19. When implementing best practices, RWE, Thames, [AWW] and WVAWC will take into full consideration the related impacts on the levels of customer service and customer satisfaction, including any negative impacts resulting from any future work force reductions.

20. At least 30 days prior to any planned reduction of 5% or more in WVAWC's work force, RWE, Thames, [AWW] or WVAWC will notify the Commission in writing of the planned reduction and will include in such written study of the reduction's expected effects on service and WVAWC's plan for maintaining service quality at the reduced work force level.

21. If any state regulatory commission, except for a commission that presently exercises jurisdiction over both [AWW] and Thames operating subsidiaries, imposes conditions of RWE, Thames or [AWW] as a condition for its approval of the proposed merger and those conditions would benefit ratepayers in any other jurisdiction, proportionate net benefits and conditions will be extended to WVAWC ratepayers.

22. WVAWC's headquarters will remain in Charleston, WV.

23. RWE, Thames, [AWW] and WVAWC will honor all existing WVAWC contracts, easements or other agreements.

The following conditions were not ordered by the Kentucky PSC, but are recommended by Staff for West Virginia:

24. For an extended [sic] from the date of the Commission's order in this matter, WVAWC will not apply for any increase in rates to recover any costs other than those associated with security measures undertaken following the events of September 11, 2001. This period of time should not be merely a token. It should be meaningful and significant to offset the

potential financial and regulatory problems associated with the premium purchase price.

25. There will be no reduction in management level or management structure in West Virginia and the current executive, rate and engineering offices will remain in West Virginia.

26. During the term of the rate moratorium there shall be no reductions in WVAWC's work force in excess of 1% per annum without prior Commission approval.

27. WVAWC shall continue plant replacement programs consistent with past practices.

28. WVAWC's ratio of equity to total capital will be maintained in the 25% to 35% range.

29. Neither RWE, Thames, [AWW] nor any other affiliate may issue any debt which pledges as security or otherwise encumbers the assets of WVAWC.

Pre-filed Rebuttal Testimony of Joint Petitioners:

Pre-filed Rebuttal by Chris E. Jarrett. Mr. Jarrett characterized Mr. Rubin's testimony as speculative. Mr. Stewart's testimony is also speculative, and one-sided, essentially stating to WVAWC, "we like what you have done, but we oppose this transaction because we do not think that you will continue to do it (or even worse, we think that you should continue to do it but not get an opportunity to recover for that effort in rates)."

In prior acquisition cases, the Commission has not attached a litany of conditions to those transactions. The clearest statement of approval in a prior Commission acquisition case is found in *Virginia Electric and Power Co.*, Case No. 85-0553-E-PC (Final Order December 12, 1986). In that case, the Commission said,

In the opinion of the Commission, if the Legislature had intended to require that there be tangible additional positive benefit flowing to the consuming public from a *W.Va. Code §24-2-12* transaction, it could have conditioned approval on a showing of "increased benefits." It did not and instead only required a showing that the public not be "adversely affected."

The Commission believes that the Legislature under *W.Va. Code* §24-2-12 requires the Commission to apply a "reasonableness" standard to these transactions. "Reasonableness" is the common yardstick by which utilities are measured under the various provisions of Chapter 24, and the Commission finds that the same standard applies under *W.Va. Code* §24-2-12.

Thus, in requiring that a transaction "not adversely affect the public," the Commission finds that the utility must make a showing that the acquiring entity has, or as a part of the transaction will acquire the knowledge, experience and resources sufficient to conduct the utility operations in a manner designed to provide adequate and reliable service at reasonable rates. That is the test the Commission will apply in this proceeding in order to determine whether the public is "not adversely affected."

(*Veeco*, Final Order at 8). Mr. Jarrett notes that neither CAD nor Staff mentioned the *Veeco* test above in their testimony.

Mr. Jarrett does not believe the Commission has disapproved any acquisition by a major purchaser where the purchaser could demonstrate knowledge, experience and resources sufficient to conduct the utility operations in a manner designed to provide adequate and reliable service at reasonable rates, even in some instances in which the purchaser might have a learning curve.

No party has raised a question about the ability, commitment, or willingness of RWE/Thames in the water business, or about WVAWC's commitment to West Virginia and its customers. Nor is there any suggestion of a rate increase. There is no reason to believe that this transaction does not meet the *Veeco* test.

Mr. Jarrett read the main point of Mr. Stewart's testimony to be his opinion that RWE/Thames paid too high a price for AWW stock. Mr. Jarrett states that both AWW and RWE/Thames are experienced and sophisticated operations, and that the purchase price was negotiated between a host of knowledgeable people. RWE/Thames has no devious intentions, rather, it seeks to acquire AWW because it will immediately have opportunities to enter this and other markets in the U.S. and pursue its aim of "earnings through growth."

Mr. Jarrett opposes a rate moratorium. If Staff really believes that savings or synergies will result, the Staff should request that the Commission order the Company to file for rate relief and not bar the Company from such a filing. The Commission is currently aware that WVAWC is in need of rate relief. WVAWC told the Commission so

during its last rate case. WVAWC is emerging from a period of sustained construction and a significant portion of plant is not included in cost of service. While an agreed-upon moratorium is acceptable, a Commission ordered moratorium would violate the Commission's obligation to ensure that utility rates are cost-based.

Mr. Jarrett opposes a Commission-ordered rate reduction for the same reasons as he opposes a rate moratorium. Reliance on speculation about possible synergies as the basis for a rate-reduction is not cost-based rate making.

Mr. Jarrett does not believe that WVAWC will be less likely to upgrade West Virginia properties, cooperate with troubled utilities, or expand into unserved areas, after acquisition. The availability of low-cost capital from RWE will make these activities more likely.

As to Mr. Stewart's speculation regarding employee layoffs, Mr. Jarrett notes that no WVAWC employees currently enjoy guaranteed jobs. An assurance until March 2004 puts employees in a better position than they are now.

Mr. Jarrett says there is no basis for Mr. Stewart's concerns about access to information. All documents and information have been provided in a timely fashion in this case.

Some of the conditions recommended by Staff and CAD intrude into areas historically reserved to the discretion of utility management. The Commission is not a "super board of directors." Then Mr. Jarrett addresses the problems with each condition in turn.

Pre-filed Rebuttal by James McGivern. Mr. McGivern opined that the rate recommendations made by Staff and CAD cannot be reconciled with established rate making principles.

The transaction does not carry the financial, managerial, regulatory or service quality risks imagined by Mr. Rubin. The price RWE will pay for AWW stock is in the mid-range of the prices paid for other smaller US water companies with less growth potential. Although the premium paid in the E'Town Corp. acquisition was higher than in this case, none of the risks identified by Mr. Rubin has materialized. The fact that RWE is involved in non-utility business does not make it a risky entity. Its strength is related to its diversity and diversity is an advantage. RWE has provisions sufficient to cover its future nuclear and coal liabilities.