

Although RWE's bond rating decreases recently with its announcement of acquisitions of AWW, Transgas and Innogy, both Thames and Elizabethtown Water's bond rating increased with RWE's acquisition of those companies. It is probable than AWW's bond rating will experience an upgrade as well.

Some of the conditions recommended by Staff or CAD have already been satisfied in the transaction agreement, such as the prohibition against inclusion of transaction costs in the rate base of WVAWC. Other conditions are acceptable to WVAWC/Thames/RWE, such as the requirement to report to the Commission within 5 business days any downgrading of the bonds of RWE, Thames, AWW etc., and the requirement to include english-language copies of annual reports, quarterly reports, and other documents, provided the filing could be made electronically.

Conditions regarding the priority of WVAWC capital needs, required equity ratios, etc., are improper and would constitute micro-management by the Commission.

The Staff and CAD concerns regarding continuity of management and recommendations regarding reporting of any changes are unnecessary. The petitioners have made retention commitments designed to ensure continuity of management and personnel.

There is no risk of deterioration of service quality. Toleration of diminution in service quality would be inconsistent with RWE's growth strategy. WVAWC will continue to meet its service obligations under West Virginia law.

The primary motivation for this transaction is not to achieve savings at the operating utility level, but rather for Thames/RWE to acquire a strong platform for growth in the water industry in the Americas. Mr. Rubin's fixation on savings is misplaced. To the extent costs are lower in the future than they otherwise would have been, that will be reflected in customer rates. Mr. Rubin's recommendation of an immediate rate reduction is inconsistent with the fact that if savings are to be realized from the transaction, those savings will likely take years to realize.

Pre-filed Rebuttal of William D. Patterson. Mr. Patterson opined that US water utility acquisitions must be priced at a premium to book value. This is understood and accepted among industry and financial market participants. The reasons are: (1) for the past several years, water utility common stocks have consistently traded at a premium to book value. AWW had a market price to book value ration of 2.0x based on its 30-day average stock price prior to the announcement of the acquisition. This is due to investors' favorable assessments of the predictability of future cash flows and dividends; (2) all recent water utility acquisitions involving an acquirer larger in size than the target company have

featured a purchase price premium to recent stock price trading levels. This is due to the seller's requirement that a premium be received in return for ceding control of the seller's assets and businesses to the buyer's shareholders and management. The purchase price premium is referred to as the "control" premium. The control premium is often lower, and sometimes immaterial, in acquisitions of two similarly sized companies operating in substantially similar businesses, often referred to as "mergers of equals" or "MOE" transactions. The RWE/AWW transaction is not an MOE transaction; it is an acquisition featuring a buyer substantially larger than the seller, hence the justification of a "control premium." The sum of the two factors, the trading level premium over book value and the control premium, accounts for the purchase price premium to book value.

The valuation multiples used in this transaction are comparable to recent acquisitions in the US.

Acquisition synergies fall into two categories: (1) incremental cost savings; and (2) incremental revenue growth. In this transaction, revenue growth is the principle potential source of synergies. RWE/Thames does not own any other West Virginia water utilities, so there are no immediately apparent utility operating cost savings to be achieved as a direct result of the acquisition.

Mr. Patterson disagrees with Mr. Rubin's prediction that RWE/Thames will be likely to attempt to siphon funds from AWW's utilities, including WVAWC. Operation cost savings are not the goal. Existing regulatory oversight and safeguards will also prevent this.

RWE's decision to issue debt to finance this acquisition is prudent. RWE is mindful of preserving a sound credit profile to preserve continuing access to capital on attractive terms.

The acquisition affords WVAWC an additional level of financial flexibility above and beyond its pre-acquisition position.

When analyzing RWE's future nuclear and coal liabilities, Mr. Rubin ignored RWE's financial investments earmarked for the eventual payment of those liabilities as they become due. After netting RWE's assets and liabilities, it has a strong and prudent balance sheet consistent with ratios needed to maintain a strong "A" credit rating.

WVAWC will continue to have access to capital after the acquisition.

End of pre-filed testimony summaries.

The Evidentiary Hearing:

The hearing was held as scheduled on July 25, 2002. Appearances included WVAWC represented by Michael A. Albert, Esquire and Chris Callas, Esquire; Thames/RWE represented by James D. Gray, Esquire; Commission Staff represented by Caryn Short, Esquire and Leslie Anderson, Esquire; CAD represented by David A. Sade, Esquire and Billy Jack Gregg, Esquire. (See hearing transcript from July 25, 2002, hereinafter referred to as "Tr.")

The Commission heard testimony from James McGivern, Chris E. Jarrett, Andrew Chapman, Tom S. Witt, and William D. Patterson, all on behalf of WVAWC and Thames/RWE. The Commission heard testimony from Scott J. Rubin on behalf of CAD and Paul P. Stewart, Jr. on behalf of Commission Staff.

Mr. James McGivern testified first and sponsored and adopted the pre-filed direct testimony of Michael Carmedy and Mr. McGivern's own pre-filed rebuttal testimony. (Tr. at 12; Exh. JM-A; Exh. JM-B). This testimony was admitted into the record as JM-A and JM-B, respectively. (Tr. at 145). Mr. McGivern sponsored the Joint Stipulation filed by all of the parties. (Tr. at 13). The Joint Stipulation was also made a part of the record. (Tr. at 145). The parties to the Joint Stipulation include Thames, WVAWC, RWE, AWW, CAD and Commission Staff. (Tr. p. 13; Joint Party Exh. 1). Mr. McGivern stated that the Joint Stipulation's terms are fair and reasonable and that adoption of the Joint Stipulation by the Commission will result in excellent, long-term service to customers in West Virginia. (Tr. at 16-18).

The terms of the Joint Stipulation provide in item 8.A. that WVAWC will not file a rate case prior to March 7, 2003 for new rates to be effective no sooner than January 1, 2004. (Tr. at 19-20; Joint Party Exh. 1 at 5). In Joint Stipulation item 8.B. WVAWC agrees to pass through to its customers in future rate cases the actual savings recognized from efficiencies that result from the acquisition of AWW by Thames/RWE and experienced by WVAWC. (Tr. at 20-21; Joint Party Exh. 1 at 5). The Joint Stipulation proves in item 8.C. that WVAWC will continue to work with local communities to grow its service areas and business in the State. (Tr. at 22-23; Joint Party Exh. 1 at 5). Item 8.D. is a commitment by WVAWC not to lay-off employees prior to March 31, 2004. (Tr. at 24-25; Joint Party Exh. 1 at 6). Item 8.E. provides that WVAWC will continue to meet or improve upon its water service standards and implement a system to electronically track customer complaints to document the nature of and response time to those complaints. (Tr. at 25-26; Joint Party Exh. 1 at 6). In item 8.F. the parties agree that WVAWC will meet all applicable water quality standards and make no detrimental changes in WVAWC operations as a result of this transaction. (Tr. at 26-27; Joint Party Exh. 1 at 6).

In item 8.G. the parties agree that WVAWC will maintain its corporate offices in West Virginia. Further, there will be no reduction in the overall level and responsibility of local management in West Virginia. (Tr. at 27-28; Joint Party Exh. 1 at 6). Mr. McGivern stated that there are no plans to change the name of WVAWC or to operate under a different trade name. This is reflected in item 8.H. (Tr. at 28-29; Joint Party Exh. 1 at 6). In item 8.I. the parties agree that WVAWC will include local interest representation on its Board of Directors. (Tr. at 29; Joint Party Exh. 1 at 6). In item 8.J. the parties agree that WVAWC agrees to continue its current level of support for involvement in local and community projects. (Tr. at 30-31; Joint Party Exh. 1 at 6). In item 8.K. the parties agree that WVAWC will implement certain new services and programs to benefit local communities. (Tr. at 31-32; Joint Party Exh. 1 at 6-7). In items 8.L. and 8.M. the parties agreed that costs of this transaction, including but not limited to retention bonuses for certain employees, and the purchase price premium to be paid by Thames, would not be allocated, pushed down, or assigned to WVAWC. (Tr. at 33-34; Joint Party Exh. 1 at 7). In item 8.N. the parties agree that WVAWC will maintain its equity at a level no lower than 35% of total capital and provide the Commission with written notice within 30 days after the implementation of any change in its equity ratio greater than 5%. (Tr. at 34-35; Joint Party Exh. 1 at 7). In item 8.O. the parties agree that WVAWC will maintain a separate set of books and records for WVAWC in West Virginia. (Tr. at 35-36; Joint Party Exh. 1 at 7). In item 8.P. the parties agree that WVAWC will pass through to its customers in future rate cases, any savings that may result from access to lower cost debt which results from its relationship with Thames/RWE. (Tr. at 36-37; Joint Party Exh. 1 at 7).

In item 8.Q. the parties agree that WVAWC will provide the Commission with English-language versions of RWE annual reports and other reports and statements, including financial statements converted to U.S. dollars. (Tr. at 37; Joint Party Exh. 1 at 7). In item 8.R. the parties agree that WVAWC will report to the Commission within 30 days any downgrade of bonds of RWE, Thames, American Water Capital Corp. and any subsidiary of AWW, including a report from the bond rating agency. (Tr. at 37-38; Joint Party Exh. 1 at 7). In item 8.S. the parties agree that WVAWC will continue to adequately fund and maintain its treatment, transmission and distribution facilities to assure quality service. (Tr. at 38; Joint Party Exh. 1 at 8). In item 8.T. the parties agree that WVAWC will consider related effects on customer service and customer satisfaction in implementing "best practices." (Tr. at 38-42; Joint Party Exh. 1 at 8). Mr. McGivern stated that areas such as capital procurement and integration of customer service will be impacted by best practices. (*Id.*) In item 8.U. the parties agree that WVAWC will provide written notice at least 30 days prior to any planned workforce reduction greater than 5%. Mr. McGivern stated that there are no current plans to reduce WVAWC's current workforce of 329 employees. (Tr. at 42-43; Joint Party Exh. 1 at 8). In item 8.V. the parties agree that WVAWC will honor all existing contracts, easements, and other

agreements in accordance with their respective terms. (Tr. at 44; Joint Party Exh. 1 at 8). In item 8.W. the parties agree that WVAWC will not allow affiliates to make use of WVAWC's personnel, assets or equipment without prior Commission consent. (Tr. at 44-45; Joint Party Exh. 1 at 8).

Mr. McGivern stated that if the West Virginia Public Service Commission does not approve Thames' acquisition of AWW, then Thames' agreement with AWW may be compromised because it is conditioned upon the regulatory approval of all the affected states. (Tr. at 47). At the holding company level, with the exception of two members of AWW's board of directors, all other directors will resign when the acquisition is consummated. (Tr. at 50). Mr. McGivern is not aware of any noncompliance by AWW with Securities and Exchange Commission requirements regarding the filing of financial and accounting reports. (Tr. at 51-52). Although the same SEC requirements which now apply to AWW as a publicly held company will not apply to Thames, a privately held company, after the acquisition, Thames' management staff must sign annual documents certifying financial statements, and business and accounting practices compliance. (Tr. at 52-53). Mr. McGivern and counsel explained that a statement regarding "forward looking statements" contained in a press release regarding this transaction, was made to comply with European and SEC rules prohibiting publication of forward looking statements that have not been filed with regulators and do not include substantial disclaimers. (Tr. at 54-55). Mr. McGivern explained that although RWE engages in power trading, its trading differs from that performed by energy traders such as Enron because the trades are "covered; the exposure is minimal; and RWE has some limits on the levels of exposure; and it's, again, very low-risk." (Tr. at 55-56; 84-85; 106-107).

Mr. McGivern was with Thames at the time RWE acquired Thames and was impressed by RWE's balance sheet, future prospects, ability to fulfill its commitments, the sincerity and vision of the senior management, and its position as the 5th largest company in Germany. (Tr. at 56-57). Since RWE's acquisition of Thames, RWE has met all commitments. (Id.) Mr. McGivern stated that Thames/RWE does not intend to challenge the Kentucky Public Service Commission's requirement, set forth in that Commission's order approving the acquisition, that if RWE establishes a headquarters in the United States, that it will locate that office in Kentucky. (Tr. at 58).

Mr. McGivern believes that a bankruptcy at the holding company level would not affect the assets of WVAWC in West Virginia. (Tr. p. 59).

Mr. McGivern explained that Thames/RWE is paying a large premium for AWW because the it wishes to be a part of the phenomenal growth in the United States water market. RWE intends to grow AWW's business by providing wastewater services in communities already served by water service, and then to consolidate the entities to result

in savings for customers. RWE is buying into that growth. RWE also intends to accelerate its practice of purchasing stand-alone utility companies. RWE additionally will seek operating contracts with existing utilities. Because water and wastewater service are long-term businesses, and given the anticipated growth, RWE believes the price premium is appropriate. (Tr. at 60-64; 67-68). Mr. McGivern believes that the growth will bring sufficient increased revenues to justify the acquisition price. (Tr. at 65-66). Pursuant to IAS, which differs from the U.S.'s General Accounting Practices (GAP), RWE will amortize the portion of the purchase price attributable to goodwill over a twenty year period. (Tr. at 69). Under GAP, an impairment test might require RWE to write-off the goodwill rather than amortize. (Tr. at 69-70).

RWE has not placed dollar guidelines, minimum or maximum, on WVAWC's ability to engage in public/private growth partnerships because it wishes to give Mr. Jarrett and WVAWC flexibility to continue to exercise its best efforts toward those projects. (Tr. at 71; 75). Despite RWE's interests all over the world, its commitment to growth negates an argument that WVAWC's growth will be assigned a low priority by RWE. (Tr. at 72). In addition, RWE will have fewer capital restraints than did AWW, and WVAWC will have access to that increased capital. (Tr. at 73-74). Mr. McGivern does not believe the Commission should require a minimum annual investment in growth because each project must be assessed for its viability and because the Commission already had authority to require maintenance of assets and provision of adequate service. (Tr. at 74-76). The Commission should not attempt to either micro manage or constrain companies' investment decisions. (Tr. at 102). Rather, the Commission and the utility are better able to achieve growth goals where there is a good level of trust and understanding of what needs to be done. Should disagreements or problems arise over these decisions, there will be opportunities for management and the Commission to discuss those issues. (Tr. at 103). RWE/Thames will not unreasonably withhold capital. (Tr. at 104).

Mr. McGivern stated that there are no plans to move AWW's call center outside of the continental United States. (Tr. at 78).

When asked for more detail about RWE, Mr. McGivern explained that RWE is a household name in Germany and its stock is regarded in much the same way that American investors regard utility stock, as a traditional and conservative investment. Many pension funds and municipalities own RWE shares for retirement plan purposes. Shares are also owned by insurance companies. RWE is the largest power company in Germany, providing power to 9,000,000 customers. RWE also operates natural gas and solid waste businesses. RWE entered the water business two years ago when it purchased Thames. (Tr. at 80; 83). In addition to utility businesses, RWE operates both construction and printing businesses but plans to sell those. (Tr. at 81). From this point, RWE plans to

engage only in energy and energy related business, including coal operations, gas, waste management, and water. (Tr. at 81-82).

Even if RWE were to engage in disadvantageous energy trading, that would have no affect on WVAWC because the assets of the utility would be protected by law from seizure by the parent. (Tr. at 85). Financial distress of the parent could, however, hypothetically negatively impact RWE's credit rating and WVAWC's access to favorable capital. (Tr. at 86). AWW would be subject to identical risks of fraud even if RWE were not in the picture (Tr. at 87).

Mr. McGivern explained that RWE's credit rating was lowered upon its recent acquisition of a power company in the UK. Mr. McGivern opined that it is not unusual for a credit watch to be placed on an acquiring company after a major acquisition due to certain uncertainties. (Tr. at 88-89). RWE has no further major acquisitions planned at this time and has made statements that its businesses will be operated to maintain a strong single A credit rating. (Tr. at 89-90).

Mr. McGivern explained that its purchase of AWW is a cash purchase instead of a stock exchange because of RWE's strong cash position, and need to use its cash to grow its business. (Tr. at 91). Furthermore stock exchanges of foreign stock for U.S. stock are complicated from the SEC perspective, whereas cash is easily transferred. (Tr. at 92-93).

Mr. McGivern explained that the accounts of WVAWC and AWW will continue to be maintained and reported upon according to GAP, rather than according to IAS. (Tr. at 93). The Frankfurt stock market is run very much the same as any major world stock market such as New York or London. Small stockholders wishing to buy shares in RWE could do that through a US broker. (Tr. at 94).

Mr. McGivern explained RWE's liability for decommissioning of nuclear power plants. The German government and the nuclear industry in Germany have reached agreements regarding the remaining useful lives of nuclear power plants. RWE knows the useful life of each of its nuclear plants and plans to scale down its reliance on plants, and bring in other sources of generation by the end of the nuclear plants' useful lives. In the meantime, RWE is building funds on its balance sheet to finance the decommissioning of plants at the end of their useful lives. (Tr. at 95-96). RWE has no potential nuclear liabilities that it has not covered. (Tr. at 96). RWE is in the same position regarding coal cleanup costs.

When asked about costs of implementation of efficiencies that might result from the acquisition, that are to be netted out from any passed through savings to customers

pursuant to item 8.B. of the Joint Stipulation, Mr. McGivern explained that there are costs associated with new systems that will ultimately result in savings. (Tr. at 100-101).

Mr. McGivern explained that implementation of "best practices" could result in WVAWC's suppliers being able to lower costs and business risks to result in lower prices to the utility. (Tr. at 104-105).

Mr. McGivern explained the performance incentives in place for European employees, which include salaries partially dependent upon performance targets. Some of the performance packages may include stock options that are much more modest than those awarded by US companies. As an example, Mr. McGivern stated that he could earn a 30-40% bonus on his base salary if he meets certain financial and customer service targets. (Tr. at 107-108).

Mr. McGivern understands that any and all cash generated by WVAWC would be kept in West Virginia to be reinvested in the utility. (Tr. at 109-110).

The next witness to testify was Mr. Chris E. Jarrett, President of WVAWC. Mr. Jarrett adopted, with one correction, his pre-filed direct testimony and his pre-filed rebuttal testimony. (Tr. at 112). This testimony was admitted into the record as CEJ-A and CEJ-B respectively. (Tr. at 145). Mr. Jarrett stated that he is a proponent of the public/private partnerships in which WVAWC has participated in recent years. (Tr. at 116). Mr. Jarrett stated that an investment floor requirement would not facilitate public/private partnerships for the reason that project size varies significantly and that timing of projects is unpredictable. WVAWC can control neither the funding, nor timing of these projects. (Tr. at 116-122). Mr. Jarrett is comfortable with Thames/RWE's support of continued growth in West Virginia. (Tr. at 123-124; 128). Mr. Jarrett is excited about RWE's experience in wastewater service because WVAWC has wished to pursue that area of investment for some time but has lacked necessary expertise. (Tr. 124-125; 129). Mr. Jarrett believes that RWE's expertise would enable WVAWC to assist cities in the separation of storm water and wastewater sewers, which is big problem at the current time. (Tr. at 129-130). Huge synergies would result from joint water and wastewater operations. (Tr. at 125-126). Mr. Jarrett supports the Joint Stipulation and characterizes it as a give-and-take on all sides. (Tr. at 126).

Under Mr. Jarrett's agreement with Thames/RWE, he is obligated to stay with WVAWC for six months after the acquisition, but Mr. Jarrett has no plans to depart WVAWC. (Tr. at 127).

Mr. Jarrett noted that one justification for the price premium provided in the acquisition is the longevity of water utility assets as compared to the assets of electric, gas, or telephone utilities, and the long depreciation period. (Tr. at 131-132).

Mr. Jarrett explained WVAWC's current telemetry system and its ability to enhance that telemetry system to better serve customers, under the guidance of Thames/RWE. (Tr. at 132-134). WVAWC has mapped out its entire system, but has some difficulty mapping systems that it acquires. Typically, WVAWC relies on employees of the acquired systems to educate WVAWC as to line location, etc. GIS mapping would be helpful in these areas. (Tr. at 137-138).

Mr. Jarrett does not anticipate any reduction in work force. The best job security for employees is for WVAWC to continue to grow the customer base. (Tr. at 135).

Mr. Jarrett stated that WVAWC operates water testing labs in Charleston, Princeton, Weston and Fayetteville. It offers testing services to public service districts and municipalities for a fee. WVAWC will continue to offer that service to other utilities who need the service. (Tr. at 139-140).

Mr. Jarrett stated that WVAWC has emergency preparedness manuals with instructions on how the company would react to water contamination or natural disaster. Since September 11, 2001, WVAWC has implemented more stringent security measures relating to possible terrorist activity. (Tr. at 142-143). The Thames/RWE acquisition will enhance WVAWC's security to the benefit of customers. (Tr. at 143-144).

Mr. Andrew Chapman testified next on behalf of the Joint Petitioners. Mr. Chapman is President of Elizabethtown Water Company and its parent company, E'Town Corporation. (Tr. at 145) Mr. Chapman adopted his pre-filed direct testimony (Tr. at 146-147), which was admitted into the record as AMC-A. (Tr. at 166). In November 1999, Thames and E'Town entered into a contract whereby Thames would purchase E'Town. Just prior to the closing of that acquisition, Thames informed E'Town that it was about to be purchased by RWE. Approval of Thames/RWE's acquisition of E'Town was granted in October of 2000. (Tr. at 151-152). Mr. Chapman's dealings are with Thames, and rarely with RWE. Mr. Chapman has not detected any change in Thames' philosophy since RWE's acquisition of Thames. (Tr. at 153).

Thames has been supportive of E'Town's investment in telemetry system for its water utility service. The system has substantial customer service benefits because it affects a tight integration between a call center and field work. E'Town expects to complete the last phase of its telemetry project within eight months. (Tr. at 147-149).

Thames paid approximately 2 ½ times book value for E'Town's stock. (Tr. at 153). There was very little change in E'Town's management structure after Thames' acquisition of E'Town. E'Town expects to merge with New Jersey American Water Company after the Thames/RWE acquisition of AWW is complete. Mr. Chapman expects consolidation of the E'Town and New Jersey American Water management teams at that time, but that is a situation unique to New Jersey. (Tr. at 154-156). Since the Thames acquisition, E'Town has not been forced to change direction. Rather, increased resources have been made available to execute E'Town's plans for the future at a higher level. (Tr. at 156-157). Employees have benefitted from the fact that their business lives now have an international perspective, rather than purely local. (Tr. at 157).

Mr. Chapman indicated that E'Town has saved substantial money with respect to two projects it has constructed since its acquisition by Thames. Thames' best practices, technical expertise, and global review of the projects resulted in costs under those that were anticipated for the projects. (Tr. at 159-164). Since Thames' acquisition of E'Town, E'Town has earned ISO 9001 certification. (Tr. at 164-165).

The next witness to testify on behalf of the Joint Petitioners was Tom S. Witt, from West Virginia University's College of Business and Economics. Mr. Witt sponsored his pre-filed direct testimony (Tr. at 169), which was adopted into the record as TSW-A. (Tr. at 179). Mr. Witt's pre-filed testimony focused on the positive aspects of foreign investment in West Virginia, but Mr. Witt has not studied the status of Consol properties in West Virginia since RWE's purchase of those properties. (Tr. at 170). Mr. Witt opined that public utility industries, and water systems specifically, are among the least susceptible to the specter of foreign control or manipulation due to regulatory oversight of utilities. (Tr. at 171-172). Although Mr. Witt could not identify specific dollar amounts of new investment, new jobs, or new revenues for the state of West Virginia, that will result from this acquisition, he indicated that these items could see future growth if the foreign investment is permitted. (Tr. at 177-178).

The last witness to testify for the Joint Petitioners was William D. Patterson, a financial consultant. Mr. Patterson adopted his pre-filed rebuttal testimony with certain clarifications (Tr. at 181), which was admitted into the record as WDP-A. (Tr. at 199). Mr. Patterson stated that it would not be difficult for an individual investor to purchase stock in RWE on the Frankfurt exchange, through any licensed broker. (Tr. at 184). Mr. Patterson opined that there is no reason to be concerned about a recent downgrade in RWE's credit rating resulting from increased debt. Mr. Patterson explained that RWE issued debt to finance acquisition transactions, rather than using cash on hand, because RWE has made a conscious corporate decision to maintain significant cash or liquid investment positions to offset its long-term nuclear liabilities. Therefore, it is not inconsistent to borrow money and still have cash on the balance sheet. (Tr. at 187-188).

Mr. Patterson believes that AWW will continue to have to file statements and reports with the SEC as long as there are publicly outstanding securities issued by those entities. (Tr. at 192).

Mr. Patterson noted that whereas IAS accounting standards are straightforward as to how goodwill is recorded on a balance sheet and amortized over a 20-year period, GAP has had, until recently, three or four different methods for accounting for goodwill. (Tr. at 194). Under IAP, every quarter, an important impairment test will be made of the goodwill amount in this transaction. This test may result in non-amortized goodwill, which stays on the balance sheet as a full asset. (Tr. at 195). If an impairment test indicates an impairment of the going forward basis of the business versus the purchase price of the business, then the company will be required to charge that impairment against its income in that quarter. (Tr. at 195).

In response to concerns regarding a hypothetical failure of Thames/RWE as WVAWC's parent, Mr. Patterson noted that in the case of wholly-owned public utility companies, Enron and other parent/subsidiary situations have taught us that the failure of the parent does not result in the failure of the subsidiary utility. Mr. Patterson noted that Portland General Electric is a wholly owned subsidiary of Enron, but is continuing to operate as usual. (Tr. at 196). Similarly, Illinois Power is a subsidiary of Dynergy, which is in financial distress, but Illinois Power has been unaffected. (Tr. at 197). Mr. Patterson supports the proposed transaction as financially reasonable. (Tr. at 198-199).

The CAD's witness was Scott J. Rubin, a utility consultant. Mr. Rubin adopted his pre-filed direct testimony (Tr. at 203), which was admitted into the record as CAD-1 (Tr. at 225). Although Mr. Rubin had pre-filed both proprietary and non-proprietary versions of his testimony, the proprietary version was not made a part of the record in this case. (Tr. at 203). Mr. Rubin acknowledged that the CAD supported the Joint Stipulation filed in this case, but stated his personal opinion that the Joint Stipulation does not go far enough to protect the interests of WVAWC consumers. (Tr. at 204). Mr. Rubin disagreed with Mr. Patterson's assertion that utility company subsidiaries of parent companies that fail financially, can continue to operate unscathed. Rather, Mr. Rubin is aware that Portland Electric is having difficulty accessing capital markets and the federal government may no longer do business with that utility. (Tr. at 206-207). There is also uncertainty regarding whether WorldCom's internet backbone UUNET will survive WorldCom's bankruptcy. (Tr. at 207).

Mr. Rubin notes that after the acquisition, WVAWC will no longer be competing for capital with similar companies. WVAWC will not be on equal footing with the entities with which it will be competing for capital. (Tr. at 208-209). When exchange rates change as they have recently, investment in the United States becomes less attractive to

RWE. Also RWE has unregulated businesses that will compete for capital. (Tr. at 209). We cannot know how RWE or Thames will allocate capital. Mr. Rubin believes the 20 conditions outlined in his pre-filed testimony would provide certainty for WVAWC and the Commission regarding these inherent risks. (Tr. at 210).

Mr. Rubin states that after the acquisition, the SEC will not have jurisdiction over RWE or Thames. It might continue to have jurisdiction over AWW to the extent that AWW still has outstanding securities, but RWE may plan to retire that debt so that it does not have to continue to file reports for a wholly-owned subsidiary. (Tr. at 211).

Mr. Rubin has serious concerns about RWE because of its nuclear power and decommissioning obligations, its coal mine restoration liabilities and other environmental remediation liabilities. RWE has not placed the cash it says that it is holding to meet those liabilities in separate trust accounts, and nothing restricts RWE from using that cash for other purposes. (Tr. at 212-213). Germany does not require separate escrow accounts. (Tr. at 218). Mr. Rubin is also concerned that RWE recently changed, without explanation, its method of accounting for its nuclear decommissioning obligations. Another cause of concern is the fact that RWE recently opened an energy trading operation in the U.S. without having any physical assets to back up its energy trading. (Tr. at 213).

Mr. Rubin believes that in order for RWE to justify the \$2.8 million premium it is paying for AWW, it will have to grow the revenues. It may do so by growing the unregulated aspects of the business; selling assets of the regulated business; or reducing expenses of the regulated business. (Tr. at 215-216).

Mr. Rubin believes that the Joint Stipulation should have included a proviso that no capital priority of RWE should take precedence over the capital needs of the regulated utilities such as WVAWC. (Tr. at 219).

Mr. Rubin acknowledged that if he were to endorse the Joint Stipulation in this case, the testimony he has filed, or intends to file in related proceedings in other states would be compromised. (Tr. at 222-223). Mr. Rubin stated that he does not doubt the veracity of the witnesses who testified on behalf of the Joint Petitioners in this case, but that there is no way of knowing that these witnesses will be able to perform the way they intend to perform. (Tr. at 224).

The Staff's witness, Mr. Paul P. Stewart, Utilities Analyst, testified next. Mr. Stewart adopted his pre-filed direct testimony, with corrections. (Tr. at 227-229). This testimony was admitted into the record as Staff 1. (Tr. at 233). Mr. Stewart testified that Staff's areas of concern regarding the proposed acquisition, including continued employment levels, diminution of local control, and expansion of water service in the

State, are adequately addressed in the Joint Stipulation. (Tr. at 231). Mr. Stewart believes the Joint Stipulation is in the public interest, does not adversely affect the public in the state, and should be adopted by the Commission. (Tr. at 232; 233).

Mr. Stewart believes that RWE intends to responsibly address its future nuclear, coal, and other environmental liabilities, and that this is reflected by the cash balances on its balance sheet. (Tr. at 234).

In closing remarks, counsel for CAD, Mr. Sade stressed to the Commission that notwithstanding Mr. Rubin's remarks, the CAD believes that the Joint Stipulation substantially and reasonably addresses Mr. Rubin's concerns. Mr. Sade noted that CAD's primary concern is the well-being of ratepayers, and that ratepayers receive adequate protections in the Joint Stipulation because economic synergies are to be passed through in rates, and because the Joint Stipulation provides rate stability in the near term. (Tr. at 236-238).

Counsel for Staff stated that from a legal perspective, the Joint Stipulation meets the statutory requirements pursuant to which the Commission must analyze this case.

Following closing remarks from Chairman Williams, the hearing was adjourned.

DISCUSSION

In the July 22, 2002, Order, the Commission stated that when it issued its final, post-hearing, decision, it would rule on the confidentiality of the proprietary version of Appendix A, attached to the May 1, 2002, Joint Motion for Protective Order. In deciding this case, the Commission does not rely upon, and has not considered any of the proprietary filings. Nor did any of the parties move the proprietary filings into the record at hearing. Accordingly, we conclude that there is simply no need to retain the proprietary files at the Public Service Commission. The proprietary filings shall be returned to the Joint Petitioners.

Turning to the Joint Stipulation and the proposed acquisition, the Commission's approval or disapproval must be made pursuant to *W. Va. Code* §24-2-12, which requires WVAWC to obtain the Commission's prior consent to the proposed transaction and also provides:

The Commission may grant its consent [to transactions referred to in this Code section] upon proper showing that the terms and conditions thereof are reasonable and that neither party thereto is given an undue advantage over the other, and do not adversely affect the public in this state. . . and

after such hearing or in case no hearing is required, the commission shall, if the public will be inconvenienced thereby, enter such order as it may deem proper and as the circumstances may require, attaching thereto such conditions as it may deem proper, consent to the entering into or doing of the things herein provided, without approving the terms and conditions thereof, and thereupon it shall be lawful to do the things provided for in such order. . .

After review of the Joint Stipulation, the Commission concludes that in order to meet the statutory requirement that the public interest not be adversely affected by the proposed acquisition, the commitments made in the Joint Stipulation must be either modified or expanded in a number of respects which are discussed below. Provided the parties accept and agree to abide by all of the commitments and conditions, whether included in the original Joint Stipulation or as expanded and/or modified by the Commission in this order, the Commission can conclude that the public interest will not be adversely affected by the proposed transaction.

Many of the protestants who appeared at the public comment hearings expressed concern at the idea that control of our local water utility will shift from an American company to foreign entities. The foreign entities in question in this transaction, RWE and Thames, have taken care to come to West Virginia, and assure both the Commission and the public that they will be responsible owners of our utility and improve the utility in terms of security and in other ways. The possibility exists, however, that yet another acquisition of either RWE or Thames, or a future sale by those owners of their interest in WVAWC, could bring additional unknown entities into the chain of control of WVAWC. Fortunately, *W.Va. Code* §24-2-12(g) provides protection against such changes in control in taking place without Commission approval. Specifically, *W.Va. Code* §24-2-12(g), requires this Commission's approval of any future transaction that would result in a direct or indirect acquisition of the majority of common stock in WVAWC by another entity. In order to assure that there is no misunderstanding on the part of WVAWC, AWW, Thames or RWE on that point, the Commission shall establish as a condition that any change in ownership of AWW or Thames or any significant change in ownership of RWE would constitute a direct or indirect change in majority ownership of the common stock of WVAWC, and therefore must be approved by this Commission.

WVAWC, AWW, Thames, and RWE shall file a verified acknowledgment that, in addition to the other conditions of this order, they accept and agree to this condition.

Turning to the commitments contained in the Joint Stipulation, the Commission has the following requirements.

First - Future Rate Applications:

The Joint Petitioners have represented that the proposed acquisition will result in operational savings due to synergies. (McGivern testimony, Tr. p. 101-105), but the Joint Petitioners have not been able to calculate expected savings for the Commission.

The Commission does not object to paragraph 8.A. of the Joint Stipulation, which provides that WVAWC will file its next general rate case no earlier than March 7, 2003. The Commission will require, however, that the Joint Petitioners agree not to file a rate application for WVAWC after the proposed stock acquisition is consummated, until WVAWC is prepared to file, simultaneously with such rate application, a statement quantifying all synergy savings realized since the closing date of RWE/Thames' acquisition of AWW, that are attributable to WVAWC.

Second - Investment Obligations:

The Commission concludes that it would be contrary to the public interest to allow ownership of WVAWC to transfer to any entity that would in any way limit, restrict or reduce capital expenditures of WVAWC on West Virginia projects. While it may be true that RWE has a much larger capital base than AWW, it does not necessarily follow that RWE will be committed to investment in water and wastewater projects to the same degree as AWW. RWE may be much more inclined to consider investments in energy or other business area projects that have shorter pay back expectations. Accordingly, this Commission must have assurances that the Thames/RWE ownership of WVAWC will not only cooperate with West Virginia, but will dedicate capital backing to West Virginia water and wastewater projects, including storm water projects,¹ if appropriate, even if those projects do not have the profit potential of alternative projects in other states, countries or areas of business activity.

Paragraph 8.C. of the Joint Stipulation and Agreement for Settlement filed with the Commission provides as follows:

¹ The Commission includes storm water in this paragraph based on Mr. Jarrett's testimony that WVAWC is eager to venture into storm water projects in cooperation with municipalities and other utilities. (See Tr. p. 140-141).

WVAWC, AWW, Thames and RWE will cooperate with state, county and local entities in the development of water and wastewater infrastructure throughout the State.

For instance, to the extent such projects are economically viable, WVAWC will commit to continue to participate in additional Public/Private Partnership Projects, such as the Mercer-Summers Regional Water Project and the Cabell County Project 2000, through the Infrastructure and Jobs Development Council or otherwise, in order to provide water service to unserved and under served residents of this State and to assist or consolidate troubled water utility operations within the State. This would include a commitment to incur debt or provide equity capital necessary to carry out authorized expansion and/or upgrades of treatment and pipeline facilities.

As part of this undertaking, WVAWC will:

- (i) comply with any Commission order directing it to provide service to unserved areas of the State as described above, whether in a proceeding initiated by WVAWC, the Commission, the Commission Staff or the CAD;
- (ii) aggressively pursue possible acquisition or operation of specific troubled water and wastewater operations throughout the State as identified in discussions with the Staff and the CAD; and
- (iii) offer to provide water through an incentive-type rate under a Special Contract Sale for Resale arrangement to water utilities in reasonably close proximity to WVAWC's system.

In every case mentioned above, WVAWC, the Staff and the CAD reserve the right to take whatever position they deem appropriate concerning the appropriateness and economic viability of individual projects.

While this provision of the Joint Stipulation offers a starting point with regard to investment in West Virginia water and wastewater projects, the Commission does not believe that it goes far enough to provide the assurances and guarantees that we believe are necessary to alleviate concerns that RWE may push West Virginia infrastructure investment to the bottom of its priority list. In determining the reasonableness of the Joint Stipulation and considering what additional commitments should be imposed by the Commission, we shall take note of the testimony offered by the Joint Petitioners in support of the Joint Petition and the Joint Stipulation.

On this issue of commitment to infrastructure investment by WVAWC, Mr. McGivern testified that he was pleased to see the above quoted provision in the Joint Stipulation. He stated that RWE was interested in growth and that the U.S. water market was the fastest growing water market in the world. He testified that WVAWC's historic approach to development of water infrastructure "... caught the spirit of our vision for how we could grow AWW." (Tr. p. 22). He stated that the West Virginia public/private partnerships were "... exactly what we do as a company in other places around the world." (Tr. p. 22). He then stated that he wanted to make it clear on the record that "... we will absolutely facilitate Chris [WVAWC President Chris Jarrett] to continue this good work." (Tr. p. 23).

Upon questioning by the Commission, Mr. McGivern expressed reservations with regard to the Commission's establishment of a minimum infrastructure expansion capital budget or requirement for WVAWC. He testified that he did not want to include a dollar limit because he wanted WVAWC to continue looking for expansion opportunities outside of any limits. He stated with regard to infrastructure expansion projects: "The more the merrier." He then stated "... I will not put any constraints on him [WVAWC President Chris Jarrett] in terms of saying it's 5 million or its 2 million; it's a good project, it will be funded." (Tr. p. 71). He further stated that the only way that the acquisition works "is if we facilitate the type of growth which Chris has been doing in West Virginia and we do it faster and on a larger scale than AWW had previously been doing." (Tr. p. 72 - 73). Rather than agree to a Commission prescribed minimum, Mr. McGivern asked that we "believe that myself as a manager or my company I represent will make good these commitments, which I can assure you sincerely we fully intend to do." (Tr. p. 75).

The Commission is gratified by Mr. McGivern's commitment to continue and even exceed the historic level of expansion in West Virginia; however, we believe that there should be some linkage between the Applicant's intentions as expressed by Mr. McGivern and the Joint Stipulation, which we find to be too general in nature. For example, the Joint Stipulation assures "cooperation," but does not define how cooperation will be translated into dollars of investment budget. Furthermore, the Joint Stipulation clearly established a requirement regarding economic viability without committing or agreeing that the determination of economic viability must be in the hands of the Commission. Finally, the Joint Stipulation does not clearly extend the requirement to go forward with financing of Commission approved projects to Thames and/or RWE.

We recognize that the establishment of any annual dollar amount may not be appropriate since projects may not be planned or constructed every year. Therefore, in lieu of a minimum annual dollar amount, the Commission requires the following:

First, with respect to necessary repairs or upgrades to, or extensions of, existing plant and facilities, WVAWC, AWW, Thames and RWE must jointly commit that they will fund the same, through a reasonable and appropriate combination of debt and equity capital. WVAWC's, AWW's, Thames' and RWE's commitment to make all necessary repairs and upgrades includes the obligation to commit funds to assure that the WVAWC system is and will remain in compliance with all applicable health and/or environmental laws, regulations, and standards.

Second, with respect to water and/or wastewater including storm water, if appropriate, infrastructure expansion projects (collectively, infrastructure projects), the Commission may require that WVAWC, AWW, Thames and RWE fund, or participate in the funding of, all infrastructure projects that the Commission determines are necessary, in the public interest, and financially feasible. The Commission will make its determination by order and after hearing, if required. Further, WVAWC, AWW, Thames, and RWE must acknowledge that the Commission's determination may be made in a proceeding initiated upon the Commission's own motion or by petition from another utility, Commission Staff or the Consumer Advocate. Furthermore, if the Commission makes a final determination that WVAWC should proceed with an infrastructure project, it will immediately commence all necessary planning, engineering, financing and filings for necessary regulatory approvals.

Third - Capital Investment Budgets:

To further alleviate concern regarding future investment, the Commission believes that an additional commitment, similar but not identical to the condition eight proposed by Mr. Rubin, should be a condition to our approval of this transaction. WVAWC should include in its Annual Report to the Commission, copies of its approved capital investment 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 approved capital investment budgets for the year 2005) and any capital investment budgets for future years that have been approved. Mr. Jarrett testified that pursuant to a recent "board meeting" WVAWC has an approved capital investment budget for the next five years of \$85,000,000. (Tr. p. 122). The Commission expects the next annual report of WVAWC would include the approved capital investment budget of \$85,000,000.

Fourth - Cash Over and Above Dividends:

Fourth, to ensure that monies generated by WVAWC's business will be available for WVAWC's investment in the repair, replacement, upgrading and/or expansion of its own facilities, the Commission will require an additional condition in which the Joint Petitioners agree that any cash generated by WVAWC, over and above the cash needed

to pay dividends, must be placed in investment securities owned by WVAWC until such time as such cash is needed for reinvestment in WVAWC plant additions or to cover prudent operating expenses of WVAWC. This requirement is consistent with Mr. McGivern's testimony, "My understanding would be that all of the cash that is generated over and above dividends would be kept in the business. The only money that goes out of the business is dividends. All other cash generated by the business will be invested in the business." (Tr. p. 109-110). When asked whether he meant the West Virginia business, Mr. McGivern answered in the affirmative. (Id.)

Fifth - Limitation on Dividends:

The Commission takes administrative notice of the fact that historically, over the past ten years, WVAWC's payout of net income as dividends to AWW has ranged from a low of 71.3% to a high of 82.3%. The payout percentage has exceeded 80% only twice in the last ten years. The average ten year dividend payout has been 75.4% and over the past three years, that payout has averaged 77.4%. (See, WVAWC Annual Reports filed at the Commission for the years 1992-2001).

The Commission finds that it is reasonable to place a limit on the percentage of net income that WVAWC can pay out as dividends as a condition of our approval in this proceeding. A maximum dividend payout of 80% of annual net income appears to be reasonable and consistent with the history of WVAWC's dividend payout requirements over the past ten years.

Sixth - Employee Severance:

Sixth, paragraph 8.D. of the Joint Stipulation reads,

WVAWC will effect no layoffs or involuntary severance of employees, except for cause, before March 31, 2004.

In light of the fact that RWE/Thames' acquisition of all of the AWW local utilities is unlikely to obtain the necessary approval of all State Commissions for another year or even longer, the Commission finds that the commitment should be amended to read,

WVAWC will effect no layoffs or involuntary severance of employees, except for cause, before March 31, 2004, or the date that is 18 months after the actual close of RWE/Thames' acquisition of AWW, whichever is later.

Seventh - affirmation of Joint Stipulation amendments:

Seventh, authorized representatives of each of the Joint Petitioners shall be required to file verified statements that they agree to and accept the modifications of the Joint Stipulation described in this Order, as well as the additional conditions established by the Commission herein. The Joint Petitioners shall waive any argument that the Commission's modifications render the Joint Stipulation as a whole, or any individual provisions of the Joint Stipulation, invalid. The Joint Petitioners shall also waive any argument that the Commission lacks jurisdiction to impose or enforce the conditions. All of the modifications to be agreed to are set forth on Appendix B, attached hereto.

FINDINGS OF FACT

1. 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 issue in the case which, if approved, would authorize the acquisition of American Water Works Company, Inc. by Thames Water Aqua Holdings GmbH.

2. WVAWC and Thames seek the Commission's consent and approval of the acquisition of the outstanding common stock of AWW, the parent company and controlling shareholder of WVAWC, by Thames. (See Joint Petition).

3. A significant number of protests were filed in response to public notice of this petition. (See case file).

4. Notice of the petition was published in all counties in which WVAWC provides utility service. (See affidavits of publication).

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

6. The Commission held public comment hearings 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.

7. Many of the protestants who appeared at the public comment hearings expressed concern at the idea that control of our local water utility will shift from an American company to foreign entities.

8. The foreign entities in question in this transaction, RWE and Thames, have taken care to come to West Virginia, and assure both the Commission and the public that

they will be responsible owners of our utility and improve the utility in terms of security and in other ways.

9. Prior to the evidentiary hearing, the parties filed both direct and responsive pre-filed testimony.

10. 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.

11. The hearing was held as scheduled on July 25, 2002. Appearances included WVAWC represented by Michael A. Albert, Esquire and Chris Callas, Esquire; Thames/RWE represented by James D. Gray, Esquire; Commission Staff represented by Caryn Short, Esquire and Leslie Anderson, Esquire; CAD represented by David A. Sade, Esquire and Billy Jack Gregg, Esquire. (See hearing transcript from July 25, 2002, hereinafter referred to as "Tr.")

12. The Commission heard testimony from James McGivern, Chris E. Jarrett, Andrew Chapman, Tom S. Witt, and William D. Patterson, all on behalf of WVAWC and Thames/RWE. The Commission heard testimony from Scott J. Rubin on behalf of CAD and Paul P. Stewart, Jr. on behalf of Commission Staff.

13. In the July 22, 2002, Order, the Commission stated that when it issued its final, post-hearing, decision, it would rule on the confidentiality of the proprietary version of Appendix A, attached to the May 1, 2002, Joint Motion for Protective Order. In deciding this case, the Commission does not rely upon, and has not considered any of the proprietary filings. Nor did any of the parties move the proprietary filings into the record at hearing.

14. The Joint Petitioners have represented that the proposed acquisition will result in operational savings due to synergies. (McGivern testimony, Tr. p. 101-105), but the Joint Petitioners have not been able to calculate expected savings for the Commission.

15. While it may be true that RWE has a much larger capital base than AWW, it does not necessarily follow that RWE will be committed to investment in water and wastewater projects to the same degree as AWW. RWE may be much more inclined to consider investments in energy or other business area projects that have shorter pay back expectations.

16. Mr. Jarrett testified that pursuant to a recent "board meeting" WVAWC has an approved capital investment budget for the next five years of \$85,000,000. (Tr. p. 122).

17. When questioned about Thames' plans for WVAWC's cash over and above dividends, Mr. McGivern stated, "My understanding would be that all of the cash that is generated over and above dividends would be kept in the business. The only money that goes out of the business is dividends. All other cash generated by the business will be invested in the business." (Tr. p. 109-110). When asked whether he meant the West Virginia business, Mr. McGivern answered in the affirmative. (Id.)

18. Historically, over the past ten years, WVAWC's payout of net income as dividends to AWW has ranged from a low of 71.3% to a high of 82.3%. The payout percentage has exceeded 80% only twice in the last ten years. The average ten year dividend payout has been 75.4% and over the past three years, that payout has averaged 77.4%. (See, WVAWC Annual Reports filed at the Commission for the years 1992-2001).

CONCLUSIONS OF LAW

1. There is no need to retain the Joint Petitioners' proprietary files at the Public Service Commission. The proprietary filings shall be returned to the Joint Petitioners.

2. The Commission's approval or disapproval of the Joint Stipulation and the proposed acquisition, must be made pursuant to *W.Va. Code* §24-2-12, which requires WVAWC to obtain the Commission's prior consent to the proposed transaction and also provides:

The Commission may grant its consent [to transactions referred to in this Code section] upon proper showing that the terms and conditions thereof *are reasonable and that neither party thereto is given an undue advantage over the other, and do not adversely affect the public in this state. . . and after such hearing or in case no hearing is required, the commission shall, if the public will be inconvenienced thereby, enter such order as it may deem proper and as the circumstances may require, attaching thereto such conditions as it may deem proper, consent to the entering into or doing of the things herein provided, without approving the terms and conditions thereof, and thereupon it shall be lawful to do the things provided for in such order. . .*

3. In order to meet the statutory requirement that the public interest not be adversely affected by the proposed acquisition, the commitments made in the Joint Stipulation must be either modified or expanded in a number of respects. Provided the parties accept and agree to abide by all of the commitments and conditions, whether included in the original Joint Stipulation or as expanded and/or modified by the

Commission in this order, the Commission can conclude that the public interest will not be adversely affected by the proposed transaction.

4. If this acquisition is approved, the possibility exists that yet another acquisition of either RWE or Thames, or a future sale by those owners of their interest in WVAWC, could bring additional unknown entities into the chain of control of WVAWC.

5. *W.Va. Code §24-2-12(g)* provides protection against such changes in control in taking place without Commission approval.

6. *W.Va. Code §24-2-12(g)*, requires this Commission's approval of any future transaction that would result in a direct or indirect acquisition of the majority of common stock in WVAWC by another entity.

7. In order to assure that there is no misunderstanding on the part of WVAWC, AWW, Thames or RWE on that point, the Commission shall establish as a condition that any change in ownership of AWW or Thames or any significant change in ownership of RWE would constitute a direct or indirect change in majority ownership of the common stock of WVAWC, and therefore must be approved by this Commission.

8. The Commission does not object to paragraph 8.A. of the Joint Stipulation, which provides that WVAWC will file its next general rate case no earlier than March 7, 2003. The Commission will require, however, that the Joint Petitioners agree not to file a rate application for WVAWC after the proposed stock acquisition is consummated, until WVAWC is prepared to file, simultaneously with such rate application, a statement quantifying all synergy savings realized since the closing date of RWE/Thames' acquisition of AWW, that are attributable to WVAWC.

9. It would be contrary to the public interest to allow ownership of WVAWC to transfer to any entity that would in any way limit, restrict or reduce capital expenditures of WVAWC on West Virginia projects.

10. This Commission must have assurances that the Thames/RWE ownership of WVAWC will not only cooperate with West Virginia, but will dedicate capital backing to West Virginia water and wastewater projects, including storm water projects, if appropriate, even if those projects do not have the profit potential of alternative projects in other states, countries or areas of business activity.

11. While Paragraph 8.C. of the Joint Stipulation offers a starting point with regard to investment in West Virginia water and wastewater projects, the Commission does not believe that it goes far enough to provide the assurances and guarantees that are necessary

to alleviate concerns that RWE may push West Virginia infrastructure investment to the bottom of its priority list.

12. There should be some linkage between the Applicant's intentions as expressed by Mr. McGivern at the evidentiary hearing, and the Joint Stipulation, which we find to be too general in nature. For example, the Joint Stipulation assures "cooperation," but does not define how cooperation will be translated into dollars of investment budget. Furthermore, the Joint Stipulation clearly established a requirement regarding economic viability without committing or agreeing that the determination of economic viability must be in the hands of the Commission. Finally, the Joint Stipulation does not clearly extend the requirement to go forward with financing of Commission approved projects to Thames and/or RWE.

13. We recognize that the establishment of any annual dollar amount may not be appropriate since projects may not be planned or constructed every year. Therefore, in lieu of a minimum annual dollar amount, the Commission will require the following.

14. With respect to necessary repairs or upgrades to, or extensions of, existing plant and facilities, WVAWC, AWW, Thames and RWE must jointly commit that they will fund the same, through a reasonable and appropriate combination of debt and equity capital.

15. With respect to water and/or wastewater including storm water, if appropriate, infrastructure expansion projects (infrastructure projects), the Commission will require that WVAWC, AWW, Thames and RWE fund all infrastructure projects that the Commission determines are necessary, in the public interest, and financially feasible.

16. WVAWC, AWW, Thames, and RWE must acknowledge that the Commission's determination that an infrastructure project is necessary, in the public interest, and financially feasible, may be made in a proceeding initiated by a petition from any interested party, including one or more potential customers, another utility, Commission Staff or the Consumer Advocate.

17. If the Commission makes a final determination that WVAWC should proceed with an Infrastructure project, it will immediately commence all necessary planning, engineering, financing and filings for necessary regulatory approvals.

18. To further alleviate concern regarding future investment, the Commission believes that an additional commitment, similar but not identical to the condition eight proposed by Mr. Rubin, should be a condition to our approval of this transaction. WVAWC should include in its Annual Report to the Commission, copies of its approved

capital investment 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 approved capital investment budgets for the year 2005) and any capital investment budgets for future years that have been approved. The Commission expects the next annual report of WVAWC would include the approved capital investment budget of \$85,000,000, referred to by Mr. Jarrett..

19. To ensure that monies generated by WVAWC's business will be available for WVAWC's investment in the repair, replacement, upgrading and/or expansion of its own facilities, the Commission will require an additional condition in which the Joint Petitioners agree that any cash generated by WVAWC, over and above the cash needed to pay dividends, must be placed in investment securities owned by WVAWC until such time as such cash is needed for reinvestment in WVAWC plant additions or to cover prudent operating expenses of WVAWC.

20. It is reasonable to place a limit on the percentage of net income that WVAWC can pay out as dividends as a condition of our approval in this proceeding. A maximum dividend payout of 80% of annual net income appears to be reasonable and consistent with the history of WVAWC's dividend payout requirements over the past ten years.

21. In light of the fact that RWE/Thames' acquisition of all of the AWW local utilities is unlikely to obtain the necessary approval of all State Commissions for another year or even longer, the Commission finds that the Joint Stipulation's commitment regarding employee severance should be amended to read,

WVAWC will effect no layoffs or involuntary severance of employees, except for cause, before March 31, 2004, or the date that is 18 months after the actual close of RWE/Thames' acquisition of AWW, whichever is later.

22. Authorized representatives of each of the Joint Petitioners shall be required to file verified statements that they agree to and accept the modifications of the Joint Stipulation described in this Order, as well as the additional conditions established by the Commission herein. In the verification, the Joint Petitioners will waive any argument that the Commission's modifications render the Joint Stipulation as a whole, or any individual provisions of the Joint Stipulation, invalid, and waive any argument that the Commission lacks jurisdiction to impose or enforce the conditions.

23. Upon the receipt of the verification as required herein, the Commission finds the terms and conditions of this proposed transaction are reasonable, does not give any party an undue advantage over another, and will not adversely affect the public in this State.

24. A summary of the modifications to be agreed to are set forth on Appendix B, attached hereto.

ORDER

IT IS THEREFORE ORDERED that, subject to the terms of the Joint Stipulation and the modifications and conditions established herein, and the receipt of the verification acknowledging acceptance of such modifications and conditions, as required by this order, the Commission hereby grants its consent and approval of the acquisition of the outstanding common stock of American Water Works Company, Inc. by Thames Water Aqua Holdings GmbH.

IT IS FURTHER ORDERED that the proprietary version of the Appendix A that was attached to the Joint Motion for Protective Treatment filed on May 1, 2002, shall be returned to WVAWC, with no copy being retained by this Commission or its Staff.

IT IS FURTHER ORDERED that within twenty (20) days of the date of this Order, WVAWC, AWW, Thames and RWE file a verified acknowledgment and acceptance of the modifications of the Joint Stipulation described in this Order, as well as the additional conditions established by the Commission herein, all as contained herein and summarized in Appendix B attached hereto. The verification must also waive any argument that the Commission's modifications render the Joint Stipulation as a whole, or any individual provisions of the Joint Stipulation, invalid. The verification must also waive any argument that the Commission lacks jurisdiction to impose or enforce the conditions.

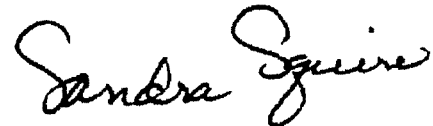
IT IS FURTHER ORDERED that, upon entry hereof, this proceeding shall be removed from the Commission's active docket of cases.

IT IS FURTHER ORDERED that the Joint Stipulation, without exhibits, attached hereto as Appendix A, as modified or expanded herein, is hereby adopted and approved.

IT IS FURTHER ORDERED that the Commission's Executive Secretary shall serve a copy of this order on all parties of record by First Class United States Mail, and upon Commission Staff by hand delivery.

JML/ijm
011691cc.sca

A True Copy, Teste:


Sandra Squire
Executive Secretary

PUBLIC SERVICE COMMISSION
OF WEST VIRGINIA
CHARLESTON

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.

JOINT STIPULATION
AND AGREEMENT FOR SETTLEMENT

Pursuant to West Virginia Code § 24-1-9(f) and Rule 13(d) of the Public Service Commission's Rules of Practice and Procedure, West Virginia-American Water Company ("WVAWC") on behalf of itself and its parent company, American Water Works Company, Inc. ("American Water"), Thames Water Aqua Holdings GmbH ("Thames Holdings," on behalf of itself and its parent holding company, RWE Aktiengesellschaft ("RWE"), the Staff of the Public Service Commission of West Virginia ("Staff"), and the Consumer Advocate Division of the Public Service Commission ("CAD") (collectively referred to herein as the "Parties") join in this Joint Stipulation and Agreement for Settlement ("Joint Stipulation").

This Joint Stipulation proposes and recommends a settlement among the Parties to PSC Case No. 01-1691-W-PC. In this Joint Stipulation, the Parties have agreed and recommend that the Public Service Commission ("Commission") enter a Commission Order granting consent and approval under West Virginia Code § 24-2-12(g) to the

transactions contemplated in an Agreement and Plan of Merger ("Agreement") dated September 16, 2001, by and among RWE, American Water (WVAWC's corporate parent), Thames Holdings, and Apollo Acquisition Company ("Acquisition Corp."), a wholly-owned subsidiary of Thames Holdings created for the purpose of implementing the Agreement. As described in the Joint Petition filed on December 20, 2001 (the "Joint Petition"), the Agreement provides that Acquisition Corp. will be merged (the "Merger") with and into American Water, with American Water surviving the Merger and continuing in corporate existence under Delaware law. As a result of the Merger, the common stock of American Water ("American Common Stock") will be converted into the right to receive cash in consideration of \$46 per share, and the American Common Stock will be owned by Thames Holdings, a wholly-owned subsidiary of RWE, or by an entity owned or controlled, directly or indirectly, by Thames Holdings and managed by Thames Water PLC ("Thames").

In this Joint Stipulation, the Parties recommend that the Commission approve the Joint Petition but agree to condition consent and approval of the Joint Petition and the Merger and Agreement to *certain commitments and undertakings with respect to the consummation of the transactions contemplated in the Joint Petition and the Agreement (as described in more detail below, the "Conditions")*.

In support of this Joint Stipulation and the settlement embodied herein, the Parties state that:

1. On December 20, 2001, Joint Petitioners filed the Joint Petition with the Commission. Among other things, the Joint Petition identified WVAWC, American Water, Thames Holdings, Thames and RWE; described the terms and conditions of the

Agreement; represented that the Merger would have no adverse impact on WVAWC or its operations, rates, service quality, employees or customers; described certain anticipated benefits of the Merger to American Water and its subsidiaries, including WVAWC; requested an Order of the Commission approving the Merger and the Agreement and authorizing Thames Holdings, RWE and any entity owned or controlled, directly or indirectly, by Thames Holdings and managed by Thames, to acquire the American Common Stock and control of WVAWC pursuant to W. Va. Code § 24-2-12; and requested a ruling that no further approval of the Commission be required in regard to the Agreement or the Merger.

2. On January 4, the CAD petitioned to intervene.

3. On March 20, 2002, the Commission entered a Commission Order that, among other things, (i) scheduled public comment hearings to be held in Princeton, Huntington, Weston, Fayetteville, and Charleston; (ii) established filing dates for pre-filed testimony; and (iii) scheduled an evidentiary hearing in Charleston, West Virginia for July 25 and 26, 2002.

4. The March 20, 2002, Commission Order also required WVAWC to publish a Notice of Filing and Hearings as a Class I legal advertisement in newspapers published and of general circulation in all counties in which WVAWC provides utility service. WVAWC published the required Notice of Filing and Hearings and provided evidence thereof by filing affidavits of publication with the Commission. The Commission conducted the public comment hearings as scheduled at the times and places indicated in the Commission Order.

5. On May 8, 2002, the Joint Petitioners filed the Direct Testimony and related exhibits of Chris E. Jarrett, Michael Carmedy, Andrew Chapman and Tom S. Witt. On June 5, 2002, the Staff filed the Direct Testimony and related exhibits of Paul P. Stewart and the CAD filed the Direct Testimony and related exhibits of Scott J. Rubin. On June 12, 2002, the Joint Petitioners filed the Rebuttal Testimony and related exhibits of James McGivern, Chris E. Jarrett, and William D. Patterson.

6. The Staff and the CAD undertook extensive discovery, both of a formal and informal character, with respect to the Merger, the Agreement and the relief requested in the Joint Petition.

7. During the weeks preceding the July 25-26 hearing, the Parties attempted to negotiate a resolution of this case. Specifically, during prehearing conferences held on May 31, 2002, and July 10, 2002, and in various correspondence, meetings and telephone discussions, the Parties attempted to address, narrow or eliminate certain of the issues and concerns raised by the Staff and CAD with respect to the Merger, the Agreement and the Joint Petition and to reach a settlement. Based on these negotiations, the Parties have reached a recommended settlement of this case, the terms of which are described herein.

8. The Parties jointly recommend that the Commission enter an Order approving the Joint Petition, the Agreement and the Merger and granting the consent and approval of the Commission to the Joint Petition and the Agreement pursuant to W. Va. Code § 24-2-12(g) on the condition that the Joint Petitioners, on their own behalf and as

authorized representatives for American Water and RWE for purposes of this Joint Stipulation, make the following commitments:

- A. WVAWC will file its next general rate case no earlier than March 7, 2003, based on a 2002 historical test year, with any change in WVAWC's rates and charges from such case to be implemented no earlier than January 1, 2004.
- B. WVAWC will pass through to WVAWC's customers in future rate cases the demonstrated actual savings recognized during the applicable test year (net of any properly allocated implementation costs) from efficiencies resulting from the acquisition of American Water by RWE/Thames and experienced by or allocated to WVAWC.
- C. WVAWC, American Water, Thames and RWE will cooperate with state, county and local entities in the development of water and wastewater infrastructure throughout the State. For instance, to the extent such projects are economically viable, WVAWC will commit to continue to participate in additional Public/Private Partnership Projects, such as the Mercer-Summers Regional Water Project and the Cabell County Project 2000, through the Infrastructure and Jobs Development Council or otherwise, in order to provide water service to unserved and underserved residents of this State and to assist or consolidate troubled water utility operations within the State. This would include a commitment to incur debt or provide equity capital necessary to carry out authorized expansion and/or upgrades of treatment and pipeline facilities. As a part of this undertaking, WVAWC will: (i) comply with any Commission order directing it to provide service to unserved areas of the State as described above, whether in a proceeding initiated by WVAWC, the Commission, the Commission Staff or the CAD; (ii) aggressively pursue possible acquisition or operation of specific troubled water and wastewater operations throughout the State as identified in discussions with the Staff and the CAD; and (iii) offer to provide water through an incentive-type rate under a Special Contract Sale for Resale arrangement to water utilities in reasonably close proximity to WVAWC's system. In every case mentioned above, WVAWC, the Staff and the CAD reserve the right to take whatever position they deem appropriate concerning the appropriateness and economic viability of individual projects.

- D. WVAWC will effect no layoffs or involuntary severance of employees, except for cause, before March 31, 2004.
- E. WVAWC will continue to use its best efforts to meet or improve upon WVAWC's water service standards, including but not limited to standards for water service interruptions, employee response time, customer complaints and complaint response time. After consultation with the Staff and the CAD, WVAWC will implement a system to electronically track customer complaints in order to document the nature of and response time to those complaints. Reports from this system will be submitted to the Commission at least annually.
- F. WVAWC will continue to make its best efforts, at all times, to meet applicable water quality standards and will commit to make no detrimental changes in the basic operations of WVAWC as a result of the transaction.
- G. WVAWC will maintain its corporate offices in West Virginia. Furthermore, there will be no reduction in the overall levels and responsibilities of West Virginia local management located in West Virginia as a result of the transaction.
- H. Without the prior approval of the Commission, WVAWC will make no change in its corporate name. In addition, without the prior approval of the Commission, WVAWC will neither operate under a trade name different from its corporate name nor allow any affiliated entity to do business in West Virginia under a name that is comparable or similar to WVAWC.
- I. WVAWC will include a substantial "local interest" representation on its Board of Directors, and the Board of Directors of WVAWC will continue to provide guidance and oversight of the business and affairs of WVAWC.
- J. WVAWC will continue its current level of support for and involvement in local and community projects. Further, WVAWC agrees to increase its financial commitment from \$5,000 per year to \$25,000 per year in calendar years 2003 and 2004 for WVAWC's "Helping Hand" Program to assist low income residential customers with their water bills.
- K. WVAWC will agree to implement services and programs similar in purpose to those services and programs described in

the Thames Water "Community" brochure attached as Appendix A hereto.

- L. RWE/Thames/American Water/WVAWC will make no attempt to allocate, push down, or assign to WVAWC any purchase price, goodwill, early termination payment, change in control payment, incentive or retention bonus payment in connection with the transaction, either directly, indirectly through American Water Works Service Company, Inc., or another affiliate, or by any other means.
- M. RWE/Thames/American Water/WVAWC will not attempt to pass through to or recover from WVAWC's customers or have WVAWC's customers fund any portion of the acquisition premium or purchase price for the American Common Stock or any costs associated with the transaction, including but not limited to financial, legal, severance payments, regulatory fees and investment services.
- N. WVAWC will maintain its equity at a level no lower than 35% of total capital and provide the Commission with written notice within 30 days after the implementation of any change in its equity ratio greater than 5%.
- O. WVAWC will maintain a separate set of books and records for WVAWC in West Virginia.
- P. WVAWC will flow through to the benefit of its customers the lower cost of debt applicable to WVAWC, to the extent known and measurable, as a result of its relationship with RWE/Thames in future general rate cases.
- Q. WVAWC will provide the Commission with English-language versions of the RWE annual reports, RWE quarterly shareholders reports and the annual audit reports of RWE, Thames, American Water and WVAWC, as applicable, either in printed media or through access to electronic versions. In addition, the Income Statement, Balance Sheet, and Statement of Cash Flows will be converted to U.S. dollars at the exchange rates existing at the end of the time period for such excerpts or financial reports.
- R. WVAWC will report to the Commission within 30 days any downgrading of the bonds of RWE, Thames, American Water Capital Corp., or any subsidiary of American Water, including a full copy of the report issued by the bond rating agency.

- S. WVAWC will continue to adequately fund and maintain its treatment, transmission and distribution facilities in order to assure quality service to its customers.
- T. When implementing "best practices," RWE/Thames, American Water and WVAWC will consider any related effects on customer service and customer satisfaction levels.
- U. WVAWC will provide written notice at least 30 days prior to any planned workforce reduction greater than 5% of WVAWC's existing workforce. The Parties agree that WVAWC's existing workforce is 329 employees.
- V. WVAWC will honor all of its existing contracts, easements and other agreements in accordance with their respective terms.
- W. WVAWC will not allow the use of any of its personnel, assets or equipment by any affiliated entity without the Commission's prior consent and approval pursuant to W. Va. Code § 24-2-12. Further, to the extent that WVAWC allows the use of such personnel, assets or equipment by any unaffiliated entity, other than a governmental body or non-profit entity, WVAWC will file a report with the Commission within thirty days after the use of such personnel, assets or equipment on the identity of the personnel, assets or equipment involved and the estimated fully-allocated cost of such personnel, assets or equipment.

9. By the execution of this Joint Stipulation by their counsel, the Joint Petitioners affirmatively commit to be bound by the conditions set forth in Paragraph 8 above.

10. RWE, through the acknowledgment of this Joint Stipulation by James McGivern, a representative of RWE duly authorized pursuant to the power of attorney of RWE, and American Water, through the written acknowledgment of Ellen C. Wolf, Vice-President and Chief Financial Officer of American Water, also affirmatively commit RWE and American Water to be bound by the conditions set forth in Paragraph 8 above. A copy of the RWE power of attorney in favor of Mr. McGivern is attached hereto as Exhibit 1.

11. Based on the affirmative representations of the Joint Petitioners, RWE and American Water as set forth in Paragraphs 9 and 10 above, the Parties agree and

recommend that the Commission issue appropriate findings of fact and conclusions of law to the effect (i) that the terms and conditions of the Merger, the Agreement and the Joint Petition are reasonable, (ii) that no party to the Merger or the Agreement is given an undue advantage over another, and (iii) that the Merger and the Agreement do not and, upon its consummation, will not adversely affect the public in this State.

12. The Parties further request that the Commission grant the Joint Motion for Confidential Treatment filed by the Joint Petitioners on May 1, 2002.

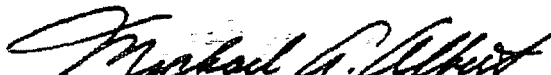
13. The Joint Stipulation is entered into subject to the acceptance and approval of the Commission. It results from a review of all filings in these proceedings and extensive negotiation. It reflects substantial compromises by the Parties and the modification of their respective positions asserted in this case, and is being proposed to expedite and simplify the resolution of these proceedings and other matters. It is made without any admission or prejudice to any positions which any Party might adopt during subsequent litigation.

14. The Parties adopt the Joint Stipulation as being in the public interest, without adopting any of the compromise positions set forth herein as principles applicable to future regulatory proceedings, except as may otherwise be provided herein. The Parties acknowledge that it is the Commission's prerogative to accept, reject, or modify any stipulation. However, in the event that the Joint Stipulation is modified or rejected by the Commission, it is expressly understood by the Parties that they are not bound to accept the Joint Stipulation as modified or rejected, and may avail themselves of whatever rights are available to them under law and the Commission's Rules of Practice and Procedure.


WHEREFORE, the Parties, on the basis of all of the foregoing, respectfully request that the Commission make appropriate findings of fact and conclusions of law adopting and approving the Joint Stipulation in its entirety.

WEST VIRGINIA-AMERICAN WATER
COMPANY

By Counsel



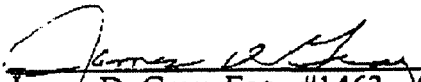
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Charleston, WV 25322-0553
Phone (304) 340-1287
Fax (304) 340-1080

THAMES WATER AQUA HOLDINGS GmbH,

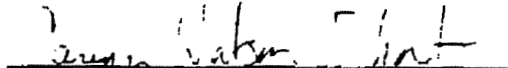
By Counsel

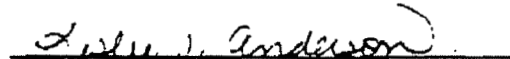


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By Counsel


Caryn Watson Short, Esq., #4962


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201 Brooks Street
P. O. Box 812
Charleston, WV 25323

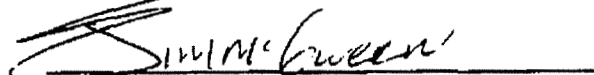
CONSUMER ADVOCATE DIVISION OF THE
PUBLIC SERVICE COMMISSION OF WEST
VIRGINIA

By Counsel


David A. Sade, Esq., #3229
Consumer Advocate Division
7th Floor, Union Building
723 Kanawha Boulevard, East
Charleston, West Virginia 25301

Acknowledged and agreed to by:

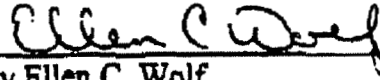
RWE AKTIENGESELLSCHAFT



By James McGivern
An Authorized Agent By Virtue of the Power of
Attorney Attached As Exhibit A Hereto

Acknowledged and agreed to by:

AMERICAN WATER WORKS
COMPANY, INC.

A handwritten signature in cursive script, reading "Ellen C. Wolf", is written over a horizontal line.

By Ellen C. Wolf
Vice-President and Chief Financial
Officer

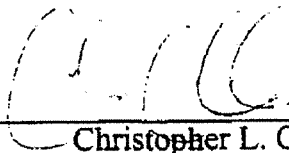
CERTIFICATE OF SERVICE

I, Christopher L. Callas, counsel for West Virginia-American Water Company, hereby affirm that the **Joint Stipulation and Agreement for Settlement** was served on the parties of record by hand delivering true and correct copies thereof addressed as follows:

David A. Sade, Esq.
Consumer Advocate Division
7th Floor, Union Building
723 Kanawha Boulevard, East
Charleston, West Virginia 25301

Caryn Watson Short, Esq.
Public Service Commission
P. O. Box 812
Charleston, West Virginia 25323

Leslie J. Anderson, Esq.
Public Service Commission
P. O. Box 812
Charleston, West Virginia 25323



Christopher L. Callas

Dated: July 24, 2002



**SUMMARY OF COMMISSION MODIFICATIONS
TO JOINT STIPULATION AND
ADDITIONAL COMMISSION CONDITIONS¹
CASE NO. 01-1691-W-PC**

1. WVAWC, AWW, Thames and RWE understand and agree that any change in ownership of AWW or Thames or any significant change in ownership of RWE would constitute a direct or indirect change in majority ownership of the common stock of WVAWC and therefore must be approved by this Commission.

2. WVAWC will not file a rate application after the proposed stock acquisition is consummated, until WVAWC is prepared to file, simultaneously with such rate application, a statement(s) quantifying all synergy savings realized since the closing date of RWE/Thames' acquisition of AWW, and attributable to WVAWC.

3. With respect to necessary repairs or upgrades to, or extensions of, existing plant and facilities, WVAWC, AWW, Thames and RWE will fund the same, through a reasonable and appropriate combination of debt and equity capital. WVAWC's, AWW's, Thames' and RWE's commitment to make all necessary repairs and upgrades includes the obligation to commit funds to assure that the WVAWC system is and will remain in compliance with all applicable health and/or environmental laws, regulations, and standards.

4. With respect to water and/or wastewater, including storm water, if appropriate, infrastructure expansion projects (infrastructure projects), WVAWC, AWW, Thames and RWE will fund all infrastructure projects that the Commission determines are necessary, in the public interest and financially feasible. The Commission will make its determination by order and after hearing, if required.

5. WVAWC, AWW, Thames, and RWE must acknowledge that the Commission's determination in the prior paragraph may be made in a proceeding initiated upon the Commission's own motion or by petition from another utility, Commission Staff or the Consumer Advocate.

¹ This document is intended to be a summary of the conditions established in the Commission's order. Readers should rely on the order itself for the Commission's directives as to each condition.

6. If the Commission makes a final determination that WVAWC should proceed with an infrastructure project, WVAWC will immediately commence all necessary planning, engineering, financing and filings for necessary regulatory approvals.

7. WVAWC shall include in its Annual Report to the Commission, copies of its approved capital investment budgets for the then current year and any capital construction budgets for future years that have been approved.

8. Any cash generated by WVAWC, over and above the cash needed to pay dividends, must be placed in investment securities owned by WVAWC until such time as such cash is needed for reinvestment in WVAWC plant additions or to cover prudent operating expenses of WVAWC.

9. Total common and preferred dividends from WVAWC to its owner shall be limited to 80% of earnings each year.

BEFORE THE
NEW JERSEY BOARD OF PUBLIC UTILITIES

Joint Petition of New Jersey-American Water Company, :
Inc. and Thames Water Aqua Holdings GmbH for : BPU Docket No. WM0112083
Approval of Change in Control of New Jersey-American :
Water Company, Inc. :

**Direct Testimony of
Scott J. Rubin**

on Behalf of
Division of Ratepayer Advocate

August 1, 2002

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1 **I. Introduction**

2 Q. PLEASE STATE YOUR NAME AND BUSINESS ADDRESS.

3 A. My name is Scott J. Rubin. My business address is 3 Lost Creek Drive, Selinsgrove, PA.

4 Q. BY WHOM ARE YOU EMPLOYED AND IN WHAT CAPACITY?

5 A. I am an independent attorney and consultant. My practice is limited to matters affecting
6 the public utility industry.

7 Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY IN THIS CASE?

8 A. I have been asked by the Division of Ratepayer Advocate to review the proposed
9 acquisition of American Water Works Company, Inc. (AWW) by RWE AG (RWE), a
10 multinational corporation based in Essen, Germany. The transaction is structured as an
11 acquisition by Thames Water Aqua Holdings GmbH (Thames), a British corporation that
12 is a wholly owned subsidiary of RWE. My review includes the identification of potential
13 risks and benefits from the acquisition, with a particular focus on the risks and benefits to
14 the customers of AWW's New Jersey subsidiary, New Jersey-American Water Company
15 (NJAWC).

16 I also would note that my testimony constitutes just one part of the Ratepayer
17 Advocate's evidentiary presentation in this case. In addition to the risks and benefits that
18 I identify, and the conditions that I recommend, other issues are being addressed by Ms.
19 Alexander, Mr. Henkes, and Mr. Rothschild.