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STATE OF INDIANA

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INDIANA UTILITY REGULATORY COMMISSION

IN RE THE COMMISSION'S INVESTIGATION,)
PURSUANT, BUT NOT LIMITED, TO IC 8-1-2-4,)
IC 8-1-2-58 AND IC 8-1-2-59, OF THE EFFECT)
THAT THE ACQUISITION OF INDIANA-)
AMERICAN WATER COMPANY WILL HAVE)
ON CUSTOMERS AND QUALITY OF SERVICE)

CAUSE NO. 42250

APPROVED: DEC 04 2002

BY THE COMMISSION:

Judith G. Ripley, Commissioner
William G. Divine, Administrative Law Judge

On June 12, 2002, the Indiana Utility Regulatory Commission ("Commission") commenced an investigation on its own motion of the effect the proposed acquisition of the stock of American Water Works Company, Inc. ("American") by a subsidiary of RWE AG ("RWE") will have on the customers and quality of service of Indiana-American Water Company, Inc. ("Indiana-American" or "Respondent"). In the Order initiating the investigation, the Commission stated that given the size and scope of the acquisition, the Commission wanted to ensure that it fully reviews the aspects of this transaction that are relevant to the Commission's obligations and jurisdiction over utility rates and service quality.

A joint petition to intervene was filed by Praxair, Inc. and United States Steel Corporation ("Intervenors"). This petition was granted on July 29, 2002 by docket entry, and the Intervenors were made parties to this Cause.

Pursuant to the Prehearing Conference on July 1, 2002, the Prehearing Conference Order dated July 10, 2002, and notice of hearing given as provided by law, proof of which was incorporated into the record and placed in the official files of the Commission, a public evidentiary hearing in this Cause was held on August 27, 2002, in Room E-306, Indiana Government Center South, Indianapolis, Indiana. Prior to the evidentiary hearing, the Intervenors filed Notice of their intent not to file testimony. At the hearing a Stipulation and Settlement Agreement ("Settlement Agreement") by and between Indiana-American and the Office of Utility Consumer Counselor ("Public" or "OUCC") was admitted in the record as a joint exhibit. A copy of the Settlement Agreement is attached hereto as Appendix A and is incorporated herein by reference. At the hearing, the prefiled direct and rebuttal testimony and exhibits sponsored by Indiana-American witnesses James McGivern and John E. Eckart were admitted in the record. Also admitted in the record was the prefiled direct testimony and exhibits of OUCC's witnesses Edward R. Kaufman, Judith I. Gemmecke, and Scott A. Bell. Pursuant to the Settlement Agreement, Indiana-American and the Public waived cross-examination of these witnesses. The Commission questioned the witnesses.

Having considered the evidence and being duly advised, the Commission now finds:

1. **Notice and Jurisdiction.** Due, legal and timely notice of the public hearing in this Cause was given and published as required by law. Indiana-American is a "public utility" within the meaning of Ind. Code § 8-1-2-1 and is subject to the jurisdiction of the Commission in the manner and to the extent provided by the laws of the State of Indiana.

2. **Indiana-American and American.** Indiana-American is a public utility, incorporated under the laws of the State of Indiana with its principal office located in Greenwood, Indiana. Indiana-American is engaged in the provision of water utility service to approximately 270,000 customers in 21 counties throughout the State of Indiana. Indiana-American also provides sewer utility service in Wabash and Delaware Counties. Indiana-American is regulated by this Commission as to matters of rates and service as provided by Indiana law.

Indiana-American is a wholly owned subsidiary of American. American is a corporation organized under the laws of the State of Delaware. The common stock of American is publicly traded on the New York Stock Exchange. American is a holding company that owns the common stock of subsidiaries that provide water utility service, wastewater utility service and other water resource management services to approximately 15 million people in 28 states and three Canadian Provinces.

3. **Nature of the Transaction.** Indiana-American witness James McGivern, Managing Director-Americas, of Thames Water Plc. ("Thames") testified about the transaction. Thames is a subsidiary of Thames Water Aqua Holdings GmbH ("Thames Holdings"), which is a subsidiary of RWE. Mr. McGivern stated that Thames Holdings acts as a holding company for the water and wastewater operations under the RWE corporate umbrella.

Mr. McGivern said that the transaction is described in an Agreement and Plan of the Merger ("Agreement") dated September 16, 2001 by and among RWE, Thames Holdings, American, and Apollo Acquisition Company ("Acquisition Corp."), a subsidiary of Thames Holdings created to effectuate the acquisition. The Agreement provides that upon satisfaction of the conditions to closing, American will merge into Acquisition Corp., with American being the surviving entity. As a result of this merger, American will become a wholly owned subsidiary of Thames Holdings or a wholly-owned subsidiary of a corporation to be formed which will be a wholly-owned subsidiary of Thames Holdings. Each share of outstanding American common stock will be purchased for \$46. The Agreement requires American to redeem its outstanding Preferred Stock prior to the closing.

Mr. McGivern testified that RWE is an international, multi-utility service provider, organized under the laws of the Federal Republic of Germany. RWE's core businesses are in electricity, water, wastewater, gas, waste management and utility-related services. RWE is active in more than 120 countries on six continents.

Mr. McGivern testified that the proposed transaction would not affect Indiana-American's corporate or regulatory status. Indiana-American will remain the same separate

corporate entity that it is today. Indiana-American's stock will continue to be owned by American. No assets or securities of Indiana-American will be transferred as a result of the transaction. Indiana-American will continue to be regulated by this Commission as it is now.

Mr. McGivern explained that, as the third largest provider of water and wastewater services in the world, Thames Holdings identified North America as a market in which it should have a larger presence and determined to grow its business there as rapidly as possible. Mr. McGivern said the acquisition of American represents an excellent opportunity for Thames Holdings to increase its presence in North America, consistent with its philosophy of delivering quality service to its customers.

4. **Effect of Transaction on Indiana-American.** Mr. McGivern testified that the purchase price for the transaction exceeds the book value of American's common stock, but RWE and Thames Holdings (collectively "RWE/Thames") will not seek to recover from the customers of Indiana-American the costs of the transaction, including the difference between the purchase price and book value. Mr. McGivern said RWE/Thames would not be seeking to "push down" any acquisition premium or costs of this transaction to Indiana-American ratepayers. Mr. McGivern stated that Indiana-American's rates would not be increased as a result of this transaction. On the contrary, Mr. McGivern testified that Indiana-American's access to capital at reasonable rates should be enhanced by its affiliation with RWE/Thames, which will provide long-term benefits to ratepayers in what is an extremely capital intensive industry.

Mr. McGivern testified that RWE/Thames is committed to excellence in customer service and water quality. Mr. McGivern stated that RWE/Thames does not intend to make any changes to the current Indiana-American management structure as a result of the transaction. Mr. McGivern said that RWE/Thames recognizes that water utility service by its nature is a local business that cannot be properly managed from a great distance. Mr. McGivern testified that, like American, RWE/Thames relies on trained managers who are part of the community they serve. He stated that the transaction would not result in changes to the existing management and officers of Indiana-American that would not otherwise have occurred through the normal management process and the passage of time. Mr. McGivern testified that, after the transaction, Indiana-American would retain its local presence and continue to deliver excellent customer service under the leadership of its current management.

Mr. McGivern also stated that the economics of the transaction are not predicated on any downsizing or reductions of the Indiana-American workforce or that of any of American's other operational subsidiaries. Mr. McGivern said that, without limiting the discretion of Indiana-American's executives to manage their business, RWE/Thames does not anticipate any reduction of employees attributable to the transaction. Accordingly, RWE/Thames anticipates no changes in local staffing, compensation, or the value of benefits as a result of the transaction. Mr. McGivern testified that all collective bargaining agreements would be honored. He reported that RWE/Thames has addressed this issue with the largest labor union within American, the Utility Workers Union of America ("UWA"), and the UWA is publicly on record as supporting the proposed transaction.

Mr. McGivern stated that RWE/Thames is committed to the training and development of its employees and will be involving all American employees in the training programs run by RWE/Thames going forward. Mr. McGivern expressed the opinion that this access to better training and development, as well as the opportunity for employees to work in a larger group, should enhance the retention, training, motivation and customer service ethic of highly skilled and highly valued employees.

Mr. McGivern testified that RWE/Thames recognizes its fundamental civic relationships in communities where it serves, and actively pursues long-term beneficial relations with its communities. RWE/Thames expects to continue American's community relations programs and to reinforce those community links everywhere it operates.

Mr. McGivern testified that Indiana-American's customers stand to benefit from the combination of the best practices of both the American system and those of RWE/Thames. In terms of customer support and service, RWE/Thames anticipates that Indiana-American customers will benefit in those instances where this affiliation delivers the economies and efficiencies that are inherent when two industry leaders share practical knowledge and experience. In particular, Mr. McGivern discussed benefits that will accrue as a result of RWE/Thames' experience with and emphasis on security, environmental matters, service standards, customer service, research and development, and community service.

John E. Eckart, Indiana-American's President, also testified regarding the effect of the transaction on Indiana-American. Mr. Eckart stated that the transaction will permit a combination of resources and expertise that will, among other things, create opportunities for sharing best operating practices; increase access to capital markets; increase opportunities for growth in the water and wastewater market; and enhance research and development. Thus, Mr. Eckart said, the transaction will expand Indiana-American's ability to address difficult challenges facing the water industry.

Mr. Eckart explained that water utilities face large capital investment requirements due to the need to replace infrastructure, the requirements of the Safe Drinking Water Act and the need to enhance security. This has resulted in severe pressure on the water industry to increase its ability to attract capital as well as on its technical and operating capabilities. Mr. Eckart said RWE/Thames has strong credit quality and large financial resources that are devoted to RWE/Thames' subsidiary utility businesses in general and water and wastewater utility businesses in particular. Therefore, according to Mr. Eckart, Indiana-American's affiliation with RWE/Thames will enhance Indiana-American's ability to finance the improvements necessary to meet these challenges, while maintaining an ownership interest devoted to the utility business.

5. OUCC Testimony. The Public submitted the testimony of three witnesses, each of whom made specific recommendations in the form of "safeguards" to be initiated as a result of the transaction. The Public points out in its testimony that the recommended safeguards are not to be viewed as conditions for approval of the transaction, since that is not the purpose of this proceeding, but should be regarded as independent safeguards to help ensure that rates and quality of service are not detrimentally affected by the transaction. Edward R. Kaufman, the Lead Financial Analyst in the Public's Rates/Water/Sewer

Division, expressed concern that RWE/Thames, having paid a substantial premium for its purchase of American, may, in an attempt to recoup its investment, take actions that will negatively impact the operational and financial health of American and subsequently Indiana-American. Mr. Kaufman opined that if Indiana-American were required to make large dividend payments to its parent companies, these payments would hurt its equity ratio, reduce its ability to raise capital, increase its cost of capital and potentially impair its ability to properly maintain its infrastructure. Mr. Kaufman concluded his direct testimony by stating that Indiana-American has not demonstrated that the transaction will provide tangible benefits; that even if all of the Public's recommended safeguards are put into place, an attempt by RWE/Thames to recover their investment in American may lead to operational and financial pressures. Mr. Kaufman recommended safeguards concerning equity ratios; notice of credit rating changes; the flow through to customers in future rate cases of lower debt costs of Indiana-American as a result of its relationship with RWE/Thames; and a restriction against seeking a return on the excess of the purchase price over book value.

Judith I. Gemmecke, a Utility Analyst for the Public, testified regarding the nature of the transaction, affiliate relationships, RWE's risk, cost allocations, retention bonuses, and the positions taken by consumer advocates in proceedings in other states. Ms. Gemmecke expressed concern that the additional layering of ownership resulting from the transaction will make it more difficult to fully understand and regulate Indiana-American. Ms. Gemmecke testified that the additional layers of ownership could affect Indiana-American's access to capital, using, as sources of concern, RWE's significant liabilities in the areas of pensions and nuclear waste management. Ms. Gemmecke also expressed concern that two additional layers of holding companies could cause allocated costs for indirect services to rise, including the concern that costs for Thames' security expertise and bonuses to top-management would filter down to Indiana-American. Ms. Gemmecke proposed safeguards restricting the push down to Indiana-American or recovery in rates of the purchase price, transaction costs and change in control and retention payments; verification of affiliate services and goods; maintenance of books and records in Indiana; a Commission approval requirement for the use of Indiana-American's personnel, assets and equipment by other affiliated and unaffiliated entities; and provision of RWE/Thames financial information to the Commission.

Scott A. Bell, Assistant Director in the OUCC's Sewer/Water Division, testified about quality of service issues, particularly as they relate to management structure, employee retention, operations quality and water quality. Mr. Bell expressed concern that a change to less experienced management, or a reduction in the number of employees, could detrimentally affect service quality. Mr. Bell also stated that the change in control to be brought about by this transaction could affect how Indiana-American maintains its operations and the quality of water it provides to customers. Mr. Bell recommended safeguards regarding retention of management; notification of changes in management; restrictions on layoffs; notice of planned workforce reductions; customer complaint reporting; meeting applicable water quality standards; avoiding detrimental changes in basic operations; and the funding and maintaining of treatment, transmission and distribution facilities.

6. **Indiana-American's Rebuttal Testimony.** In rebuttal, Mr. Eckart testified that although Indiana-American has been advised by counsel that the Commission does not have the statutory authority to approve a transaction like RWE/Thames' acquisition of American, Indiana-American also recognizes that the Commission and the OUCC are concerned about whether the transaction would affect service to and the rates of Indiana-American's customers. Mr. Eckart stated that Indiana-American would like to be responsive to these concerns because the Commission has historically provided Indiana-American with regulatory support that has allowed it to provide high quality service to growing numbers of Indiana consumers. Therefore, Mr. Eckart explained, Indiana-American has discussed the OUCC's recommendations with the OUCC and reached an agreement with the OUCC upon safeguards in the form of commitments that are attached to the Settlement Agreement.

Mr. Eckart further stated that although Indiana-American does not believe that over the long term it should be subject to a regulatory regime different from that applicable to other similarly situated Indiana public utilities, Indiana-American is willing to provide some company-specific assurances and agree to certain company-specific practices during a transition period to afford the Commission the opportunity to more closely evaluate Indiana-American's performance after consummation of the acquisition. Therefore, according to Mr. Eckart, some of the commitments that impose obligations on Indiana-American to which other utilities are not subject are effective for specified periods of time.

Mr. Eckart also commented on two of the OUCC's safeguards that Indiana-American did not accept. Indiana-American disagreed with a proposed restriction on the use of Indiana-American personnel, assets and equipment by other affiliated and non-affiliated entities without Commission approval. Mr. Eckart explained that Indiana-American from time to time would assist its affiliated companies in other states and non-affiliated utilities within the State of Indiana when they are faced with emergency conditions, unexpected needs and service problems. Often there is no time to seek Commission pre-approval. Indiana-American expects reciprocity if it experiences similar needs. Mr. Eckart said such a restriction would potentially interfere with its ability to interact in beneficial ways with affiliated and non-affiliated companies. Mr. Eckart stated that a benefit of being part of the American system is that Indiana-American can call upon the expertise of its affiliated companies on an as needed basis. Mr. Eckart also pointed out that Indiana-American's recoverable costs are carefully scrutinized in rate cases to make sure they are appropriate. Indiana-American did agree, however, to cooperate with the OUCC in discovery requests seeking information relating to the use of any of its personnel, assets or equipment by any affiliated or unaffiliated entity for a period of greater than one week.

Mr. Eckart also disagreed with the OUCC's proposal to implement a system to electronically track customer complaints and, for five years beginning with calendar year 2002, to submit annually information on water quality standards, service interruptions, employee response time, number of complaints and customer inquiry response time for each calendar year from the year 2000. Mr. Eckart said that Indiana-American does not currently have the software to automatically track such information and it would be burdensome and expensive for Indiana-American to initiate such a system. Mr. Eckart further stated that Indiana-American has always provided good service to its customers and does not intend for this to change in the future. Therefore, Indiana-American does not believe this tracking and

reporting burden is justified. Indiana-American did agree, however, to provide the OUCC with certain information about customer complaints.

Mr. McGivern also submitted rebuttal testimony which provided additional information on RWE's debt and equity ratios, the benefit he believes will be derived from RWE/Thames' experience and expertise in enhancing the security of water supply systems against terrorist threats, and RWE/Thames' willingness to assist Indiana-American in providing information required by the Settlement Agreement.

7. **Commission Findings and Analysis.** In reviewing the evidence presented, the Commission has compared the safeguards contained in the Settlement Agreement tendered in this Cause with safeguards adopted in other states in which this transaction has been reviewed in regard to other public utility subsidiaries of American. The evidence presented shows two other states have adopted safeguards. In the Commonwealth of Kentucky, the Kentucky Public Service Commission issued an order approving the transfer of control of Kentucky American Water Company ("Kentucky-American") from American to RWE and Thames Holdings. The Kentucky Commission's approval of the merger was conditioned upon written acceptance of specific commitments and assurances by RWE, Thames Holdings, American, and Kentucky-American. In West Virginia, a Joint Stipulation and Agreement for Settlement, containing specific commitments, was entered into among the West Virginia-American Water Company ("West Virginia-American") on behalf of itself and its parent company American, Thames Holdings on behalf of itself and its parent holding company RWE, the Staff of the Public Service Commission of West Virginia, and the Consumer Advocate Division of the Public Service Commission. With the exception of safeguard paragraph Nos. 16, 17, and 18, each of the safeguard paragraphs in the Settlement Agreement can be found in similar to nearly identical form in the commitments made in Kentucky and West Virginia.

One concern this comparison has raised, and expressed by the Commission during the evidentiary hearing, is the discrepancy between certain important safeguards in the Settlement Agreement and the same commitments adopted in Kentucky and West Virginia. One obvious discrepancy is the existence of time limitations for Indiana-American to abide by certain safeguards. Indiana-American's agreement to maintain its equity level no lower than 35% and report to the Commission within thirty (30) days any change in its equity level of greater than five percentage points, is limited to a period of three years. Indiana-American's agreement to report to the Commission within thirty days any upgrading or downgrading of the bonds of RWE, Thames Water, or American Water Capital Corp., is limited to a period of three years. Indiana-American's agreement not to relocate books and records currently maintained in Indiana, is limited to a period of two years. Indiana-American's agreement to provide the Commission with English language versions of RWE's annual reports, quarterly shareholder reports, and U.S. dollar versions of the Income Statement, Balance Sheet, and Statement of Cash Flows, is limited to a period of three years. And Indiana-American's agreement to provide the Commission with at least thirty days advance notice of any planned workforce reduction greater than five percent, is limited to a period of three years. All five of these safeguards, using the same or very similar language, are also in place in Kentucky and West Virginia, with the obvious difference that none of these safeguards in those states is subject to any time limitation. Even with Respondent's

defense in its rebuttal testimony as to the appropriateness of these time limitations, this Commission sees the time limitations as arbitrary and not linked to any future circumstance that may or may not dictate a need for their continuation.

Another obvious discrepancy is Indiana-American's rejection of two safeguards, found in other states, that the OUCC recommended for inclusion in this Settlement Agreement. Respondent defends its opposition to these two safeguards in its rebuttal testimony. One of these rejected safeguards would require Commission approval before an affiliated entity of Indiana-American could utilize the resources of Indiana-American, and any use of Indiana-American's resources by an unaffiliated entity would require a reporting of that use to the Commission. Notwithstanding the fact that this commitment exists in the West Virginia Joint Stipulation and Agreement, the Respondent testified that emergency situations require reciprocity in sharing resources among both affiliates and non-affiliated entities, and there would be no time to seek Commission approval. The Commission considers that one of the most significant results of this transaction will be the much longer corporate chain to which Indiana-American will be attached. Presently, the only link is that of Indiana-American with its parent, American. After the transaction, however, Indiana-American will be linked not only to American, but linked internationally to RWE/Thames. This Commission's concern has been, and will continue to be, with the operations of Indiana-American and, to the extent there are interests affiliated or unaffiliated with Indiana-American, with the impact of those interests on this public utility's obligation to provide reasonable rates and service. The further this Commission is removed from understanding the impact of these complex affiliated and unaffiliated interests on Indiana-American, the more difficult it will be for the Commission to assess any corresponding impact on rates and quality of service.

The second rejected safeguard, recommended for inclusion by the Public, is the implementation of a system to electronically track customer complaints in order to document the nature and response time of that service quality information. In addition, the Public recommended that Indiana-American report annually to the Commission the number of service interruptions and complaints, and the Respondent's response time to those interruptions and complaints. Despite an agreement in West Virginia to implement a system to electronically track and report customer complaints, and a commitment in Kentucky to track and report customer complaints and service interruptions, the Respondent argues in Indiana that it does not currently have the software to track this information and that such tracking and reporting would be burdensome and is not justified. The Respondent has testified that Indiana-American will not experience any deterioration in service quality as a result of this transaction. Given that testimony, this Commission is at a loss to understand why Indiana-American would not be anxious to demonstrate, in a manner consistent among all states affected by the acquisition of American, that the highly touted economies and efficiencies to be derived from the affiliation of American and RWE/Thames are, indeed, in the public interest.

As expressed during the evidentiary hearing, the Commission is also concerned about a loss of shareholder participation in American. Though Mr. McGivern testified that RWE/Thames recognizes the local nature of water utility service, a result of this transaction

will be to eliminate shareholder involvement in American. Under its current corporate makeup, American, a publicly traded U.S. company, is responsible to its shareholders. After the transaction, shareholders of this type will exist only at the RWE/Thames level, which is much further removed from Indiana-American and much less local than the current corporate structure.

While the transaction may result in the economies and efficiencies described in Respondent's testimony, this Commission is not convinced that any resulting benefits will outweigh the potential risks to the citizens of Indiana. Nor does this Commission see in the Settlement Agreement, as pointed out during the evidentiary hearing, any desire by Respondent to implement a method by which to demonstrate that a benefit, derived from the economies and efficiencies of which it speaks, has occurred at some point in the future. The Kentucky order provides: "18. No later than March 16, 2003, RWE, AWWC, and KAWC will develop and implement a mechanism to track the savings and costs resulting from the proposed merger and a methodology to allocate such savings and costs and will submit to the Commission in writing a detailed description of that methodology.... 48. RWE, Thames, AWWC and KAWC will file annually with the Commission a formal analysis of any potential synergies and benefits from any water or wastewater utility merger or acquisition in the United States that occurred in the previous calendar year and that is exempted from Commission review, together with a proposed methodology for allotting an appropriate share of the potential synergies and benefits to KAWC's ratepayers." And the West Virginia agreement provides: "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) the efficiencies resulting from the acquisition of American Water by RWE/Thames and experienced by or allocated to WVAWC."

The Respondent, in its testimony, reminds the Commission of its lack of authority to approve this type of transaction.¹ However, this investigation was initiated under the Commission's authority to ensure just and reasonable rates and service, and we must now look to that authority for a resolution of this investigation.

Indiana Code §§ 8-1-2-4, 8-1-2-58, and 8-1-2-59 provided the Commission with authority to initiate this investigation of rates and quality of service. Indiana Code §§ 8-1-2-68 and 8-1-2-69 authorize the Commission to impose remedies upon finding that any rates are unjust, unreasonable, insufficient, unjustly discriminatory, preferential, or otherwise in violation of Indiana Code § 8-1-2, or that any practices, acts, or services are unjust, unreasonable, unwholesome, unsanitary, unsafe, insufficient, preferential, unjustly discriminatory, or otherwise in violation of Indiana Code § 8-1-2.

The Commission finds that the evidence presented does not support a conclusion that the purported benefits outweigh the potential risks associated with this transaction. Nonetheless, the Commission appreciates the efforts of both the Office of Utility Consumer

¹ See: *Indiana Bell Telephone Company, Incorporated v. Indiana Utility Regulatory Commission*, 715 N.E.2d 351 (1999).

Counselor and Indiana-American Water Company, Inc., which have resulted in the Settlement Agreement and its attached safeguards. These safeguards will hopefully help to ensure that rates and service quality do not deteriorate as a result of the transaction.

But ratepayers and all citizens of Indiana deserve the highest level of assurance that this transaction will not result in unreasonable rates or in a deterioration of quality of service. Given the magnitude of this transaction, the concerns expressed by the Commission and the OUCC as to the detrimental effects this transaction could have on rates and quality of service, and our inherent obligation to ensure just and reasonable rates and service, we find it wholly appropriate to amend the provisions of the already existent Settlement Agreement in such a way that the safeguards applicable to ensuring just and reasonable rates and service are no less inclusive than the safeguards governing this transaction in other states. Inherent within the Commission's authority to conduct this investigation "is the implicit power and authority to do that which is necessary to effectuate the regulatory scheme."² Therefore, the Commission finds the Settlement Agreement should be amended to expand Indiana-American's reporting requirements and to require that Indiana-American further track and demonstrate its assertion of the economies and efficiencies that will result from the transaction. To that end, we find that the Settlement Agreement should be amended as follows:

a. The time limitation of either two (2) years or three (3) years in paragraph Nos. 1, 2, 8, 9, and 13 in Exhibit A ("Safeguards") of the Settlement Agreement, shall be eliminated.

b. The following provisions shall be added to Exhibit A ("Safeguards") of the Settlement Agreement:

(1) To the extent Indiana-American allows the use of its personnel, assets or equipment by any affiliated or unaffiliated entity, other than a governmental body or non-profit entity, Indiana-American will file a report with the Commission within thirty (30) days after the use of such personnel, assets or equipment on the identity and nature of use of the personnel, assets or equipment involved and the estimated fully-allocated cost of such personnel, assets or equipment.

(2) Indiana-American will implement a system to electronically track customer complaints and service in order to document the nature and response time of its customer service and those customer complaints. Beginning for calendar year 2003 and for the next five (5) years thereafter, Indiana-American will include in its annual report to the Commission a table, generated by said electronic tracking system, that shows Indiana-American's level of compliance with each water quality standard, the number of water service interruptions, the average employee response time to water service interruptions, the number of boil water advisories issued, the average speed of answer (que time) to customer inquiries in Indiana-American's customer service centers, the number of customer complaints, and the average time for customer complaint resolution.

² South Eastern Indiana Natural Gas Co., Inc. v. Ingram, 617 N.E.2d 943, 948 (Ind. App. 1993).

(3) Within six (6) months of the effective date of the transaction, Indiana-American will develop and implement a mechanism to track the savings and costs resulting from the transaction and a methodology to allocate such savings and costs for the benefit of ratepayers. Indiana-American will submit to the Commission a detailed written description of that methodology, which will be subject to Commission approval.

IT IS THEREFORE ORDERED BY THE INDIANA UTILITY REGULATORY COMMISSION THAT:

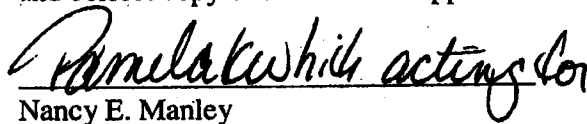
1. The Stipulation and Settlement Agreement filed in this Cause on August 21, 2002, as amended by provisions a, b1, b2 and b3 in *Commission Findings and Analysis* paragraph No. 7 above, is approved.

2. This Order shall be effective on and after the date of its approval.

MCCARTY, HADLEY AND RIPLEY CONCUR; ZIEGNER ABSENT:

APPROVED: DEC 04 2002

I hereby certify that the above is a true and correct copy of the Order as approved.



Nancy E. Manley
Secretary to the Commission

STATE OF INDIANA

FILED

INDIANA UTILITY REGULATORY COMMISSION

AUG 21 2002

IN RE THE COMMISSION'S INVESTIGATION,)
PURSUANT, BUT NOT LIMITED, TO IC 8-1-2-4,)
IC 8-1-2-58 AND IC 8-1-2-59, OF THE EFFECT)
THAT THE ACQUISITION OF INDIANA-)
AMERICAN WATER COMPANY WILL HAVE)
ON CUSTOMERS AND QUALITY OF SERVICE)

INDIANA UTILITY
REGULATORY COMMISSION

CAUSE NO. 42250

STIPULATION AND SETTLEMENT AGREEMENT

This Stipulation and Settlement Agreement (the "Agreement") is entered into by and between Respondent Indiana-American Water Company, Inc. ("Indiana-American"), the Office of Utility Consumer Counselor ("OUCC") and any other party joining in this Agreement (collectively, the "Parties") which, having been duly advised by their respective staff, experts, and counsel, stipulate and agree solely for the purpose of compromise and settlement that the terms and conditions set forth below represent a fair, reasonable and just resolution of the issues in this proceeding, subject to their approval by a final Commission order ("Final Order") without modification or further condition unacceptable to either Party.

1. Indiana-American accepts and agrees to the commitments and safeguards set forth on Exhibit A hereto.

2. The Parties hereby request that the Commission accept and approve the Agreement.

3. At the evidentiary hearing on August 27, 2002, the Parties will confirm their request that the Commission approve the Agreement. At the hearing, Indiana-American shall

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~~MEMORANDUM~~ JOINT

EXHIBIT NO. A
8-27-02 AT
DATE REPORTER

offer the prefiled direct and rebuttal testimony and exhibits of its witnesses, and the OUCC shall offer the prefiled direct testimony and exhibits of its witnesses. The witnesses whose testimony has been prefiled will be made available at the hearing to answer questions from the bench, if any, but the Parties waive cross-examination of such witnesses.

4. The Parties agree that the prefiled testimony and exhibits constitutes substantial evidence sufficient to support this Agreement and provides an adequate evidentiary basis upon which the Commission can approve this Agreement and resolve and terminate this investigation.

5. This Agreement shall not constitute nor be cited as precedent by any person or deemed an admission by any Party in any other proceeding except as necessary to enforce its terms before the Commission, or any state court of competent jurisdiction on these particular issues. This Agreement is solely the result of compromise in the settlement process and except as provided herein, is without prejudice to and shall not constitute a waiver of any position that any of the Parties may take with respect to any or all of the items resolved herein in any future regulatory or other proceedings.

6. The undersigned represent that they are fully authorized to execute the Agreement on behalf of the designated client which will be bound thereby.

7. This Agreement is contingent upon the Commission's issuance of a Final Order approving the terms of this Agreement in their entirety, without modification unacceptable to either of the Parties, and terminating the investigation initiated by the Commission Order in this Cause dated June 12, 2002. In the event the Commission does not approve this Agreement in its

entirety and without modification unacceptable to the Parties, this Agreement shall be deemed null and void and withdrawn unless otherwise agreed by the Parties.

ACCEPTED and AGREED this 21st day of August, 2002.

INDIANA-AMERICAN WATER COMPANY, INC.

By: *Daniel W. McGill*
Daniel W. McGill
BARNES & THORNBURG
11 South Meridian Street
Indianapolis, Indiana 46204
Its Attorney

Dated: August 21, 2002

OFFICE OF UTILITY CONSUMER COUNSELOR

By: *George A. Porch*
George A. Porch, Deputy Consumer Counselor
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100 North Senate Avenue, Room N-501
Indiana Government Center North
Indianapolis, Indiana 46204

Dated: August 21, 2002

SAFEGUARDS

1. For a period of 3 years after the acquisition of American Water Works Company, Inc. ("American Water") by RWE AG ("RWE") (the "acquisition"), Indiana-American Water Company, Inc. ("Indiana-American") will maintain its equity level no lower than 35.0% of total investor supplied capital (excluding short-term debt and other current liabilities, including the current portion of long-term debt) and provide the Commission with written notice within thirty (30) days after the implementation of any change in its equity ratio of greater than five percentage points.

2. For a period of 3 years after the acquisition, Indiana-American will report to the Commission within thirty (30) days any upgrading or downgrading of the bonds of RWE, Thames Water Plc ("Thames"), or American Water Capital Corp. by Moody's or Standard and Poor's, and include a full copy of the report issued by the bond rating agency.

3. Indiana-American will reflect the lower cost of debt of Indiana-American as a result of its relationship with RWE/Thames, to the extent reflected in the interest rate applicable to new debt issues, in the determination of its cost of capital in future general rate cases.

4. Indiana-American will not use an allocated portion of the acquisition purchase price paid by RWE as evidence of fair value for the purpose of seeking a return on any excess over book value of the purchase price paid to acquire American Water.

5. Indiana-American and its affiliates will make no attempt to allocate, push down, or assign to Indiana-American any purchase price, goodwill, early termination payment, change in control payment, incentive or retention bonus payment in connection with the transaction,

either directly or indirectly through American Water Works Service Company, Inc., or another affiliate, or by any other means.

6. Indiana-American and its affiliates will not attempt to pass through to or recover from Indiana-American's customers or have Indiana-American's customers fund any portion of the acquisition premium or purchase price for the American Water Common Stock or any costs associated with the transaction, including but not limited to financial, legal, severance payments, regulatory fees and investment services.

7. The services and goods provided by any direct or indirect affiliated company of Indiana-American must be reasonably verifiable and confirmable before the Commission approves inclusion of their cost in rates.

8. For a period of 2 years after the acquisition, Indiana-American will not relocate outside of Indiana books and records of Indiana-American currently maintained in Indiana except to the extent otherwise approved by the Commission (including the outcome of Cause No. 42043). This provision shall in no way be construed as providing any authorization to Indiana-American to relocate records after expiration of the 2 year period.

9. For a period of 3 years after the acquisition and in any Indiana-American general rate proceedings, Indiana-American will provide the Commission on request with English-language publicly available RWE annual reports, RWE quarterly shareholders reports and the annual audited financial statements of RWE. In addition, for the period of 3 years after the acquisition, 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 these financial statements.

10. Except for resignations, Indiana-American shall retain the existing management for at least one year from the acquisition. Each of Indiana-American's current corporate officers will continue in his or her current position and perform his or her current duties unless the officer resigns, requests reassignment or retirement, is unable to continue to perform the duties of that position due to some physical, mental or civil disability, or has engaged in some misconduct that requires his removal or reassignment; provided, however, the President of Indiana-American shall not be precluded from exercising his discretion to reassign job responsibilities and titles among the corporate officers reporting to him.

11. For at least one year from the acquisition, Indiana-American shall notify the Commission and the OUCC in writing within ten (10) days of any changes in Indiana-American's corporate officers and management personnel.

12. For at least the later of one year after the acquisition or March 31, 2004, Indiana-American should effect no layoffs or involuntary severance of employees, except for cause, and Indiana-American shall otherwise maintain on a total-company basis normal staffing as existent before the acquisition, except for legitimate operational reasons; provided, however, the restrictions in this provision shall not apply to Indiana-American's previously announced transition to the national call center.

13. For a period of 3 years after the acquisition, Indiana-American should provide the Commission with written notice at least thirty (30) days prior to any planned workforce reduction greater than 5% of Indiana-American's existing workforce.

14. Indiana-American shall take all reasonable steps, consistent with its past practices, to maintain compliance with applicable water quality standards and shall make no detrimental changes in its basic operations as a result of the acquisition.

15. Indiana-American shall adequately fund and maintain its treatment, transmission and distribution facilities in order to assure quality service to its customers.

16. In general rate cases and other proceedings in which such information is relevant, Indiana-American, on a good faith basis, will respond to discovery requests by the OUCC relating to the use of any of its personnel, assets or equipment by any affiliated or non-affiliated entity for a period of greater than one week.

17. For a period of 3 years after the acquisition, Indiana-American shall provide on a timely basis to the OUCC copies of the consumer confidence reports required by the Safe Drinking Water Act and its annual reports to the Commission on customer complaints required by 170 IAC 6-1-17.


18. Indiana-American agrees that the Commission has the authority and power to approve and oversee all the terms and provisions hereof.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing "Stipulation and Settlement Agreement" has been served upon the following by depositing a copy thereof in the United States mail, first class postage prepaid addressed to:

Bette J. Dodd
Lewis & Kappes, P.C.
1700 American Square
Box 82053
Indianapolis, Indiana 46282-0003

this 21st day of August, 2002.


Daniel W. McGill