

STATE OF MARYLAND  
PUBLIC SERVICE COMMISSION

ORDER NO. 78073

IN THE MATTER OF THE JOINT PETITION	*	BEFORE THE
OF MARYLAND-AMERICAN WATER	*	PUBLIC SERVICE COMMISSION
COMPANY, INC. AND THAMES WATER	*	OF MARYLAND
AQUA HOLDINGS GmbH FOR APPROVAL	*	
OF A TRANSFER OF CONTROL.	*	
	*	
	*	
	*	CASE NO. 8944
	*	

On December 20, 2001, Maryland-American Water Company, Inc. ("MD-American") and Thames Water Aqua Holdings GmbH ("Thames Holdings") filed with the Commission a Joint Petition for Approval of a Transfer of Control ("Joint Petition"). MD-American is a wholly-owned subsidiary of American Water Works Company, Inc. ("American"). Specifically, under the terms of an Agreement and Plan of Merger ("Agreement") between Thames Holdings, its parent RWE Aktiengesellschaft ("RWE") and American, Thames Holdings, RWE or another entity-owned or controlled, directly or indirectly, by Thames Holdings and managed by Thames Holdings, shall acquire control of American. Following consummation of the Agreement, MD-American will continue to exist as the Maryland public service company. On September 24, 2002, the Joint Petitioners filed an Amendment to their December 20, 2001 Joint Petition.

In a memorandum dated October 1, 2002, the Technical Staff of the Commission ("Staff") filed comments regarding this matter. Staff recommended that the Commission approval the transfer of control subject to the terms and conditions enumerated in the Joint Petition as amended. The memorandum from Staff noted that the management and operation of MD-American would not change. Staff further noted that: (1) Thames Holdings and its parent have extensive experience in the water business which should

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benefit MD-American; and (2) the transfer of control should not adversely affect MD-American's provision of water service.

Section 5-205 of the Public Utility Companies Article, Md. Ann. Code, permits the Commission to authorize the transfer of a controlling interest in a water company if it is consistent with the public convenience and necessity.

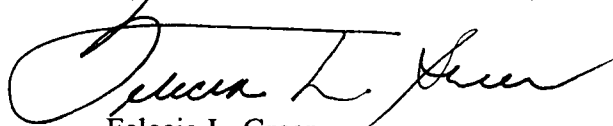
After considering this matter at the Administrative Meeting of October 9, 2002, the Commission finds that the Joint Petition of Maryland-American Water Company, Inc. and Thames Water Aqua Holdings GmbH for approval of a transfer of control, as amended by the Amendment to the Joint Petition, is consistent with the public convenience and necessity and should be granted.

IT IS THEREFORE, this 16<sup>th</sup> day of October, in the year Two Thousand and Two, by the Public Service Commission of Maryland,

ORDERED: (1) That the Joint Petition of Maryland-American Water Company, Inc. and Thames Water Aqua Holdings GmbH, as amended, is hereby granted and the acquisition of control as described is approved.

(2) That Thames Holdings, RWE or any other entity-owned or controlled, directly or indirectly, by Thames Holdings and managed by Thames Holdings, is authorized to acquire control of Maryland-American Company, Inc. through control of American Water Works Company, Inc. subject to the terms and conditions enumerated in the Joint Petition as amended.

By Direction of the Commission,



Felecia L. Greer  
Executive Secretary

September 24, 2002

**VIA HAND-DELIVERY**

Felecia L. Greer, Executive Secretary  
Maryland Public Service Commission  
6 St. Paul Street, 16<sup>th</sup> Floor  
William Donald Schaefer Tower  
Baltimore, MD 21202-6806

Re: **Mail Log No. 81115**  
Joint Petition of Maryland-American Water  
Company, Inc. and Thames Water Aqua  
Holdings GmbH for Approval of a Transfer in Control  
Amendment to Petition

Dear Ms. Greer:

I have enclosed for filing an original and fourteen (14) copies of an Amendment to the Joint Petition of Maryland-American Water Company, Inc. ("Maryland-American") and Thames Water Aqua Holdings GmbH ("Thames Holdings") for Approval of a Transfer in Control. As explained in the Petition, the transfer of control relates to a transaction in which the parent of Maryland-American, American Water Works Company, Inc., ("American") will become a subsidiary of Thames Holdings.

For the reasons set forth in the Petition, as amended, the petitioners respectfully request that the Commissioners find that the transfer of control is consistent with the public convenience and necessity. The Amendment to Petition contains certain Terms and Conditions. The Petitioners and the Office of People's Counsel have agreed that approval by the Commission of the transfer in control would be subject to the Terms and Conditions.

A diskette containing this letter, and the Amendment to the Petition is enclosed.

I am including an extra copy of this letter and the Amendment to the Petition. I would appreciate your marking the extra copy as having been "filed" and returning it to me with our messenger. Thank you for your help.

Please contact me with any questions concerning the filing.

Very truly yours,

Susan D. Baker

SDB/mlp

Enclosures

cc: Randall S. Rich, Esq.  
Donald F. Rogers, Esq.  
Lindsey W. Ingram, Jr., Esq.  
Ronald Walsh, Esq.

**STATE OF MARYLAND  
MARYLAND PUBLIC SERVICE COMMISSION**

**IN THE MATTER OF THE JOINT PETITION OF )  
MARYLAND-AMERICAN WATER COMPANY, INC. )  
AND THAMES WATER AQUA HOLDINGS GmbH FOR )      **CASE NO. \_\_\_\_\_**  
APPROVAL OF A TRANSFER IN CONTROL )**

**AMENDMENT TO PETITION**

On December 20, 2001, Maryland-American Water Company (“Maryland-American”) and Thames Water Aqua Holdings GmbH (“Thames Holdings”), on behalf of itself and its parent holding company RWE Aktiengesellschaft (“RWE”; Maryland-American, Thames Holding and RWE being sometimes collectively referred to as “Petitioners”), filed a Petition (the “Petition”) requesting that the Maryland Public Service Commission (“Commission”) approve the transfer of control described in the Petition. All terms not otherwise defined herein shall be defined as set forth in the Petition.

Petitioners now wish to amend the Petition so that approval by the Commission of the Petition shall be subject to the Terms and Conditions attached hereto as Exhibit A.

WHEREFORE, the Petitioners respectfully request:

A. That the Commission issue an Order (i) approving the acquisition of control described in the Petition, as amended, as contemplated by the Agreement, and (ii) authorizing Thames Holdings, RWE and any other entity owned or controlled, directly or indirectly, by Thames Holdings and managed by Thames Holdings, to acquire control of Maryland-American through its control of American, subject to the Terms and Conditions set forth in the amended Petition; and

B. That the Commission handle this matter on an expeditious basis, and retain the matter to itself.

Respectfully submitted:

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Susan D. Baker  
Niles, Barton & Wilmer, LLP  
111 S. Calvert Street, Suite 1400  
Baltimore, MD 21202-6185  
(410) 783-6300  
Attorneys for  
Maryland-American Water Company, Inc.

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Randall S. Rich\*  
Kimberly A. Curry  
Bracewell & Patterson, L.L.P.  
2000 K Street, N.W., Suite 500  
Washington, D.C. 20006-1872  
(202) 828-5800  
Attorneys for  
Thames Water Aqua Holdings GmbH and  
RWE Aktiengesellschaft

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\*Not admitted in Maryland.

**AMERICAN WATER WORKS COMPANY/RWE  
AKTIENGESELLSCHAFT MERGER  
MARYLAND-AMERICAN WATER COMPANY  
TERMS AND CONDITIONS**

**CONFIDENTIAL**

1. Maryland-American Water Company ("Maryland-American") will cap all rates and charges at their present (pre-merger) levels until March 31, 2004; provided that Maryland-American may file a rate case prior to March 31, 2004 in order that it may have approval of rate changes no later than March 31, 2004. This stay-out period is established to mirror the period of time in which the merging companies have agreed to maintain its workforce at pre-merger levels. The rate cap does not apply in circumstances of (a) extreme financial hardship, (b) significant changes in water quality regulation, or (c) changes in federal income taxes. It is agreed that extreme financial hardship includes purchase of water and that the agreement to stay out would not preclude Maryland-American from filing a water purchase cost pass through tariff prior to March 31, 2004.
2. American Water Works Company ("American"), Thames Water Plc ("Thames"), Thames Water Aqua Holdings GmbH ("Thames Holdings") and RWE Aktiengesellschaft ("RWE") shall be prohibited from allocating, pushing down, or assigning any purchase price, goodwill, retention bonus, or any premium reflected in the purchase price of the American stock acquisition transaction by and between American, Thames, Thames Holdings and RWE which is the subject of this Petition (the "Transaction") to Maryland-American either directly or indirectly through the service company affiliate or by any other means. No costs associated with the Transaction, including but not limited to financial, legal, severance payments, regulatory fees, and investment services or the purchase price of American's stock shall be passed on to, recovered from, or be funded by customers of Maryland-American any time. No acquisition adjustment, as defined in the Commission-adopted Uniform System of Accounts, shall be recovered from the customers of Maryland-American.
3. RWE, Thames and Thames Holdings shall be permitted to allocate or assign costs, fees, investments, or expenses to Maryland-American, either directly or indirectly through American Water Works Service Company ("AWWSC"), the service company affiliate; provided that such costs, fees, investments or expenses relate to the provision of services to Maryland-American customers that directly benefit such customers by enhancing service to customers or reducing the cost of such services and are not duplicative.
4. Subject to the execution, where appropriate, of acceptable confidentiality agreements, to the extent AWWSC, American, Thames, Thames Holdings or RWE transact business with Maryland-American, the Commission Staff and the Office of People's Counsel shall be provided reasonable and convenient (i.e., after reasonable notice, in Maryland) access to the books and records of such entities for the purpose of reviewing the proper allocation of costs to Maryland-American.

5. Maryland-American shall provide water that is potable, and, insofar as practicable, free from objectionable odors, taste, color and turbidity, all in accordance with all regulatory requirements applicable to Maryland water companies.
6. There shall be no change in the method by which Maryland-American allocates costs to or from affiliates from the date of the Commission's order approving the merger in this proceeding without prior approval by the Commission.
7. Maryland-American shall continue to maintain its books and records in accordance with the Commission-approved Uniform System of Accounts or as otherwise prescribed by the Commission. In addition, the annual reports of RWE ([www.rwe.com](http://www.rwe.com)) and Thames ([www.Thames-Water.com](http://www.Thames-Water.com)) are available at the web sites indicated, in English. The financial statements of American, prepared in accordance with US GAAP, shall also be made available to the Commission, Commission staff and Office of People's Counsel upon request. A general explanation of significant differences in the accounting principles used by RWE, International Accounting Standards, and those required under GAAP in the United States is available at a web site maintained by the accounting firm Price Waterhouse Coopers at <http://www.pwcglobal.com/extweb/pwcpublishations.nsf/DocID/803E18F1DDD4A91E852568CC0055602B>. To the extent that, the Commission, Commission staff or Office of People's Counsel may have questions regarding how specific items appearing in the financial statements of RWE, Thames Holdings or Thames would be treated under GAAP, Petitioners shall promptly answer such questions.
8. The corporate headquarters of American shall remain within the continental United States.
9. No layoffs or involuntary employee severance, except for cause, shall take place at Maryland-American before March 31, 2004. A de minimus or temporary reduction in employment levels shall not constitute a violation of this provision.
10. Maryland-American shall maintain capital structures and use its best efforts to achieve financial target ratios consistent with at least the retention of Maryland-American's current debt quality and/or rating. Any lowering of these debt qualities and/or ratings, resulting in the debt instrument grade shall be reported to the Commission.
11. With respect to its Maryland customers, neither American, Thames, RWE nor Maryland-American shall disclose confidential customer information, including names, addresses, and phone numbers, to an affiliate of RWE, except for contracted billing purposes, without prior written notice to the Commission and without prior consent of the customer.
12. Upon closing of the merger transaction, RWE and Thames shall each appoint an agent who will accept service of process in Maryland.