



STATE OF NEW JERSEY
Board of Public Utilities
Two Gateway Center
Newark, NJ 07102
www.bpu.state.nj.us

IN THE MATTER OF THE JOINT PETITION OF)
NEW JERSEY-AMERICAN WATER COMPANY,)
INC. AND THAMES WATER AQUA HOLDINGS)
GmbH FOR APPROVAL OF A CHANGE IN)
CONTROL OF NEW JERSEY-AMERICAN WATER)
COMPANY, INC.)

WATER AND WASTEWATER

ORDER

DOCKET NO. WM01120833

(SERVICE LIST ATTACHED)

BY THE BOARD:

On December 21, 2001, Petitioner New Jersey-American Water Company, Inc. (New Jersey-American), and Petitioner Thames Water Aqua Holdings GmbH (Thames Holdings) on behalf of itself and its parent holding company RWE Aktiengesellschaft (RWE)(New Jersey-American and Thames Holdings being collectively referred to herein as Petitioners) filed a joint petition (Petition) with the New Jersey Board of Public Utilities (Board), pursuant to N.J.S.A. 48:2-51.1, N.J.S.A. 48:3-10, and such other statutes and regulations as may be deemed relevant, requesting approval of an Agreement and Plan of Merger dated September 16, 2001, (Agreement) by and among RWE, Thames Holdings, Apollo Acquisition Company (Acquisition Corp.) and American Water Works Company Inc. (American).

New Jersey-American, a corporation of the State of New Jersey, with its principal office located in Haddon Heights, New Jersey, is a regulated public utility organized and operating under the laws of the State of New Jersey and subject to the jurisdiction of the Board. New Jersey-American provides water and wastewater services to more than one million residents in 124 communities throughout 15 counties.

Thames Holdings, with its local offices located in Voorhees, New Jersey and a corporate address in Essen, Germany, is a company organized under the laws of the Federal Republic of Germany and a wholly-owned subsidiary of RWE. Thames Water Plc. (Thames) is a public limited corporation organized under the laws of England and Wales with its principal office located in London, United Kingdom. Thames operates all of the water business of Thames Holdings and is the largest water and wastewater company in the United Kingdom and one of the largest water and wastewater companies in the world, providing water-related services to over 43 million people worldwide. Within the United States, Thames owns Elizabethtown Corporation (E'Town), a Board regulated water and wastewater utility. Through its subsidiaries, Elizabethtown Water Company, Mount Holly Water Company, and Applied Wastewater Management, Inc., E'town provides water and wastewater service throughout eight counties in New Jersey.

American is a corporation organized and existing under the laws of the State of Delaware with its principal office located in Voorhees, New Jersey. American, a holding company, and its subsidiaries have approximately 6,300 employees. American provides water, wastewater and other water resource management services to a population of approximately twelve million throughout the United States and Canada.

RWE, a German corporation, is a leading international multi-utility provider with core businesses in electricity, water, gas, and waste management. RWE, Germany's fifth largest industrial group, maintains varying degrees of operations in several European countries, the United States, Canada and on the continents of Africa and Asia. RWE is the largest electric company in Germany and the third largest water supplier in the world.

Acquisition Corp. is a corporation duly organized and existing under the laws of the State of Delaware, which was formed for the sole purpose of effectuating this proposed transaction. Acquisition Corp. is a wholly-owned subsidiary of Thames Holdings.

The Agreement provides that Acquisition Corp. shall be merged with and into American and American shall be the surviving corporation and shall continue its corporate existence under Delaware law. Thames Holdings and RWE propose to acquire 100% control of American and indirectly, control of New-Jersey American. New Jersey-American will continue to be a wholly owned subsidiary of American and will continue to exist as a New Jersey public utility corporation subject to the jurisdiction and regulation of the Board.

After proper notice, three public hearings were conducted on the evenings of April 15, 17 and 23, 2002, in Eatontown, Cherry Hill and Maplewood respectively. These public hearings were presided over by Edward D. Beslow, Esq. or Joseph Quirolo, Esq. No member of the public appeared on the record at any of the hearings. At the August 19, 2002, evidentiary hearing public statements were received from Elaine Becker and Salvatore J. Bate that did not address the merits of the instant petition.

On February 8, 2002, a Motion to Intervene was filed on behalf of the Utility Workers Union of America, AFL-CIO and Utility Workers Union of America Local No. 391, 395 and 423 (collectively, the Unions). The Petitioners filed a Response to the Motion on February 19, 2002, to which the Unions replied on February 20, 2002. On March 1, 2002, Thames Holdings and the Unions executed a Memorandum of Agreement. On March 22, 2002, counsel for the Unions submitted a letter to the Board pursuant to which the Unions withdrew their request for relief as contained in their Motion to Intervene. On May 31, 2002, counsel for the Unions wrote a letter to the Board in support of the proposed transaction (Exhibit B of the Stipulation).

Motions to Intervene were also filed on January 7, 2002, on behalf of the Township of Maplewood, a customer of New Jersey-American and on March 20, 2002, on behalf of the Manasquan Customer Group (which is made up of the Boroughs of Belmar, Keyport, Matawan and Red Bank plus Shorelands Water Company), whose members are all customers of New Jersey-American. The Board granted those motions by Order dated April 19, 2002.

After numerous settlement conferences and discussions, Petitioners, the Staff of the Board (Staff), the Division of the Ratepayer Advocate (Ratepayer Advocate) and the Manasquan Customer Group (collectively, the parties) entered into the attached Stipulation of Settlement, which fully disposes of all issues in this matter. Intervener, the Township of Maplewood.

submitted a letter dated November 18, 2002, stating that it did not oppose the Stipulation of Settlement, but it did not intend to sign it.

PROPOSED AGREEMENT AND PLAN OF MERGER

RWE, Thames Holdings, Acquisition Corp. and American entered into an Agreement, dated September 16, 2001, which provides that Acquisition Corp. shall be merged with and into American and American shall be the surviving corporation and shall continue its corporate existence under Delaware law. Thames Holdings and RWE will be acquiring 100% control of American and indirectly, control of New-Jersey American. New Jersey-American will continue to be a wholly owned subsidiary of American and will continue to exist as a New Jersey public utility corporation subject to the jurisdiction and regulation of the Board.

Under the terms of the Agreement, all of the issued and outstanding Common Stock, par value \$1.25 per share, of American (American Common Stock) not owned by Thames Holdings, Acquisition Corp., or American, other than shares owned by any holder who invokes appraisal rights under Delaware law, shall be converted into the right to receive cash consideration of \$46.00 per share. The current authorized capital stock of American consists of (i) 300,000,000 shares of American Common Stock (ii) 1,770,000 shares of Cumulative Preferred Stock, par value \$25.00 per share (the Preference Stock) and (iv) 3,000,000 shares of Cumulative Preferential Stock, par value \$35.00 per share (the Preferential Stock).

As of September 30, 2001, 99,971,542 shares of American Common Stock (excluding shares held by American as treasury shares), 101,777 shares of the Preferred Stock, 365,158 shares of the Preference Stock and no shares of the Preferential Stock were issued and outstanding. Under the Agreement, American is required to redeem, prior to the closing of the transaction, each outstanding share of the Preferred Stock at a redemption price of \$25.25 per share, plus full cumulative dividends thereon, and each outstanding share of the Preference Stock at a redemption price of \$25.00 per share, plus full cumulative dividends thereon. The Agreement also provides that, at the time of the closing of the transaction, each share of American Common Stock owned by Thames Holdings, Acquisition Corp. or American shall automatically be cancelled and cease to exist and no consideration shall be delivered in exchange therefore. Under the Agreement, RWE will cause Thames Holdings to have funds sufficient to consummate the transaction. None of the outstanding debt owed and recorded as liabilities on the books of New Jersey-American will be affected by the Agreement. All of the outstanding debt will continue to be liabilities and obligations of New Jersey-American.

Petitioners filed their petition seeking approval of the merger under N.J.S.A. 48:2-51.1, which provides that:

No person shall acquire or seek to acquire control of a public utility directly or indirectly through the medium of an affiliated or parent corporation or organization, or through the purchase of shares, the election of a board of directors, the acquisition of proxies to vote for the election of directors, or through any other manner, without requesting and receiving the written approval of the Board of Public Utilities. Any agreement reached, or any other action taken, in violation of this act shall be void.

From a regulatory perspective, the transaction is appropriately viewed as an acquisition of control under N.J.S.A. 48:2-51.1. Additionally, the petition was filed under N.J.S.A. 48:3-10, which the Board has fully considered in performing its analysis in this proceeding.

Under N.J.S.A. 48:2-51.1, the Board is required to:

...evaluate the impact of the acquisition on competition, on the rates of ratepayers affected by the acquisition of control, on the employees of the affected public utility or utilities, and on the provision of safe and adequate utility service at just and reasonable rates.

The Board must determine whether this transaction can be accomplished without any adverse impact on the four areas specified in the statute, and that it is not contrary to the public interest. The Board's primary means of assuring that New Jersey-American is properly protected lies in the Board's power to set rates and oversee the transactions of New Jersey-American. The Board's traditional regulatory powers will provide the enforcement the Board will need to assure that New Jersey-American and its customers are adequately and properly protected and that the proposed transaction does not affect their operations or customers.

STIPULATION

The parties agree that criteria N.J.S.A. 48:2-51.1 are satisfied and that the proposed change in control will not adversely impact competition, rates, employees or the provision of safe and adequate utility service at just and reasonable rates. As more fully set forth in the attached Stipulation, the parties agree that:

1. **IMPACT ON COMPETITION:** The change in control will not adversely impact competition because New Jersey-American will continue to operate in its current franchise territories under the same market conditions, which currently exist, subject to the continuing jurisdiction of the Board.
2. **IMPACT ON CUSTOMER RATES:** The transaction will have no adverse impact on New Jersey-American rates. New Jersey-American will continue to operate under its existing tariffs and rate structures (until such time as such tariffs and rate structures are revised in accordance with New Jersey law). The transaction will cause no changes in the balance sheet or financial position of New Jersey-American. The transaction will not impair New Jersey-American's ability to raise necessary capital on reasonable terms or to maintain a reasonable capital structure. Further, New Jersey-American will continue to operate subject to the jurisdiction of the Board.
3. **IMPACT ON EMPLOYEES:** The change in control will not have an immediate, direct or measurable impact on the employees of New Jersey-American. The transaction contemplated by the Agreement will not have an adverse impact on the compensation of the New Jersey-American employees and the value of employees' benefits will not be reduced. The Petitioners shall not terminate any employee, other than for cause, through the later of one year from the date of the financial close of the merger or March 31, 2004; and for a period of at least eighteen months from the close of the merger, Petitioners agree that there will be no reduction in the value of employee benefits. There will also be no change in any existing collective bargaining agreement as a result of this transaction.
4. **IMPACT ON SERVICE:** The change in control will not affect the ability of New Jersey-American to provide safe, adequate and reliable service in fulfillment of its obligations

under New Jersey law. Nor will this transaction in any way affect the Board's continuing jurisdiction over service.

The Board, having considered the record in this matter, HEREBY FINDS that:

1. The proposed change in control is in accordance with law and, with the implementation of the provisions set out in the Stipulation as conditions to this Order, does not appear to be contrary to the public interest.
2. The proposed conditions set forth in the Stipulation entered into by the parties appear reasonable and appropriate and, in conjunction with existing statutes, provide the Board with sufficient means to properly regulate the operations of New Jersey-American.
3. Based upon the record in this proceeding and subject to the conditions set forth in this Order, the statutory criteria set forth in N.J.S.A. 48:2-51.1 are satisfied and the change in control can be accomplished without any adverse impact on competition, rates, employees or the provision of safe and adequate utility services at just and reasonable rates; and that the change in control will not affect the ability of New Jersey-American to continue to provide safe, adequate and proper service to its customers.
4. The proposed transaction is expected to benefit the customers of New Jersey-American by: (i) combining resources and expertise, such as through sharing best operating practices; (ii) enhancing research and development; and (iii) promoting compliance with federal and state regulatory requirements regarding wastewater, water supply and water quality.
5. Following the close of the hearings, certain newspaper articles raised concerns regarding the environmental record of Thames in the United Kingdom. James McGivern, Thames' Managing Director – Americas, provided a report (attached hereto as Exhibit A of the Stipulation) to the Board in response to concerns the parties had with respect to said articles. Furthermore, the parties recognize that the quality of service delivered by water and wastewater utilities is regulated not only by the Board, but also by the stringent standards of the New Jersey Department of Environmental Protection, set forth in N.J.S.A. 58:12A et seq. Thus, Petitioners understand that New Jersey's laws, rules and regulations concerning water and wastewater utilities require that Petitioners be diligent in New Jersey and demonstrate a sensitivity toward the environment and water sources of the State, and agree to be governed by the laws, rules, and regulations of the State of New Jersey.

Accordingly, the Board HEREBY ADOPTS the Stipulation attached hereto as its own, incorporating by reference the terms and conditions as if fully set forth at length herein, subject to the following conditions:

- (a) That the New Jersey laws, rules and regulations concerning water and wastewater utilities require that Petitioners be diligent in New Jersey and demonstrate a sensitivity toward the environment and water sources of the State, and agree to be governed by the laws, rules, and regulations of the State of New Jersey.

- (b) Thames Holdings and New Jersey-American shall not allocate, push down, or assign any purchase price, goodwill or any premium reflected in the purchase price of the American stock to New Jersey-American, either directly or indirectly for ratemaking purposes. Such items shall not be passed on to or funded by customers of New Jersey-American after the proposed transaction. No acquisition adjustment amount, as defined in the Board-approved Uniform System of Accounts, shall be recovered from the customers of New Jersey-American.
- (c) No merger transaction costs (e.g., financial, legal, change in control agreements), as described in Exhibit C of the Stipulation, shall be passed on to, recovered from, or funded by customers of New Jersey-American. Merger transaction costs include, in general costs, in the categories listed on Exhibit C annexed hereto, and are intended to include costs that would not have been incurred but for the proposed transaction. The parties agree that with regard to costs not listed on Exhibit C, the Petitioners reserve the right to seek recovery in rates of specific costs incurred in order to achieve benefits to ratepayers. All merger transaction costs shall be tracked and shall be reported to the Board and the Ratepayer Advocate on a regular basis and the supporting documentation, such as receipts or general ledger entries, shall be made available for review within a reasonable amount of time upon notice to the Company by the Board and/or the Ratepayer Advocate.
- (d) Subject to the execution, where appropriate, of acceptable confidentiality agreements, the Petitioners shall provide the Board and Ratepayer Advocate reasonable access to the books and records of RWE, Thames Holdings and its subsidiaries to the extent that they pertain to the operations of New Jersey-American and such review is necessary to carry out the Board's functions, where the Board directs, using appropriate procedures, that such access is necessary to ensure the proper exercise of the Board's regulatory jurisdiction. Nothing in the Stipulation shall be construed so as to limit the authority of the Board pursuant to N.J.S.A. 48:2-16 et seq. RWE, Thames Holdings, and any of its subsidiaries and successors agree to maintain the books and records of New Jersey-American in accordance with the Board-approved Uniform System of Accounts or as otherwise prescribed by New Jersey or United States of America law or regulation.
- (e) Post-merger, New Jersey-American shall provide and/or make ready for review by the Board any or all of its original accounting books, records, and financial documents upon request within twenty (20) working days, unless otherwise specified by the Board.
- (f) Post-merger, RWE, Thames Holdings, and any of their subsidiaries and successors shall make the books of New Jersey-American available to the Board. Post-merger, RWE, Thames Holdings, and any of their subsidiaries and successors shall make the books and records of RWE, Thames Holdings, and any of their subsidiaries and successors available to the Board to the extent that they pertain to the operations of New Jersey-American and such review is necessary to carry out the Board's functions. The above-mentioned books and

records shall be provided at either (a) a location in New Jersey, or (b) another location, provided that Petitioners shall pay all travel or travel related expenses incurred by the Board in the performance of their regulatory responsibilities.

- (g) Post-merger, RWE, Thames Holdings and any of their subsidiaries and successors shall provide computer access and/or the printed copies of books and records to the extent that they pertain to the operations of New Jersey-American and such review is necessary to carry out Board functions.
- (h) Post-merger, New Jersey-American shall notify the Board of any material change in the administration, management or condition of the books and records and related documentation of New Jersey-American, which notice shall be sent to the Board Secretary and Directors of the Board's Division of Audits and Division of Water and Wastewater within ten (10) days of the event.
- (i) Post-merger, RWE, Thames Holdings and any of their subsidiaries and successors shall allow the Board to conduct various focused audits, management audits or reviews of New Jersey-American, commencing no sooner than one year after the date of this Order approving the Merger, and then at least once every six years, or as the Board deems necessary.
- (j) Petitioners shall file a report with the Board fully describing the post-merger corporate structure and various corporate relationships in sufficient detail to allow the Board's Division of Audits Staff to effectively monitor all affiliate relationships to the extent that they pertain to the operations of New Jersey-American and/or include New Jersey-American as a party, and such review is necessary to carry out the Board's functions. The books, records and supporting details of such affiliate transactions shall be made available to the Board within six (6) months of the date of the closing of the merger.
- (k) Upon request, New Jersey-American shall make available to the Board's Division of Audits, for review in New Jersey-American's offices, copies of all New Jersey-American audits and the internal audits of RWE, Thames Holdings or any of their subsidiaries and successors to the extent such audits pertain to the operations of New Jersey-American and such review is necessary to carry out the Board's functions.
- (l) Copies of the U.S. federal income tax returns of RWE, Thames Holdings, and any of their subsidiaries and successors that are consolidated with New Jersey-American for the purposes of U.S. federal income taxes shall be made available for review to the Board and the Ratepayer Advocate to the extent the Board determines that it is necessary to review those documents for any appropriate regulatory purpose.
- (m) Whenever New Jersey-American is required to provide documents to the Board concerning the operations of RWE or any other subsidiaries or holdings of RWE, all financial records shall be provided in their original currency and in U.S. dollars (converted as of the date of the financial record).

- (n) New Jersey-American's Annual Report to the Board shall include a complete, English-language copy of the Annual Reports of RWE and Thames Holdings, as well as a complete German-language copy of the Annual Report of RWE. Alternatively, an electronic reference or Internet link leading to these documents can be furnished in lieu of paper filing, provided such transmission is the legal equivalent of a paper filing.
- (o) RWE, Thames Holdings and any of its subsidiaries and successors shall provide the Board with access to the live webcast of RWE's annual stockholders meeting and shall provide simultaneous English language translation of that webcast at a location in New Jersey.
- (p) If the accounting and financial reports, books, records and other documentation referred to herein are submitted to the Board in a digital format (i.e., diskette, CD-ROM or e-mail), the submission shall include a certification stating that such materials are authentic copies of the originals.
- (q) Unless otherwise required under Title 48, RWE, Thames Holdings and their subsidiaries and successors shall provide notice to the Board within 48 hours but in no event before such information becomes publicly available, if RWE experiences any of the following events: (a) a change in control; (b) a significant acquisition or disposal of assets other than in the ordinary course of business; (c) a filing of bankruptcy or appointment of a receiver; or (d) a change in their independent accounting firm.
- (r) New Jersey-American shall use its best efforts to maintain all applicable water quality standards and to maintain or improve water service standards including, but not limited to, the following: water service related interruptions and employee response time thereto; and customer complaint and customer inquiry response time. New Jersey-American shall maintain adequate resources to continue to be responsive to questions from customers and regulatory agencies. Beginning at the time of Board approval of the merger and continuing until the effective date of rates resulting from its next rate case, New Jersey-American will submit to the Board on the form attached as Exhibit D of the Stipulation, quarterly reports of the quality of service measures for the purpose of developing a baseline against which to track future performance and ultimately to permit the Board to consider whether to establish customer service performance standards (CSPS) in the future, provided that no existing New Jersey Operating Utility (NJOU)¹ will have its CSPS lowered as a result of this transaction.
- (s) The Board may conduct a management audit as part of its continuing monitoring of New Jersey-American after the merger is completed and the Board reserves its right to do so.
- (t) Upon closing, Petitioners shall inform the Board of the date on which the change in control shall have been consummated and, within 180 days of closing shall

¹ At the time of the closing of this transaction, the existing New Jersey Operating Utilities will be New Jersey-American, Elizabethtown Water Company, Mount Holly Water Company, and Applied Wastewater Management, Inc.

provide the Board with an exhibit showing all transaction costs as well as the final details of the share prices and exchange ratios.

- (u) In the next rate proceeding, should New Jersey-American seek to recover in rates costs allocated by Thames Holdings, its parent, or any of its subsidiaries or affiliates, except for costs allocated to New Jersey-American pursuant to the existing contract with American Water Works Service Company, Inc., New Jersey-American shall provide the parties with a written explanation, supported by sufficient credible data, of the method of allocating such costs.
- (v) In accordance with and absent a change in N.J.S.A. 48:3-7.1 or applicable Board regulations, any management, advisory service, construction or engineering contract that in itself or in connection with another contract relating to the same work, project, transaction or service involves the expenditure of a sum exceeding twenty-five thousand dollars (\$25,000.00), made by any public utility with any person or corporation owning, holding or controlling separately, or in affiliation with another person or corporation, five per cent or more of the capital stock of such public utility or with any corporation five per cent of the capital stock of which is owned, held or controlled by a person or corporation owning, holding or controlling separately, or in affiliation with another person or corporation, five per cent of the capital stock of such public utility shall be submitted to the Board for approval. Any such contracts shall be reported annually to the Board by New Jersey-American at the time of filing of their annual reports to the Board. New Jersey-American shall continue to comply with N.J.S.A. 48:3-7.1.
- (w) Neither the credit nor the assets of New Jersey-American shall be pledged to support any financing related to Petitioners, their affiliates or parent, without the prior approval of the Board, provided, however, that this restriction shall not impair the ability of the NJOUs to borrow short term without the approval of the Board.
- (x) The corporate headquarters of New Jersey-American and American shall remain in New Jersey.
- (y) For two years following the date of this Order approving the transaction, New Jersey-American shall notify the Board, the Ratepayer Advocate and the interveners within 30 days if any of the officers, managers, or key employees of New Jersey-American leaves the employ of New Jersey-American.
- (z) Neither of the Petitioners shall terminate any individual who continues to be an employee of New Jersey-American until the later of one year from the date of the closing of the merger or March 31, 2004, other than for cause. During this period of time, New Jersey-American shall provide the Board, on a quarterly basis, with reports on employee levels. There shall be no change in the pensions and other employee benefits related to New Jersey-American as a result of the merger for a period of eighteen (18) months from closing. Thames Holdings shall honor the collective bargaining agreements between New Jersey-American and the Utility Workers Union of America, A.F.L.-C.I.O., and the National Conference of Firemen and Oilers SEIU through the termination dates of those agreements, consistent with the terms of the Memorandum of Agreement dated March 1,

2002, by and between Thames Holdings and the Unions. This paragraph governs the relations between the parties and does not confer any additional employee rights.

- (aa) The Board recognizes that it remains the policy of Thames Holdings to rely upon local management and local employees as critical elements of the success of its operating companies.
- (bb) If requested in the context of a base rate proceeding, Petitioners shall provide the capital structures of New Jersey-American and American. Petitioners shall maintain the debt/equity ratio of New Jersey-American at approximately current levels. New Jersey-American shall notify the Board within 30 days if its equity ratio or the equity ratio of American changes by more than five (5) percent. If requested by Board Staff, Petitioners shall submit an action plan to restore New Jersey-American's equity ratio to the prior level. Notwithstanding the above conditions, nothing in this paragraph shall constrain any party in any future base rate proceeding from recommending to the Board the use of various capital structures for ratemaking purposes.
- (cc) The NJOUs must preserve their financing capacity so that they can finance capital improvements necessary to provide safe, adequate and proper service. The NJOUs, with reported bond ratings, shall use their best efforts to maintain current bond ratings. For a three-year period following the closing of this transaction, any change in the bond ratings as reported by Moody's Investors Service and Standard & Poor's Corporation, from the current levels of the ratings, and any post-merger changes in dividend policy, shall be reported to the Board as they occur. The NJOUs must preserve their financing capacity so that they can finance capital improvements necessary to provide safe, adequate and proper service.
- (dd) New Jersey-American shall maintain a level of capital investment and best operating practices sufficient to ensure long-term safe, adequate and proper service in compliance with applicable regulations and statutes and in accordance with prudent utility practice. New Jersey-American shall receive funding priority equal to that of any other subsidiary of RWE/Thames Holdings. Petitioners shall support projects designed to enhance the long-term viability of the State's water supplies to serve customers in the Petitioners' service territories in the State, including the development of new sources of supplies and the enhanced utilization of existing supplies.
- (ee) For a minimum of three years following the date of this Order, a majority of the individuals appointed to serve on the New Jersey-American Board of Directors shall be residents of New Jersey. To ensure appropriate local input, Petitioners shall make familiarity with New Jersey interests and concerns an important consideration in appointing directors to serve on the Board of New Jersey-American. Subsequent to the three-year period following this transaction, any changes to the New Jersey-

American Board shall be reported to the Board within ten (10) business days.

- (ff) Petitioners, upon closing of the merger, shall file with the Board a certified copy of the Certificate of Merger as recorded with the Secretary of State for the State of New Jersey.
- (gg) In connection with the provision of goods or services that are not functionally related to the provision of public utility water and wastewater services, New Jersey-American shall not disclose confidential customer information, including names, addresses, and phone numbers, to any affiliate of American or New Jersey-American, including Thames or RWE, without prior notice to the Board. The Petitioners shall not, under any circumstances, disclose any confidential customer information to any non-affiliated person, company or organization, except for purposes of billing, bill payment, collection, or the provision of emergency response services.
- (hh) RWE's liabilities for nuclear power plant decommissioning and coal mine remediation and reclamation shall not result in any liabilities to New Jersey-American, and shall not result in any costs, risks or consequences being passed on to, recovered from, or funded by customers of New Jersey-American. RWE shall take steps to insulate New Jersey-American or any other RWE-owned regulated New Jersey utility from any credit or bond rating downgrades related to such liabilities, including providing the Board with information related to any credit or bond rating downgrades whether or not such downgrades are, in the opinion of RWE, related to such nuclear or coal liabilities.
- (ii) This transaction will result in the common ownership of four operating utilities in New Jersey that will become subsidiaries of the same parent, RWE, as a result of this transaction. As a result of this common ownership, certain merger synergy savings will be realized.
- (jj) As a result of the combined ownership of the NJOUs, certain merger savings are expected to be achieved in advance of the completion of the rate proceedings, shortly after the close of this transaction. In recognition of the time lag between the closing of the transaction and the effective date of new rates, the Joint Petitioners shall pass through the following as one-time payments no later than 90 days after the time of closing of the transaction: (a) \$1 million of such savings to the State of New Jersey, to be allocated at the discretion of the Commissioner of the Department of Education and, (b) \$2 million of such savings in a one time bill credit to New Jersey-American ratepayers.
- (kk) The NJOUs shall file base rate proceedings no later than six (6) months after the close of the transaction.
- (ll) The Joint Petitioners shall continue the existing low-income customer assistance program currently in place at New Jersey-American. The Joint Petitioners shall also make the program available to customers of any

other regulated New Jersey utility owned by the Joint Petitioners. The Joint Petitioners shall continue to support the efforts of the Board and the Ratepayer Advocate to make utility services affordable for all customers, including low-income and financially distressed customers.

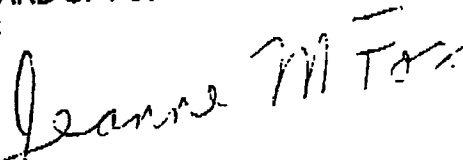
- (mm) As part of New Jersey-American's next rate case, New Jersey-American shall file a stand-alone cost of service study with respect to service it provides to the Manasquan Customer Group (MCG), as required by the Board in its Orders in Docket No. WR98010015. This stand-alone cost of service study will reflect the particular costs and service characteristics of MCG, and will be prepared utilizing the same methodology for MCG that New Jersey-American used to prepare its cost of service study in its 1995 rate case (Docket No. WR95040165), decided April 1, 1996. If New Jersey-American does not prepare and file a stand-alone cost of service study with respect to MCG as provided herein, then New Jersey-American shall not propose an increase in its Manasquan Uninterruptible Service Rate in that rate case.
- (nn) The Board may exercise its authority to enforce the provisions of the Stipulation and this Order adopting the Stipulation.
- (oo) The authority granted herein shall become null and void if the merger is not consummated within 12-months from the date of this Order.
- (pp) The Stipulation shall bind and inure to the benefit of the parties and their respective successors and assigns.
- (qq) Nothing in this Order shall be construed as limiting the jurisdiction vested in the Board under Title 48 or as altering the requirements found therein, including, but not limited to the requirements in N.J.S.A. 48:2-51.1 or N.J.S.A. 48:2-16.


Therefore, the Board HEREBY APPROVES the acquisition of control of New Jersey-American described herein as contemplated by the Agreement and as conditioned herein and authorizes Thames Holdings, RWE and an entity owned or controlled, directly or indirectly, by Thames Holdings and managed by Thames, (to be identified by the Petitioners prior to the close of this transaction) to acquire control of New Jersey-American, pursuant to N.J.S.A. 48:2-51.1 and N.J.S.A. 48:3-10.

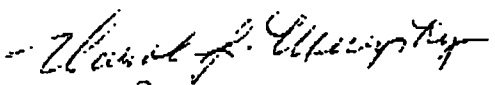
The effective date of this Order is as dated below.

DATED: 11/26/02

BOARD OF PUBLIC UTILITIES
BY:


JEANNE M. FOX
PRESIDENT

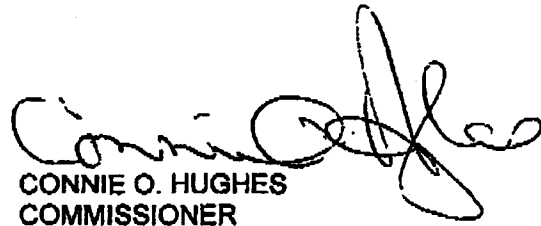

FREDERICK F. BUTLER
COMMISSIONER


CAROL J. MURPHY
COMMISSIONER


JACK ALTER
COMMISSIONER

I concur with the decision of the majority of the Board to adopt the Stipulation for the reasons described above. However, I have a strong concern regarding the provision in the Stipulation which provides for an allocation representing \$1,000,000 of the \$3,000,000 in merger savings be made available to the New Jersey Department of Education, " ... to be allocated at the discretion of the Commissioner of the Department of Education ..."

Given that the source of these funds is derived from shareholders of a New Jersey water utility, and that water conservation is an important component of the State's drought management policy, this \$1,000,000 should be dedicated to implement educational curricula and/or programs which address water conservation, drought, and other similar water programs within the New Jersey - American Water service area.


CONNIE O. HUGHES
COMMISSIONER

ATTEST:


KRISTI IZZO
SECRETARY

I HEREBY CERTIFY that the within document is a true copy of the original in the files of the Board of Public Utilities

