

KENTUCKY-AMERICAN WATER COMPANY  
THAMES WATER AQUA HOLDINGS GmbH  
RWE AKTIENGESELLSCHAFT  
THAMES WATER AQUA US HOLDINGS, INC.  
APOLLO ACQUISITION COMPANY  
AMERICAN WATER WORKS COMPANY, INC.

CASE NO. 2002-00317

RESPONSES TO THE ATTORNEY GENERAL'S INITIAL REQUEST  
FOR INFORMATION DATED SEPTEMBER 23, 2002

ITEM NO. 1

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**Witness: Stephen Smith**

1. Reference: Motion and Petition to Modify Order, Numbered Paragraph 7, Testimony of Stephen Smith, Response to Question 6. When was Thames Water Aqua US Holdings, Inc. ("TWUS") formed?

**RESPONSE:**

1. TWUS was formed on July 26, 2002. (The June 26<sup>th</sup> date in the Smith testimony is erroneous.)

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ITEM NO. 2

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**Witness: Stephen Smith**

2. Confirm that the full, legal name of the new company is “Thames Water Aqua US Holdings, Inc. If this is not the name, please supply the name.

**RESPONSE:**

2. Thames Water Aqua US Holdings, Inc., is the correct, full legal name.

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ITEM NO. 3

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**Witness: Stephen Smith**

3. What is the legal form of the organization of TWUS (e.g. business corporation, limited liability company, etc.)?

**RESPONSE:**

3. TWUS is a corporation.

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ITEM NO. 4

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**Witness: Stephen Smith**

4. Where was TWUS formed and where will its headquarters be located?

**RESPONSE:**

4. TWUS was formed in the State of Delaware, and its headquarters will be located in Voorhees, New Jersey.

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ITEM NO. 5

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**Witness: Stephen Smith**

5. With respect to the Certificate of Incorporation for TWUS, please confirm that these are the complete articles of incorporation. If not, please supply a complete copy.

**RESPONSE:**

5. Yes, but to eliminate any doubt, certified copies in paper medium of the Certificate of Incorporation, the organizational minutes, and the By-Laws of TWUS, along with a Certificate of Good Standing, are attached.

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ITEM NO. 6

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**Witness: Stephen Smith**

6. Please supply a copy of the TWUS bylaws.

**RESPONSE:**

6. See the Response to Item No. 5.

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ITEM NO. 7

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**Witness: Stephen Smith**

7. Please provide a certificate of good standing or similar document from the state in which TWUS is organized.

**RESPONSE:**

7. See the Response to Item No. 5.

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ITEM NO. 8

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**Witness: Stephen Smith**

8. Please provide a complete listing of all entities that own or control any or all of the ownership interests in TWUS.

**RESPONSE:**

8. Thames Water Aqua Holdings GmbH owns all the stock of TWUS.



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ITEM NO. 9

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**Witness: Stephen Smith**

9. Please provide a complete balance sheet and income statement for TWUS as of 31 August 2002.

**RESPONSE:**

9. No financial statements exist for TWUS as of August 31, 2002, since no financial activities have taken place prior to and up to that date. In terms of good financial practice, it is anticipated that TWUS will be funded, requiring the setting up of balance sheets and income statements, as near in time as is possible to the closing of the transaction.

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ITEM NO. 10

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**Witness: James McGivern**

10. How will TWUS be capitalized and from what source(s) will it receive the funds necessary to purchase the common stock of American Water Works Co? Will such funding be debt, equity, or a mix of debt and equity (if both debt and equity, please show the amounts of each)?

**RESPONSE:**

10. At this time, no financing plans have been established for TWUS. The source of funding will ultimately be provided by RWE and it will seek to obtain the best terms and rates available from the open market at the time of close.

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ITEM NO. 11

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**Witness: James McGivern**

11. If any of the capitalization of TWUS will be from debt, please provide copies of the debt instruments (indentures, notes, etc.) that document the terms and conditions associated with that debt. If such debt instruments do not yet exist, please provide all documents that discuss or otherwise concern the likely terms and conditions of such debt.

**RESPONSE:**

11. No debt financing arrangements have yet been established and no analyses have been conducted to date.

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ITEM NO. 12

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**Witness: James McGivern**

12. Please provide a complete listing of the officers, directors, or similar officials of TWUS. This listing should include the name, business address, and the position held (if any) with any of the Joint Petitioners or any affiliates of the Joint Petitioners.

**RESPONSE:**

12. The officers and directors of TWUS are:

James McGivern – President and Director  
Michael Carmedy – Vice President, Treasurer and Director  
Ronald Walsh – Secretary and Director

Mr. McGivern is employed by Thames Water Plc., he is the Managing Director – Americas for Thames Water Plc; and his business address is 1025 Laurel Oak Road, Voorhees, New Jersey 08043.

Mr. Carmedy is also employed by Thames Water Plc., he is Senior Vice President and Commercial Director of Thames Water Americas; and his business address is 1101 Laurel Oak Road, Voorhees, New Jersey 08043.

Mr. Walsh is the former General Counsel, now retired, of Thames Water Plc's operations in the United States; he now acts as a consultant for Thames Water Plc in the United States, and his business address is 21 Salem Road, Fairfield, Connecticut 06430.

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ITEM NO. 13

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**Witness: James McGivern**

13. Please provide the number of employees of TWUS.

**RESPONSE:**

13. TWUS has no employees.

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ITEM NO. 14

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**Witness: James McGivern**

14. Do the Joint Petitioners expect TWUS to also own or acquire any other assets of Thames, RWE, or both Thames and RWE in the United States? If so, please list and describe each such asset and describe the transaction(s) and regulatory approval(s) that will be necessary for such acquisitions to occur. If not, please explain why not.

**RESPONSE:**

14. It is anticipated that TWUS will own the stock of each of the corporations listed on the exhibit to Mr. Smith's testimony. Regulatory approvals are not anticipated to be required.

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ITEM NO. 15

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**Witness: James McGivern**

15. Is it anticipated that American Water Works Co., Kentucky-American, or both American Water Works and Kentucky-American will participate in the filing of a consolidated tax return with any entities outside of the current American Water Works system (for example, with E'town Corp. or any other entity owned by Thames, RWE, or both Thames and RWE in the United States)? If so, please list and describe each such entity and estimate the impact on Kentucky-American Water Company from expanding the group with which it will be consolidated for tax purposes. If not, please explain why not.

**RESPONSE:**

15. Yes, we intend to file consolidated returns including other Thames owned entities in the US; the current list of such entities is set out on the exhibit to Mr. Smith's testimony herein. The subsidiaries of E-Town Corporation are Elizabethtown Water Company, Edison Water Company, E'town Properties, Liberty Water Company, The Mount Holly Water Company, Applied Water Management, Inc. and Applied Wastewater Management, Inc. Kentucky-American will not be impacted, since its rates are set on a stand-alone tax basis.

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ITEM NO. 16

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**Witness: James McGivern**

16. Please confirm that none of the costs associated with forming or operating TWUS will be borne by, or passed down to, American Water Works Co. or any of its subsidiaries. If this is not the case, please specifically describe and estimate the amount of each such cost. If not, please explain why not.

**RESPONSE:**

16. None of the costs associated with forming or operating TWUS will be borne by, or passed down to, American Water Works Co. or any of its subsidiaries.



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ITEM NO. 17

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**Witness: James McGivern**

17. Please confirm that TWUS will be wholly owned by RWE AG/Thames Water Aqua Holdings GmbH. If not, please list all other entities that will own, control, or own and control any portion of TWUS and explain the reasons for the involvement of such other entities.

**RESPONSE:**

17. TWUS will be wholly owned by Thames Water Aqua Holdings GmbH.

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ITEM NO. 18

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**Witness: McGivern**

18. Please list the name of each person who is authorized to make commitments in this proceeding on that are binding on TWUS. For each such person, provide documentary evidence of the fact that they are authorized to bind TWUS (such as a power of attorney, board of directors' resolutions, etc.).

**RESPONSE:**

18. James McGivern is authorized to make commitments in this proceeding that are binding on TWUS. A copy of a Board of Directors Resolution electing Mr. McGivern President of TWUS is attached.

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ITEM NO. 19

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**Witness: James McGivern**

19. Please provide copies of all minutes of the board of directors (or comparable governing body) of TWUS that concern the acquisition of American Water Works co., the regulatory proceedings associated with that acquisition, and the method of funding that acquisition.

**RESPONSE:**

19. No such minutes are now in place. It is typical finance and M & A ("Merger and Acquisition") practice to pass such resolutions shortly before the transaction actually happens. We would expect TWUS to pass a resolution approving whatever loan or contribution is used to capitalize it around the time the documentation for such loan or contribution is executed.

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ITEM NO. 20

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**Witnesses: James McGivern and Daniel Kelleher**

20. Please confirm that the Joint Petitioners will neither assert or otherwise challenge the jurisdiction and authority of the Commission, whether by means of law, treaty, convention, choice of forums, conflict of law provision, or otherwise, with the enforcement of the order granting any approval of the transfer of control. If no, please identify by entity the challenge(s) to the jurisdiction and authority of the Commission.

**RESPONSE:**

20. Joint Petitioners confirm that they will not challenge the jurisdiction and authority of the Commission, whether by means of present or future law, treaty, convention, choice of forums, conflict of law provision or otherwise, to enforce the order granting any approval of the transfer of control.

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ITEM NO. 21

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**Witness: Stephen Smith**

21. Will future changes in German tax law dictate, or contribute to the decision of, the corporate structure above Kentucky-American? If yes, please explain.

**RESPONSE:**

21. We know of no proposed changes in the German tax law that would dictate changes in the corporate structure.

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ITEM NO. 22

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**Witnesses: James McGivern, Daniel Kelleher and Roy W. Mundy II**

22. Please provide the name and address for the agent for service of process for each Joint Petitioner. If service is not perfected by serving the named individual by certified mail, please state the means by which service is perfected.

**RESPONSE:**

22. The agent for service of process of Thames Water Aqua US Holdings, Inc. and Apollo Acquisition Company is The Corporation Trust Company, Corporation Trust Center, 1209 Orange Street, Wilmington, Delaware 19801. The agent for service of process of Kentucky-American Water Company is Roy W. Mundy, II, 2300 Richmond Road, Lexington, Kentucky 40502. The agent for service of process of American Water Works Company, Inc. is CT Corp. System, Kentucky Home Life Building, Room 1102, Louisville, Kentucky 40202. Service of process may be perfected by the means designated in the applicable rules or statutes. Neither RWE AG nor Thames Water Aqua Holdings GmbH has agents for service of process in the United States.

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ITEM NO. 23

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**Witness: Stephen Smith**

23. With regard to the transaction, please indicate whether the transfer of the stock of AWW to TWUS will occur before or after the merger of the Apollo Acquisition Company into the American Water Works Company.

**RESPONSE:**

23. TWUS will acquire the shares of AWW at the moment the Merger of Apollo and AWW becomes effective. AWW will issue TWUS a stock certificate representing such shares shortly after the Merger becomes effective.

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ITEM NO. 24

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**Witness: James McGivern**

24. Please provide all of the journal entries that TWUS will record to accept the stock of Thames Holdings' water interest in the United States.

**RESPONSE:**

24. Prior to completion of the merger agreement, TWUS will hold an investment in Apollo Acquisition Inc. After the completion of the merger agreement TWUS will then hold an investment in American Water Works Company (the surviving company) at the same amount.



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ITEM NO. 25

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**Witness: Daniel Kelleher**

25. Please provide the specific journal entries that the American Water Works Company will record to reflect the transfer of stock to TWUS.

**RESPONSE:**

25. Upon its merger with Apollo Acquisition Company, American Water Works Company will debit "equity/loans payable" and credit "cash."

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ITEM NO. 26

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**Witness:**

26. Please provide any post-stock transfer journal entries that either TWUS or American Water Works Company will record in connection with the transfer.

**RESPONSE:**

26. Our accountants are unable to understand this question because the question is ambiguous.

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ITEM NO. 27

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**Witnesses: James McGivern and Daniel Kelleher**

27. Please confirm that each Joint Petitioner has availed itself to the jurisdiction of the Commonwealth of Kentucky.

**RESPONSE:**

27. As stated in paragraph 8 of the Petition and Motion herein, each of the Joint Petitioners has submitted to the jurisdiction of the Commission in this proceeding.

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ITEM NO. 28

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**Witnesses: James McGivern and Daniel Kelleher**

28. With respect to KRS 278.990, please confirm that all of the Joint Petitioners are subject to this statute. If not, please identify each Joint Petitioner that is not subject to KRS 278.990.

**RESPONSE:**

28. All of the Joint Petitioners are not subject to KRS 278.990. It applies to utilities and Kentucky-American is the only Joint Petitioner that is a utility as that term is defined in KRS 278.010.

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ITEM NO. 29

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**Witness:**

29. With respect to KRS 278.390, please confirm that all of the Joint Petitioners are subject to this statute. If not, please identify each Joint Petitioner that is not subject to KRS 278.390.

**RESPONSE:**

29. KRS 278.390 grants authority to the Commission, the Franklin Circuit Court and other courts of competent jurisdiction. It neither grants authority to, nor imposes duties upon, entities other than the Commission and courts.

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ITEM NO. 30

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**Witness:**

30. With respect to KRS 278.250, please confirm that all of the Joint Petitioners are within the Commission's jurisdiction and subject to an investigation or examination of the condition of the Joint Petitioners' utility activity subject to the Commission's jurisdiction. If not, please identify each Joint Petitioner that is not subject to KRS 278.250.

**RESPONSE:**

30. Kentucky-American and any Joint Petitioner that conducts activities that cause it to fall within the definition of "utility" as that term is defined in KRS 278.010 are subject to KRS 278.250.

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ITEM NO. 31

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**Witnesses: James McGivern, Daniel Kellerher and Roy W. Mundy II**

31. With regard to all of the Joint Petitioners in this case, please confirm that they adopt the joint petitioners answers to the Attorney General's discovery requests in case number 2002-00018 as if the questions had been presented to all the Joint Petitioners in the instant case. If the answers are now different or would change as a result of the inclusion of the additional petitioners, please provide the new answer.

**RESPONSE:**

31. They are adopted. See the Response to Item No. 32.

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ITEM NO. 32

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**Witnesses: James McGivern, Daniel Kelleher and Roy W. Mundy II**

32. If the answer has been or should be updated with respect to the current Joint Petitioners, please provide the update(s).

**RESPONSE:**

32. AG1-89 – Please see the Response to Item No. 10 of the Attorney General’s Initial Request for Information in this case.

AG1-90, AG2-19 – A list of the individuals eligible to receive retention bonuses, subject to the conditions in the agreements is attached hereto.

AG1-93 – A copy of the Section 7A Clayton Act notices is attached hereto. All of the attachments to the notices are either available on the SEC web site, American Water Works Company, Inc.’s web site, RWE AG’s web site, or were filed in redacted and unredacted form in Case No. 2002-00018.

AG1-64 – An updated Response is attached.



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ITEM NO. 33

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**Witness: James McGivern and Daniel Kelleher**

33. Have any of the Joint Petitioners or their subsidiaries been sanctioned for any violations of any environmental laws or regulations? If so, please provide details including the name of the company, the date and nature of the violation(s), sanction or penalty imposed, and the name of the regulatory agency or entity.

**RESPONSE:**

33. See responses to Staff Requests 8 and 9 and LFUCG's Request 13.