

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 SUPPLEMENT
REQUEST FOR INFORMATION DATED OCTOBER 7, 2002

ITEM NO. 1

Witness:

1. Please reference the Joint Petitioners' response to AG 1-22. Please provide, with specific detail, the means by which service of process may be perfected on RWE AG and Thames Water Aqua Holdings GmbH. The explanation should include the name and address of the individual or entity to whom the service should be forwarded, the means by which it is to be forwarded, specific references to any law, treaty or governing authority which controls the perfection, the number of copies and entities/people to whom service should be made, etc.

RESPONSE:

1. See the Response to Item No. 1 of LFUCG's Supplemental Request for Information. Further, the means by which service of process may be perfected is not an appropriate subject for discovery in this or any proceeding. Service of process is a matter of law that must be investigated by a person who might seek to have process served on RWE AG or Thames Water Aqua Holdings GmbH. That circumstance does not present itself in this proceeding.

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ITEM NO. 2

Witness: Steve Smith

2. Please reference the Joint Petitioners' responses to AG 1 – 24. With regard to this item, please provide the specific journal entries that TWUS will record to reflect the transfer of stock to American Water Works Company.

RESPONSE:

2. No stock will be transferred to American Water Works Company. Therefore, no journal entries will be made to reflect the transfer of stock to American Water Works Company.

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ITEM NO. 3

Witnesses: James McGivern and Daniel Kelleher

3. Please reference the Joint Petitioners' response to AG 1-28. With respect to this item, please answer the following questions.

a. Are the Joint Petitioners aware of the following language set forth in Appendix A of the Commission's 30 May 2002 Order in Case No. 2002-00018?

The approval of the proposed merger agreement between RWE, Thames, AWWC, and Apollo and the transfer of control of KAWC from AWWC to Thames and RWE is conditioned upon the written acceptance of RWE, Thames, AWWC, and KAWC of the commitments and assurances listed below:

b. Are the Joint Petitioners aware of the fact that Items 4, 5, 6, 11, 12, 16, 17, 18, 19, 20, 21, 22, 23, 27, 28, 29, 30, 31, 32, 33, 34, 36, 37, 39, 40, 41, 42, 44, 45, 47, 48, 54, and 56 of the Commission's 30 May 2002 Order in Case No. 2002-00018 include determinations, requirements, and directions that are expressly applicable to RWE, Thames, or AWWC?

c. Are the Joint Petitioners aware of the following language in KRS 278.990(1)?

Any officer, agent, or employee of a utility, as defined in KRS 278.010, *and any other person* who willfully violates any of the provisions of this chapter or any regulation promulgated pursuant to this chapter, *or fails to obey any order of the commission from which all rights of appeal have been exhausted*, or who procures, aids, or abets a violation by any utility, shall be subject to either a civil penalty to be assessed by the commission not to exceed two thousand five hundred dollars (\$2,500) for each offense or a criminal penalty of imprisonment for not more than six (6) months, or both (emphasis added).

d. Please identify the Joint Petitioners who believe that they are beyond the Commission's authority under KRS 278.990(1) with regard to (for example) a willful breach of an acceptance or commitment that they made in Case No. 2002-00018.

RESPONSE:

3.
 - a. Yes.
 - b. The numbered items in the May 30, 2002, Order in Case No. 2002-00018 are self-explanatory.
 - c. Yes.
 - d. Joint Petitioners cannot answer this item as it relates to a hypothetical future circumstance. The Commission's authority under KRS 278.990 is a function of the factual circumstances that exist at the time that it proceeds under such statute.

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ITEM NO. 4

Witness:

4. Please reference the Joint Petitioners' response to AG 1 – 29. With respect to this item, please answer the following questions.
 - a. Identify the Joint Petitioners that believe that the Commission may only compel a “utility” (as defined by KRS 278.010(3)) to obey a lawful order of the Commission.
 - b. Identify the Joint Petitioners that will object to or otherwise resist an effort by the Commission to enforce the assurances and commitments made by RWE, Thames, and AWWC in response to the Commission’s 30 May 2002 Order in Case No. 2002-00018.
 - c. Identify the Joint Petitioners that believe that they are exempt from the Commission’s enforcement of its orders. Also, indicate the corresponding theory of exemption.

RESPONSE:

4.
 - a. The response to AG 1-29 has nothing to do with the definition of a “utility.”
 - b. The response to a hypothetical future effort to enforce an order cannot be determined at this time. The Joint Petitioners will comply with the May 30, 2002, Order in Case No. 2002-00018.
 - c. See the Response to Item No. 4(b) above.

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ITEM NO. 5

Witness:

5. Please reference the Joint Petitioners' response to AG 1 – 30. With respect to this item, please answer the following questions.
- a. Identify the Joint Petitioners that believe that the Commission may not conduct an investigation and examination concerning that Petitioners' actions relating to an assurance or commitment made in response to the Commission's 30 May 2002 Order in Case No. 2002-00018.
 - b. Identify the Joint Petitioners that believe that the assurances and commitments made by RWE, Thames, or AWWC in response to the Commission's 30 May 2002 Order in Case No. 2002-00018 do not constitute utility activity subject to the Commission's jurisdiction.

RESPONSE:

5. a. None.
- b. KRS 278.250 relates to Commission investigations of the condition of utilities, not "utility activities." Thus, Joint Petitioners' beliefs about what constitutes "utility activity" would seem to have no relevance to the question posed in AG 1-30. Kentucky-American is the only Joint Petitioner that is currently a "utility" as that term is defined in KRS 278.010.

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ITEM NO. 6

Witnesses: James McGivern and Daniel Kelleher

6. Please reference the Joint Petitioners' response to AG 1-32. For each state in which the application has been approved, please provide a list of the conditions and/or restrictions accompanying the approval for each respective state.

RESPONSE:

6. Only New Mexico, Pennsylvania, Maryland and Virginia have included conditions or restrictions on approval of the transaction. Copies of the final orders from New Mexico, Pennsylvania and Virginia are attached in electronic medium. Maryland has approved the transaction but the order has not taken written form. The Terms and Conditions of Maryland's approval are attached in electronic medium.

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ITEM NO. 7

Witness:

7. Please reference the Joint Petitioners' response to LFUCG 1-1. Please explain why "legal jurisdictional issues are not pertinent to this proceeding."

RESPONSE:

7. Legal jurisdictional issues that are described in LFUCG 1-1(c) only arise in the event the Commission seeks court intervention to enforce its orders. That situation does not exist with respect to any of the Joint Petitioners.

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ITEM NO. 8

Witness: James McGivern

8. Please reference the Joint Petitioners' response to LFUCG 1-7. Please provide a definition of "housekeeping modification."

RESPONSE:

8. See the Response to Item No. 6 of LFUCG's Supplemental Requests for Information.

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ITEM NO. 9

Witness: Daniel Kelleher

9. Please reference the Joint Petitioners' response to LFUCG 1-8. Will Kentucky-American's tax liabilities be impacted by liabilities of unregulated companies? In other words, will Kentucky-American's tax liabilities fluctuate based on the performance of unregulated companies?

RESPONSE:

9. Kentucky-American's tax liability will continue to be calculated on a stand-alone basis. Therefore results from unregulated operations will have no impact on Kentucky-American's tax liability.

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ITEM NO. 10

Witness: James McGivern

10. Please reference the Joint Petitioners' response to LFUCG 1-12. Will the Joint Petitioners commit that TWUS will not become involved in the operational control of AWW or KAWC?

RESPONSE:

10. Yes.

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ITEM NO. 11

Witness: James McGivern

11. Please reference the Joint Petitioners' response to LFUCG 1-15. Please provide the definition of "corporate housekeeping."

RESPONSE:

11. Please see the Response to Item No. 6 of LFUCG's Supplemental Requests for Information.

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ITEM NO. 12

Witness:

12. Please reference the Joint Petitioners' response to LFUCG 1-26. The Joint Petitioners make the statement that "the above documents make public substantially the same information that is provided by AWW's current SEC filing period." In detail, please provide the differences.

RESPONSE:

12. The annual reports, quarterly reports, invitations to general meeting and ad hoc reports are filed with the same general frequency as their U.S. counterparts, but the differences between the two countries' filing requirements can only be definitively determined by a side by side comparison of the applicable statutes, regulations, rules and other authorities. Such determination is a legal analysis that can be made by the Attorney General as readily as by counsel for the Joint Petitioners.

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ITEM NO. 13

Witness: James McGivern

13. Please reference the Joint Petitioners' response to LFUCG 1-14d at the Goldman Sachs Report, page 25. Further, please reference the bottom right hand block in the chart at the top of the page. Under the category "Threats," do the Joint Petitioners have an explanation for the bullet point which reads "Potential Stock Overhang 35% owned by municipalities, 12% owned by Alliance"? Is the word "municipalities" as used in this context synonymous with cities? If not, what is the definition of Municipalities?

RESPONSE:

13. The word "municipalities" in this context is a generic term for cities, boroughs, districts, municipal associations as well as public savings banks and state banks holding shares in RWE.

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ITEM NO. 14

Witness: James McGivern

14. Do German municipalities control approximately 35% of RWE AG?

RESPONSE:

14. RWE does not have any official information about the exact shareholding of the municipalities as defined above since all of RWE's shares are bearer shares. According to the German Securities Trading Act (Wertpapierhandelsgesetz), a shareholder only has to disclose his shareholding in bearer shares if it exceeds 5% of the total stock of a company.

There are currently two shareholders belonging to the group of municipalities as defined above that own more than 5% of the total RWE stock:

- (a) A group called RW Holding (10.94% of the voting stock)
- (b) A group called KEB (7.33% of the voting stock).

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ITEM NO. 15

Witness: James McGivern

15. Please reference the "Proposed Corporate Chart" accompanying the Motion and Petition to Modify Order. Please confirm that RWE AG will have ultimate control over TWUS.

RESPONSE:

15. We confirm that RWE AG will have ultimate control over TWUS.

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ITEM NO. 16

Witness: James McGivern

16. Please reference the 2001 Annual Report for RWE AG. What is the role of the Supervisory Board?

RESPONSE:

16. German rules on Corporate Governance provide for a mandatory two-tier board system for stock corporations, consisting of the Executive Board and the Supervisory Board.

The Supervisory Board (“Aufsichtsrat”) is the control body of a stock corporation. Its main function is to appoint, supervise and counsel the Executive Board. This involves examining both the legality and the appropriateness of the actions of the Executive Board. The Supervisory Board has no management functions and may give recommendations but no instructions to the Executive Board. It has very limited rights to represent the company, mainly with the respect to transactions between the company and members of the Executive Board.

The Supervisory Board of RWE Aktiengesellschaft is governed by the provisions of article 95, et seq., of the German Stock Corporation Act (“Aktiengesetz”) and by the provisions of article 8, et seq., of the Articles of Incorporation of RWE Aktiengesellschaft. The Supervisory Board of RWE Aktiengesellschaft consists of twenty members, ten of which are elected by the General Meeting of RWE Aktiengesellschaft pursuant to the provision of the German Stock Corporation Act and ten of which are elected by the employees pursuant to the provisions of the German Co-determination Act (“Mitbestimmungsgesetz”) of May 4, 1976. No member of the Supervisory Board is subjected to any instructions. The membership is a mere personal duty and no representation is possible. The Supervisory Board is a collegial body, which shall elect a Chairman and one Vice-Chairman among its members. The Supervisory Board may form one or multiple committees. The latest report on the performance of its duties can be found in the Report of the Supervisory Board of RWE Aktiengesellschaft which is contained in the Annual Report 2001 on page 8, et seq.

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ITEM NO. 17

Witness: James McGivern

17. Please confirm that the following individuals are still members of the Supervisory Board. In the event that they have replaced, please provide the name of the individual(s) who has assumed that vacancy.
- a. Burkhard Drescher, Mayor of the City of Oberhausen
 - b. Dr. Gerhard Langemeyer, Mayor of the City of Dortmund
 - c. Dr. Wolfgang Reiniger, Mayor of the City of Essen.

RESPONSE:

17. These individuals are still members of the Supervisory Board of RWE.

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ITEM NO. 18

Witness: James McGivern

18. Please provide the names of the mayors and their respective cities for all individuals who currently serve on the Supervisory Board, if different from the above answer, as well as any other board for RWE AG.

RESPONSE:

18. The individuals mentioned in Item No. 17 above are the only current members of the Supervisory Board of RWE Aktiengesellschaft who have a profession as “mayor” of a certain city.

Under German law, membership in a Supervisory Board entirely subsists in the respective individual (personal mandate). The members of the Supervisory Board are therefore entirely free and not subject to any directions in the exercise of their office.

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ITEM NO. 19

Witness: James McGivern

19. In regard to Heinz-Eberhard Holl, please provide the definition for the chief administrative officer Osnabruck Rural District including the duties and responsibilities. Does the position have a similar counter part in the United States governmental system?

RESPONSE:

19. Heinz-Eberhard Holl has retired as of June 30, 2002, from his office as Chief Administrative Officer of the Osnabrück Rural District. He is now a pensioner, but still a member of the Supervisory Board of RWE Aktiengesellschaft. Mr. Holl's former position would be most analogous to a non-elected city manager.

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ITEM NO. 20

Witness: James McGivern

20. Please reference the Joint Petitioners' response to LFUCG 1-14d at the Goldman Sachs Report, page 54, "Influence of the communal shareholders over strategy." Does this paragraph indicate that the communal shareholders, i.e. municipalities, have influence over decisions?

RESPONSE:

20. No. The municipalities' shareholdings only entitle them to voting rights within the General Meeting of RWE Aktiengesellschaft and only in that amount that is attributed to the individual shareholding of each individual municipality. The municipalities are only entitled to cast their votes at the General Meeting and only on resolutions that are to be decided by the General Meeting.

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ITEM NO. 21

Witnesses: Daniel Kelleher and Roy W. Mundy II

21. Does KAWC participate in a money pooling agreement (or other arrangement whereby KAWC's cash reserves are transferred to, and pooled with, the cash reserves of other entities for purposes of short-term investment) with American Water Works, American Water Works Capital Corp., or any other affiliate of American Water Works? If so:
- a. Identify the entities that are parties to the pooling agreement or other arrangement.
 - b. Identify the entity to which KAWC's cash reserves are transferred.
 - c. Provide an estimate of the annual increase in interest income that KAWC receives as a result of this arrangement.
 - d. Provide a complete copy of the agreement that governs the relationship among the parties.
 - e. Provide a complete copy of any order or other correspondence from the Kentucky Public Service Commission approving the agreement (or indicating that it does not need to approve such an arrangement).
 - f. Identify the specific conditions in the agreement that protect KAWC in the event that the entity to whom KAWC's cash reserves are transferred files for bankruptcy, becomes insolvent, or has a substantial money judgment levied against it.

RESPONSE:

21. Yes.
- a. Kentucky-American participates in American Water Capital Corp., along with American Water Works Company, Inc., American Water Works Service Co. and all the regulated subsidiaries of American.

- b. When reserves are transferred by Kentucky-American, they are transferred to American Water Capital Corp., but Kentucky-American has only been in a cash position for 3 of the 27 months since July of 2000 when it became a participant in American Water Capital Corp. The remaining 24 months Kentucky-American has been a borrower from American Water Capital Corp.
- c. The interest income that Kentucky-American earns on its cash invested with American Water Capital Corp. depends on how often Kentucky-American has excess cash. As mentioned above, Kentucky-American is rarely an investor in American Water Capital Corp. Today, Kentucky-American earns an interest rate of about 1.90% from American Water Capital Corp., which is about 50 basis points (or 35%) higher than the 1.40% it would earn investing on its own directly with a commercial bank.
- d. A copy is attached in electronic medium.
- e. A copy is attached in electronic medium.
- f. American Water Capital Corp. has entered into a Support Agreement with American Water Works Company, Inc. by which American Water Works Company, Inc. agrees to (a) maintain ownership of all the voting stock of American Water Capital Corp.; (b) maintain a positive tangible net worth in American Water Capital Corp.; (c) provide immediate and timely funds if American Water Capital Corp. is unable to make timely payment of debt service.

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ITEM NO. 22

Witness: Daniel Kelleher and Roy W. Mundy II

22. If the transaction between American Water Works and the RWE-Thames is approved, does KAWC intend to participate in a money pooling agreement (or other arrangement whereby KAWC's cash reserves are transferred to, and pooled with, the cash reserves of other entities for purposes of short-term investment) with any entities other than those identified in response to the previous question? If so, identify the entities that are expected to be parties to such a pooling agreement or other arrangement, and provide all documents that discuss the possible terms and conditions of such an agreement or arrangement. In particular, identify the specific conditions that would protect KAWC in the event that the entity to whom KAWC's cash reserves are transferred files for bankruptcy, becomes insolvent, or has a substantial money judgment levied against it.

RESPONSE:

22. No decision in this regard has yet been taken. However, we note that such money pooling is efficient and probably would reduce Kentucky-American's costs.

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ITEM NO. 23

Witnesses: Daniel Kelleher and Roy W. Mundy II

23. Would the Joint Petitioners agree to a condition that prohibits KAWC, American Water Works Capital Corp., and American Water Works from entering into a money pooling agreement or similar arrangement with Thames, RWE, or any other non-American Water Works affiliates of Thames and RWE? If not, please state in details the reasons for opposing such a condition.

RESPONSE:

23. Since such an arrangement could be beneficial to the named companies, it appears to be inappropriate to commit, without study or evaluation, to such a condition.