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COMMONWEALTH OF VIRGINIA
STATE CORPORATION COMMISSION

AT RICHMOND, April 4, 2002

JOINT PETITION OF

AMERICAN WATER WORKS COMPANY, INC.,

CASE NO. PUA010082

and

THAMES WATER AQUA HOLDINGS GmbH

For approval under the Utility Transfers Act

ORDER GRANTING APPROVAL

On December 19, 2001, American Water Works Company, Inc. ("American"), and Thames Water Aqua Holdings GmbH ("Thames Holdings") (collectively, "Petitioners") filed a joint petition with the State Corporation Commission ("Commission") requesting approval, pursuant to § 56-88.1 of the Code of Virginia ("Code"), for Thames Holdings to acquire control of Virginia-American Water Company, United Water Virginia, Inc., and Bluefield Valley Water Works Company (collectively, the "American Companies").

Subject to obtaining the necessary regulatory approvals, American, Thames Holdings, RWE Aktiengesellschaft ("RWE"), the parent holding company of Thames Holdings, and Apollo Acquisition Company ("Acquisition Corp."), a subsidiary of Thames Holdings, have entered into an Agreement and Plan of Merger dated September 16, 2001 ("Agreement"). The Agreement provides that Acquisition Corp. will be merged with and into American, the corporate parent or grandparent of each of the American companies, with American as the surviving entity. American will then become a wholly owned subsidiary of Thames Holdings.

Alternatively, American may become a wholly owned subsidiary of a new company created by Thames Holdings for the purpose of holding the American stock that will be acquired pursuant to the Agreement. The proposed transaction, including the alternate proposal, will result in an indirect change of control of the American Companies and requires approval under Chapter 5 of the Code. The Petitioners represent that the transaction will not jeopardize or impair the provision of adequate service to the public at just and reasonable rates.

The American Companies and Parties to the Agreement

Virginia-American Water Company (“Virginia-American”) is a Virginia public service company and a wholly owned subsidiary of American. Its principal office is located in Alexandria, Virginia. Virginia-American provides water service in the City of Alexandria, the community of Dale City, the City of Hopewell, Fort Lee, and a portion of Prince George County, Virginia.

United Water Virginia, Inc. (“United Water Virginia”), is a Virginia public service company with principal offices in Alexandria, Virginia, and is a wholly owned subsidiary of Virginia-American, which is wholly owned by American. United Water Virginia provides water service in parts of the counties of Westmoreland, Northumberland, Lancaster, Essex, and King William, Virginia.

Bluefield Valley Water Works Company (“Bluefield Valley Water”) is a Virginia public service company that provides water service in Bluefield, Virginia. Its office is located in Charleston, West Virginia, and it is a wholly owned subsidiary of West Virginia-American Water Company, which, in turn, is wholly owned by American.

American is a Delaware corporation located in Voorhees, New Jersey. As stated in the joint petition, American and its subsidiaries have approximately 6,300 employees and provide

water, wastewater, and other water resources management services to a population of approximately twelve million in 28 states and Canada.

Thames Holdings, with its local offices in Voorhees, New Jersey, is a company organized under the laws of the Federal Republic of Germany and is a wholly owned subsidiary of RWE.

As stated in the joint petition, RWE is Germany's fifth largest industrial group and a leading international multi-utility provider with core businesses in electricity, water, gas, waste management, and utility-related services.

Acquisition Corp. is a Delaware corporation and a wholly owned subsidiary of Thames Holdings created for the purpose of implementing the Agreement.

Thames Water plc ("Thames"), though not a party to the Agreement, is a wholly owned subsidiary of Thames Holdings and is a public limited corporation organized under the laws of England and Wales with its principal office located in London, United Kingdom. As stated in the joint petition, Thames operates all of the water businesses of Thames Holdings and brings to Thames Holdings its extensive experience and expertise as 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.

The Commission issued its Order for Notice and Comment on January **14**, 2002. Counsel for Petitioners filed Proof of Notice on February **5**, 2002.

On February **4**, 2002, Loren D. Mellendorf ("Mr. Mellendorf") filed comments wherein he expressed concern over yet another natural resource being controlled by a foreign entity. On February **5**, 2002, the Hopewell Committee for Fair Water Rates ("the Committee"), through counsel, filed Comments, Request for Hearing, and Notice of Participation. In its comments, the Committee expressed concern that the change in management and control might impact service

quality and rate issues for customers of Virginia-American. The Committee also requested a hearing.

On February 11, 2002, The Town of Bluefield ("Bluefield"), through counsel, filed comments and requested a hearing (if necessary). Bluefield also filed a notice of participation. Bluefield's comments relate to its need to resolve an existing matter concerning designation of service areas for Bluefield and Bluefield Water and the need for a franchise agreement between Bluefield and Bluefield Water for the operation of the Bluefield water utility in the Town of Bluefield.

The Transaction

Under the terms of the Agreement, American will become a wholly owned subsidiary of Thames Holdings, which, in turn, is a wholly owned subsidiary of RWE. Each issued and outstanding share of 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, will be converted into the right to receive cash consideration of \$46.00 per share. As of September 30, 2001, the authorized capital stock of American consists of (1) 300,000,000 shares of American Common Stock; (2) 1,770,000 shares of Cumulative Preferred Stock, par value \$25.00 per share (the "Preferred Stock"); (3) 750,000 shares of Cumulative Preference Stock, par value \$25.00 per share (the "Preference Stock"); and (4) 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 Preferred Stock, 365,158 shares of Preference Stock, and no shares of Preferential Stock were issued and outstanding. The

Agreement requires American 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 Preference Stock at a redemption price of \$25.00 per share, plus full cumulative dividends thereon. The Agreement further provides that, at the time of closing, each share of the American Common Stock owned by Thames Holdings, Acquisition Corp., ~~or~~ American will automatically be cancelled and cease to exist, and no consideration will be delivered in exchange for such shares. RWE will cause Thames Holdings to have sufficient funds to consummate the transaction. The total value of the transaction is about **\$7.6** billion.

The Petitioners state that, after the transaction is completed, Virginia-American will continue to be owned by American, United Water Virginia will continue to be wholly owned by Virginia-American, and Bluefield Valley Water will continue to be a wholly owned subsidiary of West Virginia-American Water Company. The Petitioners represent that the transaction will not alter the daily operations of the American Companies, which will continue to be operated by American and subject to the jurisdiction and regulation of the Commission

On March 1, 2002, the Committee filed a Motion to Withdraw Comments and Request for Hearing ("Motion") and a Notice of Settlement ("Notice"). In the Motion and Notice, the Committee states that the Committee and the Petitioners state that they have reached a settlement agreement whereby the proposed transaction will not result in an acquisition adjustment for the customers of Virginia-American and will not affect certain agreements between Virginia-American and the Committee concerning non-potable service.

Bluefield filed follow-up comments on March 14, 2002, wherein it stated that Bluefield agreed with the representatives of American that if they could work out matters discussed in its

original comments, Bluefield would withdraw its protest. Bluefield filed no further comments. It has not withdrawn its protest and has not requested a hearing.

With respect to Mr. Mellendorf's concerns relating to the trend toward foreign ownership of United States entities, the Petitioners state that the local utilities will continue to operate under their existing tariffs until changed by the Commission. The Petitioners state that the American Companies will fully honor all obligations to customers and all regulatory authorities and that the transfer will not affect the outstanding debt of the American Companies. Moreover, there will be no changes in the American Companies' balance sheet or financial position.

On March 14, 2002, Staff filed its Report. In its Report, Staff noted a concern with the trend toward multiple layers of ownership of local utility companies, both domestic and foreign. Staff questioned whether decisions made at higher levels above the local utility genuinely consider local customers' best interests. Staff noted that the Petitioners represent that nothing will change at the local level and that customers' service and rates will not be adversely affected. Staff stated that, after such transactions take place, it is quite possible that decisions regarding the local utility that were once made at a local level or by a direct parent will then be made at higher levels. Staff noted that such decisions are not necessarily detrimental to the Virginia utility customer. However, Staff stated that, once approval is granted, changes in the level of decision making may be difficult, if not impossible, to track and monitor. Staff indicated that one way of tracking or monitoring such action is through the review and prior approval requirement for affiliate transactions. Staff noted, however, that Bluefield Valley Water is not subject to the Affiliates Act pursuant to § 56-265.13:7 of the Code.

Regarding Bluefield's protest, Staff believes that while issues addressed by Bluefield need to be resolved, resolution of such issues is not necessary within the context of this

proceeding.¹ With respect to the concerns raised by Mr. Mellendorf, while they may have some validity, monitoring what happens on the local company level can be accomplished through review and prior approval of affiliate transactions, monitoring complaints, and periodic audits conducted at the local level. Staff also stated in its Report that it does not appear that the American Companies will face higher capital costs as a result of the acquisition.

Staff found no indication that the proposed transaction would impair or jeopardize the provision of adequate service at just and reasonable rates and, therefore, recommended approval of the proposed transaction. To the contrary, Staff concluded that there appear to be some very good benefits. These include the financial backing of a large company such as RWE and the security concerns that have been experienced by RWE and Thames that perhaps American and the American Companies have not experienced and do not have the knowledge and resources to address such concerns to the extent that RWE and Thames have addressed. Thames and RWE appear to have strong financial statements, and there is no indication that there are any financial problems that could filter down to the American Companies. Staff also recommended that a report be submitted to the Commission's Director of Public Utility Accounting within 30 days of closing on the transaction providing certain details on the transaction as described herein. Staff recommended that Petitioners be required to track costs and savings associated with the merger and identify and quantify any portion of such costs and savings attributable to the American Companies' Virginia jurisdiction. Staff did not believe a hearing was necessary in this case.

On March 18, 2002, Petitioners, through counsel, filed comments supporting Staff's recommendations.

¹Even though the resolution of such issues is not necessary within the context of this proceeding, Staff will monitor the progress in resolving the issues and will provide assistance, if necessary, to Bluefield and Bluefield Water in resolving the issue of the franchise agreement and service territory as addressed by Bluefield.

THE COMMISSION, upon consideration of the joint petition, representations of Petitioners, comments filed, Staff's report, and applicable law, is of the opinion and finds that the above-described transfer of control will neither impair nor jeopardize the provision of adequate service to the public at just and reasonable rates and should, therefore, be approved.

Accordingly, IT IS ORDERED THAT:

- 1) Pursuant to §§ 56-88.1 and 56-90 of the Code, American Water Works Company, Inc., and Thames Water Aqua Holdings GmbH are hereby granted approval of the proposed transfer of stock of American to be held either by Thames Holdings or a company created by Thames Holdings for this purpose, such transfer resulting in the indirect transfer of control of Virginia-American, United Water Virginia, and Bluefield Water under the terms and conditions as described herein.
- 2) The approval granted herein shall have no ratemaking implications.
- 3) As required by Chapter 4 of Title 56 of the Code of Virginia ("the Affiliates Act"), Virginia-American and United Water Virginia shall file, pursuant to the Affiliates Act, for approval of any agreements with American and Thames Holdings, as well as any affiliates of American and Thames Holdings.
- 4) The Petitioners shall be required to track costs to achieve the merger as well as savings achieved as a result of the merger and shall identify and quantify any portion of such costs and savings attributable to the American Companies' Virginia jurisdiction. Costs and savings shall be tracked for five years from the date of closing and shall be made available for Staff review.
- 5) The Petitioners shall submit a report of the action taken pursuant to the approval granted herein with the Commission's Director of Public Utility Accounting within

thirty (30) days of such action taken, subject to extension by the Director of Public Utility Accounting. Such report shall include the date the acquisition took place, the total consideration paid, and the name of the entity holding the American stock.

- 6) There appearing nothing further to be done in this matter, it hereby is dismissed.