

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

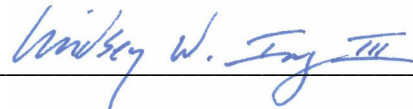
THE JOINT PETITION OF KENTUCKY-)
AMERICAN WATER COMPANY, THAMES)
WATER AQUA HOLDINGS GMBH, RWE)
AKTIENGELLSCHAFT, THAMES WATER)
AQUA US HOLDINGS, INC., AND AMERICAN) CASE NO. 2006-00197
WATER WORKS COMPANY, INC. FOR)
APPROVAL OF A CHANGE IN CONTROL OF)
KENTUCKY-AMERICAN WATER COMPANY)

NOTICE OF FILING

Joint Petitioners hereby give notice of their filing of the attached supplemental response to Item No. 1 of the LFUCG's First Request for Information and Item No. 7(c) of the Commission Staff's First Request for Information.

Respectfully submitted,

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By: 

Attorneys for RWE Aktiengesellschaft,
Thames Water Aqua Holdings GmbH,
Thames Water Aqua US Holdings, Inc.,
American Water Works Company, Inc., and
Kentucky-American Water Company

CERTIFICATION

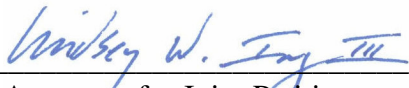
This is to certify that a true and accurate copy of the foregoing has been electronically transmitted to the Public Service Commission on January 29, 2007; that the Public Service Commission and other parties participating by electronic means have been notified of such electronic transmission; that, on January 30, 2007, the original and one (1) copy in paper medium will be hand-delivered to the Public Service Commission, 211 Sower Boulevard, Frankfort, Kentucky 40601; and that on January 29, 2007, one (1) copy in paper medium will be served upon the following via U.S. Mail:

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By 
Attorneys for Joint Petitioners

COMMONWEALTH OF KENTUCKY
PUBLIC SERVICE COMMISSION

IN THE MATTER OF:

THE JOINT PETITION OF KENTUCKY-AMERICAN)
WATER COMPANY, THAMES WATER AQUA)
HOLDINGS GMBH, RWE AKTIENGESELLSCHAFT,)
THAMES WATER AQUA US HOLDINGS, INC.,) CASE NO. 2006-00197
AND AMERICAN WATER WORKS COMPANY,)
INC. FOR APPROVAL OF A CHANGE IN CONTROL)
OF KENTUCKY-AMERICAN WATER COMPANY)

SUPPLEMENTAL RESPONSE TO COMMISSION STAFF'S
FIRST INFORMATION REQUEST DATED JUNE 27, 2006

Item No. 7

Witness: Ellen Wolf

7. a. List all regulatory and governmental approvals that Joint Petitioners, either individually or collectively, must obtain for the proposed transfer and public offering.
- b. For each approval listed in response to Item 7(a), provide a copy of the application or other filing, state the date when the application or initial filing was made or is expected to be made, and the expected date of a final decision on the application or filing.
- c. Provide a copy of each regulatory or governmental approval within 10 days of the issuance of such approval.

SUPPLEMENTAL RESPONSE TO PART (C):

In addition to the approvals identified in Petitioners' July 11, 2006 response and September 11, 2006 supplemental response to part c of this request, the Proposed Transaction which is the subject of this Petition was approved by the New Mexico Public Regulation Commission on January 18, 2007 and the West Virginia Public Service Commission on January 26, 2007. Please see the attached.

BEFORE THE NEW MEXICO PUBLIC REGULATION COMMISSION

IN THE MATTER OF THE SALE OF)
OF UP TO 100% OF THE COMMON STOCK) Case No. 06-00192-UT
OF AMERICAN WATER WORKS)
COMPANY, INC.)
_____)

FINAL ORDER APPROVING RECOMMENDED DECISION

THIS MATTER comes before the New Mexico Public Regulation Commission ("Commission") upon the Recommended Decision issued by Hearing Examiner William Herrmann on December 15, 2006. Having considered the Recommended Decision and the record in this case and being fully apprised in the premises,

THE COMMISSION FINDS AND CONCLUDES:

1. The Commission has jurisdiction over the parties and the subject matter of this case.
2. The Recommended Decision is well taken and should be adopted.
3. The Statement of the Case, Discussion, and all findings and conclusions contained in the Recommended Decision, attached to this Final Order as Exhibit 1, are incorporated by reference as if fully set forth in this Final Order, and are ADOPTED, APPROVED, and ACCEPTED as Findings and Conclusions of the Commission.

IT IS THEREFORE ORDERED:

- A. The Orders contained in the Recommended Decision as set forth in Exhibit 1 are incorporated by reference as if fully set forth herein and are ADOPTED, APPROVED and ACCEPTED as Orders of the Commission.

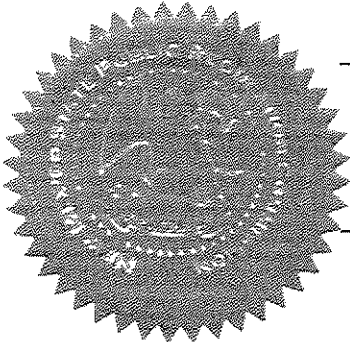
B. The Recommended Decision is ADOPTED, APPROVED, and ACCEPTED in its entirety.

C. This Order is effective immediately.

D. A copy of this Order, including Exhibit 1, shall be served on all persons listed on the attached Certificate of Service.

Issued under the seal of the Commission at Santa Fe, New Mexico, this 18th
day of January 2007.

NEW MEXICO PUBLIC REGULATION COMMISSION




BEN R. LUJAN, CHAIRMAN


JASON MARKS, VICE CHAIRMAN


DAVID W. KING, COMMISSIONER


CAROL K. SLOAN, COMMISSIONER


SANDY JONES, COMMISSIONER

DEC 20 2006

BEFORE THE NEW MEXICO PUBLIC REGULATION COMMISSION

MONTGOMERY & ANDREWS, P.A.

IN THE MATTER OF THE SALE OF)
 UP TO 100% OF THE COMMON STOCK)
 OF AMERICAN WATER WORKS)
 COMPANY, INC.)

Case No. 06-00192-UT

RECOMMENDED DECISION OF THE HEARING EXAMINER

William J. Herrmann, Hearing Examiner in this case, hereby submits this Recommended Decision to the New Mexico Public Regulation Commission ("**Commission**") pursuant to 17 NMAC 1.2.32.E(4) and 1.2.39.B. The Hearing Examiner recommends that the Commission adopt the following Statement of the Case and Discussion.

STATEMENT OF THE CASE

On May 22, 2006, New Mexico-American Water Company, Inc. ("**NMA**") filed its Petition requesting the following approvals and authorizations by the Commission:

(i) Such approval pursuant to Commission Rule 450.15 as may be required for (i) the sale by Thames Water Aqua Holdings GmbH ("**Thames GmbH**") of up to 100% of the shares of common stock of American Water Works Company, Inc. ("**American Water**") in one or more public offerings, and (ii) prior to the closing of the initial public offering ("**IPO**"), the merger of Thames Water Aqua US Holdings, Inc. ("**TWAUSHI**") with and into American Water, with American Water being the surviving corporation (the transactions set forth in (i) and (ii) are hereinafter collectively referred to as the "**Proposed Transaction**"); and

(ii) Such approval pursuant to NMSA 1978, Sections 62-3-3(L) and 62-6-19(B)(2), and Commission Rule 450.10 as may be required for adoption of the

Amended and Restated General Diversification Plan of New Mexico-American Water Company, Inc. ("GDP II"), which NMA filed with the Commission as Exhibit B to the Petition on May 22, 2006, and by which NMA proposes to amend and restate the General Diversification Plan of New Mexico-American Water Company, Inc. ("GDP I"), filed with the Commission on March 12, 2002; and

(iii) Such authorization pursuant to NMSA 1978, Section 62-6-12(A)(2) as may be required for the merger of TWAUSHI with and into American Water as part of the Proposed Transaction; and

(iv) Such other authorizations, approvals, and consents as may be required under the New Mexico Public Utility Act and the Commission's Rules and Regulations for the Proposed Transaction contemplated by the Petition.

On August 21, 2006, the Commission issued its Order Designating Hearing Examiner, which appointed William J. Herrmann to preside over this matter.

On August 28, 2006, the Hearing Examiner issued his Order Setting Pre-Hearing Conference, in which he scheduled a pre-hearing conference to discuss procedural dates and details for this case.

Pursuant to the Order Setting Pre-hearing Conference, a pre-hearing conference was held September 6, 2006, at 10 a.m. at the offices of the Commission attended by NMA, Thames GmbH, American Water, Mesa Capital Co. LLC, and Commission Staff.

On September 7, 2006, the Hearing Examiner issued a Procedural Order, which set procedural dates and schedules for this case, including publication of notice in a newspaper of general circulation where New Mexico-American provides utility service, and mailing of notice to the Attorney General of New Mexico, each of the intervenors in

Case No. 06-00208-UT, legislators representing districts in which NMA provides service, and the members of the municipal and county governing bodies, the city manager, the superintendent of schools, the fire chief, and the director of the Chamber of Commerce in each of NMA's service districts. (In the Procedural Order, the Hearing Examiner also joined Thames GmbH, on behalf of itself and its parent holding company RWE Aktiengesellschaft ("**RWE**"), as co-petitioners. NMA, Thames GmbH, and RWE will sometimes be collectively referred to as "**Petitioners.**")

On September 19, 2006, an Affidavit of Publication was filed reflecting that Notice issued with the Procedural Order was published in the Clovis News Journal on September 13, 2006.

On September 20, 2006, an Affidavit of Publication was filed reflecting that the Procedural Order was also published in the Albuquerque Journal on September 15, 2006.

On October 26, 2006, an Affidavit of Compliance was filed reflecting that the Notice issued with the Procedural Order was mailed on September 20 and 23, 2006, to persons designated in the Procedural Order, noting that the Attorney General of New Mexico and the intervenors in Case No. 06-00208-UT had previously received service of the Procedural Order and the Notice attached thereto.

There were no interventions in this case.

Petitioners filed the direct testimonies of John R. Bigelow, Paul G. Townsley, David P. Stephenson, and Kathy A. Wright with their Petition on May 22, 2006.

On May 22, 2006, pursuant to Commission Rule 450, Petitioners filed NMA's GDP II as Exhibit B to the Petition.

Staff filed the prepared direct testimony of Thomas C. Patin on October 20, 2006.

Petitioners filed the rebuttal testimony of John R. Bigelow on October 27, 2006.

A public hearing was commenced on November 2, 2006, at 10:00 a.m. at the Commission's offices and concluded on that same day.

APPEARANCES:

For Petitioners

Thomas W. Olson, Esq., and Andrew S. Montgomery, Esq., Montgomery & Andrews, P.A., attorneys for New Mexico-American Water Company, Inc. and Thames Water Aqua Holdings GmbH

For Staff

Peggy Bowen, Esq.

At the hearing, the direct testimonies of Petitioners' witnesses Bigelow, Townsley, Stephenson, and Wright and the rebuttal testimony of Petitioners' witness Bigelow were admitted into evidence and the witnesses were made available for cross-examination. The direct testimony of Staff witness Patin was admitted into evidence and the witness was made available for cross-examination. At the end of the hearing, the Hearing Examiner requested that a proposed recommended decision of the Hearing Examiner be submitted on behalf of Petitioners and Staff. Petitioners and Staff also agreed to waive exceptions and allow either party to respond to Commissioner questions as long as the Recommended Decision was consistent with their respective positions.

DISCUSSION

A. The Proposed Transaction

NMA is a waterworks corporation organized and existing under the laws of the State of New Mexico, with its principal office located at 1005 Norris Street, Clovis, New Mexico 88101. NMA is engaged in the business of distributing water to the public in New Mexico. It currently owns, operates and maintains potable water production, treatment, storage, transmission and distribution systems for the purpose of furnishing potable water for residential, commercial, industrial and governmental users in and around Clovis, New Mexico, and Edgewood, New Mexico. NMA is a wholly-owned subsidiary of American Water, except that each of its directors holds a single share of qualifying common stock.

American Water is a corporation organized and existing under the laws of the State of Delaware, with its principal office located at 1025 Laurel Oak Road, Voorhees, NJ 08043. American Water owns regulated operating subsidiaries in 18 states. American Water does not conduct business in New Mexico, nor is it authorized to do so.

TWAUSHI is a corporation organized and existing under the laws of the State of Delaware, with its principal office located at 1025 Laurel Oak Road, Voorhees, NJ 08043. TWAUSHI is the direct parent company of American Water, and is a wholly owned subsidiary of Thames GmbH. TWAUSHI does not conduct business in New Mexico, nor is it authorized to do so.

Thames GmbH is a foreign corporation organized and existing under the laws of the Federal Republic of Germany. Thames GmbH's principal office is located at Opernplatz 1, 45128 Essen, Federal Republic of Germany. It is a wholly-owned

subsidiary of RWE and is the holding company for most of RWE's water operations in the United States and in several foreign countries.

RWE is a foreign corporation organized and existing under the laws of the Federal Republic of Germany. RWE's principal office is located at Opernplatz 1, 45128 Essen, Federal Republic of Germany.

NMA is a public utility as defined by NMSA 1978, Section 62-3-3(G)(3), and is subject to regulation by the Commission. By reason of their direct or indirect ownership of the voting securities of NMA, American Water, TWAUSHI, Thames GmbH, and RWE are or may be public utility holding companies as defined by NMSA 1978, Section 62-3-3(N).

The Proposed Transaction consists of (i) the sale by Thames GmbH of up to 100% of the shares of common stock of American Water in one or more public offerings and (ii) prior to the closing of the IPO, the merger of TWAUSHI with and into American Water, with American Water being the surviving corporation. The shares are proposed to be sold through one or more underwritten public offerings to a broad group of investors, including institutional and retail investors. Petitioners state that it is the desire of Thames GmbH to sell 100% of the shares in the IPO, but that, depending on market conditions, Thames GmbH may decide not to sell 100% of the shares in the IPO, the remainder of the shares then to be sold in a subsequent offering or offerings as soon as reasonably practicable following the IPO. The IPO and any subsequent public offerings are to be conducted according to the rules for underwritten public offerings mandated by the SEC. The process for the IPO and any subsequent public offering is substantially the same, although the timeframe for subsequent public offerings is generally shorter.

Petitioners describe the process for the IPO and any subsequent public offerings in general terms. NMA Exhibit 4 (“**Bigelow Direct**”) 6-8; Petition, Exh. B, at 10-12. The key participants in an underwritten public offering such as this one are the issuer of the shares, in this case, American Water; the underwriters of the offering, which will be a group of investment banks; and the seller of the shares, in this case, Thames GmbH.

As an initial step in the IPO process, a registration statement will be prepared and filed with the U.S. Securities and Exchange Commission (“**SEC**”). The registration statement will contain extensive, primarily historical information about the issuer and the offering, including, among other things, the issuer’s audited financial statements and descriptions of its business and management.

The primary portion of the registration statement is a prospectus, which is used to market the offering to investors. The prospectus will include a clear statement that no investor is permitted to acquire control of American Water without obtaining the necessary regulatory approvals pursuant to applicable state laws. Petitioners state that RWE, through its subsidiary Thames GmbH, has no intention of permitting any person or entity to acquire a controlling interest in American Water through the Proposed Transaction. Bigelow Direct 9. In consequence, the Petition does not request approval for any individual or group to acquire a controlling interest in American Water in either the IPO or a subsequent public offering, nor has such approval been requested in any other state. *Id.* It should be noted in this regard that the New Mexico Public Utility Act specifically provides:

Any consolidation, merger, acquisition, transaction resulting in control or exercise of control, or other transaction in contravention of this section without prior authorization of the commission shall be void and of no effect.

NMSA 1978, § 62-6-12(B). Nothing herein shall be construed as granting authority to any person to acquire a controlling interest in American Water.

The initial registration statement, upon filing with the SEC, will become publicly available on the SEC's web site. One or more amendments of the registration statement may subsequently be filed in response to comments by the SEC, with such amendments also becoming available on the SEC's web site upon filing with the SEC.

The offering will then be marketed to potential investors, after which American Water will ask the SEC to declare the registration statement effective. At that point the underwriters and Thames GmbH will agree on a price per share at which the shares will be sold to the public. The closing of the offering, at which the purchases are settled, is required to take place three or four business days after pricing. Thereafter the stock begins trading in the public market. In this case, Petitioners anticipate that the shares will be listed on the New York Stock Exchange.

B. Jurisdiction and Regulatory Approvals

(i) Authorization Pursuant to NMSA 1978, §§ 62-6-12, 62-6-13

The Petition requests such authorization and approval pursuant to NMSA 1978, Sections 62-6-12(A)(2) and 62-6-13, and as may otherwise be required for the Proposed Transaction.

Pursuant to NMSA 1978, Section 62-6-13, the Commission shall give its consent and approval in writing to the transaction unless the Commission finds "that the proposed transaction is unlawful or inconsistent with the public interest." In applying the statutory test in the context of a proposed merger, the Commission has previously determined:

Under the facts of this proceeding, a “no net detriment” test as previously utilized by the Commission does not mandate either approval or rejection of SPS’ Application. The outcome depends on how the Commission weighs the quantifiable and unquantifiable benefits against mostly unquantifiable detriments. By their very nature unquantifiable benefits and costs are not subject to a dollar valuation but, nevertheless, are every bit as important, or more so, as quantifiable benefits and costs. Because a “no net detriment” test can be misinterpreted to mean that all costs and benefits are somehow quantifiable, or that quantifiable benefits outweigh unquantifiable detriments, the commission should no longer use this phrase in describing its statutory mandate in approving mergers. Rather, the Commission should state that the test is whether the public interest is served by approving the merger as determined by the specific facts and circumstances of each case. Generally the complexities of merger should require a positive benefit to ratepayers if they are to be approved.

Corrected Recommended Decision of the Hearing Examiner at 22, *In the Matter of the Application of Southwestern Public Service Co.*, Utility Case No. 3577 (Nov. 15, 1996), *adopted by* Final Order Approving Recommended Decision (Jan. 28, 1997).

The Petitioners have satisfied the statutory standard, as construed by the Commission, in providing evidence of the following benefits that they allege arise out of the Proposed Transaction, of which the merger of TWAUSHI with and into American Water is a part.

As a result of the Proposed Transaction, American Water will become a publicly-traded company focused on water and wastewater in the United States and dedicated to maintaining a high level of service at just and reasonable rates. The Proposed Transaction will provide American Water with access to the United States public equity and debt capital markets, maintaining American Water's ability to finance necessary and vital investments in the infrastructure of its subsidiaries, including NMA. In addition, following the IPO, NMA customers will be able to invest in their water utility by buying American Water stock. Bigelow Direct 11-14.

As a publicly-traded company, American Water will be managed under the supervision of American Water's board of directors. NMA will continue to be operated by its local management, under the supervision of NMA's board of directors. American Water will have a sound financial structure and, as a publicly-traded company, will be subject to extensive SEC disclosure and governance requirements, including Sarbanes-Oxley-related requirements, and the requirements of the stock exchange on which its shares are traded. Bigelow Direct 11-12; NMA Exhibit 1 ("**Townsley Direct**") 4; NMA Exhibit 2 ("**Wright Direct**") 3-4.

Following completion of the Proposed Transaction, NMA will continue to provide safe, adequate, and reliable service in fulfillment of its obligations under New Mexico law. For customers, there will be no change in service, and NMA, by remaining a stand-alone entity, can continue with its community-based utility service. Wright Direct 2-6.

It is not contemplated that the Proposed Transaction will cause any material changes in the balance sheet or financial position of NMA. Access to capital will further NMA's ability to acquire additional water systems and water rights and implement new technology. In addition, American Water, by virtue of its access to capital resources in the public equity market, will be well-positioned to meet future demands and to insure that high quality service is maintained. Bigelow Direct 12-13; NMA Exhibit 3 ("**Stephenson Direct**") 4-5.

There will be no change in NMA's incumbent local management as a result of the Proposed Transaction. The Proposed Transaction will not cause changes in NMA's local staffing or employee compensation, and the value of employee benefits will not be reduced. Moreover, the attraction and retention of highly-qualified and capable

employees should be facilitated. Employees will be able to invest in their water utility by buying American Water stock. In addition, American Water may create an employee stock purchase program following the Proposed Transaction. Wright Direct 3-4.

NMA will continue to operate under its existing tariffs and rate structures. The Commission will continue its supervision and regulation of NMA pursuant to the New Mexico Public Utility Act and Commission Rule 450, and the Commission can insure that the holding company structure, which was initially approved in 1986 between American Water and NMA, will continue to have no adverse and material effect on NMA's ability to provide reasonable and proper service at fair, just, and reasonable rates. Stephenson Direct 7.

NMA and American Water commit to the Commission that NMA will not subsidize American Water, and that there will not be any cross-subsidization or improper cost allocations detrimental to NMA to or from American Water or any of its subsidiaries. American Water and NMA commit to exclude the costs of the Proposed Transaction (including the merger of TWAUSHI with and into American Water) from rates and charges for service by NMA. NMA is not a party to the Proposed Transaction and will not issue, assume, or guarantee any securities in connection with the Proposed Transaction, nor will it sell, transfer, or otherwise dispose of its stock or its plant, property, or other assets, or purchase or otherwise acquire any securities, plant, property, or other assets in connection therewith. The Proposed Transaction will have no tax effects for NMA on a consolidated-entity or stand-alone basis. Petition, Exh. B, at 7-8.

Petitioners have thus identified a number of positive benefits likely to accrue to NMA and its customers from the Proposed Transaction. Staff made note of the benefits expected to accrue as a result of the Proposed Transaction and concurred with Petitioners' statement that "the Proposed Transaction will result in a company with a sound financial structure that is focused on the water and wastewater business in the U.S., that will be well managed, and that will provide benefits to both customers and employees of NMA." Staff Exhibit 1 ("**Patin Direct**") 3-4, 7.

On the other hand, the record reflects no detriments, quantifiable or unquantifiable, attributable to the Proposed Transaction. Mr. Stephenson testified that the Proposed Transaction can be expected to have minimal impact on NMA's cost of service. Stephenson Direct 6. At the hearing he explained that one potential change, which could be positive or negative, is that all inter-company financial relationships between RWE and American Water and its subsidiaries will be terminated upon completion of the Proposed Transaction, which may in turn require changes in the terms of inter-company debt between NMA and American Water Capital Corp. ("**AWCC**"), an American Water subsidiary which provides debt funding for American Water operating subsidiaries. *See id.* at 4. In such event, NMA would seek required approvals from the Commission in a separate petition for any necessary changes in connection with the refinancing of the debt as between AWCC and NMA. *Id.* at 5. Fundamentally, however, the capitalization and financial structure of American Water and its subsidiaries are expected to remain sound following completion of the Proposed Transaction. The Petition notes that the Proposed Transaction is expected to result in American Water becoming the largest publicly traded water company in the United States. Petition ¶ 3.

American Water will retain its solid balance sheet and, as a result of the IPO, will have access to public equity markets as well as investment-grade debt markets. Bigelow Direct 20. American Water's goal is to have a debt-to-equity ratio in the range of 45-55% debt to 55-45% equity-like components. *Id.* at 16. In sum, American Water's debt capacity and access to capital will be of sufficient depth to cover the financing needs of NMA. *Id.* at 20.

The Proposed Transaction is, therefore, in all respects lawful and consistent with the public interest and should be approved pursuant to NMSA 1978, Sections 62-6-12(A)(2) and 62-6-13.

(ii) Authorization pursuant to Commission Rule 450 (Class II transactions)

Petitioners have also requested such authorizations and approvals pursuant to Commission Rule 450 as may be required for the Proposed Transaction and for adoption of an amended and restated general diversification plan for NMA.

The Commission hereby adopts the following definitions concerning this transaction as regards the potential applicability of Section 62-3-3(L)(1) relating to "Class II transactions": NMA is a "public utility" as defined in Section 62-3-3(G)(3). American Water is a "public utility holding company" as defined in Section 62-3-3(N) and an "affiliated interest" as defined in Section 62-3-3(A). TWAUSHI is a "public utility holding company" as defined in Section 62-3-3(N) and an "affiliated interest" as defined in Section 62-3-3(A). Thames GmbH is a "public utility holding company" as defined in Section 62-3-3(N) and an "affiliated interest" as defined in Section 62-3-3(A). RWE is a "public utility holding company" as defined in Section 62-3-3(N) and an "affiliated

interest" as defined in Section 62-3-3(A). American Water's subsidiaries are "affiliated interests" as defined in Section 62-3-3(A).

In adopting these definitions, the Commission does not determine, nor does it waive, however, its authority to determine in the future, whether or not the public utility holding companies are public utilities pursuant to the New Mexico Public Utility Act. The Commission has previously held that a holding company could be a public utility under New Mexico law. Specifically, the Commission stated:

We find, however, that nothing in the Public Utility Act precludes our finding that a specific holding company is a public utility. Because the approval of PNM's holding company is subject to the terms and conditions we find are in the public interest, and because the interests of ratepayers and PNM's ability to provide them adequate service at reasonable rates are consequently protected, we need not determine whether the holding company is a public utility. Absent the continued applicability of the required terms and conditions, whether due to PNM's non-compliance with them or for some other reason, we would find it necessary to decide whether PNMR is a public utility.

Order Approving Formation of a Holding Company 13, Utility Case No. 3137.

The Proposed Transaction in the present case requires or may require the filing and approval of a general diversification plan. In order to approve a proposed Class II transaction and general diversification plan pursuant to Rule 450.10, the Commission must determine that: (1) the transaction is in the public interest which occurs if the level of the public utility's investment appears reasonable, and it appears that the public utility's ability to provide reasonable and proper service at fair, just, and reasonable rates will not be adversely and materially affected by the proposed transaction and its resulting effect; and (2) the public utility has provided satisfactory representations that: (a) the books and records of the public utility and its nonregulated business will be

separately maintained in accordance with the Uniform System of Accounts; (b) the Commission will have access to the books and records of the public utility's affiliated interest(s); (c) the diversified transaction will not obstruct, hinder, impair, or unduly complicate the Commission's supervision and regulation of the public utility; (d) for the formation of a holding company, the public utility will not pay excessive dividends to the holding company, and the holding company will take no action that will have an adverse and material effect on the public utility's service and rates; (e) the public utility will obtain prior approval for each investment in an affiliated interest, and (f) the public utility will agree to conduct a management audit and/or allocation study, at the utility's expense, and the audit/allocation study will be conducted by a consultant selected and directed by the Commission.

The GDP II proposed by Petitioners provides in sufficient detail the information required by Rule 450.10.B. Moreover, as discussed above, Petitioners presented evidence sufficient to show that the Proposed Transaction is in all respects lawful and consistent with the public interest. Staff likewise testified to its conclusion that NMA has satisfied the requirements of Rule 450.10.C concerning the Commission's inquiry into the public interest served by the Proposed Transaction. Patin Direct 8. Specifically, Mr. Patin testified that the Proposed Transaction will have no adverse and material effect on the level of investment in NMA or its ability to provide reasonable and proper utility service at fair, just and reasonable rates. *Id.* Mr. Patin further testified that NMA has satisfied the requirement of Rule 450.15 that the Proposed Transaction be in the public interest. *Id.* at 7. In light of the evidence offered by Petitioners and the

recommendations of Staff, the Commission finds that approval of the Proposed Transaction is in the public interest.

In addition, NMA, in its GDP II, has satisfactorily made the representations required by Rule 450.10.C. See Petition, Exh. B, at 18. Mr. Townsley, on behalf of NMA, has confirmed those representations. Townsley Direct 8. Thus, although NMA asserts in the GDP II that the Proposed Transaction does not result in a Class II transaction, Petition, Exh. B, at 1, the Commission need not decide, and specifically reserves decision of, that issue.

For these reasons, NMA's GDP II should be approved pursuant to Rule 450.10. Moreover, the Proposed Transaction, including the divestiture of up to 100% of the common stock of American Water, should be found to be in the public interest and, on that basis, approved pursuant to Rule 450.15.

The Hearing Examiner recommends that the Commission find and conclude:

(1) The Statement of the Case and Discussion, and all findings and conclusions contained therein, are hereby incorporated by reference as a finding and conclusion.

(2) NMA is a public utility as defined in the Public Utility Act, NMSA 1978, Section 62-3-1 *et seq.*

(3) The Commission has jurisdiction over NMA and the subject matter of the case.

(4) Due and adequate notice of this case has been provided.

(5) On May 22, 2006, the Petitioners applied to the Commission for an order approving the Petition and granting all necessary authorizations, approvals, and

consents as may be required to permit the Proposed Transaction and the resulting transfer of control of NMA as described in the Petition.

(6) The Proposed Transaction is in the public interest and should be approved.

(7) The Proposed Transaction, as described in the Petition, is not unlawful and is not inconsistent with the public interest.

(8) On the basis of the representations made by Petitioners, NMA's GDP II, including Petitioners' testimony and Staff's testimony regarding GDP II, indicates that Petitioners have complied with NMSA 1978, Section 62-6-19, and Commission Rule 450, and has demonstrated that the Proposed Transaction will not materially and adversely affect NMA's ability to provide reasonable and proper utility service to its New Mexico customers at fair, just, and reasonable rates.

(9) Pursuant to Commission Rule 450, Petitioners have made the required representations concerning the Commission's oversight of transactions with affiliated interests.

(10) In accordance with Commission Rule 450.10.C(5), NMA will not without the prior approval of the Commission:

(a) loan its funds or securities or transfer similar assets to any affiliated interest; or

(b) purchase debt instruments of any affiliated interest or guarantee or assume liabilities of such affiliated interest.

(11) In accordance with Commission Rule 450.10.C(7), if and when required by the Commission, NMA will have an allocation study (which will not be charged to

ratepayers) performed by a consulting firm chosen by and under the direction of the Commission.

(12) In accordance with Commission Rule 450.10.C(8), if and when required by the Commission, NMA will have a management audit (which will not be charged to rate payers) performed by a consulting firm chosen by and under the direction of the Commission to determine whether there are any adverse effects from the approval of Class II transactions upon NMA.

(13) In accordance with Rule 450.10.C(1), the books and records of NMA shall be kept separate from American Water or any of its affiliates.

(14) In accordance with Rule 450.10.C(2), the Commission and its Staff shall have access to the books, records, accounts or documents of the affiliate, corporate subsidiary or holding company participating in a Class I or Class II transaction with NMA.

(15) The Petition for approval of the GDP II by NMA satisfies the criteria for a finding by the Commission that approval is in the public interest.

(16) In approving the Petition, the Commission relied upon the following representations made by Petitioners in the Petition, in NMA's GDP II, in written testimony, or in live testimony at the hearing. But for these representations, the Commission would find that approval of the Petition is inconsistent with the public interest and would not approve the Petition:

(a) NMA will continue to operate under its existing tariffs and rates until changed by the Commission, and the Proposed Transaction will cause no adverse changes in the balance sheet or financial position of NMA.

(b) The Proposed Transaction will cause no changes in local staffing, based on current estimates, of NMA or its day-to-day operations. The Proposed Transaction will result in no adverse impact on NMA's customer service.

(c) The Proposed Transaction will have no adverse impact on the employees of NMA and will not cause changes in local staffing or compensation and the value of employee benefits will not be reduced and the day-to-day operations and management of NMA will not change as a result of the Proposed Transaction.

(d) The Proposed Transaction will result in no changes in NMA's policies with respect to service to customers, employees, operations, financing, accounting, capitalization, rates, depreciation, maintenance, or other matters affecting the public interest or utility operations, except as required by the Sarbanes-Oxley Act of 2002 or other applicable law.

(e) The Proposed Transaction will not impair NMA's ability to raise necessary capital or reasonable terms or to maintain a reasonable capital structure.

(f) NMA will remain subject to all applicable laws, regulations, rules, decisions and policies governing the regulation of New Mexico's public utilities.

(g) The Proposed Transaction will have no adverse impact on existing NMA rates. NMA 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 Mexico law). The Proposed Transaction will cause no changes in the balance sheet or financial position of NMA.

(h) At the time of closing of the IPO America Water will have a capital structure in the range of 45-55% debt to 55-45% equity-like components. American

Water has committed to maintain a reasonable capital structure after the Proposed Transaction is completed.

(i) RWE and Thames GmbH have no intention of permitting any person or entity to acquire a controlling interest in American Water through the Proposed Transaction. Petitioners acknowledge that they are not requesting, and they understand that the Commission is not granting, approval for any individual or group to acquire a controlling interest in American Water in either the IPO or a subsequent public offering. Moreover, the prospectus within the registration statement to be filed in connection with the Proposed Transaction will include a clear statement that no investor is permitted to acquire control of American Water without obtaining necessary regulatory approvals pursuant to applicable state laws.

(j) NMA will furnish to the Commission and the Commission Staff a notice of NMA's declaration to pay to American Water any dividend with respect to NMA's common stock if the amount of the dividend exceeds 75% of NMA's net income for the fiscal year. Such notice will be provided at least fifteen (15) days prior to the payment date for such dividend, and shall include (i) the amount of the dividend in U.S. dollars; (ii) the cumulative amount of the dividend for the fiscal year; (iii) information showing the net income and payout ratio for the prior two fiscal years for NMA; and (iv) the basis for NMA's decision to pay a dividend in an amount exceeding 75% of NMA's net income for the fiscal year. If NMA is notified by the Commission within fifteen (15) days of such dividend notification that the Commission intends to further review or investigate a proposed dividend payment, NMA will suspend payment of any dividend over 75% of the net income in the fiscal year pending Commission authorization,

provided that the Commission's notification may require suspension of a different amount.

(k) In its annual report to the Commission, NMA will not only provide the end-of-year capital structure of NMA, and American Water, but will also advise the Commission if NMA's capital structure has deviated more than 5% in that year from the capitalization ratios shown in Exhibit 4 of the filed GDP II, along with an explanation as to the reason for the change in the actual capitalization ratios in that year from the pro forma projection.

(l) In its annual report to the Commission, NMA will provide for a period of three years the end-of-year capital structure of American Water and advise the Commission if American Water's capital structure has deviated more than 5% from the previous year, along with an explanation as to the reason for the change in the actual capitalization ratios in that year from the pro forma projection.

(m) In its annual report to the Commission, NMA will provide the Commission with the name and home office address of American Water, together with American Water's current balance sheet and current annual report.

(n) NMA will not incur, directly or indirectly, any costs, liabilities, or obligations in conjunction with (i) the merger of TWAUSHI with and into American Water, or (ii) the IPO or any subsequent public offering of the common stock of American Water by Thames GmbH or another subsidiary of RWE.

(17) Petitioners have requested that certain conditions imposed by the Final Order in Utility Case No. 3712 and applicable to RWE or Thames GmbH should terminate at the point at which their control of, and affiliations with, NMA and American

Water are discontinued. At that point, RWE and Thames GmbH will cease to be public utility holding companies as defined in NMSA 1978, Section 62-3-3(N), and affiliated interests as defined in NMSA 1978, Section 62-3-3(A). The continuing exercise of jurisdiction over RWE or Thames GmbH beyond that point would be unnecessary and unwarranted. Rather, it is expected that compliance by NMA, and, where applicable, American Water, with the representations listed in Paragraph (16) above will supersede and replace any conditions imposed by the Final Order in Utility Case No. 3712 as might otherwise apply to RWE or Thames GmbH. Accordingly, at such time as RWE and Thames GmbH cease to have a beneficial interest, direct or indirect, in ten percent (10%) or more of any class of securities of American Water, any terms and conditions imposed on either of both of them by the Final Order in Utility Case No. 3712 shall terminate.

The Hearing Examiner recommends that the Commission Order:

A. The Petition to authorize, approve, and grant consent for the sale by Thames GmbH of up to 100% of the shares of common stock of American Water in ~~one or more public offerings, and, prior to the closing of the IPO, the merger of~~ TWAUSHI with and into American Water with American Water being the surviving corporation, is granted and approved subject to the terms of this Order.

B. NMA's GDP II is approved subject to the terms of this Order.

C. Any outstanding matter not specifically ruled on is disposed of consistent with this Order.

D. This Order shall constitute appropriate evidence and the only evidence required for these approvals and for approval of NMA's GDP II.

E. This Order is effective immediately.

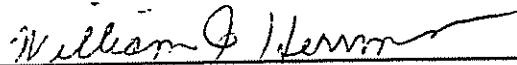
F. Copies of this Order shall be mailed to all persons on the attached

Certificate of Service.

G. This docket is closed.

ISSUED at Santa Fe, New Mexico this **15th** day of December, 2006.

NEW MEXICO PUBLIC REGULATION COMMISSION



WILLIAM J. HERRMANN
Hearing Examiner

BEFORE THE NEW MEXICO PUBLIC REGULATION COMMISSION

IN THE MATTER OF THE SALE OF UP)
TO 100% OF THE COMMON STOCK OF)
AMERICAN WATER WORKS COMPANY,)
INC.)
_____)

Case No. 06-00192-UT

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Recommended Decision of the Hearing Examiner, issued December 15, 2006, was mailed first-class, postage prepaid, to the following:

Thomas W. Olson, Esq.
Andrew S. Montgomery, Esq.
Montgomery & Andrews, P.A.
PO Box 2307
Santa Fe, NM 87504-2307

David P. Stephenson
American Water Works
Service Co., Inc.
4701 Beloit Dr.
Sacramento, CA 95838

Kathy Wright, Vice-President
NM American Water Co.
PO Box 430
Clovis, NM 88102-0430

Hand delivered to:

Peggy Bowen, Esq.
Staff Counsel
224 East Palace Avenue
Santa Fe, NM 87501

DATED this 15th day of December, 2006.

NEW MEXICO PUBLIC REGULATION COMMISSION



Elizabeth Saiz, Law Clerk

**PUBLIC SERVICE COMMISSION
OF WEST VIRGINIA
CHARLESTON**

At a session of the Public Service Commission of West Virginia, in the City of Charleston, on the 26th day of January, 2007.

CASE NO. 06-0597-W-PC

WEST VIRGINIA-AMERICAN WATER COMPANY and
THAMES WATER AQUA HOLDINGS GmbH

Joint Petition for Consent and Approval of the sale by
Thames Water Aqua Holdings GmbH of the outstanding
common stock of American Water Works Company, Inc.

COMMISSION ORDER

The Commission approves the settlement of this matter.

BACKGROUND

WVAWC and Thames' petition for consent

On May 8, 2006, West Virginia-American Water Company ("WVAWC") and Thames Water Aqua Holdings GmbH ("Thames," and Thames and WVAWC collectively as "Petitioners"), requested the Commission's consent and approval of the following:

- i. Thames' sale of up to 100% of the common stock of American Water Works Company, Inc. (American Water), WVAWC's immediate corporate parent, in one or more public offerings; and
- ii. The merger of American Water's immediate corporate parent, Thames Water Aqua US Holdings, Inc. (Thames US Holdings), with and into American Water, with American Water being the surviving corporation (to occur prior to the closing of the initial public offering).

Joint Petition pp. 1-18 & Exs. A-D. The proposed transaction will not adversely affect the public, and will result in continuous and seamless provision of reliable water service by WVAWC at just and reasonable rates, they said.

The offerings would be conducted in compliance with the U.S. Securities Act of 1933, and American Water's common stock will be listed on the New York Stock Exchange, WVAWC and Thames said.

American Water, a Delaware corporation, owns utilities operating in 18 states, including WVAWC. American Water itself is not authorized to conduct business in West Virginia.

Thames GmbH, the holding company for most of RWE's water operations, owns American Water's stock. RWE is a foreign corporation, existing under the laws of the Federal Republic of Germany.

Under the proposed transaction, American Water will become the largest publicly-traded water company in the United States. American Water will be subject to the extensive disclosure and governance requirements of the Securities and Exchange Commission (SEC), including the federal Sarbanes-Oxley legislation, and to the requirements of the New York Stock Exchange. WVAWC will continue to be operated on a day-to-day basis by its local management under WVAWC's board of directors.

While Thames intends to sell 100% of the shares in the initial public offering, under certain market conditions Thames may sell less than that. If this occurs, then the remaining shares would be sold in a subsequent offering(s) as soon as is practical after the initial public offering, pursuant to SEC rules for underwritten public offerings.

The key participants in an underwritten public offering are: (1) the issuer (company in which the shares are being sold-in this case, American Water); (2) the underwriters (in this case a group of investment banks who prepare the necessary SEC filings and participate in marketing the offering to investors); and (3) the seller of the shares (in this case, Thames GmbH). They do not expect the initial filing to be made with the SEC sooner than late 2006.

Thames and WVAWC are not requesting approval for any individual or group to acquire a majority ownership interest in American Water in either the initial public offering or subsequent public offerings. The prospectus will clearly state that no investor will be permitted to acquire control of American Water unless the investor obtains any necessary state regulatory approvals.

WVAWC and Thames asserted that the proposed transaction should not impair WVAWC's ability to maintain a reasonable capital structure, which is representative of other utilities, nor should it impair WVAWC's ability to raise needed capital on reasonable terms. As of December 31, 2005, WVAWC's debt consists of: (1) \$121,000,000 in third-party debt issued by WVAWC in capital markets and (2) \$122,501,291 in inter-company debt owed by WVAWC to American Water Capital Corp., a subsidiary of American Water. WVAWC used American Water Capital Corp. as a financing vehicle prior to RWE's acquisition of American Water, they said.

American Water Capital Corp's debt, as of December 31, 2005, consists of \$2,438,586,000 in corporate loans from RWE and a \$226,860,000 in debt issued in the capital markets. Standard

& Poor's rates American Water Capital Corp. as "A-" (on negative credit watch) and Moody's Investors Service, Inc. rates the company as "Baa1" (on negative outlook), they wrote.

American Water owes \$150,000,000 in inter-company debt to RWE, as of December 31, 2005. Additionally, RWE indirectly holds \$1.75 billion of preferred shares of American Water. Under the proposed transaction, all RWE inter-company financial relationships will be terminated. The timing and composition of any replacement financing depends largely on market conditions, they wrote. American Water's capital structure is intended to be comparable to that of other publicly-traded utilities following the proposed transaction. If the refinancing of American Water Capital Corp.'s debt with RWE requires changes in the terms of the inter-company debt between American Water Capital Corp. and WVAWC, then WVAWC will, if required, seek approval from the Commission in a separate petition for any changes that may be needed, WVAWC and Thames wrote.

Once the proposed transaction is completed, American Water and its subsidiaries will report all financial information in accordance with generally accepted accounting principles (GAAP) and SEC regulations.

American Water Works Service Company, Inc. will continue to provide customer service, accounting, administration, engineering, financial, human resources, information systems, operations, risk management, water quality and other services to WVAWC under the Service Company Agreement. Additionally, American Water Capital Corp. will continue to provide services to WVAWC under the Financial Services agreement, after the proposed transaction is consummated.

WVAWC customers may invest in their water utility by buying American Water stock, and American Water may create an employee stock purchase program following the proposed transaction, they said.

WVAWC will honor all of its existing agreements, including its collective bargaining agreements. Day-to-day operations of WVAWC are not expected to change as a result of the proposed transaction. Nor will the existing book value of any of WVAWC's assets be adjusted due to the proposed transaction.

WVAWC and Thames also asserted that they will not seek recovery of the transaction costs.

They attached the financial information required of WVAWC and Thames GmbH pursuant to Rule 21 of the Commission's *Rules of Practice and Procedure*.

They asked that, upon closing of the proposed transaction, the Commission release RWE, Thames US Holdings, American Water, Thames and WVAWC from any further obligations under the conditions that the PSC imposed in its orders approving of RWE's acquisition of American Water's common stock. If the Commission wishes to continue any of those conditions, Thames and WVAWC asked that any such conditions be handled in this proceeding. Petition pp. 17- 18.

Early procedural filings

On June 9, 2006, Staff wrote that several questions needed to be addressed and that Staff would obtain additional information from the Joint Petitioners. See Initial Joint Staff Memorandum.

On July 17, 2006, the Commission granted the Consumer Advocate Division's petition to intervene and required WVAWC and Thames to publish notice of the application one time in each county in which WVAWC provides service.

On August 2, 2006, WVAWC and Thames pre-filed the direct testimony of Michael A. Miller, vice president and treasurer of West Virginia-American Water Company, and Ellen C. Wolf, senior vice president and chief financial officer of American Water Works.

On August 11, 2006, affidavits of publication¹ regarding notice of the application were filed as follows:

July 21, 2006	<i>Point Pleasant Register</i> (Mason County), <i>The Logan Banner</i> , <i>The Exponent Telegram</i> (Harrison County)
July 22, 2006	<i>Bluefield Daily Telegraph</i> (Mercer County)
July 24, 2006	<i>Wayne County News</i> , <i>The Fayette Tribune</i> , <i>The Saturday Gazette Mail</i> (Kanawha County), <i>Register-Herald</i> (Raleigh County)
July 25, 2006	<i>Hinton News</i> (Summers County), <i>Braxton Citizens' News</i> , <i>The Jackson Herald</i>
July 26, 2006	<i>Lincoln Journal</i> , <i>Webster Echo</i> , <i>Coal Valley News</i> (Boone County), <i>Clay County Free Press</i> , <i>The Weston Democrat</i> (Lewis County)
July 27, 2006	<i>Roane County Reporter</i> , <i>The Putnam Democrat</i> and <i>The Hurricane Breeze</i> (Putnam County)

Motions for protected treatment & in camera hearing

In response to CAD's first data request, WVAWC and Thames provided certain materials to Staff and the CAD under an interim protective agreement. Thereafter, they asked the

¹ The Commission ordered WVAWC and Thames to publish notice in each county where WVAWC provides service, there being 19 such counties. WVAWC and Thames provided affidavits for all of the counties except Cabell. Moreover, WVAWC and Thames published notice in two papers in neighboring Putnam County, and they published in both Charleston papers, which have a considerable statewide readership. Under these circumstances, the Commission concludes that WVAWC and Thames have substantially complied with the publication requirement.

Commission to accord the information permanent protected treatment. See Joint Motion for Protective Order pp. 1-2 (Aug. 24, 2006).²

WVAWC and Thames noted that the Public Service Commission of Kentucky, following an *in camera* review,³ protected the same information from disclosure, because it was not related to the issues of the change of control of American Water. They asked the West Virginia PSC to do the same.

American Water's initial public stock offering (IPO) is subject to extensive federal SEC disclosure and governance requirements, including Sarbanes-Oxley, they wrote. The IPO's structure and timing will depend on American Water's present and projected post-IPO financial condition, the IPO's impact on Thames and RWE (Thames's parent), and current and foreseeable market conditions. Joint Motion p. 3. Extensive due diligence has been conducted, which includes analyses and reports containing highly sensitive, confidential, or privileged information, which has enormous commercial value to competitors because it describes American Water's current financial condition; reflects expectations for American Water's post-IPO future, including projections of business performance, identification of risks, assessments of market and industry conditions, and the relative characteristics of certain industry competitors; shows each party's independent review of how the transaction would affect its shareholders and operations; and includes advice from legal counsel, they argued. Id. p. 3. The information was generated at great cost and effort, and no outside party would be able to reproduce the information without access to the confidential information, they wrote. Id. p. 4.

Release of some of the information could result in a "gun-jumping" violation under federal securities law, they argued, because it is unlawful to sell securities before filing a registration statement with the SEC. Courts and the SEC have broadly construed an "offer to sell," and the publication of this information could constitute an offer to sell, they argued. If gun-jumping occurs, the SEC could delay the stock offering and a court might allow a buyer to rescind its purchase. Id. p. 4.

They also argued that the information is known to a very limited number of people, is comprised of trade secrets and privileged communications and should be protected from public disclosure. Id. p. 5.

² This motion was revised several times, and for clarity the Commission summarizes the total request as follows:

Aug. 24, 2006, Joint Motion	materials responding to the CAD's first data request
Sept. 14, 2006	correcting Exhibit 3 to Aug. 24, 2006, motion
Sept. 15, 2006, 1st Am.	materials responding to the CAD's second data request
Oct. 18, 2006, 2d Am.	materials responding to the Staff's first data request
Nov. 14, 2006, 3d Am.	materials ordered to be produced by the PSC at the <i>in camera</i> hearing (responding to CAD's first data request)

³ Kentucky PSC Case No. 2006-00197.

Generally, PSC documents are available for public inspection, unless a Freedom of Information Act exemption applies, WVAWC and Thames wrote. Id. p. 7. To obtain protected treatment, the information must be a trade secret and more than a mere assertion of privilege must be made, they said. The party seeking protection must make a “credible showing of likely harm.” W. Va. Code § 29B-1-4(1) defines trade secret to include any “compilation of information which is not patented which is known only to certain individuals within a commercial concern” and which “gives its users an opportunity to obtain business advantage over its competitors.” Id. p. 7.

To evaluate a trade secret claim, they wrote, the PSC must, pursuant to State ex rel. Johnson v. Tsapis, 187 W. Va. Code 337, 419 S.E.2d 1 (1992), analyze these factors:

1. The extent the information is known by persons outside the requesting business,
2. The extent the information is known by employees and others involved in the party’s business,
3. The measures taken to guard the information’s secrecy,
4. The information’s value to competitors and the requesting party,
5. The cost and effort expended to develop the information, and
6. The ease or difficulty that others could duplicate or obtain the information.

Id. pp. 8-9. Further, several items are subject to the attorney-client privilege, they said.

In the Kentucky proceeding, the Kentucky Attorney General retained the same expert witness as West Virginia’s CAD did. Thus, many of the CAD’s data requests were the same as requests made in Kentucky. Kentucky’s process for confidential treatment is similar to West Virginia’s process, they said. Id. p. 10. The Kentucky PSC concluded that none of the withheld information was relevant to the takeover case and ordered that such material be redacted from responses to discovery requests. Id. p. 12 (Kentucky PSC order attached as Ex. 2).

WVAWC and Thames advised that less than 20 of the 155,000 employees have had access to the data, and everyone involved in due diligence signed a confidentiality agreement. Joint motion pp. 15-17. They asked the West Virginia Commission to accord deference to the Kentucky ruling. Id. pp. 19-20.

On September 15, 2006, in the motion’s first amendment, they sought protection of 1) documents relating to American Water’s issuance of 1,750 shares of 5.9% preferred stock, and the related repurchase transaction, and 2) a line drawing of the pro forma capital structure of the preferred stock transaction, including affiliated parties and their respective corporate relationships. First Amendment to Joint Motion pp. 2-3. The preferred stock transaction was designed to secure tax efficiencies, and was developed with the assistance of expert securities counsel, tax counsel, and financial and tax advisors, they said. Id. The documents include assurances that the preferred stock transaction is legal and effective for its intended purposes, which results in a strategic advantage over actual and potential competitors that could not be replicated by those competitors without

investing considerable resources. Id. p. 3. Thus, the transaction constitutes a trade secret under West Virginia law, they said. Id.

On October 2, 2006, the CAD asked the Commission to require WVAWC and Thames to provide 1) Board of Director minutes that discussed the proposed separation of American Water from RWE and 2) presentations made to directors concerning the proposed separation of American Water from RWE, which had been omitted from the data responses.

CAD's counsel was permitted to review, but not copy, the information which had been redacted, CAD wrote. Motion to compel & for *in camera* review p. 3. Additionally, counsel's ability to take notes on the content of the disputed materials was restricted. Id. The CAD argued that the materials are relevant to the issues in this proceeding, "or at the very least, could be the basis for additional questions that are reasonably calculated to lead to the discovery of admissible evidence." Id. These materials bear on the managerial, financial and technical abilities of WVAWC and Thames and are relevant to this case due to representations made, and conditions imposed by the Commission in Case Number 01-1691-W-PC, relating to Thames' acquisition of WVAWC. Id. pp. 3-4. Since the documents have been refused to the CAD, the only alternative is for the Commission to conduct an *in camera* review, the CAD argued. The CAD also asked the Commission to require the materials to be provided to the CAD, subject to the protective agreement. Id. p. 5.

WVAWC and Thames provided no legal support for the proposition that another state's decision should resolve an issue pending before the West Virginia PSC, the CAD wrote. Id. p. 5. Moreover, the Kentucky decision contains two sentences, which do not explain how the materials are not relevant to the change-in-control issue. Id.

On October 12, 2006, the Commission set an *in camera* hearing, because the Commission was not willing to accord permanent protected treatment before reviewing the contested materials. WVAWC and Thames were required to provide the unredacted materials to the Commission by October 23, 2006. The Commission did not require the materials to be provided to Staff or the CAD.

On October 23, 2006, the unredacted materials were filed with the Commission, under seal.

At the October 31, 2006, *in camera* hearing, counsel for CAD and WVAWC and Thames argued their respective positions, and the essential elements of those arguments appear in the public pleadings. In addition, Staff counsel argued that,⁴ like CAD, Staff would not challenge the

⁴ Staff did not file a written response to the motions, but made legal arguments at the *in camera* hearing, which the Commission found to be very persuasive. Since Staff's position does not appear in any of the public documents, the Commission summarized Staff's legal position in this order, to provide background for the Commission's decision to require that the underlying documents be provided.

assertions of attorney-client privilege. Staff also argued that, under traditional PSC practice as authorized by W. Va. Code § 24-1-7, information is sometimes provided to the PSC that circuit courts might not receive under the Rules of Evidence. If so, the Commission allows the parties to argue about the weight to be accorded such information. Staff also agreed with the CAD that information may be discoverable if it is reasonably calculated to lead to the discovery of admissible evidence. Id. Staff noted that different arguments might apply, should the information be offered at a hearing. Staff suggested then, that the materials be made available to the parties pursuant to the interim protective agreements and that the Commission need not separately review each excerpt. Staff also agreed that the West Virginia PSC is not bound by the decisions of another state's utility commission.

At the conclusion of the *in camera* hearing, the Commission ordered the unredacted documents to be provided to Staff and the CAD, pursuant to the existing interim protective agreements. The Commission also advised that it was not addressing whether the information could be offered at hearing and that the Commission would rule on permanent protected treatment should any of the information be used at trial.

CAD & Staff direct testimony, WVAWC & Thames rebuttal testimony

On November 8, 2006, the CAD pre-filed, in public and proprietary versions, the direct testimony of Scott J. Rubin. He is an independent consultant and attorney, and his practice is limited to matters affecting the public utility industry. Also on November 8, 2006, Staff pre-filed the direct testimony of Charles "Chuck" Knurek, utilities analyst III in the Commission's Water and Wastewater Division. On November 29, 2006, Staff filed corrections to Mr. Knurek's pre-filed direct testimony.

On November 21, 2006, WVAWC and Thames pre-filed Mr. Miller's rebuttal testimony. They also pre-filed Ms. Wolf's rebuttal testimony, in public and proprietary versions.

Proposed settlement

On December 1, 2006, WVAWC, Thames, Staff and the CAD jointly filed a proposed settlement of this proceeding. See Joint Ex. No. 1 (Tr. Dec. 4, 2006). They asked the Commission to grant its prior consent, under W. Va. Code § 24-2-12, for Thames' sale of up to 100% of American Water's common stock; and for the merger of Thames Water Aqua Holdings, Inc., American Water's immediate corporate parent, into American Water, with American Water being the surviving corporation, prior to the closing of the IPO. Joint Ex. 1 p. 2 (Tr. Dec. 4, 2006).

The Commission's decision to summarize Staff's legal position in this order shall not be extended to justify the public release of the transcript. The October 31, 2006, hearing was conducted *in camera* and, statements made at the hearing are replete with references to the underlying materials. Thus, it is appropriate to accord permanent protected treatment to the transcript of the *in camera* hearing. No part of the transcript may be made public, except for the brief summary of Staff's legal arguments which is set forth above.

Staff and CAD conducted extensive discovery, they wrote. The CAD served five sets of data requests and Staff served two sets of data requests and undertook extensive informal discovery. Id. p. 5. In addition, the parties met for prehearing conferences on November 13 and November 29, 2006, to narrow the issues and finalize numerous conditions. Id. pp. 5-6.

The parties negotiated the following conditions, all appearing in Paragraph 22, which they asked the Commission to impose:

A. WVAWC will pass through to WVAWC's customers, in future rate cases, any actual savings from efficiencies resulting from the IPO/Proposed Transaction for the Common Stock of AWW and the continued ownership of WVAWC by AWW.

B. For a period of three (3) years from the date of the Commission Order ("Order") in this case (and after it has first notified its WVAWC employees), WVAWC will notify the Commission in writing of a planned reduction of 5% or more in WVAWC's work force.

C. WVAWC will continue to use its best efforts to meet or improve upon WVAWC's water service standards, including but not limited to standards for water service interruptions, employee response time, customer complaints and complaint response time.

D. WVAWC will continue to make its best efforts, at all times, to meet applicable water quality standards and will commit to make no changes in the basic operations of WVAWC as a result of the IPO/Proposed Transaction that would be detrimental to this commitment.

E. WVAWC will maintain its corporate offices in West Virginia. Furthermore, there will be no reduction in the overall levels and responsibilities of West Virginia local management located in West Virginia as a result of the IPO/Proposed Transaction.

F. WVAWC will maintain a substantial "local interest" representation on its Board of Directors, and the Board of Directors of WVAWC will continue to provide guidance and oversight of the business and affairs of WVAWC.

G. WVAWC will continue its current level of support for and involvement in local and community projects, including continued funding for WVAWC's Helping Hand Program to assist low income residential customers with their water bills.

H. AWW will make no attempt to recover through WVAWC's rates any costs of the IPO/Proposed Transaction, purchase price, goodwill, early termination payment, change in control payment, incentive or retention bonus payment in connection with the IPO/Proposed Transaction, either directly or indirectly through American Water

Works Service Company, Inc., or any other affiliate, or by any other means. AWW will supply a report to the Commission summarizing such costs, including the amount of such costs allocated to WVAWC, within one year from the date of the Order or, if the sale by Thames Holdings of the Common Stock occurs in more than one year after the date of the Order, within 60 days of the date of the sale.

I. AWW will not recover from WVAWC's customers or have WVAWC's customers fund any portion of the costs of the IPO/Proposed Transaction, including but not limited to financial, legal, severance payments, regulatory fees, investment services or the installation of the initial procedures for compliance with The Sarbanes - Oxley Act of 2002 (Pub. L. No. 107-204, 116 Stat. 745, also known as the Public Company Accounting Reform and Investor Protection Act of 2002 ("Sarbanes-Oxley").

J. For a period of three years from the date of the Order, AWW will not be permitted to charge WVAWC more than its allocated share of \$1 million per year (adjusted annually for inflation) for additional audit costs for Sarbanes Oxley compliance as calculated under the existing agreement between AWWSC and WVAWC.

K. For three years following the date of the Order, WVAWC will maintain its equity-to-capital ratio between 35% and 45%. If the equity-to-capital ratio falls outside of this range, WVAWC will notify the Commission in writing within 30 days.

L. WVAWC will flow through to the benefit of its customers any lower cost of debt applicable to WVAWC, to the extent known and measurable, as a result of its relationship with AWW in future general rate cases.

M. WVAWC will report to the Commission within 30 days any downgrading of the bonds of AWW, AWCC, WVAWC or any subsidiary of AWW and will provide a full copy of the report issued by the bond rating agency.

N. When implementing "best practices", AWW and WVAWC will consider any related effects on customer service and customer satisfaction levels.

O. WVAWC will honor all of its existing contracts, easements and other agreements in accordance with their respective terms.

P. WVAWC will not allow the use of any of its personnel, assets or equipment by any affiliated entity without the Commission's prior consent and approval pursuant to W. Va. Code § 24-2-12. Further, to the extent that WVAWC allows the use of such personnel, assets or equipment by any unaffiliated entity, other than a government body or non-profit entity, WVAWC will file a report with the Commission within thirty days after the use of such personnel, assets or equipment on the identity of the

personnel, assets or equipment involved and the estimated fully-allocated cost of such personnel, assets or equipment.

Q. AWW will not issue any debt that pledges as security or otherwise encumbers the assets of WVAWC.

R. AWW agrees that (I) it will not sell a majority of the common stock of WVAWC to any person or corporation, whether or not organized under the laws of this state, until that person or corporation has obtained the prior consent and approval of the Commission under the provisions of W. Va. Code 24-2-12; and (ii) until Thames Holdings has disposed of its interests in AWW, AWW will advise the Parties of any person or corporation that, to the knowledge of AWW or WVAWC, attempts to acquire, either directly or indirectly, a majority of the common stock of WVAWC under the provisions of W. Va. Code § 24-2-12.

S. WVAWC will file reports annually that detail how it proposes to bring WVAWC into compliance with the Commission's Water Rules regarding unaccounted for water.

T. The payment for AWW stock will not be recorded on WVAWC's books.

U. RWE and Thames Holdings' divestiture of AWW will not affect the accounting and rate making treatments of WVAWC's excess deferred income taxes.

V. WVAWC will not bear any costs incurred to comply with any law, regulation, standard, or practice of the United Kingdom, Federal Republic of Germany, or European Community necessary to complete the IPO/Proposed Transaction.

W. WVAWC will notify the Commission before making a dividend that is more than 75% of net income.

X. AWW or WVAWC will file the following reports with the Commission or provide the relevant Securities and Exchange Commission website where such reports are available: AWW's quarterly interim reports to its shareholders; AWW's annual reports to its shareholders; and AWW's and WVAWC's annual audit reports.

Y. WVAWC customers will experience no material adverse change in utility service due to the IPO/Proposed Transaction.

Z. AWW and WVAWC will adequately fund and maintain WVAWC's treatment, transmission, and distribution systems; supply the service needs of WVAWC customers; comply with all applicable West Virginia statutes; and make best efforts to remain in compliance with all administrative regulations of the Commission.

AA. RWE and Thames Holdings will infuse equity capital into AWW prior to the IPO/Proposed Transaction sufficient to establish a capital structure for AWW at the time of the IPO that includes an equity/capitalization ratio no lower than 45% common equity. AWW will file a balance sheet as of the quarter ended immediately preceding the IPO.

Id. pp. 7-10. AWW, through Ms. Wolf's signature on the settlement, agreed to be bound by the conditions. Further, RWE, through Jens Gemmecke's signature on the settlement, agreed to be bound by Condition 22-AA. See also Tr. p. 35 (Dec. 4, 2006).

WVAWC, Thames, Staff and the CAD asked the Commission to issue findings of fact and conclusions of law to the effect that 1) the terms and conditions of the IPO/Proposed Transaction and the settlement are reasonable, 2) no party to the IPO/Proposed Transaction is given an undue advantage over another, and 3) that the completion of the IPO/Proposed Transaction, and related transactions, will not adversely affect the public. Id. p. 11. In the settlement, they also asked the Commission to grant the motion for confidential treatment, as amended.

Finally, they advised that the settlement was the result of extensive negotiations, reflected substantial compromises, and was proposed to expedite and simplify the resolution of this case. Id. pp. 11-12. They acknowledged the Commission's ability to accept, reject or modify the settlement. Id. p. 12.

Final hearing

At the December 4, 2006, hearing, counsel for WVAWC and Thames advised that the affidavits of publication⁵ regarding the required notice of the hearing (see Commission's August 10, 2006, order) were filed on December 1, 2006. The case file reflects the following:

- November 6, 2006 *The Charleston Gazette & The Daily Mail* (both Kanawha County), *The Logan Banner*, *Bluefield Daily Telegraph* (Mercer County)
- November 7, 2006 *Braxton Citizens' News*, *Register-Herald* (Raleigh County), *Hinton News* (Summers County), *The Jackson Herald*, *Point Pleasant Register* (Mason County)
- November 8, 2006 *Wayne County News*, *Lincoln Journal*, *Coal Valley News* (Boone County), *Clay County Free Press*, *Webster Echo*, *The Weston Democrat* (Lewis County)
- November 9, 2006 *Roane County Reporter*, *The Hurricane Breeze & The Putnam Democrat* (both Putnam County), *The Fayette Tribune*
- November 11, 2006 *The Exponent Telegram* (Harrison County)

Tr. p. 7 (Dec. 4, 2006).

⁵ For the same reasons as appear in footnote 1, the Commission concludes that WVAWC and Thames have substantially complied with the requirement to publish in 19 counties.

WVAWC and Thames' counsel also summarized the transaction as returning American Water to a stand-alone publicly traded company. Tr. p. 8. (Dec. 4, 2006). WVAWC would continue to be an operating subsidiary of American Water. Id. "While we believe that the RWE transaction has worked, as indicated in the testimony, the circumstances have changed. And it is our belief that it is in the best interest of the water company, West Virginia-American and AWW, to consummate the IPO," said counsel. Id.

At the hearing, Mr. Miller and Ms. Wolf took the stand to speak to the settlement.⁶ Tr. pp. 9-47 (Mr. Miller), 54-68 (Ms. Wolf).

Mr. Miller said that the negotiated conditions are "the very heart of the stipulation." Id. p. 15. These conditions provide assurance that West Virginia-American will have a strong capital base, going forward; will continue to be a part of a strong corporate structure; will continue to provide quality water service at reasonable rates; will continue to have its headquarters in Charleston; and will continue its history of investment and providing or extending water service in West Virginia, he testified. Tr. pp. 15-16.

Condition 22-A means that if there are any savings or efficiencies due to the IPO, WVAWC will flow those through to the benefit of its rate payers, he said. Id. p. 16. Condition 22-B is an assurance that WVAWC does not intend any major personnel reductions. Id. pp. 16-17. WVAWC will advise the Commission if it plans a reduction of five percent or more. Id. p. 17.

Several conditions are assurances that WVAWC's service will not be compromised by the IPO, and Mr. Miller noted that such assurances had also been made in the petition. Id. pp. 17, 19-20 (i.e., Conditions 22-C, 22-D, 22-N, 22-Y & 22-Z). Conditions 22-E and 22-F address continued local operations. Id. pp. 20-21.

Conditions 22-H and 22-I, as well as assurances in the petition, state that IPO-related costs will not be passed to WVAWC rate payers. Id. pp. 21-22. The reporting requirement in Condition 22-H was a key component of the settlement, Mr. Miller testified. Id. p. 22. WVAWC will report

⁶ Throughout the hearing, care was taken to refrain from addressing the discovery information which is subject to the interim protective agreements. The hearing was closed, due to discussion of the sensitive information, for only a few minutes. Since the underlying sensitive information was not presented to the Commission as evidence, the Commission will not grant permanent protective treatment to the information exchanged in discovery. Instead, the Commission will order the parties to return the contested discovery information or destroy it.

The Commission wishes to make clear that a limited portion of the transcript from the December 4, 2006, hearing is granted permanent protective treatment and shall not be made available, without prior Commission order. See WVAWC's motion for protected treatment of hearing transcript, Tr. pp. 51-52 (Dec. 4, 2006). Similarly, permanent protective treatment is granted to the proprietary versions of the pre-filed testimonies of Mr. Rubin and Ms. Wolf. These proprietary testimonies, likewise, may not be made available, without prior Commission order.

to the Commission all of the transaction costs “so that we’re very clear about what those costs are, what was charged in West Virginia, and that there will be no recovery of those in the rates of West Virginia-American.” Id. Condition 22-V goes a little further to state that WVAWC will not recover any of the IPO costs incurred by RWE or other foreign parties. Id. p. 31. In response to a question by Commissioner Staats, Mr. Miller testified that these particular conditions do not require any of the compliance reports with Sarbanes-Oxley to be filed with the PSC. Id. pp. 40-41.

Condition 22-O reflects WVAWC’s intent to honor all existing contracts, which was also stated in the petition. Id. pp. 22-23. Mr. Miller advised that WVAWC’s bargaining units support the IPO. Id. p. 23.

Condition 22-G relates to local support that WVAWC provides, he said. Id. pp. 23-24. “West Virginia-American believes that it is a very important company player in all of the local communities where we operate,” he said. “West Virginia-American does supply the more significant metropolitan areas in the state, Charleston and Huntington and areas in between. But we also serve over 100 smaller communities around the state. In our below-the-line contributions, the company has continued to provide its employees, its donations to support many, many efforts around these communities.”

In response to a question from Chairman McKinney, Mr. Miller said that WVAWC would continue to provide local support, including the Helping Hand program, and the current level of such dollars could be determined from WVAWC’s income statement, in the below-the-line contributions. Id. p. 45.

Sarbanes-Oxley compliance and costs are addressed in Condition 22-J. Id. p. 24. Although in Conditions 22-H and 22-I WVAWC and Thames agreed not to pass through any of the IPO costs, including Sarbanes-Oxley costs, Condition 22-J goes further and limits WVAWC’s rate recovery for three years to \$1 million, adjusted for inflation, of additional audit costs of American Water. Id. pp. 24-25.

WVAWC’s capital structure is addressed in Condition 22-K. Id. p. 25. “I think it was important to the Staff and CAD, and it is for the company that we maintain a good capital equity ratio at West Virginia-American Water Company, in line with what we can see with other regulated water utilities,” Mr. Miller testified. “We formalized that into that it will be a 35 to 45 percent range. And if there would be any reason, which I don’t foresee that reason at this time, but if there would be a need to go outside that range, we will notify this Commission.” Id. This is within the historic range of 39 to 42 percent, he said.

Mr. Miller agreed with Commissioner Staats that the common equity ratio relates to the components of the balance sheet’s capital structure, and not to the balance sheet’s debt structure. Id. p. 41.

If the equity capital ratio drops below 35 percent, Mr. Miller said that WVAWC likely would borrow short-term debt, then roll that amount into long-term debt. In response to Commissioner

Staats' questions, Mr. Miller said he could not visualize circumstances under which the equity capital ratio would so fall, but if so, in the unlikely event that funds could not be borrowed or that capital could not be raised through additional equity methods, he said that rate relief could be considered. Id. pp. 42-43.

Mr. Miller said the 35 to 45 percent range would be measured quarterly. Id. p. 43. PSC rules require WVAWC to file quarterly reports, which include a complete balance sheet. Id. p. 44.

Conditions 22-M and 22-X require WVAWC and American Water to report to the Commission if bond ratings are downgraded and to provide the Commission with annual reports and audits. Id. pp. 26-27. Sarbanes-Oxley compliance will be addressed in these reports. Id. p. 41.

Condition 22-P, relating to transactions with affiliates, is a holdover condition from the 2001 case when RWE took control of American Water. Id. p. 27. "Basically what it provides is that we will continue not to permit any affiliate of American Water or West Virginia-American, or any non-governmental entity to utilize the assets of West Virginia-American Water Company, without first notifying this Commission, or in some cases regarding an affiliate transaction, come before this Commission for its authorization to do so," he said. Id. pp. 27-28. The condition allows WVAWC to continue to use its resources continue to assist state agencies in times of crisis, such as floods.

Encumbering of assets is addressed by Condition 22-Q, in response to Staff and CAD concerns that WVAWC assets would not be encumbered by American Water. Id. pp. 28-29. WVAWC's assets are now encumbered by a general mortgage indenture, which does not permit American Water to place a lien on WVAWC's assets, or encumber WVAWC's assets, in a way superior or equal to the general mortgage indenture. Id. p. 29. "This commitment goes one step further, and it provides that American Water Works will not encumber the assets of West Virginia-American and any debt they issue in the future," he said. Id.

Under Condition 22-R, until the IPO is complete and Thames is entirely divested of American Water, American Water will advise the Commission of any attempt to acquire the majority of WVAWC's stock, Mr. Miller testified.

Unaccounted-for water was discussed extensively in the pre-filed testimony, and Condition 22-S memorializes Water Rule 5.6's requirement that WVAWC annually report to the Commission on activities taken to reduce its unaccounted-for water to a 15% level, as well as plans for the upcoming year. Id. p. 30.

Condition 22-T does not allow the payment for American Water's stock to be reflected on WVAWC's books. Id. p. 30. This is a furtherance of the commitment that IPO-related accounting treatment will not be pushed down to West Virginia-American's ratepayers, Mr. Miller testified. Id. pp. 30-31. Similarly, Condition 22-U is a commitment that the IPO will not affect the accounting or rate making treatment for WVAWC's excess deferred income taxes; the deferred income taxes will remain with WVAWC. Id. p. 31.

WVAWC has historically paid common dividends at 75 percent of net income, and Condition 22-W provides that WVAWC will notify the Commission if it plans to exceed that historic percentage, he said. Id. p. 32.

Mr. Miller said that Condition 22-AA was the stipulation's central condition, and it assures that prior to the IPO, RWE will infuse equity capital into American Water so that American Water's common equity will not be lower than 45 percent of the capital ratio. Id. p. 32. "This capital structure should facilitate American Water Works' continued investment-grade rating, from the bond agencies," he said. "Obviously, those conditions had a significant amount of discussion among the parties, but we believe this commitment by RWE should leave American Water Works with a very strong balance sheet, and it will enhance its ability to continue to attract capital at the cost-effective rates." Id. pp. 32-33.

In response to a question from Commissioner Staats, Mr. Miller reiterated that RWE's equity infusion would occur prior to the IPO, saying, "So at the time of the IPO, with the sale of the stock, American's balance sheet would be in the form that this condition describes." Id. p. 44. He further agreed with Commissioner Staats that, at the time of the IPO, there will be no lower than a 45 percent common equity relationship, at the American Water level, between Thames stock and the remainder of the capital section of the balance. Id. (**CLW Note:** Have I summarized correctly?)

In Mr. Rubin's pre-filed testimony, to have adequate capital available to American Water, he suggested that 20% of the IPO proceeds be returned to American Water. Tr. pp. 36-37 (Dec. 4, 2006). However, at the conclusion of the hearing, CAD's counsel advised that it preferred RWE's equity infusion over the recommendation in Mr. Rubin's pre-filed testimony. CAD's counsel advised that IPO transaction costs were a major concern and that the settlement resolved those concerns. Tr. pp. 71-72.

The future financial health of the company, the most important concern, was addressed by Condition 22-AA, the CAD said. "The only way to take care of [those concerns] was to make sure that West Virginia-American and its parent, AWW, going forward, were in reasonably good financial health to address the challenges that Mr. Rubin identified for us in his testimony. And, we're relatively confident that the infusion of common equity capital into this company, in the amount identified, will do that, will allow them the flexibility to start to address the challenge that we've identified, the issues that need to be dealt with and the rather substantial capital requirements that this company is going to go ahead and face going forward," he said. Id. pp. 72-73.

The CAD also was concerned with quality of service issues and advised that the settlement's requirements were a sufficient first-step to address those concerns. Id. p. 73.

Staff and the CAD both advised that the settlement reasonably resolved their concerns and they asked the Commission to adopt it. Id. p. 73. Like the CAD, Staff said that Condition 22-AA was essential to the agreement.

DISCUSSION

Settlement

Some of the settlement's many conditions memorialize existing obligations. To the extent such conditions are included, the Commission recognizes that they do not represent new duties. Such conditions acknowledge matters that are vital to the provision of water utility service and are a public renewal of WVAWC's covenant to meet such existing obligations.

Other conditions, though, such as Condition 22-AA, set forth new responsibilities. The Commission agrees with WVAWC, Staff and the CAD that the equity infusion into American Water's capital structure prior to the IPO is the heart of the settlement. Going forward, American Water's equity capital structure directly affects the cost of capital available to WVAWC, one of American Water's operating utility subsidiaries. Without an infusion to American Water's equity capital structure, WVAWC's future capital costs likely would increase. Under the settlement, sufficient capital will be added to put American Water in an equity position comparable to other similar companies. This is essential to protect West Virginia rate payers and the Commission applauds the parties for achieving this result.

While the Commission's statutory responsibility is to balance the interests of West Virginia ratepayers, the utility and the state's economy, the Commission recognizes that the capital infusion obligation, which was wrought in this West Virginia proceeding, will benefit rate payers in the 17 other utility operating subsidiaries of American Water.

The Commission also believes that the conditions relating to reporting requirements and IPO transaction costs are important to the settlement. The Commission should be promptly told when bond ratings deteriorate, and the settlement requires this to be done. Similarly, the Commission should be promptly told if American Water's capital structure deviates from what was promised in the settlement. And, the Commission should be informed if WVAWC plans to pay common dividends in excess of its historic level of 75 percent of net income.

By way of several different conditions, West Virginia rate payers are excluded from the responsibility of the IPO transaction costs. The Commission concludes that the costs of the corporate decision to return ownership of American Water to the public sector should be borne by the corporation, not by West Virginia rate payers, and these conditions in the settlement place such costs on the corporation.

In the petition, Thames and WVAWC stated that, if the refinancing of American Water Capital Corp.'s debt with RWE requires changes in the terms of the inter-company debt between American Water Capital Corp. and WVAWC, then WVAWC will, if required, seek approval from the Commission in a separate petition for any changes that may be needed. The Commission wishes to make clear that such approval must be requested.

Based upon our review of these proceedings then, we agree with WVAWC, Thames, Staff and CAD that 1) the terms and conditions of the IPO/Proposed Transaction and the settlement are reasonable, 2) no party to the IPO/Proposed Transaction is given an undue advantage over another, and 3) that the completion of the IPO/Proposed Transaction, and related transactions, will not adversely affect the public. Accordingly, it is reasonable for the Commission to accept the settlement.

Confidential treatment

Discovery materials

In preparation for the litigation of this matter, WVAWC and Thames provided confidential information to Staff and the CAD, pursuant to interim protective agreements. None of the confidential discovery materials were entered into evidence in this case. Accordingly, we conclude that there is simply no need to retain the proprietary files at the Public Service Commission. The proprietary filings shall be returned to the Joint Petitioners. Therefore, it is not necessary for the Commission to consider granting them permanent protective treatment. Instead, in accordance with the terms of the interim protective agreement,⁷ Staff and the CAD shall return or destroy all such confidential information and certify to WVAWC and Thames that they have done so.

In a very unusual circumstance, the Commission received some confidential discovery materials prior to the October 31, 2006, *in camera* hearing. The Commission shall likewise return or destroy all of those confidential discovery materials, and the Commission's Executive Secretary shall certify to WVAWC and Thames that the Commission has done so.

Pre-filed testimony

The CAD pre-filed testimony from Mr. Rubin, which contained testimony relating to the confidential information. Similarly, WVAWC and Thames pre-filed testimony from Ms. Wolf,

⁷ The interim protective agreement provides, in pertinent part, as follows:

G. The Parties agree and shall inform the Executive Secretary of the Commission that no copies of the Confidential Information or testimony including the Confidential Information shall be made and such information shall not be included in unexpurgated form in the Commission's files except upon the consent of the Disclosing Parties or upon an order of the Commission

H. Upon the conclusion of the Proceeding, any testimony which references or contains any of the Confidential Information shall not be made available to the public or made available to anyone not a party to a protective agreement with the Disclosing Parties, unless this Protective Agreement is lifted by an order of the Commission. Upon the Receiving Party's destruction of or return of all of the Confidential Information to the Disclosing Parties, this Agreement shall terminate.

which related to the confidential information. Both of those testimonies were admitted into evidence at the December 4, 2006, final hearing. Therefore, the Commission must consider whether it is appropriate to accord permanent protected treatment to those pre-filed testimonies.

We agree with WVAWC and Thames that PSC documents generally are available for public inspection, and that to obtain protected treatment, the information must be a trade secret and the party seeking protection must make a “credible showing of likely harm.” Under W. Va. Code § 29B-1-4(1), a trade secret includes any “compilation of information which is not patented which is known only to certain individuals within a commercial concern” and which “gives its users an opportunity to obtain business advantage over its competitors.”

We find that WVAWC and Thames have borne the burden to establish that the confidential information should be accorded permanent protected treatment. Early release of some of the information may constitute a “gun-jumping” violation under federal securities law. The contested information contains analyses and reports containing highly sensitive, confidential, or privileged information, which has enormous commercial value to competitors because it describes American Water’s current financial condition; reflects expectations for American Water’s post-IPO future, including projections of business performance, identification of risks, assessments of market and industry conditions, and the relative characteristics of certain industry competitors; shows each party’s independent review of how the transaction would affect its shareholders and operations; and includes advice from legal counsel. Substantial care has been taken to keep the contested information private. Less than 20 of the 155,000 employees have had access to the data, and everyone involved in due diligence signed a confidentiality agreement. Some of the materials are protected by the attorney-client privilege. The contested documents were developed with the assistance of expert securities counsel, tax counsel, and financial and tax advisors, and contain confidential information relating to competitive positions. These documents could not be replicated by those competitors without investing considerable resources and having access to the underlying private data. Thus, we agree that the information constitutes a trade secret under West Virginia law. Therefore, we shall grant permanent protected treatment to the proprietary versions of the pre-filed testimony.

Transcripts

The proprietary transcripts from the October 31 and December 4, 2006, PSC hearings contain references to the permanently protected information. Therefore, the proprietary versions of those transcripts shall not be made available, without further Commission order.

FINDINGS OF FACT

WVAWC and Thames’ petition for consent

1. On May 8, 2006, WVAWC and Thames requested the Commission’s consent and approval of the following:

- i. Thames' sale of up to 100% of the common stock of American Water Works Company, Inc. (American Water), WVAWC's immediate corporate parent, in one or more public offerings; and
- ii. The merger of American Water's immediate corporate parent, Thames Water Aqua US Holdings, Inc. (Thames US Holdings), with and into American Water, with American Water being the surviving corporation (to occur prior to the closing of the initial public offering).

Joint Petition pp. 1-18 & Exs. A-D. The proposed transaction will not adversely affect the public, and will result in continuous and seamless provision of reliable water service by WVAWC at just and reasonable rates, they said.

2. American Water's common stock will be offered for sale on the New York Stock Exchange. Under the proposed transaction, American Water will become the largest publicly-traded water company in the United States.

3. WVAWC will continue to be operated on a day-to-day basis by its local management under WVAWC's board of directors.

4. While Thames intends to sell 100% of the shares in the initial public offering, under certain market conditions Thames may sell less than that. If this occurs, then the remaining shares would be sold in a subsequent offering(s) as soon as is practical after the initial public offering, pursuant to SEC rules for underwritten public offerings.

5. Thames and WVAWC are not requesting approval for any individual or group to acquire a majority ownership interest in American Water in either the initial public offering or subsequent public offerings. The prospectus will clearly state that no investor will be permitted to acquire control of American Water unless the investor obtains any necessary state regulatory approvals.

6. If the refinancing of American Water Capital Corp.'s debt with RWE requires changes in the terms of the inter-company debt between American Water Capital Corp. and WVAWC, then WVAWC will seek approval from the Commission in a separate petition for any changes that may be needed.

7. WVAWC customers may invest in their water utility by buying American Water stock, and American Water may create an employee stock purchase program following the proposed transaction.

8. WVAWC will honor all of its existing agreements, including its collective bargaining agreements.

9. The book value of WVAWC's assets will not be adjusted due to the proposed transaction.

10. WVAWC and Thames will not seek recovery of the transaction costs from West Virginia rate payers.

Notice of the application

11. On August 11, 2006, affidavits of publication regarding notice of the application were filed as follows:

July 21, 2006	<i>Point Pleasant Register</i> (Mason County), <i>The Logan Banner</i> , <i>The Exponent Telegram</i> (Harrison County)
July 22, 2006	<i>Bluefield Daily Telegraph</i> (Mercer County)
July 24, 2006	<i>Wayne County News</i> , <i>The Fayette Tribune</i> , <i>The Saturday Gazette Mail</i> (Kanawha County), <i>Register-Herald</i> (Raleigh County)
July 25, 2006	<i>Hinton News</i> (Summers County), <i>Braxton Citizens' News</i> , <i>The Jackson Herald</i>
July 26, 2006	<i>Lincoln Journal</i> , <i>Webster Echo</i> , <i>Coal Valley News</i> (Boone County), <i>Clay County Free Press</i> , <i>The Weston Democrat</i> (Lewis County)
July 27, 2006	<i>Roane County Reporter</i> , <i>The Putnam Democrat</i> and <i>The Hurricane Breeze</i> (Putnam County)

Motions for protected treatment & in camera hearing

12. In response to CAD's first data request, WVAWC and Thames provided certain materials to Staff and the CAD under an interim protective agreement. Thereafter, they asked the Commission to accord the information permanent protected treatment. See Joint Motion for Protective Order pp. 1-2 (Aug. 24, 2006) (materials responding to the CAD's first data request), as amended Sept. 14, 2006 (correcting Exhibit 3 to Aug. 24, 2006, motion), Sept. 15, 2006 (materials responding to the CAD's second data request), Oct. 18, 2006 (materials responding to the Staff's first data request), & Nov. 14, 2006 (materials ordered to be produced by the PSC at the *in camera* hearing, responding to CAD's first data request.)

13. Thames and WVAWC conducted extensive due diligence, which includes analyses and reports containing highly sensitive, confidential, or privileged information, which has enormous commercial value to competitors because it describes American Water's current financial condition; reflects expectations for American Water's post-IPO future, including projections of business performance, identification of risks, assessments of market and industry conditions, and the relative characteristics of certain industry competitors; shows each party's independent review of how the transaction would affect its shareholders and operations; and includes advice from legal counsel, they argued. The information was generated at substantial cost and effort, and no outside party would be able to reproduce the information without access to the confidential information.

14. The proposed transaction was designed to secure tax efficiencies, and was developed with the assistance of expert securities counsel, tax counsel, and financial and tax advisors. The documents include assurances that the preferred stock transaction is legal and effective for its intended purposes, which results in a strategic advantage over actual and potential competitors that could not be replicated by those competitors without investing considerable resources. Id. p. 3. Thus, the transaction constitutes a trade secret under West Virginia law, they said. Id.

15. Release of some of the information could result in a “gun-jumping” violation under federal securities law.

16. Less than 20 of 155,000 employees have had access to the confidential data, and everyone involved in due diligence signed a confidentiality agreement.

17. On October 2, 2006, the CAD asked the Commission to require WVAWC and Thames to provide 1) Board of Director minutes that discussed the proposed separation of American Water from RWE and 2) presentations made to directors concerning the proposed separation of American Water from RWE, which had been omitted from the data responses. See CAD’s Motion to compel & for *in camera* hearing.

18. CAD’s counsel was permitted to review, but not copy, the information which had been redacted. Additionally, counsel’s ability to take notes on the content of the disputed materials was restricted.

19. The CAD argued that the materials are relevant to the issues in this proceeding, “or at the very least, could be the basis for additional questions that are reasonably calculated to lead to the discovery of admissible evidence.” These materials also are relevant due to representations made, and conditions imposed by the Commission in Case Number 01-1691-W-PC, relating to Thames’ acquisition of WVAWC.

20. On October 12, 2006, the Commission set an *in camera* hearing, because the Commission was not willing to accord permanent protected treatment before reviewing the contested materials. WVAWC and Thames were required to provide the unredacted materials to the Commission.

21. On October 23, 2006, the unredacted materials were filed with the Commission, under seal.

22. At the October 31, 2006, *in camera* hearing, counsel for CAD and WVAWC and Thames argued their respective positions, and the essential elements of those arguments appear in the public pleadings. In addition, Staff counsel argued that, like CAD, Staff would not challenge the assertions of attorney-client privilege. Staff also argued that, under traditional PSC practice as authorized by W. Va. Code § 24-1-7, information is sometimes provided to the PSC that circuit courts might not receive under the Rules of Evidence. If so, the Commission allows the parties to argue about the weight to be accorded such information. Staff also agreed with the CAD that

information may be discoverable if it is reasonably calculated to lead to the discovery of admissible evidence. *Id.* Staff noted that different arguments might apply, should the information be offered at a hearing. Staff suggested then, that the materials be made available to the parties pursuant to the interim protective agreements and that the Commission need not separately review each excerpt. *Id.* pp. 30-31. Staff also agreed that the West Virginia PSC is not bound by the decisions of another state's utility commission.

23. At the conclusion of the *in camera* hearing, the Commission ordered the unredacted documents to be provided to Staff and the CAD, pursuant to the existing interim protective agreements. The Commission also advised that it was not addressing whether the information could be offered at hearing and that the Commission would rule on permanent protected treatment should any of the information be used at trial.

CAD & Staff direct testimony, WVAWC & Thames rebuttal testimony

24. On November 8, 2006, the CAD pre-filed, in public and proprietary versions, Mr. Rubin's direct testimony and Staff pre-filed the Mr. Knurek's direct testimony. On November 29, 2006, Staff filed corrections to Mr. Knurek's pre-filed direct testimony.

25. On November 21, 2006, WVAWC and Thames pre-filed Mr. Miller's rebuttal testimony. They also pre-filed Ms. Wolf's rebuttal testimony, in public and proprietary versions.

Proposed settlement

26. On December 1, 2006, WVAWC, Thames, Staff and the CAD jointly filed a proposed settlement of this proceeding. See Joint Ex. No. 1 (Tr. Dec. 4, 2006). The parties negotiated 27 following conditions, all appearing in Paragraph 22, which they asked the Commission to impose.

27. AWW, through Ms. Wolf's signature on the settlement, agreed to be bound by the conditions of the settlement.

28. RWE, through Jens Gemmecke's signature on the settlement, agreed to be bound by Condition 22-AA. See also Tr. p. 35 (Dec. 4, 2006).

Final hearing

29. Notice of the final hearing was published as follows:

November 6, 2006 *The Charleston Gazette & The Daily Mail* (both Kanawha County), *The Logan Banner*, *Bluefield Daily Telegraph* (Mercer County)
November 7, 2006 *Braxton Citizens' News*, *Register-Herald* (Raleigh County), *Hinton News* (Summers County), *The Jackson Herald*, *Point Pleasant Register* (Mason County)

- November 8, 2006 *Wayne County News, Lincoln Journal, Coal Valley News* (Boone County), *Clay County Free Press, Webster Echo, The Weston Democrat* (Lewis County)
- November 9, 2006 *Roane County Reporter, The Hurricane Breeze & The Putnam Democrat* (both Putnam County), *The Fayette Tribune*
- November 11, 2006 *The Exponent Telegram* (Harrison County)

Tr. p. 7 (Dec. 4, 2006).

30. Mr. Miller and Ms. Wolf testified about the settlement. Tr. pp. 9-47 (Mr. Miller), 54-68 (Ms. Wolf).

31. Mr. Miller said that the negotiated conditions are “the very heart of the stipulation.” Id. p. 15.

32. Conditions 22-H and 22-I, as well as assurances in the petition, state that IPO-related costs will not be passed to WVAWC rate payers. Id. pp. 21-22. The reporting requirement in Condition 22-H was a key component of the settlement, Mr. Miller testified. Id. p. 22. WVAWC will report to the Commission all of the transaction costs “so that we’re very clear about what those costs are, what was charged in West Virginia, and that there will be no recovery of those in the rates of West Virginia-American.” Id. Condition 22-V goes a little further to state that WVAWC will not recover any of the IPO costs incurred by RWE or other foreign parties. Id. p. 31. Mr. Miller testified that these particular conditions do not require any of the compliance reports with Sarbanes-Oxley to be filed with the PSC. Id. pp. 40-41.

33. Sarbanes-Oxley compliance and costs are addressed in Condition 22-J. Id. p. 24. Although in Conditions 22-H and 22-I WVAWC and Thames agreed not to pass through any of the IPO costs, including Sarbanes-Oxley costs, Condition 22-J goes further and limits WVAWC’s rate recovery for three years to \$1 million, adjusted for inflation, of additional audit costs of American Water. Id. pp. 24-25.

34. WVAWC’s capital structure is addressed in Condition 22-K. Id. p. 25. For three years, WVAWC’s equity-to-capital ratio will be in the 35 to 45 percent range, and if it goes beyond that range WVAWC will notify the Commission. WVAWC’s capital equity ratio has historically been 39 to 42 percent. This ratio relates to the components of the balance sheet’s capital structure, and not to the balance sheet’s debt structure. The 35 to 45 percent range will be measured quarterly, and PSC rules require WVAWC to file quarterly reports, which include a complete balance sheet. Id. pp. 43-44.

35. Conditions 22-M and 22-X require WVAWC and American Water to report to the Commission if bond ratings are downgraded and to provide the Commission with annual reports and audits. Id. pp. 26-27. Sarbanes-Oxley compliance will be addressed in these reports. Id. p. 41.

36. Encumbering of assets is addressed by Condition 22-Q. *Id.* pp. 28-29. WVAWC's assets are now encumbered by a general mortgage indenture, which does not permit American Water to place a lien on WVAWC's assets, or encumber WVAWC's assets, in a way superior or equal to the general mortgage indenture. *Id.* p. 29. "This commitment goes one step further, and it provides that American Water Works will not encumber the assets of West Virginia-American and any debt they issue in the future," Mr. Miller said. *Id.*

37. Condition 22-T does not allow the payment for American Water's stock to be reflected on WVAWC's books. *Id.* p. 30. This is a furtherance of the commitment that IPO-related accounting treatment will not be pushed down to West Virginia-American's ratepayers, Mr. Miller testified. *Id.* pp. 30-31. Similarly, Condition 22-U is a commitment that the IPO will not affect the accounting or rate making treatment for WVAWC's excess deferred income taxes; the deferred income taxes will remain with WVAWC. *Id.* p. 31.

38. WVAWC has historically paid common dividends at 75 percent of net income, and Condition 22-W provides that WVAWC will notify the Commission if it plans to exceed that historic percentage, Mr. Miller said. *Id.* p. 32.

39. Mr. Miller said that Condition 22-AA was the stipulation's central condition, and it assures that prior to the IPO, RWE will infuse equity capital into American Water so that American Water's common equity will not be lower than 45 percent of the capital ratio. *Id.* p. 32. "This capital structure should facilitate American Water Works' continued investment-grade rating, from the bond agencies," he said. *Id.* pp. 32-33.

40. Although Mr. Rubin suggested in pre-filed testimony that 20% of the IPO proceeds be returned to American Water, at the conclusion of the final hearing CAD's counsel advised that CAD preferred RWE's equity infusion over Mr. Rubin's pre-filed recommendation. Tr. pp. 36-37 (Dec. 4, 2006).

41. The CAD also was concerned with quality of service issues and advised that the settlement's requirements were a sufficient first-step to address those concerns. *Id.* p. 73.

42. Staff and the CAD both advised that the settlement reasonably resolved their concerns and they asked the Commission to adopt it. *Id.* p. 73. Like the CAD, Staff said that Condition 22-AA was essential to the agreement.

CONCLUSIONS OF LAW

Settlement

1. The Commission's policy is to encourage settlement, and all parties have urged the Commission to accept the settlement. We have reviewed the settlement and find it reasonable and in the public interest.

2. Some of the settlement's many conditions memorialize existing obligations. To the extent such conditions are included, the Commission recognizes that they do not represent new duties. Such conditions acknowledge matters that are vital to the provision of water utility service and are a public renewal of WVAWC's covenant to meet such existing obligations.

3. The Commission agrees with WVAWC, Staff and the CAD that Condition 22-AA's requirement of an equity infusion into American Water's capital structure prior to the IPO is the heart of the settlement. Going forward, American Water's equity capital structure directly affects the cost of capital available to WVAWC, one of American Water's operating utility subsidiaries. Without an infusion to American Water's equity capital structure, WVAWC's future capital costs likely would increase. Under the settlement, sufficient capital will be added to put American Water in an equity position comparable to other similar companies. This is essential to protect West Virginia rate payers and the Commission applauds the parties for achieving this result.

4. In addition to benefitting the interests of West Virginia ratepayers, the utility and the state's economy, the capital infusion obligation, which was wrought in this West Virginia proceeding, will benefit rate payers in the 17 other utility operating subsidiaries of American Water.

5. The conditions relating to reporting requirements and IPO transaction costs are important to the settlement. The Commission should be promptly told when bond ratings deteriorate, and the settlement requires this to be done. Similarly, the Commission should be promptly told if American Water's capital structure deviates from what was promised in the settlement. And, the Commission should be informed if WVAWC plans to pay common dividends in excess of its historic level of 75 percent of net income.

6. By way of several different conditions, West Virginia rate payers are excluded from the responsibility of the IPO transaction costs. The Commission concludes that the costs of the corporate decision to return ownership of American Water to the public sector should be borne by the corporation, not by West Virginia rate payers, and these conditions in the settlement place such costs on the corporation.

7. If the refinancing of American Water Capital Corp.'s debt with RWE requires changes in the terms of the inter-company debt between American Water Capital Corp. and WVAWC, then WVAWC must seek approval from the Commission in a separate petition for any changes that may be needed.

8. Based upon our review of these proceedings then, we agree with WVAWC, Thames, Staff and CAD that 1) the terms and conditions of the IPO/Proposed Transaction and the settlement are reasonable, 2) no party to the IPO/Proposed Transaction is given an undue advantage over another, and 3) that the completion of the IPO/Proposed Transaction, and related transactions, will not adversely affect the public. Accordingly, it is reasonable for the Commission to accept the settlement.

Confidential treatment

Discovery materials

9. In preparation for the litigation of this matter, WVAWC and Thames provided confidential information to Staff and the CAD, pursuant to interim protective agreements. None of the confidential discovery materials were entered into evidence in this case. Accordingly, we conclude that there is simply no need to retain the proprietary files at the Public Service Commission. The proprietary filings shall be returned to the Joint Petitioners. Therefore, it is not necessary for the Commission to consider granting them permanent protective treatment.

10. In accordance with the terms of the interim protective agreement, Staff and the CAD should return or destroy all such confidential information exchanged during discovery and certify to WVAWC and Thames that they have done so.

11. The Commission should likewise return or destroy all of those confidential discovery materials it received prior to the October 31, 2006, *in camera* hearing, and the Commission's Executive Secretary should certify to WVAWC and Thames that the Commission has done so.

Pre-filed testimony

12. The pre-filed testimonies of Mr. Rubin and Ms. Wolf contained references to the confidential information, and both of these testimonies were admitted into evidence at the December 4, 2006, final hearing. Therefore, the Commission should consider whether to accord permanent protected treatment to the pre-filed testimonies.

13. We agree with WVAWC and Thames that PSC documents generally are available for public inspection, and that to obtain protected treatment, the information must be a trade secret and the party seeking protection must make a "credible showing of likely harm." Under W. Va. Code § 29B-1-4(1), a trade secret includes any "compilation of information which is not patented which is known only to certain individuals within a commercial concern" and which "gives its users an opportunity to obtain business advantage over its competitors."

14. We conclude that WVAWC and Thames have borne the burden to establish that the confidential information should be accorded permanent protected treatment. Early release of some of the information may constitute a "gun-jumping" violation under federal securities law. The contested information contains analyses and reports containing highly sensitive, confidential, or privileged information, which has substantial commercial value to competitors because it describes American Water's current financial condition; reflects expectations for American Water's post-IPO future, including projections of business performance, identification of risks, assessments of market and industry conditions, and the relative characteristics of certain industry competitors; shows each party's independent review of how the transaction would affect its shareholders and operations; and includes advice from legal counsel. Substantial care has been taken to keep the contested information private. Less than 20 of the 155,000 employees have had access to the data, and everyone involved in due diligence signed a confidentiality agreement. Some of the materials are protected by the attorney-client privilege. The contested documents were developed with the

assistance of expert securities counsel, tax counsel, and financial and tax advisors, and contain confidential information relating to competitive positions. These documents could not be replicated by competitors without investing considerable resources and having access to the underlying private data. Thus, we agree that the information constitutes a trade secret under West Virginia law. Therefore, we shall grant permanent protected treatment to the proprietary versions of the pre-filed testimony.

Transcripts

15. The confidential transcripts from the October 31 and December 4, 2006, PSC hearings contain references to the permanently protected information. Therefore, the proprietary versions of those transcripts should not be made available, without further Commission order.

ORDER

IT IS THEREFORE ORDERED that the settlement filed on December 1, 2006, which is attached as Exhibit A, is accepted as a reasonable resolution of the issues in this proceeding.

IT IS FURTHER ORDERED that the Commission accords permanent protected treatment of the transcript of the October 31, 2006, *in camera* hearing. The Commission also accords permanent protected treatment to the confidential portion of the transcript of the December 4, 2006, final hearing.

IT IS FURTHER ORDERED that the materials which are subject to the interim protective agreements which were not admitted into evidence shall be destroyed or returned to WVAWC and Thames, with no copy being retained by this Commission or its Staff.

IT IS FURTHER ORDERED that the Commission's Executive Secretary shall destroy or return all copies possessed by the Commissioners, the Commissioners' staff and the Executive Secretary's staff of the unredacted information which the Commission ordered WVAWC and Thames to provide prior to the October 31, 2006, *in camera* hearing. The Commission's Executive Secretary shall certify to WVAWC and Thames the completion of this task.

IT IS FURTHER ORDERED that the Commission Staff and the CAD shall destroy or return all copies they possess of the materials which are subject to the interim protective agreements and which were not admitted into evidence in this proceeding. Commission Staff and the CAD shall certify to WVAWC and Thames the completion of this task.

IT IS FURTHER ORDERED that this case shall be removed from the Commission's docket of active cases.

IT IS FURTHER ORDERED that the Commission's Executive Secretary serve a copy of this order upon all parties of record by United States First Class Mail and upon Commission Staff by hand delivery.

A True Copy, Teste:


Sandra Squire
Executive Secretary

CLW/sek
060597ce.wpd

PUBLIC SERVICE COMMISSION
OF WEST VIRGINIA
CHARLESTON

CASE NO. 06-0597-W-PC

WEST VIRGINIA-AMERICAN WATER COMPANY,
a West Virginia corporation, and
THAMES WATER AQUA HOLDINGS GmbH,
a corporation organized under the laws of
the Federal Republic of Germany,

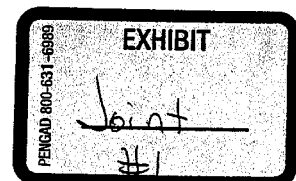
Petitioners.

Joint Petition for the Consent and Approval of the
Sale by Thames Water Aqua Holdings GmbH of
the Outstanding Common Stock of American Water
Works Company, Inc., the Controlling Shareholder
of West Virginia-American Water Company

JOINT STIPULATION
AND AGREEMENT FOR SETTLEMENT

Pursuant to West Virginia Code § 24-1-9(f) and Rule 13(d) of the Public Service Commission's Rules of Practice and Procedure, West Virginia-American Water Company ("WVAWC") and Thames Water Aqua Holdings GmbH ("Thames Holdings") the Staff of the Public Service Commission of West Virginia ("Staff"), and the Consumer Advocate Division of the Public Service Commission ("CAD") (collectively referred to herein as the ("Parties")) join in this Joint Stipulation and Agreement for Settlement ("Joint Stipulation").

(C1150821 1)



INTRODUCTION

This Joint Stipulation proposes and recommends a settlement ("Settlement") among the Parties by which they have agreed and recommend that the Public Service Commission ("Commission") enter a Commission Order granting its prior consent and approval under West Virginia Code § 24-2-12 to the Joint Petition for the Consent and Approval ("Joint Petition") (i) for the sale by Thames Holdings of up to 100% of the shares of common stock of WVAWC's immediate corporate parent, American Water Works Company, Inc. ("AWW"), in one or more public offerings and (ii) prior to the closing of the initial public offering ("IPO"), the merger of AWW's immediate corporate parent, Thames Water Aqua US Holdings, Inc. ("TWAUSHI"), with and into AWW, with AWW being the surviving corporation (the transactions set forth in (i) and (ii) are hereinafter collectively referred to as the ("IPO/Proposed Transaction")).

In this Joint Stipulation, the Parties recommend that the Commission approve the Joint Petition, but have also agreed and recommend that the Commission condition consent and approval of the IPO/Proposed Transaction to certain commitments and undertakings contemplated in the Joint Stipulation (the "Conditions").

In support of this Joint Stipulation and the Settlement embodied herein, the Parties state that:

PROCEDURAL MATTERS AND THE PARTIES

1. On May 8, 2006, WVAWC and Thames Holdings ("Joint Petitioners") filed a Joint Petition for Commission consent and approval of (i) the sale by Thames

Holdings of up to 100% of the shares of common stock of AWW ("Common Stock"), WVAWC's immediate corporate parent, in one or more public offerings; and (ii) the merger of American Water's immediate corporate parent, TWAUSHI, with and into American Water, with American Water being the surviving corporation (this is to occur prior to the IPO).

2. On May 22, 2006, the Consumer Advocate Division of the Public Service Commission (CAD) filed a petition to intervene in this proceeding.

3. Staff filed its Initial Joint Staff Memorandum on June 9, 2006. Staff indicated that its initial review of the Joint Petition raised certain issues that needed to be addressed and that would require Staff to obtain additional information from the Joint Petitioners. Staff recommended that, given the significance of the transaction, that the Commission order the Joint Petitioners to publish notice of this case and provide an opportunity for the filing of comments and petitions to intervene.

4. On July 17, 2006, the Commission entered an Order granting the CAD's intervention and requiring the Joint Petitioners to publish notice of this proceeding. Notice was given as required by the Commission's Order.

5. On July 26, 2006, the Joint Petitioners filed a Joint Motion to Establish Procedural Schedule.

6. On August 10, 2006, the Commission entered an Order adopting the procedural schedule proposed by the Parties in the Motion to Establish Procedural Schedule.

7. On August 24, 2006, WVAWC and Thames Holdings filed a Joint Petition for a Protective Order for certain documents they produced in discovery.

8. On August 31, 2006, the CAD requested an extension of time to respond to the Joint Motion for Protective Order.

9. On September 11, 2006, the Commission entered an Order granting the CAD's request for extension of time to respond to the Joint Motion for Protective Order.

10. On August 2, 2006, the Joint Petitioners filed their Direct Testimony with the Commission. The pre-filed testimony consisted of the Direct Testimony and related exhibits of Ellen C. Wolf and Michael A. Miller.

11. On November 8, 2006, Staff filed the Direct Testimony of Charles (Chuck) Knurek and the CAD filed the Direct Testimony of Scott J. Rubin.

12. On November 21, 2006, the Joint Petitioners filed the Rebuttal Testimony of Ellen Wolf and Michael A. Miller.

NATURE OF THE TRANSACTION
AND THE IPO

13. As set forth in the Joint Petition, the offering of the Common Stock will be conducted in compliance with the U. S. Securities Act of 1933. The shares of Common Stock are intended to be listed on the New York Stock Exchange. The Joint Petitioners asserted that the IPO/Proposed Transaction will not adversely affect the public

and will result in the continuous and seamless provision of water service by WVAWC at just and reasonable rates.

14. AWW is a corporation organized and existing under the laws of the State of Delaware and owns the common stock of WVAWC. AWW's principal offices are located at 1025 Laurel Oak Road, Voorhees, New Jersey.

15. While Thames Holdings intends to sell 100% of the Common Stock in the IPO, under certain market conditions 100% of the Common Stock may not be sold in the IPO. If this occurs, then the remainder of the shares of Common Stock would be sold in a subsequent offering or offerings pursuant to the Commission's order in this case as soon as is practical after the IPO. Any subsequent public offerings will be conducted in accordance with the SEC rules for underwritten public offerings.

16. The Joint Petitioners have asserted that the IPO/Proposed Transaction should not impair WVAWC's ability to maintain a reasonable capital structure, which is representative of other utilities, nor should the IPO/Proposed Transaction impair WVAWC's ability to raise needed capital on reasonable terms.

17. The Staff and CAD have undertaken extensive discovery, both of a formal and informal character, with respect to the IPO/Proposed Transaction and the relief requested in the Joint Petition. The CAD served five sets of Data Requests with numerous questions and the Staff served two sets of Data Requests and undertook extensive informal discovery.

18. In addition to the formal and informal discovery by the CAD and Staff, the Parties, in the weeks prior to the hearing conducted two separate prehearing

conferences held on November 13, 2006 and November 29, 2006, at which they discussed various aspects of the IPO/Proposed Transaction, attempted to narrow or eliminate certain of the issues and concerns raised by the Staff and CAD with respect to the IPO/Proposed Transaction, and discussed and finalized the numerous conditions set forth in paragraph 22 below.

19. Under the IPO/Proposed Transaction, the Joint Petitioners noted that American Water Works Service Company, Inc. ("AWWSC") will continue to provide customer service, accounting, administration, engineering, financial, human resources, information systems, operations, risk management, water quality and other services to WVAWC under the Service Company Agreement with WVAWC. Additionally, American Water Capital Corp. will continue to provide services under the Financial Services agreement between it and WVAWC after the IPO/Proposed Transaction is consummated.

20. WVAWC will continue to honor all existing agreements, including its collective bargaining agreements and the day-to-day operations of WVAWC are not expected to change as a result of the IPO/Proposed Transaction. WVAWC does not expect any adjustment to the existing book value of any of WVAWC's assets to result from the IPO/Proposed Transaction.

21. The Parties jointly recommend that the Commission enter an Order approving the Joint Petition and granting the consent and approval of the Commission to the Joint Petition and the transactions contemplated therein pursuant to the provisions of W. Va. Code § 24-2-12.

22. In furtherance and support by the Parties for the relief sought in the Joint Petition and this Settlement, the Parties have negotiated various conditions that WVAWC and AWW support for purposes of this Joint Stipulation. Specifically, AWW and WVAWC undertake in this Joint Stipulation the following conditions:

A. WVAWC will pass through to WVAWC's customers, in future rate cases, any actual savings from efficiencies resulting from the IPO/Proposed Transaction for the Common Stock of AWW and the continued ownership of WVAWC by AWW.

B. For a period of three (3) years from the date of the Commission Order ("Order") in this case (and after it has first notified its WVAWC employees), WVAWC will notify the Commission in writing of a planned reduction of 5% or more in WVAWC's work force.

C. WVAWC will continue to use its best efforts to meet or improve upon WVAWC's water service standards, including but not limited to standards for water service interruptions, employee response time, customer complaints and complaint response time.

D. WVAWC will continue to make its best efforts, at all times, to meet applicable water quality standards and will commit to make no changes in the basic operations of WVAWC as a result of the IPO/Proposed Transaction that would be detrimental to this commitment.

E. WVAWC will maintain its corporate offices in West Virginia. Furthermore, there will be no reduction in the overall levels and responsibilities of West Virginia local management located in West Virginia as a result of the IPO/Proposed Transaction.

F. WVAWC will maintain a substantial "local interest" representation on its Board of Directors, and the Board of Directors of WVAWC will continue to provide guidance and oversight of the business and affairs of WVAWC.

G. WVAWC will continue its current level of support for and involvement in local and community projects, including continued

funding for WVAWC's Helping Hand Program to assist low income residential customers with their water bills.

H. AWW will make no attempt to recover through WVAWC's rates any costs of the IPO/Proposed Transaction, purchase price, goodwill, early termination payment, change in control payment, incentive or retention bonus payment in connection with the IPO/Proposed Transaction, either directly or indirectly through American Water Works Service Company, Inc., or any other affiliate, or by any other means. AWW will supply a report to the Commission summarizing such costs, including the amount of such costs allocated to WVAWC, within one year from the date of the Order or, if the sale by Thames Holdings of the Common Stock occurs more than one year after the date of the Order, within 60 days of the date of the sale.

I. AWW will not recover from WVAWC's customers or have WVAWC's customers fund any portion of the costs of the IPO/Proposed Transaction, including but not limited to financial, legal, severance payments, regulatory fees, investment services or the installation of the initial procedures for compliance with The Sarbanes - Oxley Act of 2002 (Pub. L. No. 107-204, 116 Stat. 745, also known as the Public Company Accounting Reform and Investor Protection Act of 2002 ("Sarbanes-Oxley").

J. For a period of three years from the date of the Order, AWW will not be permitted to charge WVAWC more than its allocated share of \$1 million per year (adjusted annually for inflation) for additional audit costs for Sarbanes Oxley compliance as calculated under the existing agreement between AWWSC and WVAWC.

K. For three years following the date of the Order, WVAWC will maintain its equity-to-capital ratio between 35% and 45%. If the equity-to-capital ratio falls outside of this range, WVAWC will notify the Commission in writing within 30 days.

L. WVAWC will flow through to the benefit of its customers any lower cost of debt applicable to WVAWC, to the extent known and measurable, as a result of its relationship with AWW in future general rate cases.

M. WVAWC will report to the Commission within 30 days any downgrading of the bonds of AWW, AWCC, WVAWC or any

subsidiary of AWW and will provide a full copy of the report issued by the bond rating agency.

N. When implementing "best practices", AWW and WVAWC will consider any related effects on customer service and customer satisfaction levels.

O. WVAWC will honor all of its existing contracts, easements and other agreements in accordance with their respective terms.

P. WVAWC will not allow the use of any of its personnel, assets or equipment by any affiliated entity without the Commission's prior consent and approval pursuant to W. Va. Code § 24-2-12. Further, to the extent that WVAWC allows the use of such personnel, assets or equipment by any unaffiliated entity, other than a government body or non-profit entity, WVAWC will file a report with the Commission within thirty days after the use of such personnel, assets or equipment on the identity of the personnel, assets or equipment involved and the estimated fully-allocated cost of such personnel, assets or equipment.

Q. AWW will not issue any debt that pledges as security or otherwise encumbers the assets of WVAWC.

R. AWW agrees that (i) it will not sell a majority of the common stock of WVAWC to any person or corporation, whether or not organized under the laws of this state, until that person or corporation has obtained the prior consent and approval of the Commission under the provisions of W. Va. Code § 24-2-12; and (ii) until Thames Holdings has disposed of its interests in AWW, AWW will advise the Parties of any person or corporation that, to the knowledge of AWW or WVAWC, attempts to acquire, either directly or indirectly, a majority of the common stock of WVAWC under the provisions of W. Va. Code § 24-2-12.

S. WVAWC will file reports annually that detail how it proposes to bring WVAWC into compliance with the Commission's Water Rules regarding unaccounted for water.

T. The payment for AWW stock will not be recorded on WVAWC's books.

U. RWE and Thames Holdings divestiture of AWW will not affect the accounting and ratemaking treatments of WVAWC excess deferred income taxes.

V. WVAWC will not bear any costs incurred to comply with any law, regulation, standard, or practice of the United Kingdom, Federal Republic of Germany, or European Community necessary to complete the IPO/Proposed Transaction.

W. WVAWC will notify the Commission before making a dividend that is more than 75% of net income.

X. AWW or WVAWC will file the following reports with the Commission or provide the relevant Securities and Exchange Commission website where such reports are available: AWW's quarterly interim reports to its shareholders; AWW's annual reports to its share holders; and AWW's and WVAWC's annual audit reports.

Y. WVAWC customers will experience no material adverse change in utility service due to the IPO/Proposed Transaction.

Z. AWW and WVAWC will adequately fund and maintain WVAWC's treatment, transmission, and distribution systems; supply the service needs of WVAWC customers; comply with all applicable West Virginia statutes; and make best efforts to remain in compliance with all administrative regulations of the Commission.

AA. RWE and Thames Holdings will infuse equity capital into AWW prior to the IPO/Proposed Transaction sufficient to establish a capital structure for AWW at the time of the IPO that includes an equity/capitalization ratio no lower than 45% common equity. AWW will file a balance sheet as of the quarter ended immediately preceding the IPO.

23. By the execution of this Joint Stipulation by their counsel, the Joint Petitioners affirmatively commit to be bound by the conditions set forth in Paragraph 22 above.

24. Petitioner Thames Holdings is a wholly-owned subsidiary of RWE AG ("RWE"), a corporation organized under the laws of the Federal Republic of Germany. RWE, through the acknowledgement of this Joint Stipulation by Jens Gemmecke, a representative of RWE duly authorized pursuant to power of attorney of RWE, commits to the provisions of Condition AA of Paragraph 22 above and AWW, through the written acknowledgement of Ellen C. Wolf, Senior Vice President and Chief Financial Officer of AWW, commits AWW to be bound by the conditions of Paragraph 22 above.

25. Based on the affirmative representations of the Joint Petitioners, RWE, and AWW as set forth in Paragraphs 23 and 24 above, the Parties agree to recommend that the Commission issue appropriate findings of fact and conclusions of law to the effect (i) the terms and conditions of the IPO/Proposed Transaction and the Joint Stipulation are reasonable, (ii) that no party to the IPO/Proposed Transaction is given an undue advantage over another and (iii) that the IPO/Proposed Transaction and the other transactions contemplated by the Joint Petition and this Settlement do not and, upon the completion of the IPO/Proposed Transaction, will not adversely affect the public in this State.

26. The Parties further request that the Commission grant the Motion for Confidential Treatment, as amended, filed by the Joint Petitioners in this case.

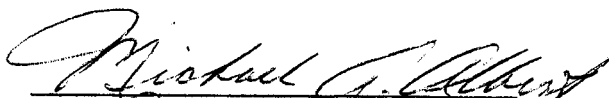
27. The Joint Stipulation is entered into subject to the acceptance and approval of the Commission. It results from a review of all filings in this proceeding and extensive negotiation. It reflects substantial compromises by the Parties and the

modification of their respective positions asserted in this case, and is being proposed to expedite and simplify the resolution of these proceedings and other matters. It is made without any admission or prejudice to any positions which any Party might adopt during subsequent litigation.

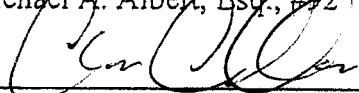
28. The Parties adopt the Joint Stipulation as being in the public interest, without adopting any of the compromise positions set forth herein as principles applicable to future regulatory proceedings, except as may otherwise be provided herein. The Parties acknowledge that it is the Commission's prerogative to accept, reject, or modify any stipulation. However, in the event that the Joint Stipulation is modified or rejected by the Commission, it is expressly understood by the Parties that they are not bound to accept the Joint Stipulation as modified or rejected, and may avail themselves of whatever rights are available to them under law and the Commission's Rules of Practice and Procedure.

WHEREFORE, the Parties, on the basis of all of the foregoing, respectfully request that the Commission make appropriate findings of fact and conclusions of law adopting and approving the Joint Stipulation in its entirety.

WEST VIRGINIA-AMERICAN WATER
COMPANY
and
THAMES WATER AQUA HOLDINGS
GmbH,
By Counsel



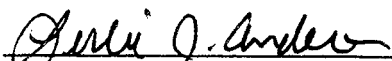
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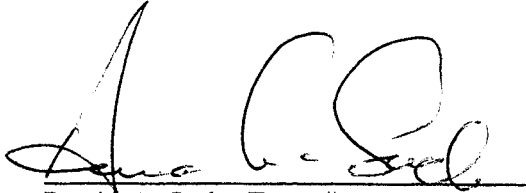
THE STAFF OF THE PUBLIC SERVICE
COMMISSION OF WEST VIRGINIA

By Counsel



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CONSUMER ADVOCATE DIVISION OF
THE PUBLIC SERVICE COMMISSION OF
WEST VIRGINIA

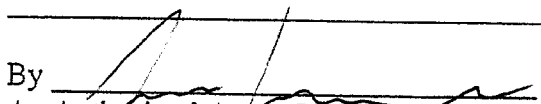


David A. Sade, Esq., #3229
Consumer Advocate Division
7th Floor, Union Building
723 Kanawha Boulevard, East
Charleston, West Virginia 25301

By Counsel

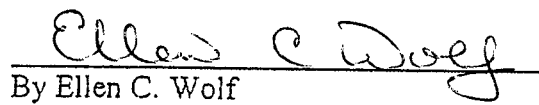
Acknowledged and agreed to by:

RWE AKTIENGESELLSCHAFT

By 
An Authorized Agent By Virtue of the Power of
Attorney Attached As Exhibit A Hereto

Acknowledged and agreed to by:

AMERICAN WATER WORKS COMPANY,
INC.


By Ellen C. Wolf
Senior Vice-President and Chief Financial
Officer

Power of Attorney

Made this 30th day of November, 2006.

WHEREAS

- (A) We, **RWE Aktiengesellschaft**, are a corporation incorporated in accordance with the laws of the Federal Republic of Germany and with its registered office at Opernplatz 1, 45128 Essen, Federal Republic of Germany ("**RWE AG**").
- (B) It is intended that RWE AG enters into a transaction involving, among other things, the negotiation of and entering into settlement agreements by which the regulatory procedures for the approval of the sale of the shares of American Water Works Company, Inc. are settled with the respective authorities (all of the foregoing the "**Transaction**").

NOW, THEREFORE, we, RWE AG, hereby appoint each of the following:

1. **Andreas Zetzsche**
2. **Jens Gemmecke**
3. **Dr. Manfred Döss**
4. **Christian Ring**
5. **Gunnar Helberg**

- each having his business address at Opernplatz 1, 45128 Essen, Germany -

6. **Dietrich Firnhaber**
7. **Dr. Volker Heischkamp**
8. **Christoph Quick**

- each having his business address at 1025 Laurel Oak Rd., Voorhees, NJ 08054, USA -

(each an "**Attorney**")

- each of them authorized to solely represent RWE AG -

to be our attorney, each of whom shall be vested with full power and authority in our name and on our behalf to do all such acts and things as follows:

- 1) to agree, sign, seal, execute, amend and deliver on behalf and in the name of RWE AG any agreement, contract, memorandum, notice, communication, deed, declaration, instrument, letter or other document and to do all such acts and things that the Attorney considers to be required or expedient in relation to the Transaction;

RWE Aktiengesellschaft

Opernplatz 1
45128 Essen

T +49 (0)201/12-00
F +49 (0)201/12-1 51 99
I www.rwe.com

Vorsitzender des
Aufsichtsrates:
Dr. Thomas R. Fischer

Vorstand:
Harry Roels
(Vorsitzender)
Berthold A. Bonekamp
Alwin Fitting
Dr. Klaus Sturany
Jan Zilius

Sitz der Gesellschaft: Essen
Eingetragen beim
Amtsgericht Essen

Handelsregister-Nr. HRB 14 525

USt.-IdNr. DE 8130 23 534



- 2 -

- 2) to do all such acts and things as the Attorney considers may be required or desirable in connection with the Transaction;
- 3) to sub-delegate the power of attorney granted hereunder on the same terms and conditions as set forth herein, except that a person to whom the power of attorney is sub-delegated may not further sub-delegate such power.

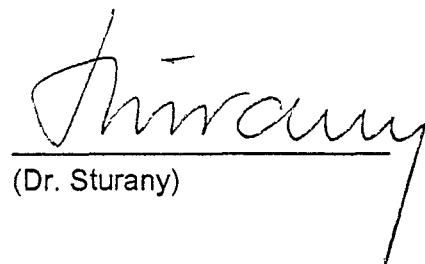
This Power of Attorney is governed by and shall be construed in accordance with the laws of the Federal Republic of Germany without its conflict of law principles.

This Power of Attorney shall expire on the 30th day of September, 2007.

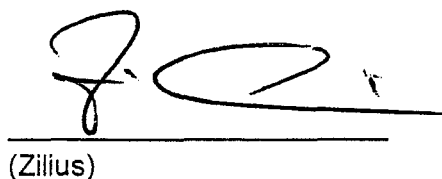
IN WITNESS WHEREOF this Power of Attorney has been executed for and on behalf of RWE Aktiengesellschaft on the date and year first above written.

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RWE Aktiengesellschaft

A handwritten signature in cursive script, appearing to read "Sturany".

(Dr. Sturany)

A handwritten signature in cursive script, appearing to read "Zilius".

(Zilius)

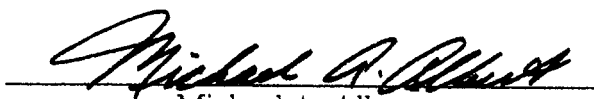
CERTIFICATE OF SERVICE

I, Michael A. Albert, counsel for West Virginia-American Water Company, hereby affirm that the **Joint Stipulation and Agreement for Settlement** was served on the parties of record by hand delivering true and correct copies thereof addressed as follows:

David A. Sade, Esq.
Consumer Advocate Division
7th Floor, Union Building
723 Kanawha Boulevard, East
Charleston, West Virginia 25301

Caryn Watson Short, Esq.
Public Service Commission
P. O. Box 812
Charleston, West Virginia 25323

Leslie J. Anderson, Esq.
Public Service Commission
P. O. Box 812
Charleston, West Virginia 25323


Michael A. Albert

Dated: December 4, 2006

COMMONWEALTH OF KENTUCKY
PUBLIC SERVICE COMMISSION

IN THE MATTER OF:

THE JOINT PETITION OF KENTUCKY-AMERICAN)
WATER COMPANY, THAMES WATER AQUA)
HOLDINGS GMBH, RWE AKTIENGESELLSCHAFT,)
THAMES WATER AQUA US HOLDINGS, INC.,) CASE NO. 2006-00197
AND AMERICAN WATER WORKS COMPANY,)
INC. FOR APPROVAL OF A CHANGE IN CONTROL)
OF KENTUCKY-AMERICAN WATER COMPANY)

SUPPLEMENTAL RESPONSE TO LFUCG'S INITIAL
REQUESTS FOR INFORMATION DATED JUNE 27, 2006

Item No. 1

Witness: Ellen Wolf / Mike Miller

1. Are the Petitioners aware of any jurisdiction in the United States in which a state regulatory Commission has approved an IPO-type change of control of a regulated utility? If so please provide all relevant information pertaining to all such cases including, but not limited to, the case number and jurisdiction, the type of utility and copies of final orders.

SUPPLEMENTAL RESPONSE:

In addition to the approvals identified in Petitioners' July 11, 2006 response and September 11, 2006 supplemental response to part c of this request, the Proposed Transaction which is the subject of this Petition was approved by the New Mexico Public Regulation Commission on January 18, 2007 and the West Virginia Public Service Commission on January 26, 2007. Please see the attached.

BEFORE THE NEW MEXICO PUBLIC REGULATION COMMISSION

IN THE MATTER OF THE SALE OF)
OF UP TO 100% OF THE COMMON STOCK)
OF AMERICAN WATER WORKS)
COMPANY, INC.)
_____)

Case No. 06-00192-UT

FINAL ORDER APPROVING RECOMMENDED DECISION

THIS MATTER comes before the New Mexico Public Regulation Commission ("Commission") upon the Recommended Decision issued by Hearing Examiner William Herrmann on December 15, 2006. Having considered the Recommended Decision and the record in this case and being fully apprised in the premises,

THE COMMISSION FINDS AND CONCLUDES:

1. The Commission has jurisdiction over the parties and the subject matter of this case.
2. The Recommended Decision is well taken and should be adopted.
3. The Statement of the Case, Discussion, and all findings and conclusions contained in the Recommended Decision, attached to this Final Order as Exhibit 1, are incorporated by reference as if fully set forth in this Final Order, and are ADOPTED, APPROVED, and ACCEPTED as Findings and Conclusions of the Commission.

IT IS THEREFORE ORDERED:

- A. The Orders contained in the Recommended Decision as set forth in Exhibit 1 are incorporated by reference as if fully set forth herein and are ADOPTED, APPROVED and ACCEPTED as Orders of the Commission.

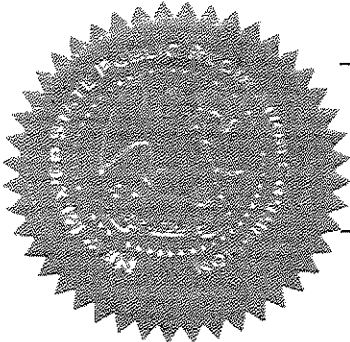
B. The Recommended Decision is ADOPTED, APPROVED, and ACCEPTED in its entirety.

C. This Order is effective immediately.

D. A copy of this Order, including Exhibit 1, shall be served on all persons listed on the attached Certificate of Service.

Issued under the seal of the Commission at Santa Fe, New Mexico, this 18th
day of January 2007.

NEW MEXICO PUBLIC REGULATION COMMISSION



Handwritten signature of Ben R. Lujan in cursive script.

BEN R. LUJAN, CHAIRMAN

Handwritten signature of Jason Marks in cursive script.

JASON MARKS, VICE CHAIRMAN

Handwritten signature of David W. King in cursive script, with the word "(abstained)" written in parentheses to the right of the signature.

DAVID W. KING, COMMISSIONER

Handwritten signature of Carol K. Sloan in cursive script.

CAROL K. SLOAN, COMMISSIONER

Handwritten signature of Sandy Jones in cursive script.

SANDY JONES, COMMISSIONER

DEC 20 2006

BEFORE THE NEW MEXICO PUBLIC REGULATION COMMISSION

MONTGOMERY & ANDREWS, P.A.

IN THE MATTER OF THE SALE OF)
 UP TO 100% OF THE COMMON STOCK)
 OF AMERICAN WATER WORKS)
 COMPANY, INC.)

Case No. 06-00192-UT

RECOMMENDED DECISION OF THE HEARING EXAMINER

William J. Herrmann, Hearing Examiner in this case, hereby submits this Recommended Decision to the New Mexico Public Regulation Commission ("**Commission**") pursuant to 17 NMAC 1.2.32.E(4) and 1.2.39.B. The Hearing Examiner recommends that the Commission adopt the following Statement of the Case and Discussion.

STATEMENT OF THE CASE

On May 22, 2006, New Mexico-American Water Company, Inc. ("**NMA**") filed its Petition requesting the following approvals and authorizations by the Commission:

(i) Such approval pursuant to Commission Rule 450.15 as may be required for (i) the sale by Thames Water Aqua Holdings GmbH ("**Thames GmbH**") of up to 100% of the shares of common stock of American Water Works Company, Inc. ("**American Water**") in one or more public offerings, and (ii) prior to the closing of the initial public offering ("**IPO**"), the merger of Thames Water Aqua US Holdings, Inc. ("**TWAUSHI**") with and into American Water, with American Water being the surviving corporation (the transactions set forth in (i) and (ii) are hereinafter collectively referred to as the "**Proposed Transaction**"); and

(ii) Such approval pursuant to NMSA 1978, Sections 62-3-3(L) and 62-6-19(B)(2), and Commission Rule 450.10 as may be required for adoption of the

Amended and Restated General Diversification Plan of New Mexico-American Water Company, Inc. ("GDP II"), which NMA filed with the Commission as Exhibit B to the Petition on May 22, 2006, and by which NMA proposes to amend and restate the General Diversification Plan of New Mexico-American Water Company, Inc. ("GDP I"), filed with the Commission on March 12, 2002; and

(iii) Such authorization pursuant to NMSA 1978, Section 62-6-12(A)(2) as may be required for the merger of TWAUSHI with and into American Water as part of the Proposed Transaction; and

(iv) Such other authorizations, approvals, and consents as may be required under the New Mexico Public Utility Act and the Commission's Rules and Regulations for the Proposed Transaction contemplated by the Petition.

On August 21, 2006, the Commission issued its Order Designating Hearing Examiner, which appointed William J. Herrmann to preside over this matter.

On August 28, 2006, the Hearing Examiner issued his Order Setting Pre-Hearing Conference, in which he scheduled a pre-hearing conference to discuss procedural dates and details for this case.

Pursuant to the Order Setting Pre-hearing Conference, a pre-hearing conference was held September 6, 2006, at 10 a.m. at the offices of the Commission attended by NMA, Thames GmbH, American Water, Mesa Capital Co. LLC, and Commission Staff.

On September 7, 2006, the Hearing Examiner issued a Procedural Order, which set procedural dates and schedules for this case, including publication of notice in a newspaper of general circulation where New Mexico-American provides utility service, and mailing of notice to the Attorney General of New Mexico, each of the intervenors in

Case No. 06-00208-UT, legislators representing districts in which NMA provides service, and the members of the municipal and county governing bodies, the city manager, the superintendent of schools, the fire chief, and the director of the Chamber of Commerce in each of NMA's service districts. (In the Procedural Order, the Hearing Examiner also joined Thames GmbH, on behalf of itself and its parent holding company RWE Aktiengesellschaft ("**RWE**"), as co-petitioners. NMA, Thames GmbH, and RWE will sometimes be collectively referred to as "**Petitioners.**")

On September 19, 2006, an Affidavit of Publication was filed reflecting that Notice issued with the Procedural Order was published in the Clovis News Journal on September 13, 2006.

On September 20, 2006, an Affidavit of Publication was filed reflecting that the Procedural Order was also published in the Albuquerque Journal on September 15, 2006.

On October 26, 2006, an Affidavit of Compliance was filed reflecting that the Notice issued with the Procedural Order was mailed on September 20 and 23, 2006, to persons designated in the Procedural Order, noting that the Attorney General of New Mexico and the intervenors in Case No. 06-00208-UT had previously received service of the Procedural Order and the Notice attached thereto.

There were no interventions in this case.

Petitioners filed the direct testimonies of John R. Bigelow, Paul G. Townsley, David P. Stephenson, and Kathy A. Wright with their Petition on May 22, 2006.

On May 22, 2006, pursuant to Commission Rule 450, Petitioners filed NMA's GDP II as Exhibit B to the Petition.

Staff filed the prepared direct testimony of Thomas C. Patin on October 20, 2006.

Petitioners filed the rebuttal testimony of John R. Bigelow on October 27, 2006.

A public hearing was commenced on November 2, 2006, at 10:00 a.m. at the Commission's offices and concluded on that same day.

APPEARANCES:

For Petitioners

Thomas W. Olson, Esq., and Andrew S. Montgomery, Esq., Montgomery & Andrews, P.A., attorneys for New Mexico-American Water Company, Inc. and Thames Water Aqua Holdings GmbH

For Staff

Peggy Bowen, Esq.

At the hearing, the direct testimonies of Petitioners' witnesses Bigelow, Townsley, Stephenson, and Wright and the rebuttal testimony of Petitioners' witness Bigelow were admitted into evidence and the witnesses were made available for cross-examination. The direct testimony of Staff witness Patin was admitted into evidence and the witness was made available for cross-examination. At the end of the hearing, the Hearing Examiner requested that a proposed recommended decision of the Hearing Examiner be submitted on behalf of Petitioners and Staff. Petitioners and Staff also agreed to waive exceptions and allow either party to respond to Commissioner questions as long as the Recommended Decision was consistent with their respective positions.

DISCUSSION

A. The Proposed Transaction

NMA is a waterworks corporation organized and existing under the laws of the State of New Mexico, with its principal office located at 1005 Norris Street, Clovis, New Mexico 88101. NMA is engaged in the business of distributing water to the public in New Mexico. It currently owns, operates and maintains potable water production, treatment, storage, transmission and distribution systems for the purpose of furnishing potable water for residential, commercial, industrial and governmental users in and around Clovis, New Mexico, and Edgewood, New Mexico. NMA is a wholly-owned subsidiary of American Water, except that each of its directors holds a single share of qualifying common stock.

American Water is a corporation organized and existing under the laws of the State of Delaware, with its principal office located at 1025 Laurel Oak Road, Voorhees, NJ 08043. American Water owns regulated operating subsidiaries in 18 states. American Water does not conduct business in New Mexico, nor is it authorized to do so.

TWAUSHI is a corporation organized and existing under the laws of the State of Delaware, with its principal office located at 1025 Laurel Oak Road, Voorhees, NJ 08043. TWAUSHI is the direct parent company of American Water, and is a wholly owned subsidiary of Thames GmbH. TWAUSHI does not conduct business in New Mexico, nor is it authorized to do so.

Thames GmbH is a foreign corporation organized and existing under the laws of the Federal Republic of Germany. Thames GmbH's principal office is located at Opernplatz 1, 45128 Essen, Federal Republic of Germany. It is a wholly-owned

subsidiary of RWE and is the holding company for most of RWE's water operations in the United States and in several foreign countries.

RWE is a foreign corporation organized and existing under the laws of the Federal Republic of Germany. RWE's principal office is located at Opernplatz 1, 45128 Essen, Federal Republic of Germany.

NMA is a public utility as defined by NMSA 1978, Section 62-3-3(G)(3), and is subject to regulation by the Commission. By reason of their direct or indirect ownership of the voting securities of NMA, American Water, TWAUSHI, Thames GmbH, and RWE are or may be public utility holding companies as defined by NMSA 1978, Section 62-3-3(N).

The Proposed Transaction consists of (i) the sale by Thames GmbH of up to 100% of the shares of common stock of American Water in one or more public offerings and (ii) prior to the closing of the IPO, the merger of TWAUSHI with and into American Water, with American Water being the surviving corporation. The shares are proposed to be sold through one or more underwritten public offerings to a broad group of investors, including institutional and retail investors. Petitioners state that it is the desire of Thames GmbH to sell 100% of the shares in the IPO, but that, depending on market conditions, Thames GmbH may decide not to sell 100% of the shares in the IPO, the remainder of the shares then to be sold in a subsequent offering or offerings as soon as reasonably practicable following the IPO. The IPO and any subsequent public offerings are to be conducted according to the rules for underwritten public offerings mandated by the SEC. The process for the IPO and any subsequent public offering is substantially the same, although the timeframe for subsequent public offerings is generally shorter.

Petitioners describe the process for the IPO and any subsequent public offerings in general terms. NMA Exhibit 4 (“**Bigelow Direct**”) 6-8; Petition, Exh. B, at 10-12. The key participants in an underwritten public offering such as this one are the issuer of the shares, in this case, American Water; the underwriters of the offering, which will be a group of investment banks; and the seller of the shares, in this case, Thames GmbH.

As an initial step in the IPO process, a registration statement will be prepared and filed with the U.S. Securities and Exchange Commission (“**SEC**”). The registration statement will contain extensive, primarily historical information about the issuer and the offering, including, among other things, the issuer’s audited financial statements and descriptions of its business and management.

The primary portion of the registration statement is a prospectus, which is used to market the offering to investors. The prospectus will include a clear statement that no investor is permitted to acquire control of American Water without obtaining the necessary regulatory approvals pursuant to applicable state laws. Petitioners state that RWE, through its subsidiary Thames GmbH, has no intention of permitting any person or entity to acquire a controlling interest in American Water through the Proposed Transaction. Bigelow Direct 9. In consequence, the Petition does not request approval for any individual or group to acquire a controlling interest in American Water in either the IPO or a subsequent public offering, nor has such approval been requested in any other state. *Id.* It should be noted in this regard that the New Mexico Public Utility Act specifically provides:

Any consolidation, merger, acquisition, transaction resulting in control or exercise of control, or other transaction in contravention of this section without prior authorization of the commission shall be void and of no effect.

NMSA 1978, § 62-6-12(B). Nothing herein shall be construed as granting authority to any person to acquire a controlling interest in American Water.

The initial registration statement, upon filing with the SEC, will become publicly available on the SEC's web site. One or more amendments of the registration statement may subsequently be filed in response to comments by the SEC, with such amendments also becoming available on the SEC's web site upon filing with the SEC.

The offering will then be marketed to potential investors, after which American Water will ask the SEC to declare the registration statement effective. At that point the underwriters and Thames GmbH will agree on a price per share at which the shares will be sold to the public. The closing of the offering, at which the purchases are settled, is required to take place three or four business days after pricing. Thereafter the stock begins trading in the public market. In this case, Petitioners anticipate that the shares will be listed on the New York Stock Exchange.

B. Jurisdiction and Regulatory Approvals

(i) Authorization Pursuant to NMSA 1978, §§ 62-6-12, 62-6-13

The Petition requests such authorization and approval pursuant to NMSA 1978, Sections 62-6-12(A)(2) and 62-6-13, and as may otherwise be required for the Proposed Transaction.

Pursuant to NMSA 1978, Section 62-6-13, the Commission shall give its consent and approval in writing to the transaction unless the Commission finds "that the proposed transaction is unlawful or inconsistent with the public interest." In applying the statutory test in the context of a proposed merger, the Commission has previously determined:

Under the facts of this proceeding, a “no net detriment” test as previously utilized by the Commission does not mandate either approval or rejection of SPS’ Application. The outcome depends on how the Commission weighs the quantifiable and unquantifiable benefits against mostly unquantifiable detriments. By their very nature unquantifiable benefits and costs are not subject to a dollar valuation but, nevertheless, are every bit as important, or more so, as quantifiable benefits and costs. Because a “no net detriment” test can be misinterpreted to mean that all costs and benefits are somehow quantifiable, or that quantifiable benefits outweigh unquantifiable detriments, the commission should no longer use this phrase in describing its statutory mandate in approving mergers. Rather, the Commission should state that the test is whether the public interest is served by approving the merger as determined by the specific facts and circumstances of each case. Generally the complexities of merger should require a positive benefit to ratepayers if they are to be approved.

Corrected Recommended Decision of the Hearing Examiner at 22, *In the Matter of the Application of Southwestern Public Service Co.*, Utility Case No. 3577 (Nov. 15, 1996), *adopted by* Final Order Approving Recommended Decision (Jan. 28, 1997).

The Petitioners have satisfied the statutory standard, as construed by the Commission, in providing evidence of the following benefits that they allege arise out of the Proposed Transaction, of which the merger of TWAUSHI with and into American Water is a part.

As a result of the Proposed Transaction, American Water will become a publicly-traded company focused on water and wastewater in the United States and dedicated to maintaining a high level of service at just and reasonable rates. The Proposed Transaction will provide American Water with access to the United States public equity and debt capital markets, maintaining American Water's ability to finance necessary and vital investments in the infrastructure of its subsidiaries, including NMA. In addition, following the IPO, NMA customers will be able to invest in their water utility by buying American Water stock. Bigelow Direct 11-14.

As a publicly-traded company, American Water will be managed under the supervision of American Water's board of directors. NMA will continue to be operated by its local management, under the supervision of NMA's board of directors. American Water will have a sound financial structure and, as a publicly-traded company, will be subject to extensive SEC disclosure and governance requirements, including Sarbanes-Oxley-related requirements, and the requirements of the stock exchange on which its shares are traded. Bigelow Direct 11-12; NMA Exhibit 1 ("**Townsley Direct**") 4; NMA Exhibit 2 ("**Wright Direct**") 3-4.

Following completion of the Proposed Transaction, NMA will continue to provide safe, adequate, and reliable service in fulfillment of its obligations under New Mexico law. For customers, there will be no change in service, and NMA, by remaining a stand-alone entity, can continue with its community-based utility service. Wright Direct 2-6.

It is not contemplated that the Proposed Transaction will cause any material changes in the balance sheet or financial position of NMA. Access to capital will further NMA's ability to acquire additional water systems and water rights and implement new technology. In addition, American Water, by virtue of its access to capital resources in the public equity market, will be well-positioned to meet future demands and to insure that high quality service is maintained. Bigelow Direct 12-13; NMA Exhibit 3 ("**Stephenson Direct**") 4-5.

There will be no change in NMA's incumbent local management as a result of the Proposed Transaction. The Proposed Transaction will not cause changes in NMA's local staffing or employee compensation, and the value of employee benefits will not be reduced. Moreover, the attraction and retention of highly-qualified and capable

employees should be facilitated. Employees will be able to invest in their water utility by buying American Water stock. In addition, American Water may create an employee stock purchase program following the Proposed Transaction. Wright Direct 3-4.

NMA will continue to operate under its existing tariffs and rate structures. The Commission will continue its supervision and regulation of NMA pursuant to the New Mexico Public Utility Act and Commission Rule 450, and the Commission can insure that the holding company structure, which was initially approved in 1986 between American Water and NMA, will continue to have no adverse and material effect on NMA's ability to provide reasonable and proper service at fair, just, and reasonable rates. Stephenson Direct 7.

NMA and American Water commit to the Commission that NMA will not subsidize American Water, and that there will not be any cross-subsidization or improper cost allocations detrimental to NMA to or from American Water or any of its subsidiaries. American Water and NMA commit to exclude the costs of the Proposed Transaction (including the merger of TWAUSHI with and into American Water) from rates and charges for service by NMA. NMA is not a party to the Proposed Transaction and will not issue, assume, or guarantee any securities in connection with the Proposed Transaction, nor will it sell, transfer, or otherwise dispose of its stock or its plant, property, or other assets, or purchase or otherwise acquire any securities, plant, property, or other assets in connection therewith. The Proposed Transaction will have no tax effects for NMA on a consolidated-entity or stand-alone basis. Petition, Exh. B, at 7-8.

Petitioners have thus identified a number of positive benefits likely to accrue to NMA and its customers from the Proposed Transaction. Staff made note of the benefits expected to accrue as a result of the Proposed Transaction and concurred with Petitioners' statement that "the Proposed Transaction will result in a company with a sound financial structure that is focused on the water and wastewater business in the U.S., that will be well managed, and that will provide benefits to both customers and employees of NMA." Staff Exhibit 1 ("**Patin Direct**") 3-4, 7.

On the other hand, the record reflects no detriments, quantifiable or unquantifiable, attributable to the Proposed Transaction. Mr. Stephenson testified that the Proposed Transaction can be expected to have minimal impact on NMA's cost of service. Stephenson Direct 6. At the hearing he explained that one potential change, which could be positive or negative, is that all inter-company financial relationships between RWE and American Water and its subsidiaries will be terminated upon completion of the Proposed Transaction, which may in turn require changes in the terms of inter-company debt between NMA and American Water Capital Corp. ("**AWCC**"), an American Water subsidiary which provides debt funding for American Water operating subsidiaries. *See id.* at 4. In such event, NMA would seek required approvals from the Commission in a separate petition for any necessary changes in connection with the refinancing of the debt as between AWCC and NMA. *Id.* at 5. Fundamentally, however, the capitalization and financial structure of American Water and its subsidiaries are expected to remain sound following completion of the Proposed Transaction. The Petition notes that the Proposed Transaction is expected to result in American Water becoming the largest publicly traded water company in the United States. Petition ¶ 3.

American Water will retain its solid balance sheet and, as a result of the IPO, will have access to public equity markets as well as investment-grade debt markets. Bigelow Direct 20. American Water's goal is to have a debt-to-equity ratio in the range of 45-55% debt to 55-45% equity-like components. *Id.* at 16. In sum, American Water's debt capacity and access to capital will be of sufficient depth to cover the financing needs of NMA. *Id.* at 20.

The Proposed Transaction is, therefore, in all respects lawful and consistent with the public interest and should be approved pursuant to NMSA 1978, Sections 62-6-12(A)(2) and 62-6-13.

(ii) Authorization pursuant to Commission Rule 450 (Class II transactions)

Petitioners have also requested such authorizations and approvals pursuant to Commission Rule 450 as may be required for the Proposed Transaction and for adoption of an amended and restated general diversification plan for NMA.

The Commission hereby adopts the following definitions concerning this transaction as regards the potential applicability of Section 62-3-3(L)(1) relating to "Class II transactions": NMA is a "public utility" as defined in Section 62-3-3(G)(3). American Water is a "public utility holding company" as defined in Section 62-3-3(N) and an "affiliated interest" as defined in Section 62-3-3(A). TWAUSHI is a "public utility holding company" as defined in Section 62-3-3(N) and an "affiliated interest" as defined in Section 62-3-3(A). Thames GmbH is a "public utility holding company" as defined in Section 62-3-3(N) and an "affiliated interest" as defined in Section 62-3-3(A). RWE is a "public utility holding company" as defined in Section 62-3-3(N) and an "affiliated

interest" as defined in Section 62-3-3(A). American Water's subsidiaries are "affiliated interests" as defined in Section 62-3-3(A).

In adopting these definitions, the Commission does not determine, nor does it waive, however, its authority to determine in the future, whether or not the public utility holding companies are public utilities pursuant to the New Mexico Public Utility Act. The Commission has previously held that a holding company could be a public utility under New Mexico law. Specifically, the Commission stated:

We find, however, that nothing in the Public Utility Act precludes our finding that a specific holding company is a public utility. Because the approval of PNM's holding company is subject to the terms and conditions we find are in the public interest, and because the interests of ratepayers and PNM's ability to provide them adequate service at reasonable rates are consequently protected, we need not determine whether the holding company is a public utility. Absent the continued applicability of the required terms and conditions, whether due to PNM's non-compliance with them or for some other reason, we would find it necessary to decide whether PNMR is a public utility.

Order Approving Formation of a Holding Company 13, Utility Case No. 3137.

The Proposed Transaction in the present case requires or may require the filing and approval of a general diversification plan. In order to approve a proposed Class II transaction and general diversification plan pursuant to Rule 450.10, the Commission must determine that: (1) the transaction is in the public interest which occurs if the level of the public utility's investment appears reasonable, and it appears that the public utility's ability to provide reasonable and proper service at fair, just, and reasonable rates will not be adversely and materially affected by the proposed transaction and its resulting effect; and (2) the public utility has provided satisfactory representations that: (a) the books and records of the public utility and its nonregulated business will be

separately maintained in accordance with the Uniform System of Accounts; (b) the Commission will have access to the books and records of the public utility's affiliated interest(s); (c) the diversified transaction will not obstruct, hinder, impair, or unduly complicate the Commission's supervision and regulation of the public utility; (d) for the formation of a holding company, the public utility will not pay excessive dividends to the holding company, and the holding company will take no action that will have an adverse and material effect on the public utility's service and rates; (e) the public utility will obtain prior approval for each investment in an affiliated interest, and (f) the public utility will agree to conduct a management audit and/or allocation study, at the utility's expense, and the audit/allocation study will be conducted by a consultant selected and directed by the Commission.

The GDP II proposed by Petitioners provides in sufficient detail the information required by Rule 450.10.B. Moreover, as discussed above, Petitioners presented evidence sufficient to show that the Proposed Transaction is in all respects lawful and consistent with the public interest. Staff likewise testified to its conclusion that NMA has satisfied the requirements of Rule 450.10.C concerning the Commission's inquiry into the public interest served by the Proposed Transaction. Patin Direct 8. Specifically, Mr. Patin testified that the Proposed Transaction will have no adverse and material effect on the level of investment in NMA or its ability to provide reasonable and proper utility service at fair, just and reasonable rates. *Id.* Mr. Patin further testified that NMA has satisfied the requirement of Rule 450.15 that the Proposed Transaction be in the public interest. *Id.* at 7. In light of the evidence offered by Petitioners and the

recommendations of Staff, the Commission finds that approval of the Proposed Transaction is in the public interest.

In addition, NMA, in its GDP II, has satisfactorily made the representations required by Rule 450.10.C. See Petition, Exh. B, at 18. Mr. Townsley, on behalf of NMA, has confirmed those representations. Townsley Direct 8. Thus, although NMA asserts in the GDP II that the Proposed Transaction does not result in a Class II transaction, Petition, Exh. B, at 1, the Commission need not decide, and specifically reserves decision of, that issue.

For these reasons, NMA's GDP II should be approved pursuant to Rule 450.10. Moreover, the Proposed Transaction, including the divestiture of up to 100% of the common stock of American Water, should be found to be in the public interest and, on that basis, approved pursuant to Rule 450.15.

The Hearing Examiner recommends that the Commission find and conclude:

(1) The Statement of the Case and Discussion, and all findings and conclusions contained therein, are hereby incorporated by reference as a finding and conclusion.

(2) NMA is a public utility as defined in the Public Utility Act, NMSA 1978, Section 62-3-1 *et seq.*

(3) The Commission has jurisdiction over NMA and the subject matter of the case.

(4) Due and adequate notice of this case has been provided.

(5) On May 22, 2006, the Petitioners applied to the Commission for an order approving the Petition and granting all necessary authorizations, approvals, and

consents as may be required to permit the Proposed Transaction and the resulting transfer of control of NMA as described in the Petition.

(6) The Proposed Transaction is in the public interest and should be approved.

(7) The Proposed Transaction, as described in the Petition, is not unlawful and is not inconsistent with the public interest.

(8) On the basis of the representations made by Petitioners, NMA's GDP II, including Petitioners' testimony and Staff's testimony regarding GDP II, indicates that Petitioners have complied with NMSA 1978, Section 62-6-19, and Commission Rule 450, and has demonstrated that the Proposed Transaction will not materially and adversely affect NMA's ability to provide reasonable and proper utility service to its New Mexico customers at fair, just, and reasonable rates.

(9) Pursuant to Commission Rule 450, Petitioners have made the required representations concerning the Commission's oversight of transactions with affiliated interests.

(10) In accordance with Commission Rule 450.10.C(5), NMA will not without the prior approval of the Commission:

(a) loan its funds or securities or transfer similar assets to any affiliated interest; or

(b) purchase debt instruments of any affiliated interest or guarantee or assume liabilities of such affiliated interest.

(11) In accordance with Commission Rule 450.10.C(7), if and when required by the Commission, NMA will have an allocation study (which will not be charged to

ratepayers) performed by a consulting firm chosen by and under the direction of the Commission.

(12) In accordance with Commission Rule 450.10.C(8), if and when required by the Commission, NMA will have a management audit (which will not be charged to rate payers) performed by a consulting firm chosen by and under the direction of the Commission to determine whether there are any adverse effects from the approval of Class II transactions upon NMA.

(13) In accordance with Rule 450.10.C(1), the books and records of NMA shall be kept separate from American Water or any of its affiliates.

(14) In accordance with Rule 450.10.C(2), the Commission and its Staff shall have access to the books, records, accounts or documents of the affiliate, corporate subsidiary or holding company participating in a Class I or Class II transaction with NMA.

(15) The Petition for approval of the GDP II by NMA satisfies the criteria for a finding by the Commission that approval is in the public interest.

(16) In approving the Petition, the Commission relied upon the following representations made by Petitioners in the Petition, in NMA's GDP II, in written testimony, or in live testimony at the hearing. But for these representations, the Commission would find that approval of the Petition is inconsistent with the public interest and would not approve the Petition:

(a) NMA will continue to operate under its existing tariffs and rates until changed by the Commission, and the Proposed Transaction will cause no adverse changes in the balance sheet or financial position of NMA.

(b) The Proposed Transaction will cause no changes in local staffing, based on current estimates, of NMA or its day-to-day operations. The Proposed Transaction will result in no adverse impact on NMA's customer service.

(c) The Proposed Transaction will have no adverse impact on the employees of NMA and will not cause changes in local staffing or compensation and the value of employee benefits will not be reduced and the day-to-day operations and management of NMA will not change as a result of the Proposed Transaction.

(d) The Proposed Transaction will result in no changes in NMA's policies with respect to service to customers, employees, operations, financing, accounting, capitalization, rates, depreciation, maintenance, or other matters affecting the public interest or utility operations, except as required by the Sarbanes-Oxley Act of 2002 or other applicable law.

(e) The Proposed Transaction will not impair NMA's ability to raise necessary capital or reasonable terms or to maintain a reasonable capital structure.

(f) NMA will remain subject to all applicable laws, regulations, rules, decisions and policies governing the regulation of New Mexico's public utilities.

(g) The Proposed Transaction will have no adverse impact on existing NMA rates. NMA 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 Mexico law). The Proposed Transaction will cause no changes in the balance sheet or financial position of NMA.

(h) At the time of closing of the IPO America Water will have a capital structure in the range of 45-55% debt to 55-45% equity-like components. American

Water has committed to maintain a reasonable capital structure after the Proposed Transaction is completed.

(i) RWE and Thames GmbH have no intention of permitting any person or entity to acquire a controlling interest in American Water through the Proposed Transaction. Petitioners acknowledge that they are not requesting, and they understand that the Commission is not granting, approval for any individual or group to acquire a controlling interest in American Water in either the IPO or a subsequent public offering. Moreover, the prospectus within the registration statement to be filed in connection with the Proposed Transaction will include a clear statement that no investor is permitted to acquire control of American Water without obtaining necessary regulatory approvals pursuant to applicable state laws.

(j) NMA will furnish to the Commission and the Commission Staff a notice of NMA's declaration to pay to American Water any dividend with respect to NMA's common stock if the amount of the dividend exceeds 75% of NMA's net income for the fiscal year. Such notice will be provided at least fifteen (15) days prior to the payment date for such dividend, and shall include (i) the amount of the dividend in U.S. dollars; (ii) the cumulative amount of the dividend for the fiscal year; (iii) information showing the net income and payout ratio for the prior two fiscal years for NMA; and (iv) the basis for NMA's decision to pay a dividend in an amount exceeding 75% of NMA's net income for the fiscal year. If NMA is notified by the Commission within fifteen (15) days of such dividend notification that the Commission intends to further review or investigate a proposed dividend payment, NMA will suspend payment of any dividend over 75% of the net income in the fiscal year pending Commission authorization,

provided that the Commission's notification may require suspension of a different amount.

(k) In its annual report to the Commission, NMA will not only provide the end-of-year capital structure of NMA, and American Water, but will also advise the Commission if NMA's capital structure has deviated more than 5% in that year from the capitalization ratios shown in Exhibit 4 of the filed GDP II, along with an explanation as to the reason for the change in the actual capitalization ratios in that year from the pro forma projection.

(l) In its annual report to the Commission, NMA will provide for a period of three years the end-of-year capital structure of American Water and advise the Commission if American Water's capital structure has deviated more than 5% from the previous year, along with an explanation as to the reason for the change in the actual capitalization ratios in that year from the pro forma projection.

(m) In its annual report to the Commission, NMA will provide the Commission with the name and home office address of American Water, together with American Water's current balance sheet and current annual report.

(n) NMA will not incur, directly or indirectly, any costs, liabilities, or obligations in conjunction with (i) the merger of TWAUSHI with and into American Water, or (ii) the IPO or any subsequent public offering of the common stock of American Water by Thames GmbH or another subsidiary of RWE.

(17) Petitioners have requested that certain conditions imposed by the Final Order in Utility Case No. 3712 and applicable to RWE or Thames GmbH should terminate at the point at which their control of, and affiliations with, NMA and American

Water are discontinued. At that point, RWE and Thames GmbH will cease to be public utility holding companies as defined in NMSA 1978, Section 62-3-3(N), and affiliated interests as defined in NMSA 1978, Section 62-3-3(A). The continuing exercise of jurisdiction over RWE or Thames GmbH beyond that point would be unnecessary and unwarranted. Rather, it is expected that compliance by NMA, and, where applicable, American Water, with the representations listed in Paragraph (16) above will supersede and replace any conditions imposed by the Final Order in Utility Case No. 3712 as might otherwise apply to RWE or Thames GmbH. Accordingly, at such time as RWE and Thames GmbH cease to have a beneficial interest, direct or indirect, in ten percent (10%) or more of any class of securities of American Water, any terms and conditions imposed on either of both of them by the Final Order in Utility Case No. 3712 shall terminate.

The Hearing Examiner recommends that the Commission Order:

A. The Petition to authorize, approve, and grant consent for the sale by Thames GmbH of up to 100% of the shares of common stock of American Water in ~~one or more public offerings, and, prior to the closing of the IPO, the merger of~~ TWAUSHI with and into American Water with American Water being the surviving corporation, is granted and approved subject to the terms of this Order.

B. NMA's GDP II is approved subject to the terms of this Order.

C. Any outstanding matter not specifically ruled on is disposed of consistent with this Order.

D. This Order shall constitute appropriate evidence and the only evidence required for these approvals and for approval of NMA's GDP II.

E. This Order is effective immediately.

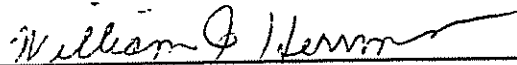
F. Copies of this Order shall be mailed to all persons on the attached

Certificate of Service.

G. This docket is closed.

ISSUED at Santa Fe, New Mexico this **15th** day of December, 2006.

NEW MEXICO PUBLIC REGULATION COMMISSION



WILLIAM J. HERRMANN
Hearing Examiner

BEFORE THE NEW MEXICO PUBLIC REGULATION COMMISSION

IN THE MATTER OF THE SALE OF UP)
TO 100% OF THE COMMON STOCK OF)
AMERICAN WATER WORKS COMPANY,)
INC.)
_____)

Case No. 06-00192-UT

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Recommended Decision of the Hearing Examiner, issued December 15, 2006, was mailed first-class, postage prepaid, to the following:

Thomas W. Olson, Esq.
Andrew S. Montgomery, Esq.
Montgomery & Andrews, P.A.
PO Box 2307
Santa Fe, NM 87504-2307

David P. Stephenson
American Water Works
Service Co., Inc.
4701 Beloit Dr.
Sacramento, CA 95838


Kathy Wright, Vice-President
NM American Water Co.
PO Box 430
Clovis, NM 88102-0430

Hand delivered to:

Peggy Bowen, Esq.
Staff Counsel
224 East Palace Avenue
Santa Fe, NM 87501

DATED this 15th day of December, 2006.

NEW MEXICO PUBLIC REGULATION COMMISSION



Elizabeth Saiz, Law Clerk

**PUBLIC SERVICE COMMISSION
OF WEST VIRGINIA
CHARLESTON**

At a session of the Public Service Commission of West Virginia, in the City of Charleston, on the 26th day of January, 2007.

CASE NO. 06-0597-W-PC

WEST VIRGINIA-AMERICAN WATER COMPANY and
THAMES WATER AQUA HOLDINGS GmbH

Joint Petition for Consent and Approval of the sale by
Thames Water Aqua Holdings GmbH of the outstanding
common stock of American Water Works Company, Inc.

COMMISSION ORDER

The Commission approves the settlement of this matter.

BACKGROUND

WVAWC and Thames' petition for consent

On May 8, 2006, West Virginia-American Water Company ("WVAWC") and Thames Water Aqua Holdings GmbH ("Thames," and Thames and WVAWC collectively as "Petitioners"), requested the Commission's consent and approval of the following:

- i. Thames' sale of up to 100% of the common stock of American Water Works Company, Inc. (American Water), WVAWC's immediate corporate parent, in one or more public offerings; and
- ii. The merger of American Water's immediate corporate parent, Thames Water Aqua US Holdings, Inc. (Thames US Holdings), with and into American Water, with American Water being the surviving corporation (to occur prior to the closing of the initial public offering).

Joint Petition pp. 1-18 & Exs. A-D. The proposed transaction will not adversely affect the public, and will result in continuous and seamless provision of reliable water service by WVAWC at just and reasonable rates, they said.

The offerings would be conducted in compliance with the U.S. Securities Act of 1933, and American Water's common stock will be listed on the New York Stock Exchange, WVAWC and Thames said.

American Water, a Delaware corporation, owns utilities operating in 18 states, including WVAWC. American Water itself is not authorized to conduct business in West Virginia.

Thames GmbH, the holding company for most of RWE's water operations, owns American Water's stock. RWE is a foreign corporation, existing under the laws of the Federal Republic of Germany.

Under the proposed transaction, American Water will become the largest publicly-traded water company in the United States. American Water will be subject to the extensive disclosure and governance requirements of the Securities and Exchange Commission (SEC), including the federal Sarbanes-Oxley legislation, and to the requirements of the New York Stock Exchange. WVAWC will continue to be operated on a day-to-day basis by its local management under WVAWC's board of directors.

While Thames intends to sell 100% of the shares in the initial public offering, under certain market conditions Thames may sell less than that. If this occurs, then the remaining shares would be sold in a subsequent offering(s) as soon as is practical after the initial public offering, pursuant to SEC rules for underwritten public offerings.

The key participants in an underwritten public offering are: (1) the issuer (company in which the shares are being sold-in this case, American Water); (2) the underwriters (in this case a group of investment banks who prepare the necessary SEC filings and participate in marketing the offering to investors); and (3) the seller of the shares (in this case, Thames GmbH). They do not expect the initial filing to be made with the SEC sooner than late 2006.

Thames and WVAWC are not requesting approval for any individual or group to acquire a majority ownership interest in American Water in either the initial public offering or subsequent public offerings. The prospectus will clearly state that no investor will be permitted to acquire control of American Water unless the investor obtains any necessary state regulatory approvals.

WVAWC and Thames asserted that the proposed transaction should not impair WVAWC's ability to maintain a reasonable capital structure, which is representative of other utilities, nor should it impair WVAWC's ability to raise needed capital on reasonable terms. As of December 31, 2005, WVAWC's debt consists of: (1) \$121,000,000 in third-party debt issued by WVAWC in capital markets and (2) \$122,501,291 in inter-company debt owed by WVAWC to American Water Capital Corp., a subsidiary of American Water. WVAWC used American Water Capital Corp. as a financing vehicle prior to RWE's acquisition of American Water, they said.

American Water Capital Corp's debt, as of December 31, 2005, consists of \$2,438,586,000 in corporate loans from RWE and a \$226,860,000 in debt issued in the capital markets. Standard

& Poor's rates American Water Capital Corp. as "A-" (on negative credit watch) and Moody's Investors Service, Inc. rates the company as "Baa1" (on negative outlook), they wrote.

American Water owes \$150,000,000 in inter-company debt to RWE, as of December 31, 2005. Additionally, RWE indirectly holds \$1.75 billion of preferred shares of American Water. Under the proposed transaction, all RWE inter-company financial relationships will be terminated. The timing and composition of any replacement financing depends largely on market conditions, they wrote. American Water's capital structure is intended to be comparable to that of other publicly-traded utilities following the proposed transaction. If the refinancing of American Water Capital Corp.'s debt with RWE requires changes in the terms of the inter-company debt between American Water Capital Corp. and WVAWC, then WVAWC will, if required, seek approval from the Commission in a separate petition for any changes that may be needed, WVAWC and Thames wrote.

Once the proposed transaction is completed, American Water and its subsidiaries will report all financial information in accordance with generally accepted accounting principles (GAAP) and SEC regulations.

American Water Works Service Company, Inc. will continue to provide customer service, accounting, administration, engineering, financial, human resources, information systems, operations, risk management, water quality and other services to WVAWC under the Service Company Agreement. Additionally, American Water Capital Corp. will continue to provide services to WVAWC under the Financial Services agreement, after the proposed transaction is consummated.

WVAWC customers may invest in their water utility by buying American Water stock, and American Water may create an employee stock purchase program following the proposed transaction, they said.

WVAWC will honor all of its existing agreements, including its collective bargaining agreements. Day-to-day operations of WVAWC are not expected to change as a result of the proposed transaction. Nor will the existing book value of any of WVAWC's assets be adjusted due to the proposed transaction.

WVAWC and Thames also asserted that they will not seek recovery of the transaction costs.

They attached the financial information required of WVAWC and Thames GmbH pursuant to Rule 21 of the Commission's *Rules of Practice and Procedure*.

They asked that, upon closing of the proposed transaction, the Commission release RWE, Thames US Holdings, American Water, Thames and WVAWC from any further obligations under the conditions that the PSC imposed in its orders approving of RWE's acquisition of American Water's common stock. If the Commission wishes to continue any of those conditions, Thames and WVAWC asked that any such conditions be handled in this proceeding. Petition pp. 17- 18.

Early procedural filings

On June 9, 2006, Staff wrote that several questions needed to be addressed and that Staff would obtain additional information from the Joint Petitioners. See Initial Joint Staff Memorandum.

On July 17, 2006, the Commission granted the Consumer Advocate Division's petition to intervene and required WVAWC and Thames to publish notice of the application one time in each county in which WVAWC provides service.

On August 2, 2006, WVAWC and Thames pre-filed the direct testimony of Michael A. Miller, vice president and treasurer of West Virginia-American Water Company, and Ellen C. Wolf, senior vice president and chief financial officer of American Water Works.

On August 11, 2006, affidavits of publication¹ regarding notice of the application were filed as follows:

July 21, 2006	<i>Point Pleasant Register</i> (Mason County), <i>The Logan Banner</i> , <i>The Exponent Telegram</i> (Harrison County)
July 22, 2006	<i>Bluefield Daily Telegraph</i> (Mercer County)
July 24, 2006	<i>Wayne County News</i> , <i>The Fayette Tribune</i> , <i>The Saturday Gazette Mail</i> (Kanawha County), <i>Register-Herald</i> (Raleigh County)
July 25, 2006	<i>Hinton News</i> (Summers County), <i>Braxton Citizens' News</i> , <i>The Jackson Herald</i>
July 26, 2006	<i>Lincoln Journal</i> , <i>Webster Echo</i> , <i>Coal Valley News</i> (Boone County), <i>Clay County Free Press</i> , <i>The Weston Democrat</i> (Lewis County)
July 27, 2006	<i>Roane County Reporter</i> , <i>The Putnam Democrat</i> and <i>The Hurricane Breeze</i> (Putnam County)

Motions for protected treatment & in camera hearing

In response to CAD's first data request, WVAWC and Thames provided certain materials to Staff and the CAD under an interim protective agreement. Thereafter, they asked the

¹ The Commission ordered WVAWC and Thames to publish notice in each county where WVAWC provides service, there being 19 such counties. WVAWC and Thames provided affidavits for all of the counties except Cabell. Moreover, WVAWC and Thames published notice in two papers in neighboring Putnam County, and they published in both Charleston papers, which have a considerable statewide readership. Under these circumstances, the Commission concludes that WVAWC and Thames have substantially complied with the publication requirement.

Commission to accord the information permanent protected treatment. See Joint Motion for Protective Order pp. 1-2 (Aug. 24, 2006).²

WVAWC and Thames noted that the Public Service Commission of Kentucky, following an *in camera* review,³ protected the same information from disclosure, because it was not related to the issues of the change of control of American Water. They asked the West Virginia PSC to do the same.

American Water's initial public stock offering (IPO) is subject to extensive federal SEC disclosure and governance requirements, including Sarbanes-Oxley, they wrote. The IPO's structure and timing will depend on American Water's present and projected post-IPO financial condition, the IPO's impact on Thames and RWE (Thames's parent), and current and foreseeable market conditions. Joint Motion p. 3. Extensive due diligence has been conducted, which includes analyses and reports containing highly sensitive, confidential, or privileged information, which has enormous commercial value to competitors because it describes American Water's current financial condition; reflects expectations for American Water's post-IPO future, including projections of business performance, identification of risks, assessments of market and industry conditions, and the relative characteristics of certain industry competitors; shows each party's independent review of how the transaction would affect its shareholders and operations; and includes advice from legal counsel, they argued. Id. p. 3. The information was generated at great cost and effort, and no outside party would be able to reproduce the information without access to the confidential information, they wrote. Id. p. 4.

Release of some of the information could result in a "gun-jumping" violation under federal securities law, they argued, because it is unlawful to sell securities before filing a registration statement with the SEC. Courts and the SEC have broadly construed an "offer to sell," and the publication of this information could constitute an offer to sell, they argued. If gun-jumping occurs, the SEC could delay the stock offering and a court might allow a buyer to rescind its purchase. Id. p. 4.

They also argued that the information is known to a very limited number of people, is comprised of trade secrets and privileged communications and should be protected from public disclosure. Id. p. 5.

² This motion was revised several times, and for clarity the Commission summarizes the total request as follows:

Aug. 24, 2006, Joint Motion	materials responding to the CAD's first data request
Sept. 14, 2006	correcting Exhibit 3 to Aug. 24, 2006, motion
Sept. 15, 2006, 1st Am.	materials responding to the CAD's second data request
Oct. 18, 2006, 2d Am.	materials responding to the Staff's first data request
Nov. 14, 2006, 3d Am.	materials ordered to be produced by the PSC at the <i>in camera</i> hearing (responding to CAD's first data request)

³ Kentucky PSC Case No. 2006-00197.

Generally, PSC documents are available for public inspection, unless a Freedom of Information Act exemption applies, WVAWC and Thames wrote. Id. p. 7. To obtain protected treatment, the information must be a trade secret and more than a mere assertion of privilege must be made, they said. The party seeking protection must make a “credible showing of likely harm.” W. Va. Code § 29B-1-4(1) defines trade secret to include any “compilation of information which is not patented which is known only to certain individuals within a commercial concern” and which “gives its users an opportunity to obtain business advantage over its competitors.” Id. p. 7.

To evaluate a trade secret claim, they wrote, the PSC must, pursuant to State ex rel. Johnson v. Tsapis, 187 W. Va. Code 337, 419 S.E.2d 1 (1992), analyze these factors:

1. The extent the information is known by persons outside the requesting business,
2. The extent the information is known by employees and others involved in the party’s business,
3. The measures taken to guard the information’s secrecy,
4. The information’s value to competitors and the requesting party,
5. The cost and effort expended to develop the information, and
6. The ease or difficulty that others could duplicate or obtain the information.

Id. pp. 8-9. Further, several items are subject to the attorney-client privilege, they said.

In the Kentucky proceeding, the Kentucky Attorney General retained the same expert witness as West Virginia’s CAD did. Thus, many of the CAD’s data requests were the same as requests made in Kentucky. Kentucky’s process for confidential treatment is similar to West Virginia’s process, they said. Id. p. 10. The Kentucky PSC concluded that none of the withheld information was relevant to the takeover case and ordered that such material be redacted from responses to discovery requests. Id. p. 12 (Kentucky PSC order attached as Ex. 2).

WVAWC and Thames advised that less than 20 of the 155,000 employees have had access to the data, and everyone involved in due diligence signed a confidentiality agreement. Joint motion pp. 15-17. They asked the West Virginia Commission to accord deference to the Kentucky ruling. Id. pp. 19-20.

On September 15, 2006, in the motion’s first amendment, they sought protection of 1) documents relating to American Water’s issuance of 1,750 shares of 5.9% preferred stock, and the related repurchase transaction, and 2) a line drawing of the pro forma capital structure of the preferred stock transaction, including affiliated parties and their respective corporate relationships. First Amendment to Joint Motion pp. 2-3. The preferred stock transaction was designed to secure tax efficiencies, and was developed with the assistance of expert securities counsel, tax counsel, and financial and tax advisors, they said. Id. The documents include assurances that the preferred stock transaction is legal and effective for its intended purposes, which results in a strategic advantage over actual and potential competitors that could not be replicated by those competitors without

investing considerable resources. Id. p. 3. Thus, the transaction constitutes a trade secret under West Virginia law, they said. Id.

On October 2, 2006, the CAD asked the Commission to require WVAWC and Thames to provide 1) Board of Director minutes that discussed the proposed separation of American Water from RWE and 2) presentations made to directors concerning the proposed separation of American Water from RWE, which had been omitted from the data responses.

CAD's counsel was permitted to review, but not copy, the information which had been redacted, CAD wrote. Motion to compel & for *in camera* review p. 3. Additionally, counsel's ability to take notes on the content of the disputed materials was restricted. Id. The CAD argued that the materials are relevant to the issues in this proceeding, "or at the very least, could be the basis for additional questions that are reasonably calculated to lead to the discovery of admissible evidence." Id. These materials bear on the managerial, financial and technical abilities of WVAWC and Thames and are relevant to this case due to representations made, and conditions imposed by the Commission in Case Number 01-1691-W-PC, relating to Thames' acquisition of WVAWC. Id. pp. 3-4. Since the documents have been refused to the CAD, the only alternative is for the Commission to conduct an *in camera* review, the CAD argued. The CAD also asked the Commission to require the materials to be provided to the CAD, subject to the protective agreement. Id. p. 5.

WVAWC and Thames provided no legal support for the proposition that another state's decision should resolve an issue pending before the West Virginia PSC, the CAD wrote. Id. p. 5. Moreover, the Kentucky decision contains two sentences, which do not explain how the materials are not relevant to the change-in-control issue. Id.

On October 12, 2006, the Commission set an *in camera* hearing, because the Commission was not willing to accord permanent protected treatment before reviewing the contested materials. WVAWC and Thames were required to provide the unredacted materials to the Commission by October 23, 2006. The Commission did not require the materials to be provided to Staff or the CAD.

On October 23, 2006, the unredacted materials were filed with the Commission, under seal.

At the October 31, 2006, *in camera* hearing, counsel for CAD and WVAWC and Thames argued their respective positions, and the essential elements of those arguments appear in the public pleadings. In addition, Staff counsel argued that,⁴ like CAD, Staff would not challenge the

⁴ Staff did not file a written response to the motions, but made legal arguments at the *in camera* hearing, which the Commission found to be very persuasive. Since Staff's position does not appear in any of the public documents, the Commission summarized Staff's legal position in this order, to provide background for the Commission's decision to require that the underlying documents be provided.

assertions of attorney-client privilege. Staff also argued that, under traditional PSC practice as authorized by W. Va. Code § 24-1-7, information is sometimes provided to the PSC that circuit courts might not receive under the Rules of Evidence. If so, the Commission allows the parties to argue about the weight to be accorded such information. Staff also agreed with the CAD that information may be discoverable if it is reasonably calculated to lead to the discovery of admissible evidence. Id. Staff noted that different arguments might apply, should the information be offered at a hearing. Staff suggested then, that the materials be made available to the parties pursuant to the interim protective agreements and that the Commission need not separately review each excerpt. Staff also agreed that the West Virginia PSC is not bound by the decisions of another state's utility commission.

At the conclusion of the *in camera* hearing, the Commission ordered the unredacted documents to be provided to Staff and the CAD, pursuant to the existing interim protective agreements. The Commission also advised that it was not addressing whether the information could be offered at hearing and that the Commission would rule on permanent protected treatment should any of the information be used at trial.

CAD & Staff direct testimony, WVAWC & Thames rebuttal testimony

On November 8, 2006, the CAD pre-filed, in public and proprietary versions, the direct testimony of Scott J. Rubin. He is an independent consultant and attorney, and his practice is limited to matters affecting the public utility industry. Also on November 8, 2006, Staff pre-filed the direct testimony of Charles "Chuck" Knurek, utilities analyst III in the Commission's Water and Wastewater Division. On November 29, 2006, Staff filed corrections to Mr. Knurek's pre-filed direct testimony.

On November 21, 2006, WVAWC and Thames pre-filed Mr. Miller's rebuttal testimony. They also pre-filed Ms. Wolf's rebuttal testimony, in public and proprietary versions.

Proposed settlement

On December 1, 2006, WVAWC, Thames, Staff and the CAD jointly filed a proposed settlement of this proceeding. See Joint Ex. No. 1 (Tr. Dec. 4, 2006). They asked the Commission to grant its prior consent, under W. Va. Code § 24-2-12, for Thames' sale of up to 100% of American Water's common stock; and for the merger of Thames Water Aqua Holdings, Inc., American Water's immediate corporate parent, into American Water, with American Water being the surviving corporation, prior to the closing of the IPO. Joint Ex. 1 p. 2 (Tr. Dec. 4, 2006).

The Commission's decision to summarize Staff's legal position in this order shall not be extended to justify the public release of the transcript. The October 31, 2006, hearing was conducted *in camera* and, statements made at the hearing are replete with references to the underlying materials. Thus, it is appropriate to accord permanent protected treatment to the transcript of the *in camera* hearing. No part of the transcript may be made public, except for the brief summary of Staff's legal arguments which is set forth above.

Staff and CAD conducted extensive discovery, they wrote. The CAD served five sets of data requests and Staff served two sets of data requests and undertook extensive informal discovery. Id. p. 5. In addition, the parties met for prehearing conferences on November 13 and November 29, 2006, to narrow the issues and finalize numerous conditions. Id. pp. 5-6.

The parties negotiated the following conditions, all appearing in Paragraph 22, which they asked the Commission to impose:

A. WVAWC will pass through to WVAWC's customers, in future rate cases, any actual savings from efficiencies resulting from the IPO/Proposed Transaction for the Common Stock of AWW and the continued ownership of WVAWC by AWW.

B. For a period of three (3) years from the date of the Commission Order ("Order") in this case (and after it has first notified its WVAWC employees), WVAWC will notify the Commission in writing of a planned reduction of 5% or more in WVAWC's work force.

C. WVAWC will continue to use its best efforts to meet or improve upon WVAWC's water service standards, including but not limited to standards for water service interruptions, employee response time, customer complaints and complaint response time.

D. WVAWC will continue to make its best efforts, at all times, to meet applicable water quality standards and will commit to make no changes in the basic operations of WVAWC as a result of the IPO/Proposed Transaction that would be detrimental to this commitment.

E. WVAWC will maintain its corporate offices in West Virginia. Furthermore, there will be no reduction in the overall levels and responsibilities of West Virginia local management located in West Virginia as a result of the IPO/Proposed Transaction.

F. WVAWC will maintain a substantial "local interest" representation on its Board of Directors, and the Board of Directors of WVAWC will continue to provide guidance and oversight of the business and affairs of WVAWC.

G. WVAWC will continue its current level of support for and involvement in local and community projects, including continued funding for WVAWC's Helping Hand Program to assist low income residential customers with their water bills.

H. AWW will make no attempt to recover through WVAWC's rates any costs of the IPO/Proposed Transaction, purchase price, goodwill, early termination payment, change in control payment, incentive or retention bonus payment in connection with the IPO/Proposed Transaction, either directly or indirectly through American Water

Works Service Company, Inc., or any other affiliate, or by any other means. AWW will supply a report to the Commission summarizing such costs, including the amount of such costs allocated to WVAWC, within one year from the date of the Order or, if the sale by Thames Holdings of the Common Stock occurs in more than one year after the date of the Order, within 60 days of the date of the sale.

I. AWW will not recover from WVAWC's customers or have WVAWC's customers fund any portion of the costs of the IPO/Proposed Transaction, including but not limited to financial, legal, severance payments, regulatory fees, investment services or the installation of the initial procedures for compliance with The Sarbanes - Oxley Act of 2002 (Pub. L. No. 107-204, 116 Stat. 745, also known as the Public Company Accounting Reform and Investor Protection Act of 2002 ("Sarbanes-Oxley").

J. For a period of three years from the date of the Order, AWW will not be permitted to charge WVAWC more than its allocated share of \$1 million per year (adjusted annually for inflation) for additional audit costs for Sarbanes Oxley compliance as calculated under the existing agreement between AWWSC and WVAWC.

K. For three years following the date of the Order, WVAWC will maintain its equity-to-capital ratio between 35% and 45%. If the equity-to-capital ratio falls outside of this range, WVAWC will notify the Commission in writing within 30 days.

L. WVAWC will flow through to the benefit of its customers any lower cost of debt applicable to WVAWC, to the extent known and measurable, as a result of its relationship with AWW in future general rate cases.

M. WVAWC will report to the Commission within 30 days any downgrading of the bonds of AWW, AWCC, WVAWC or any subsidiary of AWW and will provide a full copy of the report issued by the bond rating agency.

N. When implementing "best practices", AWW and WVAWC will consider any related effects on customer service and customer satisfaction levels.

O. WVAWC will honor all of its existing contracts, easements and other agreements in accordance with their respective terms.

P. WVAWC will not allow the use of any of its personnel, assets or equipment by any affiliated entity without the Commission's prior consent and approval pursuant to W. Va. Code § 24-2-12. Further, to the extent that WVAWC allows the use of such personnel, assets or equipment by any unaffiliated entity, other than a government body or non-profit entity, WVAWC will file a report with the Commission within thirty days after the use of such personnel, assets or equipment on the identity of the

personnel, assets or equipment involved and the estimated fully-allocated cost of such personnel, assets or equipment.

Q. AWW will not issue any debt that pledges as security or otherwise encumbers the assets of WVAWC.

R. AWW agrees that (I) it will not sell a majority of the common stock of WVAWC to any person or corporation, whether or not organized under the laws of this state, until that person or corporation has obtained the prior consent and approval of the Commission under the provisions of W. Va. Code 24-2-12; and (ii) until Thames Holdings has disposed of its interests in AWW, AWW will advise the Parties of any person or corporation that, to the knowledge of AWW or WVAWC, attempts to acquire, either directly or indirectly, a majority of the common stock of WVAWC under the provisions of W. Va. Code § 24-2-12.

S. WVAWC will file reports annually that detail how it proposes to bring WVAWC into compliance with the Commission's Water Rules regarding unaccounted for water.

T. The payment for AWW stock will not be recorded on WVAWC's books.

U. RWE and Thames Holdings' divestiture of AWW will not affect the accounting and rate making treatments of WVAWC's excess deferred income taxes.

V. WVAWC will not bear any costs incurred to comply with any law, regulation, standard, or practice of the United Kingdom, Federal Republic of Germany, or European Community necessary to complete the IPO/Proposed Transaction.

W. WVAWC will notify the Commission before making a dividend that is more than 75% of net income.

X. AWW or WVAWC will file the following reports with the Commission or provide the relevant Securities and Exchange Commission website where such reports are available: AWW's quarterly interim reports to its shareholders; AWW's annual reports to its shareholders; and AWW's and WVAWC's annual audit reports.

Y. WVAWC customers will experience no material adverse change in utility service due to the IPO/Proposed Transaction.

Z. AWW and WVAWC will adequately fund and maintain WVAWC's treatment, transmission, and distribution systems; supply the service needs of WVAWC customers; comply with all applicable West Virginia statutes; and make best efforts to remain in compliance with all administrative regulations of the Commission.

AA. RWE and Thames Holdings will infuse equity capital into AWW prior to the IPO/Proposed Transaction sufficient to establish a capital structure for AWW at the time of the IPO that includes an equity/capitalization ratio no lower than 45% common equity. AWW will file a balance sheet as of the quarter ended immediately preceding the IPO.

Id. pp. 7-10. AWW, through Ms. Wolf's signature on the settlement, agreed to be bound by the conditions. Further, RWE, through Jens Gemmecke's signature on the settlement, agreed to be bound by Condition 22-AA. See also Tr. p. 35 (Dec. 4, 2006).

WVAWC, Thames, Staff and the CAD asked the Commission to issue findings of fact and conclusions of law to the effect that 1) the terms and conditions of the IPO/Proposed Transaction and the settlement are reasonable, 2) no party to the IPO/Proposed Transaction is given an undue advantage over another, and 3) that the completion of the IPO/Proposed Transaction, and related transactions, will not adversely affect the public. Id. p. 11. In the settlement, they also asked the Commission to grant the motion for confidential treatment, as amended.

Finally, they advised that the settlement was the result of extensive negotiations, reflected substantial compromises, and was proposed to expedite and simplify the resolution of this case. Id. pp. 11-12. They acknowledged the Commission's ability to accept, reject or modify the settlement. Id. p. 12.

Final hearing

At the December 4, 2006, hearing, counsel for WVAWC and Thames advised that the affidavits of publication⁵ regarding the required notice of the hearing (see Commission's August 10, 2006, order) were filed on December 1, 2006. The case file reflects the following:

- November 6, 2006 *The Charleston Gazette & The Daily Mail* (both Kanawha County), *The Logan Banner*, *Bluefield Daily Telegraph* (Mercer County)
- November 7, 2006 *Braxton Citizens' News*, *Register-Herald* (Raleigh County), *Hinton News* (Summers County), *The Jackson Herald*, *Point Pleasant Register* (Mason County)
- November 8, 2006 *Wayne County News*, *Lincoln Journal*, *Coal Valley News* (Boone County), *Clay County Free Press*, *Webster Echo*, *The Weston Democrat* (Lewis County)
- November 9, 2006 *Roane County Reporter*, *The Hurricane Breeze & The Putnam Democrat* (both Putnam County), *The Fayette Tribune*
- November 11, 2006 *The Exponent Telegram* (Harrison County)

Tr. p. 7 (Dec. 4, 2006).

⁵ For the same reasons as appear in footnote 1, the Commission concludes that WVAWC and Thames have substantially complied with the requirement to publish in 19 counties.

WVAWC and Thames' counsel also summarized the transaction as returning American Water to a stand-alone publicly traded company. Tr. p. 8. (Dec. 4, 2006). WVAWC would continue to be an operating subsidiary of American Water. Id. "While we believe that the RWE transaction has worked, as indicated in the testimony, the circumstances have changed. And it is our belief that it is in the best interest of the water company, West Virginia-American and AWW, to consummate the IPO," said counsel. Id.

At the hearing, Mr. Miller and Ms. Wolf took the stand to speak to the settlement.⁶ Tr. pp. 9-47 (Mr. Miller), 54-68 (Ms. Wolf).

Mr. Miller said that the negotiated conditions are "the very heart of the stipulation." Id. p. 15. These conditions provide assurance that West Virginia-American will have a strong capital base, going forward; will continue to be a part of a strong corporate structure; will continue to provide quality water service at reasonable rates; will continue to have its headquarters in Charleston; and will continue its history of investment and providing or extending water service in West Virginia, he testified. Tr. pp. 15-16.

Condition 22-A means that if there are any savings or efficiencies due to the IPO, WVAWC will flow those through to the benefit of its rate payers, he said. Id. p. 16. Condition 22-B is an assurance that WVAWC does not intend any major personnel reductions. Id. pp. 16-17. WVAWC will advise the Commission if it plans a reduction of five percent or more. Id. p. 17.

Several conditions are assurances that WVAWC's service will not be compromised by the IPO, and Mr. Miller noted that such assurances had also been made in the petition. Id. pp. 17, 19-20 (i.e., Conditions 22-C, 22-D, 22-N, 22-Y & 22-Z). Conditions 22-E and 22-F address continued local operations. Id. pp. 20-21.

Conditions 22-H and 22-I, as well as assurances in the petition, state that IPO-related costs will not be passed to WVAWC rate payers. Id. pp. 21-22. The reporting requirement in Condition 22-H was a key component of the settlement, Mr. Miller testified. Id. p. 22. WVAWC will report

⁶ Throughout the hearing, care was taken to refrain from addressing the discovery information which is subject to the interim protective agreements. The hearing was closed, due to discussion of the sensitive information, for only a few minutes. Since the underlying sensitive information was not presented to the Commission as evidence, the Commission will not grant permanent protective treatment to the information exchanged in discovery. Instead, the Commission will order the parties to return the contested discovery information or destroy it.

The Commission wishes to make clear that a limited portion of the transcript from the December 4, 2006, hearing is granted permanent protective treatment and shall not be made available, without prior Commission order. See WVAWC's motion for protected treatment of hearing transcript, Tr. pp. 51-52 (Dec. 4, 2006). Similarly, permanent protective treatment is granted to the proprietary versions of the pre-filed testimonies of Mr. Rubin and Ms. Wolf. These proprietary testimonies, likewise, may not be made available, without prior Commission order.

to the Commission all of the transaction costs “so that we’re very clear about what those costs are, what was charged in West Virginia, and that there will be no recovery of those in the rates of West Virginia-American.” Id. Condition 22-V goes a little further to state that WVAWC will not recover any of the IPO costs incurred by RWE or other foreign parties. Id. p. 31. In response to a question by Commissioner Staats, Mr. Miller testified that these particular conditions do not require any of the compliance reports with Sarbanes-Oxley to be filed with the PSC. Id. pp. 40-41.

Condition 22-O reflects WVAWC’s intent to honor all existing contracts, which was also stated in the petition. Id. pp. 22-23. Mr. Miller advised that WVAWC’s bargaining units support the IPO. Id. p. 23.

Condition 22-G relates to local support that WVAWC provides, he said. Id. pp. 23-24. “West Virginia-American believes that it is a very important company player in all of the local communities where we operate,” he said. “West Virginia-American does supply the more significant metropolitan areas in the state, Charleston and Huntington and areas in between. But we also serve over 100 smaller communities around the state. In our below-the-line contributions, the company has continued to provide its employees, its donations to support many, many efforts around these communities.”

In response to a question from Chairman McKinney, Mr. Miller said that WVAWC would continue to provide local support, including the Helping Hand program, and the current level of such dollars could be determined from WVAWC’s income statement, in the below-the-line contributions. Id. p. 45.

Sarbanes-Oxley compliance and costs are addressed in Condition 22-J. Id. p. 24. Although in Conditions 22-H and 22-I WVAWC and Thames agreed not to pass through any of the IPO costs, including Sarbanes-Oxley costs, Condition 22-J goes further and limits WVAWC’s rate recovery for three years to \$1 million, adjusted for inflation, of additional audit costs of American Water. Id. pp. 24-25.

WVAWC’s capital structure is addressed in Condition 22-K. Id. p. 25. “I think it was important to the Staff and CAD, and it is for the company that we maintain a good capital equity ratio at West Virginia-American Water Company, in line with what we can see with other regulated water utilities,” Mr. Miller testified. “We formalized that into that it will be a 35 to 45 percent range. And if there would be any reason, which I don’t foresee that reason at this time, but if there would be a need to go outside that range, we will notify this Commission.” Id. This is within the historic range of 39 to 42 percent, he said.

Mr. Miller agreed with Commissioner Staats that the common equity ratio relates to the components of the balance sheet’s capital structure, and not to the balance sheet’s debt structure. Id. p. 41.

If the equity capital ratio drops below 35 percent, Mr. Miller said that WVAWC likely would borrow short-term debt, then roll that amount into long-term debt. In response to Commissioner

Staats' questions, Mr. Miller said he could not visualize circumstances under which the equity capital ratio would so fall, but if so, in the unlikely event that funds could not be borrowed or that capital could not be raised through additional equity methods, he said that rate relief could be considered. Id. pp. 42-43.

Mr. Miller said the 35 to 45 percent range would be measured quarterly. Id. p. 43. PSC rules require WVAWC to file quarterly reports, which include a complete balance sheet. Id. p. 44.

Conditions 22-M and 22-X require WVAWC and American Water to report to the Commission if bond ratings are downgraded and to provide the Commission with annual reports and audits. Id. pp. 26-27. Sarbanes-Oxley compliance will be addressed in these reports. Id. p. 41.

Condition 22-P, relating to transactions with affiliates, is a holdover condition from the 2001 case when RWE took control of American Water. Id. p. 27. "Basically what it provides is that we will continue not to permit any affiliate of American Water or West Virginia-American, or any non-governmental entity to utilize the assets of West Virginia-American Water Company, without first notifying this Commission, or in some cases regarding an affiliate transaction, come before this Commission for its authorization to do so," he said. Id. pp. 27-28. The condition allows WVAWC to continue to use its resources continue to assist state agencies in times of crisis, such as floods.

Encumbering of assets is addressed by Condition 22-Q, in response to Staff and CAD concerns that WVAWC assets would not be encumbered by American Water. Id. pp. 28-29. WVAWC's assets are now encumbered by a general mortgage indenture, which does not permit American Water to place a lien on WVAWC's assets, or encumber WVAWC's assets, in a way superior or equal to the general mortgage indenture. Id. p. 29. "This commitment goes one step further, and it provides that American Water Works will not encumber the assets of West Virginia-American and any debt they issue in the future," he said. Id.

Under Condition 22-R, until the IPO is complete and Thames is entirely divested of American Water, American Water will advise the Commission of any attempt to acquire the majority of WVAWC's stock, Mr. Miller testified.

Unaccounted-for water was discussed extensively in the pre-filed testimony, and Condition 22-S memorializes Water Rule 5.6's requirement that WVAWC annually report to the Commission on activities taken to reduce its unaccounted-for water to a 15% level, as well as plans for the upcoming year. Id. p. 30.

Condition 22-T does not allow the payment for American Water's stock to be reflected on WVAWC's books. Id. p. 30. This is a furtherance of the commitment that IPO-related accounting treatment will not be pushed down to West Virginia-American's ratepayers, Mr. Miller testified. Id. pp. 30-31. Similarly, Condition 22-U is a commitment that the IPO will not affect the accounting or rate making treatment for WVAWC's excess deferred income taxes; the deferred income taxes will remain with WVAWC. Id. p. 31.

WVAWC has historically paid common dividends at 75 percent of net income, and Condition 22-W provides that WVAWC will notify the Commission if it plans to exceed that historic percentage, he said. Id. p. 32.

Mr. Miller said that Condition 22-AA was the stipulation's central condition, and it assures that prior to the IPO, RWE will infuse equity capital into American Water so that American Water's common equity will not be lower than 45 percent of the capital ratio. Id. p. 32. "This capital structure should facilitate American Water Works' continued investment-grade rating, from the bond agencies," he said. "Obviously, those conditions had a significant amount of discussion among the parties, but we believe this commitment by RWE should leave American Water Works with a very strong balance sheet, and it will enhance its ability to continue to attract capital at the cost-effective rates." Id. pp. 32-33.

In response to a question from Commissioner Staats, Mr. Miller reiterated that RWE's equity infusion would occur prior to the IPO, saying, "So at the time of the IPO, with the sale of the stock, American's balance sheet would be in the form that this condition describes." Id. p. 44. He further agreed with Commissioner Staats that, at the time of the IPO, there will be no lower than a 45 percent common equity relationship, at the American Water level, between Thames stock and the remainder of the capital section of the balance. Id. (**CLW Note:** Have I summarized correctly?)

In Mr. Rubin's pre-filed testimony, to have adequate capital available to American Water, he suggested that 20% of the IPO proceeds be returned to American Water. Tr. pp. 36-37 (Dec. 4, 2006). However, at the conclusion of the hearing, CAD's counsel advised that it preferred RWE's equity infusion over the recommendation in Mr. Rubin's pre-filed testimony. CAD's counsel advised that IPO transaction costs were a major concern and that the settlement resolved those concerns. Tr. pp. 71-72.

The future financial health of the company, the most important concern, was addressed by Condition 22-AA, the CAD said. "The only way to take care of [those concerns] was to make sure that West Virginia-American and its parent, AWW, going forward, were in reasonably good financial health to address the challenges that Mr. Rubin identified for us in his testimony. And, we're relatively confident that the infusion of common equity capital into this company, in the amount identified, will do that, will allow them the flexibility to start to address the challenge that we've identified, the issues that need to be dealt with and the rather substantial capital requirements that this company is going to go ahead and face going forward," he said. Id. pp. 72-73.

The CAD also was concerned with quality of service issues and advised that the settlement's requirements were a sufficient first-step to address those concerns. Id. p. 73.

Staff and the CAD both advised that the settlement reasonably resolved their concerns and they asked the Commission to adopt it. Id. p. 73. Like the CAD, Staff said that Condition 22-AA was essential to the agreement.

DISCUSSION

Settlement

Some of the settlement's many conditions memorialize existing obligations. To the extent such conditions are included, the Commission recognizes that they do not represent new duties. Such conditions acknowledge matters that are vital to the provision of water utility service and are a public renewal of WVAWC's covenant to meet such existing obligations.

Other conditions, though, such as Condition 22-AA, set forth new responsibilities. The Commission agrees with WVAWC, Staff and the CAD that the equity infusion into American Water's capital structure prior to the IPO is the heart of the settlement. Going forward, American Water's equity capital structure directly affects the cost of capital available to WVAWC, one of American Water's operating utility subsidiaries. Without an infusion to American Water's equity capital structure, WVAWC's future capital costs likely would increase. Under the settlement, sufficient capital will be added to put American Water in an equity position comparable to other similar companies. This is essential to protect West Virginia rate payers and the Commission applauds the parties for achieving this result.

While the Commission's statutory responsibility is to balance the interests of West Virginia ratepayers, the utility and the state's economy, the Commission recognizes that the capital infusion obligation, which was wrought in this West Virginia proceeding, will benefit rate payers in the 17 other utility operating subsidiaries of American Water.

The Commission also believes that the conditions relating to reporting requirements and IPO transaction costs are important to the settlement. The Commission should be promptly told when bond ratings deteriorate, and the settlement requires this to be done. Similarly, the Commission should be promptly told if American Water's capital structure deviates from what was promised in the settlement. And, the Commission should be informed if WVAWC plans to pay common dividends in excess of its historic level of 75 percent of net income.

By way of several different conditions, West Virginia rate payers are excluded from the responsibility of the IPO transaction costs. The Commission concludes that the costs of the corporate decision to return ownership of American Water to the public sector should be borne by the corporation, not by West Virginia rate payers, and these conditions in the settlement place such costs on the corporation.

In the petition, Thames and WVAWC stated that, if the refinancing of American Water Capital Corp.'s debt with RWE requires changes in the terms of the inter-company debt between American Water Capital Corp. and WVAWC, then WVAWC will, if required, seek approval from the Commission in a separate petition for any changes that may be needed. The Commission wishes to make clear that such approval must be requested.

Based upon our review of these proceedings then, we agree with WVAWC, Thames, Staff and CAD that 1) the terms and conditions of the IPO/Proposed Transaction and the settlement are reasonable, 2) no party to the IPO/Proposed Transaction is given an undue advantage over another, and 3) that the completion of the IPO/Proposed Transaction, and related transactions, will not adversely affect the public. Accordingly, it is reasonable for the Commission to accept the settlement.

Confidential treatment

Discovery materials

In preparation for the litigation of this matter, WVAWC and Thames provided confidential information to Staff and the CAD, pursuant to interim protective agreements. None of the confidential discovery materials were entered into evidence in this case. Accordingly, we conclude that there is simply no need to retain the proprietary files at the Public Service Commission. The proprietary filings shall be returned to the Joint Petitioners. Therefore, it is not necessary for the Commission to consider granting them permanent protective treatment. Instead, in accordance with the terms of the interim protective agreement,⁷ Staff and the CAD shall return or destroy all such confidential information and certify to WVAWC and Thames that they have done so.

In a very unusual circumstance, the Commission received some confidential discovery materials prior to the October 31, 2006, *in camera* hearing. The Commission shall likewise return or destroy all of those confidential discovery materials, and the Commission's Executive Secretary shall certify to WVAWC and Thames that the Commission has done so.

Pre-filed testimony

The CAD pre-filed testimony from Mr. Rubin, which contained testimony relating to the confidential information. Similarly, WVAWC and Thames pre-filed testimony from Ms. Wolf,

⁷ The interim protective agreement provides, in pertinent part, as follows:

G. The Parties agree and shall inform the Executive Secretary of the Commission that no copies of the Confidential Information or testimony including the Confidential Information shall be made and such information shall not be included in unexpurgated form in the Commission's files except upon the consent of the Disclosing Parties or upon an order of the Commission

H. Upon the conclusion of the Proceeding, any testimony which references or contains any of the Confidential Information shall not be made available to the public or made available to anyone not a party to a protective agreement with the Disclosing Parties, unless this Protective Agreement is lifted by an order of the Commission. Upon the Receiving Party's destruction of or return of all of the Confidential Information to the Disclosing Parties, this Agreement shall terminate.

which related to the confidential information. Both of those testimonies were admitted into evidence at the December 4, 2006, final hearing. Therefore, the Commission must consider whether it is appropriate to accord permanent protected treatment to those pre-filed testimonies.

We agree with WVAWC and Thames that PSC documents generally are available for public inspection, and that to obtain protected treatment, the information must be a trade secret and the party seeking protection must make a “credible showing of likely harm.” Under W. Va. Code § 29B-1-4(1), a trade secret includes any “compilation of information which is not patented which is known only to certain individuals within a commercial concern” and which “gives its users an opportunity to obtain business advantage over its competitors.”

We find that WVAWC and Thames have borne the burden to establish that the confidential information should be accorded permanent protected treatment. Early release of some of the information may constitute a “gun-jumping” violation under federal securities law. The contested information contains analyses and reports containing highly sensitive, confidential, or privileged information, which has enormous commercial value to competitors because it describes American Water’s current financial condition; reflects expectations for American Water’s post-IPO future, including projections of business performance, identification of risks, assessments of market and industry conditions, and the relative characteristics of certain industry competitors; shows each party’s independent review of how the transaction would affect its shareholders and operations; and includes advice from legal counsel. Substantial care has been taken to keep the contested information private. Less than 20 of the 155,000 employees have had access to the data, and everyone involved in due diligence signed a confidentiality agreement. Some of the materials are protected by the attorney-client privilege. The contested documents were developed with the assistance of expert securities counsel, tax counsel, and financial and tax advisors, and contain confidential information relating to competitive positions. These documents could not be replicated by those competitors without investing considerable resources and having access to the underlying private data. Thus, we agree that the information constitutes a trade secret under West Virginia law. Therefore, we shall grant permanent protected treatment to the proprietary versions of the pre-filed testimony.

Transcripts

The proprietary transcripts from the October 31 and December 4, 2006, PSC hearings contain references to the permanently protected information. Therefore, the proprietary versions of those transcripts shall not be made available, without further Commission order.

FINDINGS OF FACT

WVAWC and Thames’ petition for consent

1. On May 8, 2006, WVAWC and Thames requested the Commission’s consent and approval of the following:

- i. Thames' sale of up to 100% of the common stock of American Water Works Company, Inc. (American Water), WVAWC's immediate corporate parent, in one or more public offerings; and
- ii. The merger of American Water's immediate corporate parent, Thames Water Aqua US Holdings, Inc. (Thames US Holdings), with and into American Water, with American Water being the surviving corporation (to occur prior to the closing of the initial public offering).

Joint Petition pp. 1-18 & Exs. A-D. The proposed transaction will not adversely affect the public, and will result in continuous and seamless provision of reliable water service by WVAWC at just and reasonable rates, they said.

2. American Water's common stock will be offered for sale on the New York Stock Exchange. Under the proposed transaction, American Water will become the largest publicly-traded water company in the United States.

3. WVAWC will continue to be operated on a day-to-day basis by its local management under WVAWC's board of directors.

4. While Thames intends to sell 100% of the shares in the initial public offering, under certain market conditions Thames may sell less than that. If this occurs, then the remaining shares would be sold in a subsequent offering(s) as soon as is practical after the initial public offering, pursuant to SEC rules for underwritten public offerings.

5. Thames and WVAWC are not requesting approval for any individual or group to acquire a majority ownership interest in American Water in either the initial public offering or subsequent public offerings. The prospectus will clearly state that no investor will be permitted to acquire control of American Water unless the investor obtains any necessary state regulatory approvals.

6. If the refinancing of American Water Capital Corp.'s debt with RWE requires changes in the terms of the inter-company debt between American Water Capital Corp. and WVAWC, then WVAWC will seek approval from the Commission in a separate petition for any changes that may be needed.

7. WVAWC customers may invest in their water utility by buying American Water stock, and American Water may create an employee stock purchase program following the proposed transaction.

8. WVAWC will honor all of its existing agreements, including its collective bargaining agreements.

9. The book value of WVAWC's assets will not be adjusted due to the proposed transaction.

10. WVAWC and Thames will not seek recovery of the transaction costs from West Virginia rate payers.

Notice of the application

11. On August 11, 2006, affidavits of publication regarding notice of the application were filed as follows:

July 21, 2006	<i>Point Pleasant Register</i> (Mason County), <i>The Logan Banner</i> , <i>The Exponent Telegram</i> (Harrison County)
July 22, 2006	<i>Bluefield Daily Telegraph</i> (Mercer County)
July 24, 2006	<i>Wayne County News</i> , <i>The Fayette Tribune</i> , <i>The Saturday Gazette Mail</i> (Kanawha County), <i>Register-Herald</i> (Raleigh County)
July 25, 2006	<i>Hinton News</i> (Summers County), <i>Braxton Citizens' News</i> , <i>The Jackson Herald</i>
July 26, 2006	<i>Lincoln Journal</i> , <i>Webster Echo</i> , <i>Coal Valley News</i> (Boone County), <i>Clay County Free Press</i> , <i>The Weston Democrat</i> (Lewis County)
July 27, 2006	<i>Roane County Reporter</i> , <i>The Putnam Democrat</i> and <i>The Hurricane Breeze</i> (Putnam County)

Motions for protected treatment & in camera hearing

12. In response to CAD's first data request, WVAWC and Thames provided certain materials to Staff and the CAD under an interim protective agreement. Thereafter, they asked the Commission to accord the information permanent protected treatment. See Joint Motion for Protective Order pp. 1-2 (Aug. 24, 2006) (materials responding to the CAD's first data request), as amended Sept. 14, 2006 (correcting Exhibit 3 to Aug. 24, 2006, motion), Sept. 15, 2006 (materials responding to the CAD's second data request), Oct. 18, 2006 (materials responding to the Staff's first data request), & Nov. 14, 2006 (materials ordered to be produced by the PSC at the *in camera* hearing, responding to CAD's first data request.)

13. Thames and WVAWC conducted extensive due diligence, which includes analyses and reports containing highly sensitive, confidential, or privileged information, which has enormous commercial value to competitors because it describes American Water's current financial condition; reflects expectations for American Water's post-IPO future, including projections of business performance, identification of risks, assessments of market and industry conditions, and the relative characteristics of certain industry competitors; shows each party's independent review of how the transaction would affect its shareholders and operations; and includes advice from legal counsel, they argued. The information was generated at substantial cost and effort, and no outside party would be able to reproduce the information without access to the confidential information.

14. The proposed transaction was designed to secure tax efficiencies, and was developed with the assistance of expert securities counsel, tax counsel, and financial and tax advisors. The documents include assurances that the preferred stock transaction is legal and effective for its intended purposes, which results in a strategic advantage over actual and potential competitors that could not be replicated by those competitors without investing considerable resources. Id. p. 3. Thus, the transaction constitutes a trade secret under West Virginia law, they said. Id.

15. Release of some of the information could result in a “gun-jumping” violation under federal securities law.

16. Less than 20 of 155,000 employees have had access to the confidential data, and everyone involved in due diligence signed a confidentiality agreement.

17. On October 2, 2006, the CAD asked the Commission to require WVAWC and Thames to provide 1) Board of Director minutes that discussed the proposed separation of American Water from RWE and 2) presentations made to directors concerning the proposed separation of American Water from RWE, which had been omitted from the data responses. See CAD’s Motion to compel & for *in camera* hearing.

18. CAD’s counsel was permitted to review, but not copy, the information which had been redacted. Additionally, counsel’s ability to take notes on the content of the disputed materials was restricted.

19. The CAD argued that the materials are relevant to the issues in this proceeding, “or at the very least, could be the basis for additional questions that are reasonably calculated to lead to the discovery of admissible evidence.” These materials also are relevant due to representations made, and conditions imposed by the Commission in Case Number 01-1691-W-PC, relating to Thames’ acquisition of WVAWC.

20. On October 12, 2006, the Commission set an *in camera* hearing, because the Commission was not willing to accord permanent protected treatment before reviewing the contested materials. WVAWC and Thames were required to provide the unredacted materials to the Commission.

21. On October 23, 2006, the unredacted materials were filed with the Commission, under seal.

22. At the October 31, 2006, *in camera* hearing, counsel for CAD and WVAWC and Thames argued their respective positions, and the essential elements of those arguments appear in the public pleadings. In addition, Staff counsel argued that, like CAD, Staff would not challenge the assertions of attorney-client privilege. Staff also argued that, under traditional PSC practice as authorized by W. Va. Code § 24-1-7, information is sometimes provided to the PSC that circuit courts might not receive under the Rules of Evidence. If so, the Commission allows the parties to argue about the weight to be accorded such information. Staff also agreed with the CAD that

information may be discoverable if it is reasonably calculated to lead to the discovery of admissible evidence. *Id.* Staff noted that different arguments might apply, should the information be offered at a hearing. Staff suggested then, that the materials be made available to the parties pursuant to the interim protective agreements and that the Commission need not separately review each excerpt. *Id.* pp. 30-31. Staff also agreed that the West Virginia PSC is not bound by the decisions of another state's utility commission.

23. At the conclusion of the *in camera* hearing, the Commission ordered the unredacted documents to be provided to Staff and the CAD, pursuant to the existing interim protective agreements. The Commission also advised that it was not addressing whether the information could be offered at hearing and that the Commission would rule on permanent protected treatment should any of the information be used at trial.

CAD & Staff direct testimony, WVAWC & Thames rebuttal testimony

24. On November 8, 2006, the CAD pre-filed, in public and proprietary versions, Mr. Rubin's direct testimony and Staff pre-filed the Mr. Knurek's direct testimony. On November 29, 2006, Staff filed corrections to Mr. Knurek's pre-filed direct testimony.

25. On November 21, 2006, WVAWC and Thames pre-filed Mr. Miller's rebuttal testimony. They also pre-filed Ms. Wolf's rebuttal testimony, in public and proprietary versions.

Proposed settlement

26. On December 1, 2006, WVAWC, Thames, Staff and the CAD jointly filed a proposed settlement of this proceeding. See Joint Ex. No. 1 (Tr. Dec. 4, 2006). The parties negotiated 27 following conditions, all appearing in Paragraph 22, which they asked the Commission to imposed.

27. AWW, through Ms. Wolf's signature on the settlement, agreed to be bound by the conditions of the settlement.

28. RWE, through Jens Gemmecke's signature on the settlement, agreed to be bound by Condition 22-AA. See also Tr. p. 35 (Dec. 4, 2006).

Final hearing

29. Notice of the final hearing was published as follows:

November 6, 2006 *The Charleston Gazette & The Daily Mail* (both Kanawha County), *The Logan Banner*, *Bluefield Daily Telegraph* (Mercer County)
November 7, 2006 *Braxton Citizens' News*, *Register-Herald* (Raleigh County), *Hinton News* (Summers County), *The Jackson Herald*, *Point Pleasant Register* (Mason County)

- November 8, 2006 *Wayne County News, Lincoln Journal, Coal Valley News* (Boone County), *Clay County Free Press, Webster Echo, The Weston Democrat* (Lewis County)
- November 9, 2006 *Roane County Reporter, The Hurricane Breeze & The Putnam Democrat* (both Putnam County), *The Fayette Tribune*
- November 11, 2006 *The Exponent Telegram* (Harrison County)

Tr. p. 7 (Dec. 4, 2006).

30. Mr. Miller and Ms. Wolf testified about the settlement. Tr. pp. 9-47 (Mr. Miller), 54-68 (Ms. Wolf).

31. Mr. Miller said that the negotiated conditions are “the very heart of the stipulation.” Id. p. 15.

32. Conditions 22-H and 22-I, as well as assurances in the petition, state that IPO-related costs will not be passed to WVAWC rate payers. Id. pp. 21-22. The reporting requirement in Condition 22-H was a key component of the settlement, Mr. Miller testified. Id. p. 22. WVAWC will report to the Commission all of the transaction costs “so that we’re very clear about what those costs are, what was charged in West Virginia, and that there will be no recovery of those in the rates of West Virginia-American.” Id. Condition 22-V goes a little further to state that WVAWC will not recover any of the IPO costs incurred by RWE or other foreign parties. Id. p. 31. Mr. Miller testified that these particular conditions do not require any of the compliance reports with Sarbanes-Oxley to be filed with the PSC. Id. pp. 40-41.

33. Sarbanes-Oxley compliance and costs are addressed in Condition 22-J. Id. p. 24. Although in Conditions 22-H and 22-I WVAWC and Thames agreed not to pass through any of the IPO costs, including Sarbanes-Oxley costs, Condition 22-J goes further and limits WVAWC’s rate recovery for three years to \$1 million, adjusted for inflation, of additional audit costs of American Water. Id. pp. 24-25.

34. WVAWC’s capital structure is addressed in Condition 22-K. Id. p. 25. For three years, WVAWC’s equity-to-capital ratio will be in the 35 to 45 percent range, and if it goes beyond that range WVAWC will notify the Commission. WVAWC’s capital equity ratio has historically been 39 to 42 percent. This ratio relates to the components of the balance sheet’s capital structure, and not to the balance sheet’s debt structure. The 35 to 45 percent range will be measured quarterly, and PSC rules require WVAWC to file quarterly reports, which include a complete balance sheet. Id. pp. 43-44.

35. Conditions 22-M and 22-X require WVAWC and American Water to report to the Commission if bond ratings are downgraded and to provide the Commission with annual reports and audits. Id. pp. 26-27. Sarbanes-Oxley compliance will be addressed in these reports. Id. p. 41.

36. Encumbering of assets is addressed by Condition 22-Q. *Id.* pp. 28-29. WVAWC's assets are now encumbered by a general mortgage indenture, which does not permit American Water to place a lien on WVAWC's assets, or encumber WVAWC's assets, in a way superior or equal to the general mortgage indenture. *Id.* p. 29. "This commitment goes one step further, and it provides that American Water Works will not encumber the assets of West Virginia-American and any debt they issue in the future," Mr. Miller said. *Id.*

37. Condition 22-T does not allow the payment for American Water's stock to be reflected on WVAWC's books. *Id.* p. 30. This is a furtherance of the commitment that IPO-related accounting treatment will not be pushed down to West Virginia-American's ratepayers, Mr. Miller testified. *Id.* pp. 30-31. Similarly, Condition 22-U is a commitment that the IPO will not affect the accounting or rate making treatment for WVAWC's excess deferred income taxes; the deferred income taxes will remain with WVAWC. *Id.* p. 31.

38. WVAWC has historically paid common dividends at 75 percent of net income, and Condition 22-W provides that WVAWC will notify the Commission if it plans to exceed that historic percentage, Mr. Miller said. *Id.* p. 32.

39. Mr. Miller said that Condition 22-AA was the stipulation's central condition, and it assures that prior to the IPO, RWE will infuse equity capital into American Water so that American Water's common equity will not be lower than 45 percent of the capital ratio. *Id.* p. 32. "This capital structure should facilitate American Water Works' continued investment-grade rating, from the bond agencies," he said. *Id.* pp. 32-33.

40. Although Mr. Rubin suggested in pre-filed testimony that 20% of the IPO proceeds be returned to American Water, at the conclusion of the final hearing CAD's counsel advised that CAD preferred RWE's equity infusion over Mr. Rubin's pre-filed recommendation. Tr. pp. 36-37 (Dec. 4, 2006).

41. The CAD also was concerned with quality of service issues and advised that the settlement's requirements were a sufficient first-step to address those concerns. *Id.* p. 73.

42. Staff and the CAD both advised that the settlement reasonably resolved their concerns and they asked the Commission to adopt it. *Id.* p. 73. Like the CAD, Staff said that Condition 22-AA was essential to the agreement.

CONCLUSIONS OF LAW

Settlement

1. The Commission's policy is to encourage settlement, and all parties have urged the Commission to accept the settlement. We have reviewed the settlement and find it reasonable and in the public interest.

2. Some of the settlement's many conditions memorialize existing obligations. To the extent such conditions are included, the Commission recognizes that they do not represent new duties. Such conditions acknowledge matters that are vital to the provision of water utility service and are a public renewal of WVAWC's covenant to meet such existing obligations.

3. The Commission agrees with WVAWC, Staff and the CAD that Condition 22-AA's requirement of an equity infusion into American Water's capital structure prior to the IPO is the heart of the settlement. Going forward, American Water's equity capital structure directly affects the cost of capital available to WVAWC, one of American Water's operating utility subsidiaries. Without an infusion to American Water's equity capital structure, WVAWC's future capital costs likely would increase. Under the settlement, sufficient capital will be added to put American Water in an equity position comparable to other similar companies. This is essential to protect West Virginia rate payers and the Commission applauds the parties for achieving this result.

4. In addition to benefitting the interests of West Virginia ratepayers, the utility and the state's economy, the capital infusion obligation, which was wrought in this West Virginia proceeding, will benefit rate payers in the 17 other utility operating subsidiaries of American Water.

5. The conditions relating to reporting requirements and IPO transaction costs are important to the settlement. The Commission should be promptly told when bond ratings deteriorate, and the settlement requires this to be done. Similarly, the Commission should be promptly told if American Water's capital structure deviates from what was promised in the settlement. And, the Commission should be informed if WVAWC plans to pay common dividends in excess of its historic level of 75 percent of net income.

6. By way of several different conditions, West Virginia rate payers are excluded from the responsibility of the IPO transaction costs. The Commission concludes that the costs of the corporate decision to return ownership of American Water to the public sector should be borne by the corporation, not by West Virginia rate payers, and these conditions in the settlement place such costs on the corporation.

7. If the refinancing of American Water Capital Corp.'s debt with RWE requires changes in the terms of the inter-company debt between American Water Capital Corp. and WVAWC, then WVAWC must seek approval from the Commission in a separate petition for any changes that may be needed.

8. Based upon our review of these proceedings then, we agree with WVAWC, Thames, Staff and CAD that 1) the terms and conditions of the IPO/Proposed Transaction and the settlement are reasonable, 2) no party to the IPO/Proposed Transaction is given an undue advantage over another, and 3) that the completion of the IPO/Proposed Transaction, and related transactions, will not adversely affect the public. Accordingly, it is reasonable for the Commission to accept the settlement.

Confidential treatment

Discovery materials

9. In preparation for the litigation of this matter, WVAWC and Thames provided confidential information to Staff and the CAD, pursuant to interim protective agreements. None of the confidential discovery materials were entered into evidence in this case. Accordingly, we conclude that there is simply no need to retain the proprietary files at the Public Service Commission. The proprietary filings shall be returned to the Joint Petitioners. Therefore, it is not necessary for the Commission to consider granting them permanent protective treatment.

10. In accordance with the terms of the interim protective agreement, Staff and the CAD should return or destroy all such confidential information exchanged during discovery and certify to WVAWC and Thames that they have done so.

11. The Commission should likewise return or destroy all of those confidential discovery materials it received prior to the October 31, 2006, *in camera* hearing, and the Commission's Executive Secretary should certify to WVAWC and Thames that the Commission has done so.

Pre-filed testimony

12. The pre-filed testimonies of Mr. Rubin and Ms. Wolf contained references to the confidential information, and both of these testimonies were admitted into evidence at the December 4, 2006, final hearing. Therefore, the Commission should consider whether to accord permanent protected treatment to the pre-filed testimonies.

13. We agree with WVAWC and Thames that PSC documents generally are available for public inspection, and that to obtain protected treatment, the information must be a trade secret and the party seeking protection must make a "credible showing of likely harm." Under W. Va. Code § 29B-1-4(1), a trade secret includes any "compilation of information which is not patented which is known only to certain individuals within a commercial concern" and which "gives its users an opportunity to obtain business advantage over its competitors."

14. We conclude that WVAWC and Thames have borne the burden to establish that the confidential information should be accorded permanent protected treatment. Early release of some of the information may constitute a "gun-jumping" violation under federal securities law. The contested information contains analyses and reports containing highly sensitive, confidential, or privileged information, which has substantial commercial value to competitors because it describes American Water's current financial condition; reflects expectations for American Water's post-IPO future, including projections of business performance, identification of risks, assessments of market and industry conditions, and the relative characteristics of certain industry competitors; shows each party's independent review of how the transaction would affect its shareholders and operations; and includes advice from legal counsel. Substantial care has been taken to keep the contested information private. Less than 20 of the 155,000 employees have had access to the data, and everyone involved in due diligence signed a confidentiality agreement. Some of the materials are protected by the attorney-client privilege. The contested documents were developed with the

assistance of expert securities counsel, tax counsel, and financial and tax advisors, and contain confidential information relating to competitive positions. These documents could not be replicated by competitors without investing considerable resources and having access to the underlying private data. Thus, we agree that the information constitutes a trade secret under West Virginia law. Therefore, we shall grant permanent protected treatment to the proprietary versions of the pre-filed testimony.

Transcripts

15. The confidential transcripts from the October 31 and December 4, 2006, PSC hearings contain references to the permanently protected information. Therefore, the proprietary versions of those transcripts should not be made available, without further Commission order.

ORDER

IT IS THEREFORE ORDERED that the settlement filed on December 1, 2006, which is attached as Exhibit A, is accepted as a reasonable resolution of the issues in this proceeding.

IT IS FURTHER ORDERED that the Commission accords permanent protected treatment of the transcript of the October 31, 2006, *in camera* hearing. The Commission also accords permanent protected treatment to the confidential portion of the transcript of the December 4, 2006, final hearing.

IT IS FURTHER ORDERED that the materials which are subject to the interim protective agreements which were not admitted into evidence shall be destroyed or returned to WVAWC and Thames, with no copy being retained by this Commission or its Staff.

IT IS FURTHER ORDERED that the Commission's Executive Secretary shall destroy or return all copies possessed by the Commissioners, the Commissioners' staff and the Executive Secretary's staff of the unredacted information which the Commission ordered WVAWC and Thames to provide prior to the October 31, 2006, *in camera* hearing. The Commission's Executive Secretary shall certify to WVAWC and Thames the completion of this task.

IT IS FURTHER ORDERED that the Commission Staff and the CAD shall destroy or return all copies they possess of the materials which are subject to the interim protective agreements and which were not admitted into evidence in this proceeding. Commission Staff and the CAD shall certify to WVAWC and Thames the completion of this task.

IT IS FURTHER ORDERED that this case shall be removed from the Commission's docket of active cases.

IT IS FURTHER ORDERED that the Commission's Executive Secretary serve a copy of this order upon all parties of record by United States First Class Mail and upon Commission Staff by hand delivery.

A True Copy, Teste:


Sandra Squire
Executive Secretary

CLW/sek
060597ce.wpd

PUBLIC SERVICE COMMISSION
OF WEST VIRGINIA
CHARLESTON

CASE NO. 06-0597-W-PC

WEST VIRGINIA-AMERICAN WATER COMPANY,
a West Virginia corporation, and
THAMES WATER AQUA HOLDINGS GmbH,
a corporation organized under the laws of
the Federal Republic of Germany,

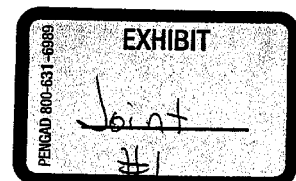
Petitioners.

Joint Petition for the Consent and Approval of the
Sale by Thames Water Aqua Holdings GmbH of
the Outstanding Common Stock of American Water
Works Company, Inc., the Controlling Shareholder
of West Virginia-American Water Company

JOINT STIPULATION
AND AGREEMENT FOR SETTLEMENT

Pursuant to West Virginia Code § 24-1-9(f) and Rule 13(d) of the Public Service Commission's Rules of Practice and Procedure, West Virginia-American Water Company ("WVAWC") and Thames Water Aqua Holdings GmbH ("Thames Holdings") the Staff of the Public Service Commission of West Virginia ("Staff"), and the Consumer Advocate Division of the Public Service Commission ("CAD") (collectively referred to herein as the ("Parties")) join in this Joint Stipulation and Agreement for Settlement ("Joint Stipulation").

(C1150821 1)



INTRODUCTION

This Joint Stipulation proposes and recommends a settlement ("Settlement") among the Parties by which they have agreed and recommend that the Public Service Commission ("Commission") enter a Commission Order granting its prior consent and approval under West Virginia Code § 24-2-12 to the Joint Petition for the Consent and Approval ("Joint Petition") (i) for the sale by Thames Holdings of up to 100% of the shares of common stock of WVAWC's immediate corporate parent, American Water Works Company, Inc. ("AWW"), in one or more public offerings and (ii) prior to the closing of the initial public offering ("IPO"), the merger of AWW's immediate corporate parent, Thames Water Aqua US Holdings, Inc. ("TWAUSHI"), with and into AWW, with AWW being the surviving corporation (the transactions set forth in (i) and (ii) are hereinafter collectively referred to as the ("IPO/Proposed Transaction")).

In this Joint Stipulation, the Parties recommend that the Commission approve the Joint Petition, but have also agreed and recommend that the Commission condition consent and approval of the IPO/Proposed Transaction to certain commitments and undertakings contemplated in the Joint Stipulation (the "Conditions").

In support of this Joint Stipulation and the Settlement embodied herein, the Parties state that:

PROCEDURAL MATTERS AND THE PARTIES

1. On May 8, 2006, WVAWC and Thames Holdings ("Joint Petitioners") filed a Joint Petition for Commission consent and approval of (i) the sale by Thames

Holdings of up to 100% of the shares of common stock of AWW ("Common Stock"), WVAWC's immediate corporate parent, in one or more public offerings; and (ii) the merger of American Water's immediate corporate parent, TWAUSHI, with and into American Water, with American Water being the surviving corporation (this is to occur prior to the IPO).

2. On May 22, 2006, the Consumer Advocate Division of the Public Service Commission (CAD) filed a petition to intervene in this proceeding.

3. Staff filed its Initial Joint Staff Memorandum on June 9, 2006. Staff indicated that its initial review of the Joint Petition raised certain issues that needed to be addressed and that would require Staff to obtain additional information from the Joint Petitioners. Staff recommended that, given the significance of the transaction, that the Commission order the Joint Petitioners to publish notice of this case and provide an opportunity for the filing of comments and petitions to intervene.

4. On July 17, 2006, the Commission entered an Order granting the CAD's intervention and requiring the Joint Petitioners to publish notice of this proceeding. Notice was given as required by the Commission's Order.

5. On July 26, 2006, the Joint Petitioners filed a Joint Motion to Establish Procedural Schedule.

6. On August 10, 2006, the Commission entered an Order adopting the procedural schedule proposed by the Parties in the Motion to Establish Procedural Schedule.

7. On August 24, 2006, WVAWC and Thames Holdings filed a Joint Petition for a Protective Order for certain documents they produced in discovery.

8. On August 31, 2006, the CAD requested an extension of time to respond to the Joint Motion for Protective Order.

9. On September 11, 2006, the Commission entered an Order granting the CAD's request for extension of time to respond to the Joint Motion for Protective Order.

10. On August 2, 2006, the Joint Petitioners filed their Direct Testimony with the Commission. The pre-filed testimony consisted of the Direct Testimony and related exhibits of Ellen C. Wolf and Michael A. Miller.

11. On November 8, 2006, Staff filed the Direct Testimony of Charles (Chuck) Knurek and the CAD filed the Direct Testimony of Scott J. Rubin.

12. On November 21, 2006, the Joint Petitioners filed the Rebuttal Testimony of Ellen Wolf and Michael A. Miller.

NATURE OF THE TRANSACTION AND THE IPO

13. As set forth in the Joint Petition, the offering of the Common Stock will be conducted in compliance with the U. S. Securities Act of 1933. The shares of Common Stock are intended to be listed on the New York Stock Exchange. The Joint Petitioners asserted that the IPO/Proposed Transaction will not adversely affect the public

and will result in the continuous and seamless provision of water service by WVAWC at just and reasonable rates.

14. AWW is a corporation organized and existing under the laws of the State of Delaware and owns the common stock of WVAWC. AWW's principal offices are located at 1025 Laurel Oak Road, Voorhees, New Jersey.

15. While Thames Holdings intends to sell 100% of the Common Stock in the IPO, under certain market conditions 100% of the Common Stock may not be sold in the IPO. If this occurs, then the remainder of the shares of Common Stock would be sold in a subsequent offering or offerings pursuant to the Commission's order in this case as soon as is practical after the IPO. Any subsequent public offerings will be conducted in accordance with the SEC rules for underwritten public offerings.

16. The Joint Petitioners have asserted that the IPO/Proposed Transaction should not impair WVAWC's ability to maintain a reasonable capital structure, which is representative of other utilities, nor should the IPO/Proposed Transaction impair WVAWC's ability to raise needed capital on reasonable terms.

17. The Staff and CAD have undertaken extensive discovery, both of a formal and informal character, with respect to the IPO/Proposed Transaction and the relief requested in the Joint Petition. The CAD served five sets of Data Requests with numerous questions and the Staff served two sets of Data Requests and undertook extensive informal discovery.

18. In addition to the formal and informal discovery by the CAD and Staff, the Parties, in the weeks prior to the hearing conducted two separate prehearing

conferences held on November 13, 2006 and November 29, 2006, at which they discussed various aspects of the IPO/Proposed Transaction, attempted to narrow or eliminate certain of the issues and concerns raised by the Staff and CAD with respect to the IPO/Proposed Transaction, and discussed and finalized the numerous conditions set forth in paragraph 22 below.

19. Under the IPO/Proposed Transaction, the Joint Petitioners noted that American Water Works Service Company, Inc. ("AWWSC") will continue to provide customer service, accounting, administration, engineering, financial, human resources, information systems, operations, risk management, water quality and other services to WVAWC under the Service Company Agreement with WVAWC. Additionally, American Water Capital Corp. will continue to provide services under the Financial Services agreement between it and WVAWC after the IPO/Proposed Transaction is consummated.

20. WVAWC will continue to honor all existing agreements, including its collective bargaining agreements and the day-to-day operations of WVAWC are not expected to change as a result of the IPO/Proposed Transaction. WVAWC does not expect any adjustment to the existing book value of any of WVAWC's assets to result from the IPO/Proposed Transaction.

21. The Parties jointly recommend that the Commission enter an Order approving the Joint Petition and granting the consent and approval of the Commission to the Joint Petition and the transactions contemplated therein pursuant to the provisions of W. Va. Code § 24-2-12.

22. In furtherance and support by the Parties for the relief sought in the Joint Petition and this Settlement, the Parties have negotiated various conditions that WVAWC and AWW support for purposes of this Joint Stipulation. Specifically, AWW and WVAWC undertake in this Joint Stipulation the following conditions:

A. WVAWC will pass through to WVAWC's customers, in future rate cases, any actual savings from efficiencies resulting from the IPO/Proposed Transaction for the Common Stock of AWW and the continued ownership of WVAWC by AWW.

B. For a period of three (3) years from the date of the Commission Order ("Order") in this case (and after it has first notified its WVAWC employees), WVAWC will notify the Commission in writing of a planned reduction of 5% or more in WVAWC's work force.

C. WVAWC will continue to use its best efforts to meet or improve upon WVAWC's water service standards, including but not limited to standards for water service interruptions, employee response time, customer complaints and complaint response time.

D. WVAWC will continue to make its best efforts, at all times, to meet applicable water quality standards and will commit to make no changes in the basic operations of WVAWC as a result of the IPO/Proposed Transaction that would be detrimental to this commitment.

E. WVAWC will maintain its corporate offices in West Virginia. Furthermore, there will be no reduction in the overall levels and responsibilities of West Virginia local management located in West Virginia as a result of the IPO/Proposed Transaction.

F. WVAWC will maintain a substantial "local interest" representation on its Board of Directors, and the Board of Directors of WVAWC will continue to provide guidance and oversight of the business and affairs of WVAWC.

G. WVAWC will continue its current level of support for and involvement in local and community projects, including continued

funding for WVAWC's Helping Hand Program to assist low income residential customers with their water bills.

H. AWW will make no attempt to recover through WVAWC's rates any costs of the IPO/Proposed Transaction, purchase price, goodwill, early termination payment, change in control payment, incentive or retention bonus payment in connection with the IPO/Proposed Transaction, either directly or indirectly through American Water Works Service Company, Inc., or any other affiliate, or by any other means. AWW will supply a report to the Commission summarizing such costs, including the amount of such costs allocated to WVAWC, within one year from the date of the Order or, if the sale by Thames Holdings of the Common Stock occurs more than one year after the date of the Order, within 60 days of the date of the sale.

I. AWW will not recover from WVAWC's customers or have WVAWC's customers fund any portion of the costs of the IPO/Proposed Transaction, including but not limited to financial, legal, severance payments, regulatory fees, investment services or the installation of the initial procedures for compliance with The Sarbanes - Oxley Act of 2002 (Pub. L. No. 107-204, 116 Stat. 745, also known as the Public Company Accounting Reform and Investor Protection Act of 2002 ("Sarbanes-Oxley").

J. For a period of three years from the date of the Order, AWW will not be permitted to charge WVAWC more than its allocated share of \$1 million per year (adjusted annually for inflation) for additional audit costs for Sarbanes Oxley compliance as calculated under the existing agreement between AWWSC and WVAWC.

K. For three years following the date of the Order, WVAWC will maintain its equity-to-capital ratio between 35% and 45%. If the equity-to-capital ratio falls outside of this range, WVAWC will notify the Commission in writing within 30 days.

L. WVAWC will flow through to the benefit of its customers any lower cost of debt applicable to WVAWC, to the extent known and measurable, as a result of its relationship with AWW in future general rate cases.

M. WVAWC will report to the Commission within 30 days any downgrading of the bonds of AWW, AWCC, WVAWC or any

subsidiary of AWW and will provide a full copy of the report issued by the bond rating agency.

N. When implementing "best practices", AWW and WVAWC will consider any related effects on customer service and customer satisfaction levels.

O. WVAWC will honor all of its existing contracts, easements and other agreements in accordance with their respective terms.

P. WVAWC will not allow the use of any of its personnel, assets or equipment by any affiliated entity without the Commission's prior consent and approval pursuant to W. Va. Code § 24-2-12. Further, to the extent that WVAWC allows the use of such personnel, assets or equipment by any unaffiliated entity, other than a government body or non-profit entity, WVAWC will file a report with the Commission within thirty days after the use of such personnel, assets or equipment on the identity of the personnel, assets or equipment involved and the estimated fully-allocated cost of such personnel, assets or equipment.

Q. AWW will not issue any debt that pledges as security or otherwise encumbers the assets of WVAWC.

R. AWW agrees that (i) it will not sell a majority of the common stock of WVAWC to any person or corporation, whether or not organized under the laws of this state, until that person or corporation has obtained the prior consent and approval of the Commission under the provisions of W. Va. Code § 24-2-12; and (ii) until Thames Holdings has disposed of its interests in AWW, AWW will advise the Parties of any person or corporation that, to the knowledge of AWW or WVAWC, attempts to acquire, either directly or indirectly, a majority of the common stock of WVAWC under the provisions of W. Va. Code § 24-2-12.

S. WVAWC will file reports annually that detail how it proposes to bring WVAWC into compliance with the Commission's Water Rules regarding unaccounted for water.

T. The payment for AWW stock will not be recorded on WVAWC's books.

U. RWE and Thames Holdings divestiture of AWW will not affect the accounting and ratemaking treatments of WVAWC excess deferred income taxes.

V. WVAWC will not bear any costs incurred to comply with any law, regulation, standard, or practice of the United Kingdom, Federal Republic of Germany, or European Community necessary to complete the IPO/Proposed Transaction.

W. WVAWC will notify the Commission before making a dividend that is more than 75% of net income.

X. AWW or WVAWC will file the following reports with the Commission or provide the relevant Securities and Exchange Commission website where such reports are available: AWW's quarterly interim reports to its shareholders; AWW's annual reports to its share holders; and AWW's and WVAWC's annual audit reports.

Y. WVAWC customers will experience no material adverse change in utility service due to the IPO/Proposed Transaction.

Z. AWW and WVAWC will adequately fund and maintain WVAWC's treatment, transmission, and distribution systems; supply the service needs of WVAWC customers; comply with all applicable West Virginia statutes; and make best efforts to remain in compliance with all administrative regulations of the Commission.

AA. RWE and Thames Holdings will infuse equity capital into AWW prior to the IPO/Proposed Transaction sufficient to establish a capital structure for AWW at the time of the IPO that includes an equity/capitalization ratio no lower than 45% common equity. AWW will file a balance sheet as of the quarter ended immediately preceding the IPO.

23. By the execution of this Joint Stipulation by their counsel, the Joint Petitioners affirmatively commit to be bound by the conditions set forth in Paragraph 22 above.

24. Petitioner Thames Holdings is a wholly-owned subsidiary of RWE AG ("RWE"), a corporation organized under the laws of the Federal Republic of Germany. RWE, through the acknowledgement of this Joint Stipulation by Jens Gemmecke, a representative of RWE duly authorized pursuant to power of attorney of RWE, commits to the provisions of Condition AA of Paragraph 22 above and AWW, through the written acknowledgement of Ellen C. Wolf, Senior Vice President and Chief Financial Officer of AWW, commits AWW to be bound by the conditions of Paragraph 22 above.

25. Based on the affirmative representations of the Joint Petitioners, RWE, and AWW as set forth in Paragraphs 23 and 24 above, the Parties agree to recommend that the Commission issue appropriate findings of fact and conclusions of law to the effect (i) the terms and conditions of the IPO/Proposed Transaction and the Joint Stipulation are reasonable, (ii) that no party to the IPO/Proposed Transaction is given an undue advantage over another and (iii) that the IPO/Proposed Transaction and the other transactions contemplated by the Joint Petition and this Settlement do not and, upon the completion of the IPO/Proposed Transaction, will not adversely affect the public in this State.

26. The Parties further request that the Commission grant the Motion for Confidential Treatment, as amended, filed by the Joint Petitioners in this case.

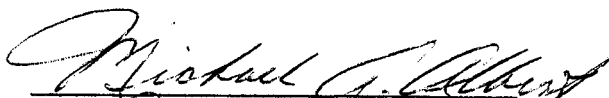
27. The Joint Stipulation is entered into subject to the acceptance and approval of the Commission. It results from a review of all filings in this proceeding and extensive negotiation. It reflects substantial compromises by the Parties and the

modification of their respective positions asserted in this case, and is being proposed to expedite and simplify the resolution of these proceedings and other matters. It is made without any admission or prejudice to any positions which any Party might adopt during subsequent litigation.

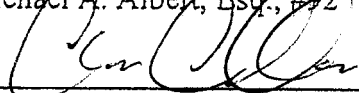
28. The Parties adopt the Joint Stipulation as being in the public interest, without adopting any of the compromise positions set forth herein as principles applicable to future regulatory proceedings, except as may otherwise be provided herein. The Parties acknowledge that it is the Commission's prerogative to accept, reject, or modify any stipulation. However, in the event that the Joint Stipulation is modified or rejected by the Commission, it is expressly understood by the Parties that they are not bound to accept the Joint Stipulation as modified or rejected, and may avail themselves of whatever rights are available to them under law and the Commission's Rules of Practice and Procedure.

WHEREFORE, the Parties, on the basis of all of the foregoing, respectfully request that the Commission make appropriate findings of fact and conclusions of law adopting and approving the Joint Stipulation in its entirety.

WEST VIRGINIA-AMERICAN WATER
COMPANY
and
THAMES WATER AQUA HOLDINGS
GmbH,
By Counsel



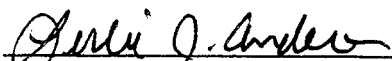
Michael A. Albert, Esq., #92



Christopher L. Callas, Esq., #5991
Jackson Kelly PLLC
P.O. Box 553
Charleston, WV 25322-0553
Phone (304) 340-1287
Fax (304) 340-1080

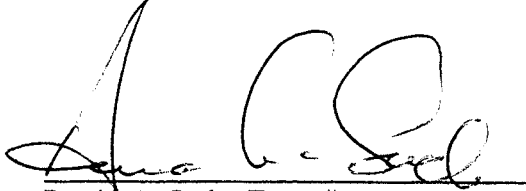
THE STAFF OF THE PUBLIC SERVICE
COMMISSION OF WEST VIRGINIA

By Counsel



Leslie J. Anderson, Esq., #5777
201 Brooks Street
P. O. Box 812
Charleston, WV 25323

CONSUMER ADVOCATE DIVISION OF
THE PUBLIC SERVICE COMMISSION OF
WEST VIRGINIA

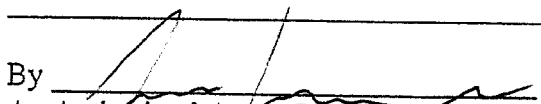


David A. Sade, Esq., #3229
Consumer Advocate Division
7th Floor, Union Building
723 Kanawha Boulevard, East
Charleston, West Virginia 25301

By Counsel

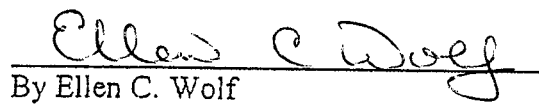
Acknowledged and agreed to by:

RWE AKTIENGESELLSCHAFT

By 
An Authorized Agent By Virtue of the Power of
Attorney Attached As Exhibit A Hereto

Acknowledged and agreed to by:

AMERICAN WATER WORKS COMPANY,
INC.


By Ellen C. Wolf
Senior Vice-President and Chief Financial
Officer

Power of Attorney

Made this 30th day of November, 2006.

WHEREAS

- (A) We, **RWE Aktiengesellschaft**, are a corporation incorporated in accordance with the laws of the Federal Republic of Germany and with its registered office at Opernplatz 1, 45128 Essen, Federal Republic of Germany ("**RWE AG**").
- (B) It is intended that RWE AG enters into a transaction involving, among other things, the negotiation of and entering into settlement agreements by which the regulatory procedures for the approval of the sale of the shares of American Water Works Company, Inc. are settled with the respective authorities (all of the foregoing the "**Transaction**").

NOW, THEREFORE, we, RWE AG, hereby appoint each of the following:

1. **Andreas Zetzsche**
2. **Jens Gemmecke**
3. **Dr. Manfred Döss**
4. **Christian Ring**
5. **Gunnar Helberg**

- each having his business address at Opernplatz 1, 45128 Essen, Germany -

6. **Dietrich Firnhaber**
7. **Dr. Volker Heischkamp**
8. **Christoph Quick**

- each having his business address at 1025 Laurel Oak Rd., Voorhees, NJ 08054, USA -

(each an "**Attorney**")

- each of them authorized to solely represent RWE AG -

to be our attorney, each of whom shall be vested with full power and authority in our name and on our behalf to do all such acts and things as follows:

- 1) to agree, sign, seal, execute, amend and deliver on behalf and in the name of RWE AG any agreement, contract, memorandum, notice, communication, deed, declaration, instrument, letter or other document and to do all such acts and things that the Attorney considers to be required or expedient in relation to the Transaction;

RWE Aktiengesellschaft

Opernplatz 1
45128 Essen

T +49 (0)201/12-00
F +49 (0)201/12-1 51 99
I www.rwe.com

Vorsitzender des
Aufsichtsrates:
Dr. Thomas R. Fischer

Vorstand:
Harry Roels
(Vorsitzender)
Berthold A. Bonekamp
Alwin Fitting
Dr. Klaus Sturany
Jan Zilius

Sitz der Gesellschaft: Essen
Eingetragen beim
Amtsgericht Essen

Handelsregister-Nr. HRB 14 525

USt.-IdNr. DE 8130 23 534



- 2 -

- 2) to do all such acts and things as the Attorney considers may be required or desirable in connection with the Transaction;
- 3) to sub-delegate the power of attorney granted hereunder on the same terms and conditions as set forth herein, except that a person to whom the power of attorney is sub-delegated may not further sub-delegate such power.

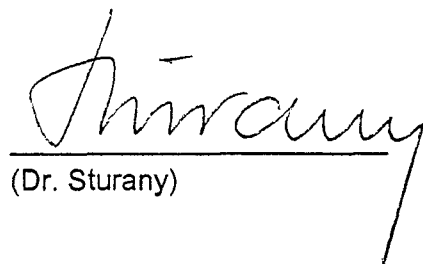
This Power of Attorney is governed by and shall be construed in accordance with the laws of the Federal Republic of Germany without its conflict of law principles.

This Power of Attorney shall expire on the 30th day of September, 2007.

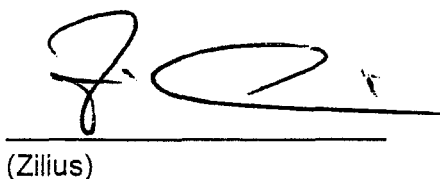
IN WITNESS WHEREOF this Power of Attorney has been executed for and on behalf of RWE Aktiengesellschaft on the date and year first above written.

Handwritten initials, possibly "JL", in cursive script.

RWE Aktiengesellschaft

A handwritten signature in cursive script, appearing to read "Sturany".

(Dr. Sturany)

A handwritten signature in cursive script, appearing to read "Zilius".

(Zilius)

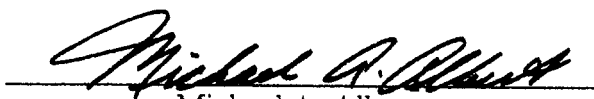
CERTIFICATE OF SERVICE

I, Michael A. Albert, counsel for West Virginia-American Water Company, hereby affirm that the **Joint Stipulation and Agreement for Settlement** was served on the parties of record by hand delivering true and correct copies thereof addressed as follows:

David A. Sade, Esq.
Consumer Advocate Division
7th Floor, Union Building
723 Kanawha Boulevard, East
Charleston, West Virginia 25301

Caryn Watson Short, Esq.
Public Service Commission
P. O. Box 812
Charleston, West Virginia 25323

Leslie J. Anderson, Esq.
Public Service Commission
P. O. Box 812
Charleston, West Virginia 25323


Michael A. Albert

Dated: December 4, 2006