

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

KENTUCKY-AMERICAN WATER COMPANY'S )  
APPLICATION FOR APPROVAL OF PAYMENT ) CASE NO. 2009-00359  
OF DIVIDEND FOR THIRD QUARTER OF )  
CALENDAR YEAR 2008 )

ORDER

On September 4, 2009, Kentucky-American Water Company ("Kentucky-American"), Thames Water Aqua Holdings ("Thames"), Thames Water Aqua US Holdings, Inc. ("TWUS"), RWE Aktiengesellschaft ("RWE") and American Water Works Company ("AWWC") (collectively "Joint Applicants") applied for Commission approval of Kentucky-American's 2009 Third Quarter Dividend on common stock.

In Case No. 2002-00317,<sup>1</sup> the Commission approved the transfer of control of Kentucky-American from AWWC to Thames, TWUS, and RWE subject to 61 conditions. One of these conditions was that Joint Applicants obtain Commission approval prior to the payment of any dividend or transfers of any funds within a calendar year that collectively represent more than 5 percent of Kentucky-American's retained earnings as of December 31 of the prior calendar year to RWE, Thames, TWUS or any other entity related to RWE.<sup>2</sup>

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<sup>1</sup> Case No. 2002-00317, *The Joint Petition of Kentucky-American Water Company, Thames Water Aqua Holdings GmbH, RWE Aktiengesellschaft, Thames Water Aqua US Holdings, Inc., Apollo Acquisition Company and American Water Works Company, Inc. for Approval of a Change of Control of Kentucky-American Water Company* (Ky. PSC Dec. 20, 2002).

<sup>2</sup> *Id.*, App. A at 6.

We imposed this condition to ensure Kentucky-American's financial ability to provide reliable service and to guard against any effort to drain Kentucky-American's treasury to finance RWE's acquisition of AWWC or pay the premium associated with the acquisition.<sup>3</sup> It enables us to monitor transfers from Kentucky-American and prevent unusual or extraordinary transfers of funds. Absent the imposition of this condition, the Commission's statutory ability to monitor and prevent such conduct is very limited.

On April 16, 2007, the Commission approved RWE's proposed divestiture of AWWC and held that all conditions to our approval of RWE's acquisition of control would terminate when RWE and Thames GmbH ceased to have any beneficial interest, direct or indirect, in any class of securities of AWWC.<sup>4</sup>

On November 30, 2009, RWE and Thames GmbH sold their remaining interest in AWWC and ceased to have any beneficial interest in any class of securities of AWWC.<sup>5</sup> As of that date, the conditions imposed by our Orders in Cases No. 2002-00018 and No. 2002-00317 terminated.

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<sup>3</sup> Case No. 2002-00018, *Application for Approval of the Transfer of Control of Kentucky-American Water Company to RWE Aktiengesellschaft and Thames Water Aqua Holdings GMBH* (Ky. PSC May 30, 2002) at 20–21.

<sup>4</sup> Case No. 2006-00197, *The Joint Petition of Kentucky-American Water Company, Thames Water Aqua Holdings GmbH, RWE Aktiengesellschaft, Thames Water Aqua US Holdings, Inc., and American Water Works Company, Inc. for Approval of a Change in Control of Kentucky-American Water Company* (Ky. PSC Apr. 16, 2007) at 36.

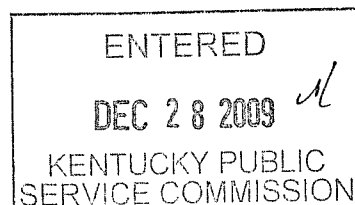
<sup>5</sup> Kentucky-American Water Company's Status Report and Request (filed Dec. 8, 2009) at 2; American Water Works Company, Inc., Current Report (Form 8-K) (Nov. 19, 2009) <http://www.sec.gov/Archives/edgar/data/1410636/000119312509237705/d8k.htm>; Press Release, American Water Works Company, American Water Announces RWE to Complete Divestiture (Nov. 24, 2009), <http://pr.amwater.com/PressReleases/releasedetail.cfm?ReleaseID=426490>.

The Commission finds that, in light of the termination of these conditions, the Joint Applicants are no longer required to obtain Commission approval of Kentucky-American's payment of dividends and that the Joint Applicants' request is moot. As the evidence of record has revealed possible violations of the Commission's Order of December 20, 2002 involving Kentucky-American's dividend payments for the first and second quarters of 2009, this docket will remain open pending completion of our review of those violations.

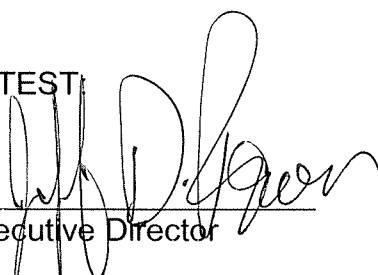
IT IS THEREFORE ORDERED that:

1. The Joint Applicants' Request for Approval is denied as moot.
2. Kentucky-American is not required to obtain Commission approval of any dividend payment made after November 30, 2009.
3. This docket shall remain open to address the Joint Applicants' alleged violations of the Commission's Order of December 20, 2002 involving Kentucky-American's dividend payments for the first and second quarters of 2009.

By the Commission



ATTEST:

  
Executive Director