

BEFORE THE
ILLINOIS COMMERCE COMMISSION

Illinois-American Water Company,	:	
American Water Works Company, Inc.,	:	
Thames Water Aqua US Holdings, Inc., and	:	
Thames Water Aqua Holdings GmbH	:	
	:	
Joint Application for Approval of Proposed	:	Docket No. 06-0336
Reorganization and Change of Control of	:	
Illinois-American Water Company Pursuant	:	
to Section 7-204 of the Illinois Public	:	
Utilities Act	:	

Direct Testimony of
Scott J. Rubin

on behalf of

The People of the State of Illinois

August 8, 2006

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1. Introduction

1

2 **Q. Please state your name and business address.**

3 A. My name is Scott J. Rubin. My business address is 3 Lost Creek Drive, Selinsgrove, PA.

4 **Q. By whom are you employed and in what capacity?**

5 A. I am an independent consultant and an attorney. My practice is limited to matters
6 affecting the public utility industry.

7 **Q. What is the purpose of your testimony in this case?**

8 A. I have been asked by the Office of Attorney General (AG) to review, and make
9 recommendations concerning, the Joint Application filed by Illinois-American Water
10 Company (IAWC), American Water Works Company, Inc. (AWW), Thames Water Aqua
11 US Holdings, Inc. (TWAUSHI), and Thames Water Aqua Holdings GmbH (Thames).
12 All of the joint applicants are either directly or indirectly wholly owned subsidiaries of a
13 multinational utility holding company based in Germany, RWE AG (RWE). The
14 application seeks approval for a proposed merger between TWAUSHI and AWW (with
15 AWW as the surviving company), to be followed by an Initial Public Offering (IPO) of
16 the common stock of AWW. At the conclusion of the IPO, AWW would be an
17 independent, publicly traded company.

18 **Q. What are your qualifications to provide this testimony in this case?**

19 A. I have testified as an expert witness before utility commissions or courts in the District of
20 Columbia and in the states of Arizona, Delaware, Kentucky, Illinois, Maine, Maryland,
21 New Jersey, New York, Ohio, Pennsylvania, and West Virginia. I also have testified as
22 an expert witness before two committees of the U.S. House of Representatives and one

23 committee of the Pennsylvania House of Representatives. I also have served as a
24 consultant to the staffs of two state utility commissions, several national utility trade
25 associations, and state and local governments throughout the country. Prior to
26 establishing my own consulting and law practice, I was employed by the Pennsylvania
27 Office of Consumer Advocate from 1983 through January 1994 in increasingly
28 responsible positions. From 1990 until I left that Office, I was one of two senior attorneys
29 in that Office. Among my other responsibilities in that position, I had a major role in
30 setting their policy positions on water and electric matters. In addition, I was responsible
31 for supervising the technical staff of that Office. I also testified as an expert witness for
32 that Office on rate design and cost of service issues.

33 In addition, from 1990 until 1994, I chaired the Water Committee of the National
34 Association of State Utility Consumer Advocates (NASUCA). In that position, I served
35 as the liaison between NASUCA members and various industry and government
36 associations, including the National Association of Water Companies, the American
37 Water Works Association, and the U.S. Environmental Protection Agency. I was
38 frequently called upon by those organizations to provide the consumer perspective on
39 various water-industry issues, including customer service.

40 Throughout my career, I developed substantial expertise in matters relating to the
41 economic regulation of public utilities. I have published articles, contributed to books,
42 written speeches, and delivered numerous presentations, on both the national and state
43 level, relating to regulatory issues. I have attended numerous continuing education
44 courses involving the utility industry. I also periodically participate as a faculty member
45 in utility-related educational programs for the Institute for Public Utilities at Michigan

46 State University, the American Water Works Association (AWWA), and the
47 Pennsylvania Bar Institute. Appendix A to this testimony is my curriculum vitae.

48 **Q. Do you have any experience that is particularly relevant to the issues in this case?**

49 A. Yes, I do. Over the years, I have been involved, either as an attorney or an expert
50 witness, in numerous utility merger or reorganization proceedings, including the
51 following:

- 52 • Allegheny Energy – Duquesne Light
- 53 • Exelon - PSEG
- 54 • FirstEnergy – GPU
- 55 • Long Island Lighting – Keyspan – Long Island Power Authority
- 56 • MCI – Sprint
- 57 • PSC – Consumers Water
- 58 • RWE – Thames – American Water Works
- 59 • SBC – AT&T
- 60 • Verizon – MCI
- 61 • Duke – Cinergy
- 62 • Sprint-Nextel – Embarq
- 63 • Alltel – Valor – Windstream
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65 Of particular note, I was an expert witness and consultant for the public advocates
66 in four states (Kentucky, New Jersey, Pennsylvania, and West Virginia) when RWE
67 acquired AWW in 2003.

68 **Q. Are you also working for a group of public advocates concerning the transaction**
69 **that is proposed in this case?**

70 A. Yes, I am. I have been retained by public advocates in five states (Illinois, Kentucky,
71 New Jersey, Pennsylvania, and West Virginia) to assist in regulatory commission
72 proceedings concerning the proposed IPO of AWW.

73 **Q. Are you familiar with IAWC?**

74 A. Yes, I am. In addition to testifying in IAWC's last base rate case, I also have been
75 retained by the AG to assist in two on-going IAWC cases: Docket Nos. 05-0681, et al.,
76 concerning IAWC's billing, metering, meter reading, and customer service practices; and
77 Docket No. 06-0196, concerning IAWC's purchased water and purchased sewerage
78 treatment adjustment surcharges in the Chicago metropolitan area.

79 **2. Overview**

80 **Q. Please provide an overview of the issues that you will be addressing.**

81 A. I will be discussing the proposed transaction and its potential impacts on the financial,
82 managerial, and technical capabilities of AWW and IAWC to provide safe and reliable
83 utility service. I also will propose various conditions that are necessary in order for the
84 proposed transaction to be in the public interest.

85 **Q. Is this testimony based on a complete review of all relevant information?**

86 A. No, a protective order has not been issued, although I am advised that one has been
87 requested. As a result, none of the information that the Joint Applicants allege to be
88 confidential has been produced in this case. I expect to supplement my testimony after I
89 have had the opportunity to review the allegedly confidential information.

3. Summary

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91 **Q. Please summarize your major findings and conclusions.**

92 A. I summarize my major findings and conclusions as follows:

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- RWE has decided to sell AWW, after just three years, because of AWW's lackluster operating performance, inefficient operations (including high levels of lost water), high capital requirements, and ineffective management.

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- AWW faces serious challenges, and projects it will need to greatly increase its level of capital expenditures during the next few years in order to stem the level of water losses and come into regulatory compliance. IAWC faces similar challenges.

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- AWW has allowed its pension plan to become seriously under-funded during RWE's ownership. At year-end 2004 (the latest figures available), AWW's unfunded pension liability stood at \$277 million – nearly tripling the unfunded liability that existed when AWW was acquired by RWE. Restoring the pension plan to fiscal health will serve as further drain on AWW's cash resources.

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- The proposed IPO will not raise any capital for AWW. The IPO and divestiture from RWE will do nothing to help AWW and IAWC meet these challenges. In fact, the IPO process itself will cost AWW millions of dollars, raise AWW's cost of capital, and distract management from addressing AWW's real problems. As such, the proposed IPO will have a negative impact on AWW, IAWC, and IAWC's customers.

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- I am concerned about the \$1.75 billion in preferred stock that is owned by TWAUSHI and that AWW apparently will need to redeem. The transaction underlying the issuance of that stock is very complex and all relevant documents have not been received yet. At this point, I am unclear how the proposed merger of TWAUSHI and AWW affects this obligation. From a summary of the transactions prepared by Goldman Sachs, however, it appears that the transactions included guarantees by IAWC and AWW's other operating subsidiaries – guarantees that apparently were given without the approval of this Commission or any of the other state regulatory commissions that require approval of such guarantees. These issues require further investigation.

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- I conclude that given the costs and detriments of the proposed IPO to AWW, that AWW should receive at least 20% of the proceeds of the

127 IPO. RWE should not be permitted to just walk away from its
128 commitments, receive billions of dollars, and leave AWW holding the
129 bag with increased costs, reduced access to capital, increasing capital
130 requirements, and other serious challenges.

131 • I also conclude that the Commission should condition its approval of
132 the proposed transaction in several ways that are designed to put
133 IAWC back on the right track. IAWC must bring under control its
134 serious problems with lost water, metering, billing, and meter reading.
135 IAWC needs to address many of these issues before the IPO occurs,
136 and it needs to have reasonable, high-priority capital expenditure plans
137 in place so that it can best utilize the capital that will be available to
138 AWW.

139 **4. Background**

140 **Q. When did RWE and Thames acquire AWW?**

141 A. On September 17, 2001, RWE and Thames announced that they had reached an
142 agreement with AWW to purchase all of AWW's common stock. The total transaction
143 had a value of approximately \$7.6 billion (the stock purchase was valued at
144 approximately \$4.6 billion, with an additional \$3.0 billion of assumed debt). It took more
145 than a year for the regulatory approval process to be completed, so the transaction did not
146 close until January 10, 2003.

147 **Q. Did the Illinois Commerce Commission review and approve that transaction?**

148 A. Yes, on November 20, 2002, this Commission issued an order approving the transaction,
149 with conditions (Docket No. 01-0832). Following are the specific conditions adopted by
150 the Commission in that order:

151 1. The rates, rules, regulations, and conditions of service applicable to the
152 service areas of IAWC shall remain the same as those currently on file
153 with the Commission, until such time as any changes are approved by the
154 Commission.

- 155 2. The final corporate structure approved by the Commission shall be the
156 following: IAWC will continue to be a subsidiary of AWWC; AWWC,
157 through TWUS, will be a wholly-owned subsidiary of RWE.
- 158 3. Commission approval consistent with Section 7-204 of the Act must be
159 sought for any additional changes to the corporate structure involving
160 IAWC.
- 161 4. IAWC shall inform the Commission of any changes to the corporate credit
162 ratings of RWE, Thames, and AWCC by filing a copy of the complete
163 credit report, within 15 days of publication, with the Chief Clerk of the
164 Commission with a second copy provided to the Finance Department
165 Manager. In addition, the reporting requirement shall be extended to
166 AWWC, Thames Holdings, and TWUS if those entities get credit ratings.
- 167 5. Although no savings resulting from the reorganization are currently
168 identified, any savings identified at a later date shall be passed on to
169 ratepayers through traditional cost of service-based ratemaking.
- 170 6. No costs resulting from the reorganization shall be recovered from IAWC
171 customers.

172 **Q. What is RWE now proposing?**

173 A. RWE is now proposing to sell its interest in AWW. In essence, RWE is not happy with
174 the deal it made less than five years ago and it wants to sell AWW. RWE attempted to
175 find a single buyer (or group of buyers) for AWW, but was unable to find one at a price it
176 found desirable. As a result, RWE is proposing to sell the common stock of AWW to the
177 public through an IPO.

178 **5. Reasons RWE is Trying to Sell AWW**

179 **Q. Why is RWE trying to sell AWW?**

180 A. According to the minutes of meetings of RWE's board of directors (known as the
181 Supervisory Board), there appear to be three major reasons for RWE's decisions. First,
182 RWE is clearly dissatisfied with AWW's operations and performance. One major area of
183 concern is the performance of AWW's unregulated operations, about which RWE's

184 board states: “growth in non-regulated business was well below expectations due to the
185 weak distribution [sales] team.” Minutes of RWE Supervisory Board meeting of
186 September 16, 2005 (Public Version) (attached as AG Exhibit 1.01), page 3. At a
187 subsequent meeting, RWE’s board was told that at AWW “rises in efficiency were not
188 implemented as planned.” Minutes of RWE Supervisory Board meeting of November 4,
189 2005 (Public Version) (attached as AG Exhibit 1.02), page 4.

190 Second, RWE is disheartened by the level of on-going capital investment that is
191 required to run AWW because, among other reasons, “tougher environmental standards
192 ... would require ever higher capital spending.” AG Exhibit 1.01, page 4. The public
193 version of the presentation at that meeting referred to AWW’s infrastructure as being
194 “outdated.” AG Exhibit 1.03. Later, RWE’s board was told that the “water business had
195 a disproportionately high need for capital without offering correspondingly high return.”
196 AG Exhibit 1.02, page 2.

197 Third, RWE’s board also expressed serious concern with the level of water that is
198 being lost within the AWW system – water that is costly to purchase or treat but that
199 never results in revenue because it does not reach the customer. Thus, the board minutes
200 state: “Mr. Roels [RWE’s CEO] then explained in depth the risks that arise for Thames
201 Water and American Water from distribution losses. In Thames Water’s case, for
202 example, the distribution losses ... currently amounted to some 30% of production. ...
203 The corresponding value at American Water was about 19%.” AG Exhibit 1.01, page 4.
204 At the board’s November meeting, this was further explained as follows:

205 In connection with the discussions about the most recent planning by
206 American Water’s management, it had become clear that leakage

207 problems in the US would tend to worsen in future. For instance, the
208 share of water production in New Jersey that is lost by leakage had risen
209 from 15% to currently 18%. The comparable value for Pennsylvania
210 stood at 30%. While replacing Thames Water's entire pipe system would
211 take 125 years at the current renewal rate, the corresponding figure for
212 American Water was over 200 years. The reason for this extraordinarily
213 high value was that American Water, across a period of several years, had
214 not met regulatory stipulations in various US states. In part, this was due
215 to insufficient investment by American Water in the previous 10 years
216 prior to RWE acquiring its holding. In view of this renewal backlog, there
217 ought to be no investment restraint in dealing with these defects. The
218 elimination of major deviations from regulators' stipulations is likely to
219 last into the year 2008.

220 AG Exhibit 1.02, page 8.

221 **Q. Are there other indications that AWW's management and unregulated operations**
222 **are adversely affecting AWW?**

223 A. Yes, in a presentation to AWW dated May 2, 2006, AWW's financial advisor, Goldman
224 Sachs, notes the following concern with AWW's credit: "Non-regulated water and
225 wastewater operations introduce more business risk than the regulatory operations."
226 Selected pages from the presentation are attached as AG Exhibit 1.04; this quote appears
227 on page 13 of the presentation (page 2 of AG Exhibit 1.04).

228 **Q. Are there other indications that AWW's capital spending needs are adversely**
229 **affecting AWW?**

230 A. Yes, the same presentation from Goldman Sachs also lists as a concern the "high level of
231 capital expenditure spending necessary to upgrade and maintain water systems in
232 compliance with regulatory standards." AG Exhibit 1.04, page 2.

233 Further, a presentation dated March 2, 2006, apparently prepared by AWW's
234 Chief Financial Officer, Ellen Wolf, notes that AWW's capital expenditures for

235 maintenance are expected to grow at a rate of 15% per year from 2011 through 2020. The
236 relevant page from this presentation is attached as AG Exhibit 1.05. This is a very high
237 growth rate, which would indicate that AWW's plant is deteriorating significantly and/or
238 that AWW has not been investing adequately in maintaining its facilities. This projected
239 spending level confirms the concerns of RWE's board that AWW has not been properly
240 maintaining its facilities.

241 Moreover, this projected increase in capital expenditures apparently is coming on
242 top of expenditures that already are at a high level. In a December 12, 2005, presentation
243 Goldman Sachs amplified this concern, noting that "capital expenditure has averaged
244 close to \$500mm [million] over the last three years, 3x higher than that of its closest
245 competitor." The relevant page from this presentation is attached as AG Exhibit 1.06.

246 **Q. Other than the three problems highlighted by RWE's board, does AWW face other**
247 **significant challenges?**

248 A. Yes, while there may be others, I will highlight one additional concern. According to the
249 May 2, 2006, Goldman Sachs presentation, AWW's pension and Other Post-Employment
250 Benefit (OPEB) plans are "under-funded ... with a low pension funding ratio." AG
251 Exhibit 1.04, page 2. In December 2005, Goldman Sachs quantified the level of under-
252 funding, stating that the pension fund was under-funded by \$277 million and OPEBs
253 were under-funded by \$177 million, as of year-end 2004. AG Exhibit 1.06. That
254 document also shows that the pension funding ratio (that is, the percentage of the pension
255 obligation that was funded) stood at only 60% compared to an industry average of 90%.

256 Id.

257 These figures are shown in more detail in a note to AWW's financial statement
258 for 2004 (the relevant portion is attached as AG Exhibit 1.07). The exhibit shows that at
259 December 31, 2004, AWW's pension obligation was \$704.9 million, but AWW's
260 pension assets had a value of only \$427.8 million.¹

261 **Q. When RWE acquired AWW, was AWW's pension plan so poorly funded?**

262 A. No, it was not. According to AWW's annual report for the year ending December 31,
263 2001, AWW's pension plan at that time was under-funded by \$110.8 million - assets of
264 \$365.9 million compared to a benefit obligation of \$476.8 million (a pension funding
265 ratio of 77%). The relevant pages from AWW's 2001 annual report are attached as AG
266 Exhibit 1.08.

267 Thus, in the four years since RWE acquired AWW, AWW and RWE have
268 allowed the funding of AWW's pension plan to deteriorate significantly. The pension
269 benefit obligation has increased by \$228 million, but the plan's assets have increased by
270 just \$62 million.

271 **Q. For regulatory purposes, why does the pension funding ratio matter?**

272 A. At some point, the pension will need to be fully funded so that AWW can meet its
273 obligations to its employees and retirees. That money has to come from somewhere – it
274 may come out of needed capital or maintenance spending, or it may come from higher
275 rates paid by customers. In any event, moving from 60% funding to 100% funding over
276 time will place yet a further strain on AWW's future cash flows and its ability to provide
277 safe, efficient, and reliable service to the public. In fact, under a new pension law passed

¹ To the best of my knowledge, the year-end 2004 financial statement is the most recent one available for AWW.

278 by Congress in early August, it appears that AWW will be required to make up its
279 pension funding shortfall by 2015.

280 **6. Impact of an IPO on AWW's Problems**

281 **Q. Will the proposed IPO help AWW address any of the challenges you discussed?**

282 A. No, the IPO as proposed would not help AWW address any of these challenges. Indeed,
283 it is likely that the IPO would worsen AWW's ability to raise the capital that it needs to
284 make significant progress in these areas.

285 **Q. Will the IPO raise additional capital for AWW?**

286 A. No, as it is currently structured, the proceeds of the IPO will all go to RWE; AWW
287 would not receive a penny from the IPO. In fact, AWW projects that it will spend
288 \$11 million on financial advisors and attorneys to make the IPO happen (response to data
289 request AG 2.20). In addition, AWW is projecting that it will spend \$16 million to
290 comply with new responsibilities for publicly traded companies in the United States,
291 including Sarbanes Oxley (response to data request AG 1.11). Thus, AWW will actually
292 have a net loss of cash as a result of the IPO.

293 In addition, AWW is being required to refinance all of the debt and preferred
294 stock that RWE holds. As of December 31, 2005, RWE held \$2.6 billion in AWW debt
295 and \$1.75 billion in AWW preferred stock. AG Exhibit 1.09. Thus, RWE expects to
296 obtain \$4.35 billion from AWW, in addition to 100% of the proceeds of the common
297 stock sale. AWW will be going to the market to obtain that \$4.35 billion (probably all in
298 debt, though it is still unclear how the preferred stock will be refinanced), plus it will be
299 actively involved in marketing the IPO, but AWW will receive no new funds as a result.

300 **Q. Will removing AWW from the RWE / Thames corporate family help AWW address**
301 **the fundamental problems in AWW's business that RWE has highlighted?**

302 A. No, it will not. Making AWW a stand-alone company will not solve anything, and will
303 actually remove a level of corporate oversight that could be important in rehabilitating
304 AWW's operations. The types of problems that RWE identified – ineffective
305 management, inadequate ability to engage in and value unregulated activities, and
306 inefficient and inadequate maintenance and capital replacement practices – are systemic
307 in nature and will require a serious change of direction and focus at AWW. AWW needs
308 to become more efficient, better utilize its capital, reduce waste, and focus its attention on
309 customer service and operational efficiency. These are tremendous challenges that will
310 require the full attention of AWW's management. Unfortunately, the IPO will be
311 diverting management's attention away from these problems – not only during the next
312 year when the IPO process takes place, but beyond that as management copes with the
313 new responsibilities of being a publicly traded company.

314 In addition, removing RWE and Thames from the picture is likely to have two
315 additional adverse consequences. First, it is likely to increase AWW's cost of capital,
316 making it more difficult and expensive for AWW to raise the capital it needs to address
317 its deficiencies. In fact, right after RWE announced its plans to jettison AWW, the long-
318 term debt of AWW's financial subsidiary, American Water Capital Corp. (AWCC), was
319 downgraded by Standard & Poor's (S&P) from an A rating to an A- rating (see AG
320 Exhibit 1.10). AWCC provides most of the capital for AWW's operating utilities,
321 including IAWC, so the downgrade can be expected to have a direct and immediate
322 impact on IAWC. The major reason S&P cited for the downgrade is to reflect "the

323 weaker, stand-alone credit quality of AWCC, absent RWE's support." AG Exhibit 1.10,
324 page 1.

325 Second, if the IPO is approved as proposed, AWW will lose the expertise and
326 oversight of RWE and Thames. That expertise was one of the major benefits that AWW
327 touted when it first announced the sale to RWE in 2001.

328 **Q. What do you conclude about the impact of the IPO on AWW?**

329 A. I conclude that the proposed IPO would be detrimental to AWW. The IPO will not help
330 AWW address any of its serious problems. Further, the IPO actually will make it even
331 more difficult for AWW to remedy those problems. Simply, AWW will lose access to
332 RWE's and Thames's expertise, oversight, supervision, and lower cost capital. Further,
333 the IPO process itself will serve as a major distraction to AWW's management and will
334 cost AWW millions of dollars that could be better spent elsewhere.

335 **7. Effect on IAWC and its Customers**

336 **Q. What effect will the IPO have on IAWC?**

337 A. It appears that IAWC is a microcosm of AWW, with many of the same problems that
338 RWE has identified. Recently, I filed testimony in two other cases (Docket Nos. 05-
339 0681, et al., and Docket No. 06-0196) where I found serious problems with IAWC's
340 billing, metering, meter reading, water losses, and related issues. What I found in IAWC
341 is indicative of the types of serious management problems that RWE identified in AWW
342 as a whole – such as, an inattention to water losses, an inability to prioritize capital
343 replacement needs, and inefficient operations. Just as the IPO will not address or solve
344 these problems for AWW, it also will do nothing to solve them for IAWC.

345 Further, as I mentioned, the cost of debt is likely to increase over what it would be
346 if RWE remained an active owner in AWW. In addition, IAWC will lose access to the
347 expertise and oversight that RWE or Thames might be able to provide in helping to
348 address these serious problems.

349 In short, IAWC and its customers will not receive any benefits from the IPO.
350 Indeed, as is the case with AWW, IAWC and its customers are likely to be made worse
351 off by the IPO, through higher capital costs, reduced access to capital, management
352 distraction, and increased costs associated with supporting a publicly traded company.

353 **Q. What do you conclude about the effects of the proposed IPO on IAWC and its**
354 **customers?**

355 A. I conclude that the proposed IPO would be detrimental to IAWC and its customers.

356 **8. Financial Fall-out of IPO: Preferred Stock**

357 **Q. Does the proposed IPO have any other financial consequences for AWW?**

358 A. Yes, it does. If RWE is permitted to sell its common stock in AWW, that results in the
359 automatic call of approximately \$1.75 billion in preferred stock that TWAUSHI holds in
360 AWW. AG Exhibit 1.04, page 3. Apparently, this is part of a more complex financial
361 arrangement, involving other RWE subsidiaries, designed to shield RWE from tax
362 liability. Id. In the limited amount of time available so far, I have not been able to fully
363 explore this transaction. But it appears that one immediate consequence of the IPO is that
364 AWW will have to come up with \$1.75 billion in cash to redeem the preferred stock held
365 by RWE.

366 **Q. Why was the preferred stock issued?**

367 A. The preferred stock was issued in June 2003 to “help fund the acquisition of American
368 Water” by RWE. AG Exhibit 1.04, page 3. In other words, it was part of the financing
369 package that was put in place by RWE to fund its initial purchase of AWW.

370 **Q. Do you have any concerns with that preferred stock?**

371 A. Yes, I do. First, if the summary provided of that preferred stock issuance is accurate, I
372 am very concerned about its very existence. According to the summary, the issuance is
373 guaranteed by “each of the Issuer’s existing and subsequently acquired or organized
374 domestic subsidiaries and any parent holding companies of the Issuer.” AG Exhibit 1.04,
375 page 3. The “Issuer” is AWW, so this provision would make IAWC and all of AWW’s
376 other operating companies guarantors of this obligation. This is very troubling, if not
377 outright illegal. I am advised by counsel that IAWC is required to obtain Commission
378 approval before entering into any guarantee with an affiliate, under 220 ILCS 5/6-101, *et*
379 *seq.* and 7-101, *et seq.* Counsel also advises that the failure to obtain such approval
380 renders the guarantee, and perhaps the underlying security, void.

381 Moreover, the guarantee would appear to violate express provisions in the order
382 issued by the Kentucky Public Service Commission which approved RWE’s purchase of
383 AWW. In that order, the Kentucky commission ruled that Kentucky-American Water
384 Company (KAWC) “is prohibited from guaranteeing the debt of RWE, Thames, TWUS,
385 AWWC, or any of their affiliates or subsidiaries without the prior approval of the
386 Commission” and that KAWC would not “pledge any assets to finance any part of the
387 purchase price paid by Thames for AWWC stock.” Thus, I have serious concerns about
388 the lawfulness of the preferred stock issuance itself.

389 Second, I also have concerns about the way in which this transaction will affect
390 the preferred stock. The first part of the proposed transaction is the merger of TWAUSHI
391 and AWW, with AWW as the surviving corporation. TWAUSHI is the holder of the
392 preferred stock. Once it merges with AWW, then the preferred stock would cease to
393 exist. It is unclear whether the related agreements referred to in the summary (“Purchase
394 and Sale Agreement, Forward Sale Agreement, Support Agreement, Guarantee
395 Agreement, among others”) would give rise to a parallel obligation for AWW or
396 TWAUSHI to pay \$1.75 billion to another RWE subsidiary. We have sent out an
397 additional data request on this issue, but we have not received the response as of the due
398 date of this testimony.

399 **Q. Why is this preferred stock important?**

400 A. Financing the preferred stock redemption appears to be a significant concern for AWW.
401 Goldman Sachs has presented several options for raising the \$1.75 billion to refinance the
402 preferred stock, and it appears that it has not been decided whether it will be financed
403 with debt, preferred stock, common stock (that is, part of the IPO proceeds), or some
404 combination of these. Further, it appears that, due to the size of this obligation, the
405 method chosen to finance the redemption will have a significant effect on AWW’s capital
406 structure and credit ratings.

407 **Q. What do you recommend?**

408 A. I recommend that the Commission fully investigate and understand the preferred stock
409 issuance and related agreements. Given the complexity of the related transactions, the
410 proposed merger of TWAUSHI, and the questionable nature of the guarantees, it is
411 unclear whether there is even a valid obligation that AWW is required to repay. Further,

412 if the Commission finds that AWW or IAWC violated the law when it agreed to IAWC
413 guaranteeing the issuance, then the Commission should consider appropriate sanctions
414 against AWW and/or IAWC, including fines or civil penalties and the possibility of
415 voiding the underlying transaction.

416 **9. IPO Recommendation**

417 **Q. Do you have any recommendations concerning RWE's sale of its entire interest in**
418 **AWW?**

419 A. Yes, I am troubled by RWE's lack of commitment to AWW and its apparent failure to
420 understand the long-term nature and capital intensity of the water business. In 2001,
421 RWE made a commitment to AWW and its customers. In September 2005, less than
422 three years after RWE took ownership of AWW, RWE decided that it no longer wanted
423 the responsibility of running a major water utility. RWE seemed to be surprised by the
424 problems it found at AWW – problems that should have been readily apparent in the
425 performance of due diligence. Issues like water losses, capital requirements, main
426 replacement practices, and the ability of management to execute plans should have been
427 identified and addressed during due diligence. As RWE was quick to tell us in 2002,
428 Thames is one of the largest water utilities in the world and has tremendous expertise in
429 these areas. It is troubling that RWE can just walk away from its commitments because it
430 didn't realize how hard it would be. But I also do not like the idea of keeping an owner
431 in place that does not want to be there and that is not willing to devote further capital to
432 the enterprise.

433 **Q. If RWE can just sell out, then can anything be done to help AWW address its**
434 **serious problems?**

435 A. Yes, there is a way that the IPO process can be used to help AWW. I recommend that
436 RWE be required to pay 20% of the proceeds from the IPO to AWW. By providing
437 AWW with some of the funds generated through the IPO, it would serve to improve
438 AWW's credit rating and reduce the amount of debt it needs to issue. It also would
439 permit AWW to at least try to recover some of the up-front costs it will be incurring for
440 the IPO and public-company compliance programs, have funds available for capital
441 improvements, and allow AWW to start making more reasonable contributions toward its
442 pension plan.

443 **Q. How did you determine that 20% was a reasonable amount?**

444 A. I based this amount on the level of capital investment that AWW will require and the
445 failure of AWW and RWE to adequately fund AWW's pension fund during RWE's
446 tenure. In a sense, the carve-out of 20% of the proceeds that I recommend is a way for
447 RWE to make good on some of the commitments it made when it acquired AWW –
448 commitments that have not been met, such as improving the safety, reliability, and
449 efficiency of service.

450 Specifically, when RWE purchased AWW, it paid approximately \$4.6 billion for
451 the common stock. During the year ending December 31, 2005, RWE wrote off €759
452 million (approximately \$900 million) of that investment. Response to AG 2.9. At this
453 point, then, RWE's equity investment in AWW is valued at approximately \$3.7 billion.
454 If the IPO is able to raise that amount of money, then 20% of the proceeds would be
455 approximately \$750 million. This amount would provide AWW with the funds to cover

456 its pension funding shortfall during RWE's tenure (\$166 million)² and enough to fund
457 about one year of AWW's capital spending.³

458 The effect of my recommendation, then, would be to require RWE to pay the
459 shortfall in AWW's pension funding that RWE allowed to occur, and to provide
460 transitional funding for about one year of AWW's capital program from funds generated
461 through the IPO.

462 10. Benefits of Currency Hedge

463 **Q. Are there any aspects to the proposed transaction that have not been fully disclosed**
464 **in the Joint Application?**

465 A. Yes, there is another aspect to the transaction that would result in a substantial financial
466 gain to RWE, but that does not appear in any of the documents provided with the Joint
467 Application. Specifically, RWE entered into a hedging transaction when it purchased
468 AWW to insulate itself from the risk of currency exchange rate changes.

469 At the time the transaction was announced, in September 2001, a U.S. dollar was
470 worth about 1.10 euros (€). So for every dollar earned by AWW, RWE would see
471 earnings on its books of €1.10.⁴ In the past four years, the exchange rates have changed
472 dramatically. During July 2006, \$1 was worth only about €0.79. So for RWE to earn
473 €1.10 from its investment in AWW, AWW would need to earn \$1.28. That is, in order

² An increase in pension liability of \$228 million, but an increase in pension assets of only \$62 million, as I discussed above.

³ AWW's capital program in 2005 was about \$500 million, but it is projecting substantial increases in the level of investment that is required, as I discussed previously. See AG Exhibits 1.05 and 1.06. It appears likely, therefore, that AWW's capital program in 2007 will be in the range of \$600 million or more.

⁴ This and the other currency cross-rates (or exchange rates) discussed here are from < <http://www.x-rates.com> >, as of August 3, 2006.

474 for RWE's earnings to stay the same in euros, AWW's earnings would have had to
475 increase by 28% in dollars.

476 As a sophisticated, multi-national company, RWE was obviously aware of the
477 potential risk to its earnings from exchange rate fluctuations. So RWE protected its
478 original investment in AWW by entering into a hedging transaction. This transaction is
479 described in a note to the financial statement of Thames Water Aqua Holdings GmbH, a
480 German subsidiary of RWE that is the intermediate holding company of both Thames
481 Water and AWW (the relevant portion is attached as AG Exhibit 1.11).

482 **Q. How does the Thames Water Aqua Holdings financial statement describe the**
483 **hedging transaction?**

484 A. The document states that yet another RWE subsidiary, Thames Water Aqua International
485 GmbH, borrowed money in U.S. dollars in 2003 that provided the hedge. In other words,
486 RWE borrowed the money in U.S. dollars that it used to purchase AWW's common
487 stock. As I understand the financial statement, when RWE sells its interest in AWW and
488 TWAUSHI, it will pay back the loans that provided the hedge. RWE will then offset the
489 gain on the loans "against the acquisition cost of the investment in TWAUSHI." AG
490 Exhibit 1.11, page 2.

491 **Q. Has the hedging transaction been successful?**

492 A. Yes, it has. According to the financial statement, the remaining value of the loans is
493 €3,224,153,238.80. In January 2003, \$1 was worth €0.94, so the U.S. dollar value of the
494 loan would be approximately \$3.43 billion. At today's exchange rate of \$1 = €0.79, it
495 would take only €2.71 billion to pay off that loan. Thus, even though the value of RWE's

496 investment in AWW has declined, that decline in value was partially offset by the
497 currency hedge, which has generated a profit for RWE in the amount of approximately
498 €10 million (or about \$650 million).

499 **Q. What happens to that \$650 million gain?**

500 A. That money goes directly to RWE. In essence, under RWE's proposal, RWE will obtain
501 cash from four sources if it is allowed to sell AWW: (1) AWW's refinancing of debt
502 held by RWE or an affiliate; (2) AWW's redemption of preferred stock held by
503 TWAUSHI; (3) the proceeds of the IPO that sells AWW's common stock; and (4) the
504 gain on the currency hedging transaction entered into by Thames Water Aqua
505 International GmbH.

506 **Q. Is that a reasonable result?**

507 A. It may be reasonable for RWE to obtain the benefit of the currency hedging transaction
508 standing on its own, but it is not reasonable for RWE to receive 100% of the cash from
509 all of these sources, leaving AWW with nothing. This provides further support for my
510 proposals to provide AWW with some gain from the transaction, and to prevent RWE
511 from completely walking away from AWW.

512 **11. Further Recommendations**

513 **Q. Do you have any other recommendations?**

514 A. Yes, I do. In addition to my two earlier recommendations, I also recommend a series of
515 conditions that require IAWC to address the serious deficiencies in its operations. As I
516 discussed earlier, these deficiencies appear to be endemic within the AWW system,
517 meaning that it will require a change in focus by AWW's management, as well as

518 IAWC's management, to start correcting these problems. Without the changes that I
519 recommend below, I would conclude that AWW lacks the financial, managerial, and
520 technical fitness to own and operate a public utility in Illinois.

521 **Q. What conditions do you recommend?**

522 A. I recommend the following conditions:

- 523 • IAWC should be required to prepare and implement a 5-year capital
524 investment plan designed to reduce water losses, reduce estimated
525 bills, and improve the accuracy of metering. The plan should be
526 reviewed and approved by the Commission, with full opportunity for
527 public involvement.
- 528 • IAWC and AWW must commit to provide the funding to implement
529 the plan, with serious sanctions for their failure to do so, including
530 both financial penalties and ultimately the loss of IAWC's certificate
531 of public convenience for repeated failures to adequately implement
532 the plan.
- 533 • The capital investment plan should be updated each year and filed with
534 ICC and all active parties to this proceeding.
- 535 • For the next five years, in any IAWC rate case the cost of debt should
536 be set at the lower of IAWC's actual cost of debt or the cost of debt for
537 an A-rated public utility. This will insulate IAWC's customers from
538 the adverse effect on IAWC's bond ratings from its divestiture from
539 RWE.
- 540 • IAWC should be prohibited from extending service to new areas in
541 portions of its system where non-revenue water (that is, the difference
542 between water produced or purchased and water sold) exceeds 10%.
543 This condition is designed to ensure that IAWC's capital (which may
544 be in limited supply after the IPO) is employed to enable the system to
545 achieve an adequate level of efficiency before service is extended to
546 new customers. Simply, it does no good to add a new customer if you
547 have to produce or purchase 100 gallons of water to sell 80. The
548 Commission should not allow inefficiency to go unchecked and IAWC
549 should not be allowed to keep adding new customers which just
550 exacerbates the waste and inefficiency.
- 551 • IAWC must conduct a full-scale audit as I recommended in Docket
552 Nos. 05-0681, et al. before the IPO takes place, which is estimated to

553 be mid-2007. IAWC must gain an understanding, and provide
554 assurances to the Commission, that it has accurate records of how
555 much water it purchases, produces, and sells. As I explained in detail
556 in Docket Nos. 05-0681, et al., and 06-0196, IAWC's records are in
557 dreadful shape. It has a high level of estimated bills, it does not follow
558 up on repeated estimated or zero-consumption meter reads, in some
559 areas it thinks it is selling more water than it purchases, while in others
560 it has high levels of lost water. If IAWC does not provide assurances
561 that it has solved these problems before the IPO occurs, the offering
562 statement for the IPO would need to disclose these very serious
563 problems, which could make it difficult for AWW to raise capital.
564 Solving these problems before the IPO and debt refinancing occur is
565 essential.

566 • IAWC must adopt new procedures to closely monitor lost water,
567 estimated reads, and consecutive zero reads. These are all designed to
568 address one of the key problems that is leading RWE to abandon
569 AWW: the high level of lost water and the failure to maintain
570 distribution systems.

571 • IAWC should be required to file quarterly water loss reports with the
572 Commission.

573 **12. Conclusion**

574 **Q. Does this conclude your direct testimony?**

575 A. Yes, it does, based on the information I have available at this time. I reserve the right to
576 supplement this testimony as necessary or appropriate after the Protective Order is in
577 place.

Appendix A

Scott J. Rubin

Attorney + Consultant

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Current Position

Public Utility Attorney and Consultant, Selinsgrove, PA. 1994 to present. I provide legal, consulting, and expert witness services to various organizations interested in the regulation of public utilities.

Previous Positions

Lecturer in Computer Science, Susquehanna University, Selinsgrove, PA. 1993 to 2000.

Senior Assistant Consumer Advocate, Office of Consumer Advocate, Harrisburg, PA. 1990 to 1994.

I supervised the administrative and technical staff and shared with one other senior attorney the supervision of a legal staff of 14 attorneys.

Assistant Consumer Advocate, Office of Consumer Advocate, Harrisburg, PA. 1983 to 1990.

Associate, Laws and Staruch, Harrisburg, PA. 1981 to 1983.

Law Clerk, U.S. Environmental Protection Agency, Washington, DC. 1980 to 1981.

Research Assistant, Rockville Consulting Group, Washington, DC. 1979.

Current Professional Activities

Member, American Bar Association, Public Utility Law Section.

Member, American Water Works Association.

Admitted to practice law before the Supreme Court of Pennsylvania, the New York State Court of Appeals, the United States District Court for the Middle District of Pennsylvania, the United States Court of Appeals for the Third Circuit, and the Supreme Court of the United States.

Previous Professional Activities

Member, American Water Works Association, Rates and Charges Subcommittee, 1998-2001.

Member, Federal Advisory Committee on Disinfectants and Disinfection By-Products in Drinking Water, U.S. Environmental Protection Agency, Washington, DC. 1992 to 1994.

Chair, Water Committee, National Association of State Utility Consumer Advocates, Washington, DC. 1990 to 1994; member of committee from 1988 to 1990.

Member, Board of Directors, Pennsylvania Energy Development Authority, Harrisburg, PA. 1990 to 1994.

Member, Small Water Systems Advisory Committee, Pennsylvania Department of Environmental Resources, Harrisburg, PA. 1990 to 1992.

Member, Ad Hoc Committee on Emissions Control and Acid Rain Compliance, National Association of State Utility Consumer Advocates, 1991.

Member, Nitrogen Oxides Subcommittee of the Acid Rain Advisory Committee, U.S. Environmental Protection Agency, Washington DC. 1991.

Education

J.D. with Honors, George Washington University, Washington, DC. 1981.

B.A. with Distinction in Political Science, Pennsylvania State University, University Park, PA. 1978.

Publications and Presentations

“Quality of Service Issues,” a speech to the Pennsylvania Public Utility Commission Consumer Conference, State College, PA. 1988.

K.L. Pape and S.J. Rubin, “Current Developments in Water Utility Law,” in *Pennsylvania Public Utility Law* (Pennsylvania Bar Institute). 1990.

Presentation on Water Utility Holding Companies to the Annual Meeting of the National Association of State Utility Consumer Advocates, Orlando, FL. 1990.

“How the OCA Approaches Quality of Service Issues,” a speech to the Pennsylvania Chapter of the National Association of Water Companies. 1991.

Presentation on the Safe Drinking Water Act to the Mid-Year Meeting of the National Association of State Utility Consumer Advocates, Seattle, WA. 1991.

“A Consumer Advocate's View of Federal Pre-emption in Electric Utility Cases,” a speech to the Pennsylvania Public Utility Commission Electricity Conference. 1991.

Workshop on Safe Drinking Water Act Compliance Issues at the Mid-Year Meeting of the National Association of State Utility Consumer Advocates, Washington, DC. 1992.

Formal Discussant, Regional Acid Rain Workshop, U.S. Environmental Protection Agency and National Regulatory Research Institute, Charlotte, NC. 1992.

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Member, Technical Horizons Panel, Annual Meeting of the National Association of Water Companies, Hilton Head, SC. 1992.

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Presentation on Small Water System Viability to the Technical Assistance Center for Small Water Companies, Pa. Department of Environmental Resources, Harrisburg, PA. 1993

- “The Results Through a Public Service Commission Lens,” speaker and participant in panel discussion at Symposium: “Impact of EPA's Allowance Auction,” Washington, DC, sponsored by AER*X. 1993.
- “The Hottest Legislative Issue of Today -- Reauthorization of the Safe Drinking Water Act,” speaker and participant in panel discussion at the Annual Conference of the American Water Works Association, San Antonio, TX. 1993.
- “Water Service in the Year 2000,” a speech to the Conference: “Utilities and Public Policy III: The Challenges of Change,” sponsored by the Pennsylvania Public Utility Commission and the Pennsylvania State University, University Park, PA. 1993.
- “Government Regulation of the Drinking Water Supply: Is it Properly Focused?,” speaker and participant in panel discussion at the National Consumers League's Forum on Drinking Water Safety and Quality, Washington, DC. 1993. Reprinted in *Rural Water*, Vol. 15 No. 1 (Spring 1994), pages 13-16.
- “Telephone Penetration Rates for Renters in Pennsylvania,” a study prepared for the Pennsylvania Office of Consumer Advocate. 1993.
- “Zealous Advocacy, Ethical Limitations and Considerations,” participant in panel discussion at “Continuing Legal Education in Ethics for Pennsylvania Lawyers,” sponsored by the Office of General Counsel, Commonwealth of Pennsylvania, State College, PA. 1993.
- “Serving the Customer,” participant in panel discussion at the Annual Conference of the National Association of Water Companies, Williamsburg, VA. 1993.
- “A Simple, Inexpensive, Quantitative Method to Assess the Viability of Small Water Systems,” a speech to the Water Supply Symposium, New York Section of the American Water Works Association, Syracuse, NY. 1993.
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- “Are Water Rates Becoming Unaffordable?,” a speech to the Legislative and Regulatory Conference, Association of Metropolitan Water Agencies, Washington, DC. 1994.
- “Relationships: Drinking Water, Health, Risk and Affordability,” speaker and participant in panel discussion at the Annual Meeting of the Southeastern Association of Regulatory Commissioners, Charleston, SC. 1994.
- “Small System Viability: Assessment Methods and Implementation Issues,” speaker and participant in panel discussion at the Annual Conference of the American Water Works Association, New York, NY. 1994.

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- "Surviving the Safe Drinking Water Act," speaker at the Annual Meeting of the National Association of State Utility Consumer Advocates, Reno, NV. 1994.
- "Safe Drinking Water Act Compliance -- Ratemaking Implications," speaker at the National Conference of Regulatory Attorneys, Scottsdale, AZ. 1995. Reprinted in *Water*, Vol. 36, No. 2 (Summer 1995), pages 28-29.
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- Speaker and participant in the Water Policy Forum, sponsored by the National Association of Water Companies, Naples, FL. 1995.
- Participant in panel discussion on "The Efficient and Effective Maintenance and Delivery of Potable Water at Affordable Rates to the People of New Jersey," at *The New Advocacy: Protecting Consumers in the Emerging Era of Utility Competition*, a conference sponsored by the New Jersey Division of the Ratepayer Advocate, Newark, NJ. 1995.
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- "Clean Water at Affordable Rates: A Ratepayers Conference," moderator at symposium sponsored by the New Jersey Division of Ratepayer Advocate, Trenton, NJ. 1996.

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- The Petition on Behalf of Gordon's Corner Water Company for an Increase in Rates*, New Jersey Board of Public Utilities, Docket No. WR94020037. 1994. Concerning revenue requirements and rate design, on behalf of the New Jersey Division of Ratepayer Advocate.
- Re Consumers Maine Water Company Request for Approval of Contracts with Consumers Water Company and with Ohio Water Service Company*, Me. Public Utilities Commission, Docket No. 94-352. 1994. Concerning affiliated interest agreements, on behalf of the Maine Public Advocate.
- In the Matter of the Application of Potomac Electric Power Company for Approval of its Third Least-Cost Plan*, D.C. Public Service Commission, Formal Case No. 917, Phase II. 1995. Concerning Clean Air Act implementation and environmental externalities, on behalf of the District of Columbia Office of the People's Counsel.
- In the Matter of the Regulation of the Electric Fuel Component Contained within the Rate Schedules of the Dayton Power and Light Company and Related Matters*, Ohio Public Utilities Commission, Case No. 94-105-EL-EFC. 1995. Concerning Clean Air Act implementation (case settled before testimony was filed), on behalf of the Office of the Ohio Consumers' Counsel.
- Kennebec Water District Proposed Increase in Rates*, Maine Public Utilities Commission, Docket No. 95-091. 1995. Concerning the reasonableness of planning decisions and the relationship between a publicly owned water district and a very large industrial customer, on behalf of the Maine Public Advocate.
- Winter Harbor Water Company, Proposed Schedule Revisions to Introduce a Readiness-to-Serve Charge*, Maine Public Utilities Commission, Docket No. 95-271. 1995 and 1996. Concerning standards for, and the reasonableness of, imposing a readiness to serve charge and/or exit fee on the customers of a small investor-owned water utility, on behalf of the Maine Public Advocate.
- In the Matter of the 1995 Long-Term Electric Forecast Report of the Cincinnati Gas & Electric Company*, Public Utilities Commission of Ohio, Case No. 95-203-EL-FOR, and *In the Matter of the Two-Year Review of the Cincinnati Gas & Electric Company's Environmental Compliance Plan Pursuant to Section 4913.05, Revised Cost*, Case No. 95-747-EL-ECP. 1996. Concerning the reasonableness of the utility's long-range supply and demand-management plans, the reasonableness of its plan for complying with the Clean Air Act Amendments of 1990, and discussing methods to ensure the provision of utility service to low-income customers, on behalf of the Office of the Ohio Consumers' Counsel..

- In the Matter of Notice of the Adjustment of the Rates of Kentucky-American Water Company*, Kentucky Public Service Commission, Case No. 95-554. 1996. Concerning rate design, cost of service, and sales forecast issues, on behalf of the Kentucky Office of Attorney General.
- In the Matter of the Application of Citizens Utilities Company for a Hearing to Determine the Fair Value of its Properties for Ratemaking Purposes, to Fix a Just and Reasonable Rate of Return Thereon, and to Approve Rate Schedules Designed to Provide such Rate of Return*, Arizona Corporation Commission, Docket Nos. E-1032-95-417, *et al.* 1996. Concerning rate design, cost of service, and the price elasticity of water demand, on behalf of the Arizona Residential Utility Consumer Office.
- Cochrane v. Bangor Hydro-Electric Company*, Maine Public Utilities Commission, Docket No. 96-053. 1996. Concerning regulatory requirements for an electric utility to engage in unregulated business enterprises, on behalf of the Maine Public Advocate.
- In the Matter of the Regulation of the Electric Fuel Component Contained within the Rate Schedules of Monongahela Power Company and Related Matters*, Public Utilities Commission of Ohio, Case No. 96-106-EL-EFC. 1996. Concerning the costs and procedures associated with the implementation of the Clean Air Act Amendments of 1990, on behalf of the Ohio Consumers' Counsel.
- In the Matter of the Regulation of the Electric Fuel Component Contained within the Rate Schedules of Cleveland Electric Illuminating Company and Toledo Edison Company and Related Matters*, Public Utilities Commission of Ohio, Case Nos. 96-107-EL-EFC and 96-108-EL-EFC. 1996. Concerning the costs and procedures associated with the implementation of the Clean Air Act Amendments of 1990, on behalf of the Ohio Consumers' Counsel.
- In the Matter of the Regulation of the Electric Fuel Component Contained within the Rate Schedules of Ohio Power Company and Columbus Southern Power Company and Related Matters*, Public Utilities Commission of Ohio, Case Nos. 96-101-EL-EFC and 96-102-EL-EFC. 1997. Concerning the costs and procedures associated with the implementation of the Clean Air Act Amendments of 1990, on behalf of the Ohio Consumers' Counsel.
- An Investigation of the Sources of Supply and Future Demand of Kentucky-American Water Company (Phase II)*, Kentucky Public Service Commission, Docket No. 93-434. 1997. Concerning supply and demand planning, on behalf of the Kentucky Office of Attorney General, Public Service Litigation Branch.
- In the Matter of the Regulation of the Electric Fuel Component Contained within the Rate Schedules of Cincinnati Gas and Electric Co. and Related Matters*, Public Utilities Commission of Ohio, Case No. 96-103-EL-EFC. 1997. Concerning the costs and procedures associated with the implementation of the Clean Air Act Amendments of 1990, on behalf of the Ohio Consumers' Counsel.
- Bangor Hydro-Electric Company Petition for Temporary Rate Increase*, Maine Public Utilities Commission, Docket No. 97-201. 1997. Concerning the reasonableness of granting an electric utility's request for emergency rate relief, and related issues, on behalf of the Maine Public Advocate.

Testimony concerning H.B. 1068 Relating to Restructuring of the Natural Gas Utility Industry, Consumer Affairs Committee, Pennsylvania House of Representatives. 1997. Concerning the provisions of proposed legislation to restructure the natural gas utility industry in Pennsylvania, on behalf of the Pennsylvania AFL-CIO Gas Utility Caucus.

In the Matter of the Regulation of the Electric Fuel Component Contained within the Rate Schedules of Cleveland Electric Illuminating Company and Toledo Edison Company and Related Matters, Public Utilities Commission of Ohio, Case Nos. 97-107-EL-EFC and 97-108-EL-EFC. 1997. Concerning the costs and procedures associated with the implementation of the Clean Air Act Amendments of 1990, on behalf of the Ohio Consumers' Counsel.

In the Matter of the Petition of Valley Road Sewerage Company for a Revision in Rates and Charges for Water Service, New Jersey Board of Public Utilities, Docket No. WR92080846J. 1997. Concerning the revenue requirements and rate design for a wastewater treatment utility, on behalf of the New Jersey Division of Ratepayer Advocate.

Bangor Gas Company, L.L.C., Petition for Approval to Furnish Gas Service in the State of Maine, Maine Public Utilities Commission, Docket No. 97-795. 1998. Concerning the standards and public policy concerns involved in issuing a certificate of public convenience and necessity for a new natural gas utility, and related ratemaking issues, on behalf of the Maine Public Advocate.

In the Matter of the Investigation on Motion of the Commission into the Adequacy of the Public Utility Water Service Provided by Tidewater Utilities, Inc., in Areas in Southern New Castle County, Delaware, Delaware Public Service Commission, Docket No. 309-97. 1998. Concerning the standards for the provision of efficient, sufficient, and adequate water service, and the application of those standards to a water utility, on behalf of the Delaware Division of the Public Advocate.

In the Matter of the Regulation of the Electric Fuel Component Contained within the Rate Schedules of Cincinnati Gas and Electric Co. and Related Matters, Public Utilities Commission of Ohio, Case No. 97-103-EL-EFC. 1998. Concerning fuel-related transactions with affiliated companies and the appropriate ratemaking treatment and regulatory safeguards involving such transactions, on behalf of the Ohio Consumers' Counsel.

Olde Port Mariner Fleet, Inc. Complaint Regarding Casco Bay Island Transit District's Tour and Charter Service, Maine Public Utilities Commission, Docket No. 98-161. 1998. Concerning the standards and requirements for allocating costs and separating operations between regulated and unregulated operations of a transportation utility, on behalf of the Maine Public Advocate and Olde Port Mariner Fleet, Inc.

Central Maine Power Company Investigation of Stranded Costs, Transmission and Distribution Utility Revenue Requirements, and Rate Design, Maine Public Utilities Commission, Docket No. 97-580. 1998. Concerning the treatment of existing rate discounts when designing rates for a transmission and distribution electric utility, on behalf of the Maine Public Advocate.

Pa. Public Utility Commission v. Manufacturers Water Company, Pennsylvania Public Utility Commission, Docket No. R-00984275. 1998. Concerning rate design on behalf of the Manufacturers Water Industrial Users.

In the Matter of Petition of Pennsgrove Water Supply Company for an Increase in Rates for Water Service, New Jersey Board of Public Utilities, Docket No. WR98030147. 1998. Concerning the revenue requirements, level of affiliated charges, and rate design for a water utility, on behalf of the New Jersey Division of Ratepayer Advocate.

In the Matter of Petition of Seaview Water Company for an Increase in Rates for Water Service, New Jersey Board of Public Utilities, Docket No. WR98040193. 1999. Concerning the revenue requirements and rate design for a water utility, on behalf of the New Jersey Division of Ratepayer Advocate.

In the Matter of the Regulation of the Electric Fuel Component Contained within the Rate Schedules of Ohio Power Company and Columbus Southern Power Company and Related Matters, Public Utilities Commission of Ohio, Case Nos. 98-101-EL-EFC and 98-102-EL-EFC. 1999. Concerning the costs and procedures associated with the implementation of the Clean Air Act Amendments of 1990, on behalf of the Ohio Consumers' Counsel.

In the Matter of the Regulation of the Electric Fuel Component Contained within the Rate Schedules of Dayton Power and Light Company and Related Matters, Public Utilities Commission of Ohio, Case No. 98-105-EL-EFC. 1999. Concerning the costs and procedures associated with the implementation of the Clean Air Act Amendments of 1990, on behalf of the Ohio Consumers' Counsel.

In the Matter of the Regulation of the Electric Fuel Component Contained within the Rate Schedules of Monongahela Power Company and Related Matters, Public Utilities Commission of Ohio, Case No. 99-106-EL-EFC. 1999. Concerning the costs and procedures associated with the implementation of the Clean Air Act Amendments of 1990, on behalf of the Ohio Consumers' Counsel.

County of Suffolk, et al. v. Long Island Lighting Company, et al., U.S. District Court for the Eastern District of New York, Case No. 87-CV-0646. 2000. Submitted two affidavits concerning the calculation and collection of court-ordered refunds to utility customers, on behalf of counsel for the plaintiffs.

Northern Utilities, Inc., Petition for Waivers from Chapter 820, Maine Public Utilities Commission, Docket No. 99-254. 2000. Concerning the standards and requirements for defining and separating a natural gas utility's core and non-core business functions, on behalf of the Maine Public Advocate.

Notice of Adjustment of the Rates of Kentucky-American Water Company, Kentucky Public Service Commission, Case No. 2000-120. 2000. Concerning the appropriate methods for allocating costs and designing rates, on behalf of the Kentucky Office of Attorney General.

In the Matter of the Petition of Gordon's Corner Water Company for an Increase in Rates and Charges for Water Service, New Jersey Board of Public Utilities, Docket No. WR00050304. 2000. Concerning the revenue requirements and rate design for a water utility, on behalf of the New Jersey Division of Ratepayer Advocate.

Testimony concerning Arsenic in Drinking Water: An Update on the Science, Benefits, and Costs, Committee on Science, United States House of Representatives. 2001. Concerning the effects

on low-income households and small communities from a more stringent regulation of arsenic in drinking water.

In the Matter of the Application of The Cincinnati Gas & Electric Company for an Increase in Gas Rates in its Service Territory, Public Utilities Commission of Ohio, Case No. 01-1228-GA-AIR, et al. 2002. Concerning the need for and structure of a special rider and alternative form of regulation for an accelerated main replacement program, on behalf of the Ohio Consumers' Counsel.

Pennsylvania State Treasurer's Hearing on Enron and Corporate Governance Issues. 2002. Concerning Enron's role in Pennsylvania's electricity market and related issues, on behalf of the Pennsylvania AFL-CIO.

An Investigation into the Feasibility and Advisability of Kentucky-American Water Company's Proposed Solution to its Water Supply Deficit, Kentucky Public Service Commission, Case No. 2001-00117. 2002. Concerning water supply planning, regulatory oversight, and related issue, on behalf of the Kentucky Office of Attorney General.

Joint Application of Pennsylvania-American Water Company and Thames Water Aqua Holdings GmbH, Pennsylvania Public Utility Commission, Docket Nos. A-212285F0096 and A-230073F0004. 2002. Concerning the risks and benefits associated with the proposed acquisition of a water utility, on behalf of the Pennsylvania Office of Consumer Advocate.

Application for Approval of the Transfer of Control of Kentucky-American Water Company to RWE AG and Thames Water Aqua Holdings GmbH, Kentucky Public Service Commission, Case No. 2002-00018. 2002. Concerning the risks and benefits associated with the proposed acquisition of a water utility, on behalf of the Kentucky Office of Attorney General.

Joint Petition for the Consent and Approval of the Acquisition of the Outstanding Common Stock of American Water Works Company, Inc., the Parent Company and Controlling Shareholder of West Virginia-American Water Company, West Virginia Public Service Commission, Case No. 01-1691-W-PC. 2002. Concerning the risks and benefits associated with the proposed acquisition of a water utility, on behalf of the Consumer Advocate Division of the West Virginia Public Service Commission.

Joint Petition of New Jersey-American Water Company, Inc. and Thames Water Aqua Holdings GmbH for Approval of Change in Control of New Jersey-American Water Company, Inc., New Jersey Board of Public Utilities, Docket No. WM01120833. 2002. Concerning the risks and benefits associated with the proposed acquisition of a water utility, on behalf of the New Jersey Division of Ratepayer Advocate.

Illinois-American Water Company, Proposed General Increase in Water Rates, Illinois Commerce Commission, Docket No. 02-0690. 2003. Concerning rate design and cost of service issues, on behalf of the Illinois Office of the Attorney General.

Pennsylvania Public Utility Commission v. Pennsylvania-American Water Company, Pennsylvania Public Utility Commission, Docket No. R-00038304. 2003. Concerning rate design and cost of service issues, on behalf of the Pennsylvania Office of Consumer Advocate.

West Virginia-American Water Company, West Virginia Public Service Commission, Case No. 03-0353-W-42T. 2003. Concerning affordability, rate design, and cost of service issues, on behalf of the West Virginia Consumer Advocate Division.

Petition of Seabrook Water Corp. for an Increase in Rates and Charges for Water Service, New Jersey Board of Public Utilities, Docket No. WR3010054. 2003. Concerning revenue requirements, rate design, prudence, and regulatory policy, on behalf of the New Jersey Division of Ratepayer Advocate.

Chesapeake Ranch Water Co. v. Board of Commissioners of Calvert County, U.S. District Court for Southern District of Maryland, Civil Action No. 8:03-cv-02527-AW. 2004. Submitted expert report concerning the expected level of rates under various options for serving new commercial development, on behalf of the plaintiff.

Testimony concerning Lead in Drinking Water, Committee on Government Reform, United States House of Representatives. 2004. Concerning the trade-offs faced by low-income households when drinking water costs increase, including an analysis of H.R. 4268.

West Virginia-American Water Company, West Virginia Public Service Commission, Case No. 04-0373-W-42T. 2004. Concerning affordability and rate comparisons, on behalf of the West Virginia Consumer Advocate Division.

West Virginia-American Water Company, West Virginia Public Service Commission, Case No. 04-0358-W-PC. 2004. Concerning costs, benefits, and risks associated with a wholesale water sales contract, on behalf of the West Virginia Consumer Advocate Division.

Kentucky-American Water Company, Kentucky Public Service Commission, Case No. 2004-00103. 2004. Concerning rate design and tariff issues, on behalf of the Kentucky Office of Attorney General.

New Landing Utility, Inc., Illinois Commerce Commission, Docket No. 04-0610. 2005. Concerning the adequacy of service provided by, and standards of performance for, a water and wastewater utility, on behalf of the Illinois Office of Attorney General.

People of the State of Illinois v. New Landing Utility, Inc., Circuit Court of the 15th Judicial District, Ogle County, Illinois, No. 00-CH-97. 2005. Concerning the standards of performance for a water and wastewater utility, including whether a receiver should be appointed to manage the utility's operations, on behalf of the Illinois Office of Attorney General.

Hope Gas, Inc. d/b/a Dominion Hope, West Virginia Public Service Commission, Case No. 05-0304-G-42T. 2005. Concerning the utility's relationships with affiliated companies, including an appropriate level of revenues and expenses associated with services provided to and received from affiliates, on behalf of the West Virginia Consumer Advocate Division.

Monongahela Power Co. and The Potomac Edison Co., West Virginia Public Service Commission, Case Nos. 05-0402-E-CN and 05-0750-E-PC. 2005. Concerning review of a plan to finance the construction of pollution control facilities and related issues, on behalf of the West Virginia Consumer Advocate Division.

Joint Application of Duke Energy Corp., et al., for Approval of a Transfer and Acquisition of Control, Case Kentucky Public Service Commission, No. 2005-00228. 2005. Concerning the risks and benefits associated with the proposed acquisition of an energy utility, on behalf of the Kentucky Office of the Attorney General.

Commonwealth Edison Company proposed general revision of rates, restructuring and price unbundling of bundled service rates, and revision of other terms and conditions of service, Illinois Commerce Commission, Docket No. 05-0597. 2005. Concerning rate design and cost of service, on behalf of the Illinois Office of Attorney General.

Pennsylvania Public Utility Commission v. Aqua Pennsylvania, Inc., Pennsylvania Public Utility Commission, Docket No. R-00051030. 2006. Concerning rate design and cost of service, on behalf of the Pennsylvania Office of Consumer Advocate.

Central Illinois Light Company d/b/a AmerenCILCO, Central Illinois Public Service Company d/b/a AmerenCIPS, and Illinois Power Company d/b/a AmerenIP, proposed general increases in rates for delivery service, Illinois Commerce Commission, Docket Nos. 06-0070, et al. 2006. Concerning rate design and cost of service, on behalf of the Illinois Office of Attorney General.

Grens, et al., v. Illinois-American Water Co., Illinois Commerce Commission, Docket Nos. 5-0681, et al. 2006. Concerning utility billing, metering, meter reading, and customer service practices, on behalf of the Illinois Office of Attorney General and the Village of Homer Glen, Illinois.

Commonwealth Edison Company Petition for Approval of Tariffs Implementing ComEd's Proposed Residential Rate Stabilization Program, Illinois Commerce Commission, Docket No. 06-0411. 2006. Concerning a utility's proposed purchased power phase-in proposal, in behalf of the Illinois Office of Attorney General.

Illinois-American Water Company, Application for Approval of its Annual Reconciliation of Purchased Water and Purchased Sewage Treatment Surcharges Pursuant to 83 Ill. Adm. Code 655, Illinois Commerce Commission, Docket No. 06-0196. 2006. Concerning the reconciliation of purchased water and sewer charges, on behalf of the Illinois Office of Attorney General and the Village of Homer Glen, Illinois.