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6 **BEFORE THE ARIZONA CORPORATION COMMISSION**

7
 8 IN THE MATTER OF THE
 9 APPLICATION OF ARIZONA-
 AMERICAN WATER COMPANY
 10 FOR A LIMITED WAIVER OF THE
 REQUIREMENTS OF A.A.C. R14-2-
 11 801, ET SEQ., AND CERTAIN
 RELATED RELIEF.

DOCKET NO. W-01303A-01-0983

Arizona Corporation Commission

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18 **ARIZONA-AMERICAN WATER COMPANY'S CLOSING BRIEF**

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1 **I. INTRODUCTION.**

2 **A. Procedural Background.**

3 On December 17, 2001, Arizona-American Water Company, an Arizona
4 corporation ("Arizona-American" or "Company"), filed an application requesting that the
5 Arizona Corporation Commission (the "Commission") issue an order waiving compliance
6 with the requirements of A.A.C. R14-2-801, *et seq.* (hereinafter, "the Affiliated Interests
7 Rules"), with respect to a specific, pending transaction involving Arizona-American's
8 parent, American Water Works Company, Inc., a Delaware corporation ("AWW"), and
9 that corporation's shareholders. Alternatively, Arizona-American requested that the
10 Commission issue an order declaring that the transaction is not subject to the Affiliated
11 Interests Rules and may be consummated without Commission review and approval.

12 On January 15, 2002, the Commission issued Decision No. 64362, by which the
13 Commission suspended Arizona-American's application for a period of 120 days at the
14 request of the Utilities Division ("Staff"). Subsequently, on April 22, 2002, Arizona-
15 American filed its Amendment to Application for Waiver and Notice of Intent to
16 Reorganize. On May 10, 2002, Staff filed a Request for Procedural Order, requesting that
17 deadlines be established for the filing of written testimony, the commencement of the
18 hearing and certain other procedural matters. Arizona-American consented to the dates
19 proposed by Staff, and by Procedural Order dated May 14, 2002, this matter was set for
20 hearing on August 8, 2002.

21 In accordance with the Procedural Order, on July 11, 2002, a public notice of the
22 hearing was published in *The Arizona Republic*, a newspaper of general circulation within
23 the State of Arizona. No third party sought leave to intervene in this matter, and no
24 persons provided public comment when the hearing commenced on August 8, 2002 at the
25 Commission's office in Phoenix. Following the presentation of their respective
26 witnesses, Arizona-American and Staff agreed, with the approval of the Presiding

1 Officer, to submit written briefs summarizing their respective positions in lieu of
2 presenting closing argument.

3 **B. Summary of the Parties' Positions.**

4 In its application and subsequent amendment, Arizona-American has maintained,
5 in summary, that it is entitled to a waiver from the Affiliated Interests Rules with respect
6 to the transaction pursuant to R14-2-806 or, in the alternative, to a declaration that the
7 Commission lacks jurisdiction over the transaction because the transaction does not
8 directly involve Arizona-American, but instead involves Arizona-American's parent,
9 AWW, whose publicly-traded common stock is being acquired by means of a merger with
10 a foreign (non-Arizona) corporation. Alternatively, Arizona-American has requested
11 approval of the transaction as a "reorganization of a holding company" pursuant to R14-
12 2-803.

13 Staff has recommended approval of the transaction pursuant to R14-2-803 subject,
14 however, to a series of 15 conditions. Ultimately, Arizona-American, seeking a
15 cooperative resolution, and Staff reached agreement on 13 of the conditions (although
16 several conditions required clarification, which was provided by Staff at the hearing).
17 However, the parties continue to disagree on the language of proposed conditions 3 and
18 13. With respect to those two conditions, Arizona-American submits that Staff's
19 proposals go beyond what is necessary to achieve the goals of the Affiliated Interests
20 Rules. In fact, the Staff witness chiefly responsible for sponsoring Staff's conditions
21 admitted on cross-examination that he did not understand the requirements imposed under
22 the Affiliated Interests Rules, and therefore could not explain why Staff believes the
23 Rules may be inadequate in this case. Tr. at 141-42.¹

24 ¹ The transcript of the August 8, 2002 hearing will be cited as "Tr." The rebuttal
25 testimony of the Company's witnesses, Mr. Turner and Mr. McGivern, will be cited as
26 "Turner Reb." and "McGivern Reb." The direct testimony of Staff's witnesses, Mr.
Carlson, Mr. Reiker and Mr. Chelus, will be cited as "Carlson Dir.," "Reiker Dir." and
"Chelus Dir.," respectively.

1 Without waiving its jurisdictional and other arguments, Arizona-American will
2 accept approval of the transaction pursuant to R14-2-803, provided that the conditions
3 imposed are reasonable. On this point, it must again be emphasized that Arizona-
4 American will continue to be subject to the Affiliated Interests Rules and other regulatory
5 requirements imposed by the Commission. See Tr. at 42; Turner Reb. at 8. Given the
6 limited nature of the approval sought in this case, it is unnecessary and inappropriate to
7 go beyond what the Commission's rules provide, particularly when Arizona-American
8 has satisfied the approval criteria set forth in R14-2-803(C). Consequently, there are no
9 grounds on which the Commission should reject the proposed reorganization.

10 **II. SUMMARY OF THE SUBJECT TRANSACTION AND ITS EFFECT ON**
11 **ARIZONA-AMERICAN.**

12 **A. Background on Arizona-American.**

13 Arizona-American is an Arizona corporation that has, for many years, provided
14 water utility service in portions of the Town of Paradise Valley, the City of Scottsdale and
15 certain unincorporated portions of Maricopa County.² All of Arizona-American's
16 common stock was purchased by AWW in the late 1960s, and, since that time, Arizona-
17 American has been a wholly-owned subsidiary of AWW. Turner Reb. at 3.

18 In January 2002, Arizona-American completed the acquisition of the water and
19 wastewater utility systems and assets of Citizens Communications Company in Arizona.
20 As a result of that transaction, approved by the Commission in Decision No. 63584,
21 Arizona-American currently provides water and wastewater service to approximately
22 140,000 customers in Arizona. *Id.* at 3-4. Consequently, Arizona-American is a Class A
23 water utility, and is subject to the Affiliated Interests Rules. A.A.C. R14-2-103.

24 Arizona-American's parent, AWW, is a Delaware corporation whose headquarters

25 _____
26 ² Arizona-American was originally named Paradise Valley Water Company. The
Company's name was changed to Arizona-American Water Company in January 2000.

1 is located in Voorhees, New Jersey. Turner Reb. at 4. AWW is a publicly-traded
2 company, whose shares of common stock are traded on the New York Stock Exchange.
3 At present, there are approximately 100 million shares of AWW common stock issued
4 and outstanding. AWW has more than 60 subsidiaries (both regulated and unregulated),
5 which collectively have a business presence in 27 states and 3 Canadian provinces. *Id.*
6 Regulated utility subsidiaries provide water and/or wastewater services to more than 15
7 million people in more than 20 states, including Arizona. At present, Arizona-American
8 engages in certain transactions with other subsidiaries of AWW, including American
9 Water Works Service Company, Inc., which provides various professional services (*e.g.*,
10 accounting, engineering, human resources, risk management, customer and water quality
11 services) to AWW subsidiaries, and American Water Capital Corp., which provides debt
12 capital and financial management services to AWW and its utility subsidiaries, including
13 Arizona-American. *Id.*

14 While AWW controls a large number of regulated and unregulated subsidiaries,
15 including Arizona-American, AWW itself is not engaged in any business activities in
16 Arizona. *Id.* As stated, water and wastewater utility services are provided in Arizona by
17 Arizona-American, and not by AWW or any other AWW subsidiary. Consequently,
18 AWW is not a public service corporation. *See Ariz. Const.* Art. 15, § 2 (defining “public
19 service corporation”); *Rural Metro Corp. v. Ariz. Corp. Comm’n*, 129 Ariz. 116, 117-18,
20 629 P.2d 83, 84-85 (1981) (the legislature may not delegate authority to the Commission
21 to regulate businesses not defined as “public service corporations”).

22 **B. The Subject Transaction.**

23 The transaction that is the subject of Arizona-American’s application concerns an
24 agreement made by AWW with RWE AG, a company organized under the laws of the
25 Federal Republic of Germany (“RWE”) and Thames Water Aqua Holdings GmbH, a
26 company organized under the laws of the Federal Republic of Germany and a wholly-

1 owned subsidiary of RWE (“Thames Holdings”). Turner Reb. at 5.³ Pursuant to this
2 transaction, all of AWW’s issued and outstanding common stock will be acquired by
3 Thames Water Aqua U.S. Holdings, a recently formed Delaware corporation and a
4 wholly-owned subsidiary of Thames Holdings. Tr. at 74-78. The acquisition of AWW’s
5 common stock will be accomplished by means of a merger in which Apollo Acquisition
6 Company, also a Delaware corporation controlled by Thames Holdings, will be merged
7 with and into AWW, with AWW surviving the merger. *Id.*; see also McGivern Reb at 3-
8 4. In conjunction with the merger, Thames Water Aqua U.S. Holdings will purchase all
9 of the issued and outstanding shares of AWW’s common stock at \$46.00 per share.
10 Shareholder approval was obtained at a special meeting on January 17, 2002. Turner
11 Reb. at 6.

12 RWE, Germany’s fifth largest industrial group, is an international multi-utility
13 service provider with its core businesses in electricity, water, gas, waste management and
14 other utility-related services. McGivern Reb. at 2-3. RWE has a business presence in
15 more than 120 countries on six continents. RWE and its subsidiaries employ some
16 170,000 people, more than one-third of whom work outside of Germany, including more
17 than 16,000 employees in the United States. *Id.*; Turner Reb. at 11.

18 Thames Holdings serves as a holding company for the water and wastewater
19 operations under the RWE corporate umbrella. McGivern Reb. at 3. Thames Water
20 Aqua U.S. Holdings has been formed as the holding company for all of the water and
21 wastewater operations in the United States. Tr. at 74-75, 78, 81. Management of the
22 water and wastewater operations has been delegated to Thames Water PLC (“Thames
23 Water”), which is a public limited company organized under the laws of England and
24 Wales and headquartered in London. Tr. at 76-77. Thames is presently the third largest
25

26 ³ A complete copy of the agreement between AWW, RWE and Thames Holdings is
attached to Arizona-American’s application. Turner Reb. at Tab B.

1 private water company in the world. McGivern Reb. at 3.

2 Although Thames Holdings, presently controls various businesses in the United
3 States, including E-town, a large water utility in New Jersey, neither Thames Holdings
4 nor any Thames' subsidiary provides utility services in Arizona. Tr. at 75; McGivern Reb
5 at 3; Turner Reb. at 9. Thus, none of the parties to the transaction are public service
6 corporations as defined by Art. 15, § 2 of the Arizona Constitution. *Compare, e.g.,*
7 *Southwest Gas Corp. v. Ariz. Corp. Comm'n*, 169 Ariz. 279, 285-287, 818 P.2d 714, 720-
8 722 (App. 1991) (discussing criteria for determining when an entity is a public service
9 corporation).

10 **C. The Effect of the Transaction on Arizona-American.**

11 Following the completion of the transaction, AWW's shares of common stock will
12 no longer be publicly traded, but, as stated, will be held by Thames Water Aqua U.S.
13 Holdings. Notwithstanding this ownership change, AWW will remain in existence and
14 become responsible for managing the Americas region (North and South America) of
15 Thames Water. Tr. at 92. AWW will continue to be headquartered in Voorhees, New
16 Jersey. *Id.*

17 More importantly, Arizona-American will continue to be a wholly-owned
18 subsidiary of AWW and will continue to provide utility service under the Commission's
19 jurisdiction in Arizona. Tr. at 91-92; McGivern Reb at 4; Turner Reb. at 6. Operational
20 control of Arizona-American after the transaction will remain just as it is today. As
21 explained by James McGivern, the Managing Director of Thames Water's Americas
22 business operations, during the hearing:

23 [T]he people making the decisions today will be the same
24 people making the decisions tomorrow and into the future of
25 the acquisition. That is the intention. It's not meant to have
any change in that respect.

26 Tr. at 92. Local and regional management will not change, and there will be no reduction

1 in Arizona-American's local staffing as a result of the transaction. *Id.* at 95; McGivern
2 Reb. at 4.

3 In addition, there will be no changes in Arizona-American's rates and charges for
4 service as a result of the transaction. Arizona-American's capital structure will not
5 change. Turner Reb. at 6. There will be no request to recover any acquisition premium
6 or any other costs associated with the transaction. Tr. at 16-17, 91-92; McGivern Reb at
7 4-5; Turner Reb. at 6-7. Finally, the transaction will not cause any additional layer of
8 management overhead to be allocated to Arizona-American. *Id.* There will not be any
9 cross-subsidization of any affiliates, and any transactions between Arizona-American and
10 any "affiliate," as such term is defined in A.A.C. R14-2-801, will continue to be subject
11 to the Affiliated Interests Rules and other regulatory requirements of the Commission.
12 Turner Reb. at 8. Put simply, the transaction will be "transparent" to Arizona-American
13 and its utility customers. Turner Reb. at 7.

14 D. **Benefits That Arizona-American Is Likely to Receive from the**
15 **Transaction.**

16 While the transaction will not result in any changes in Arizona-American's
17 management, local staffing and capital structure, the transaction is likely to generate
18 benefits for Arizona-American and its utility customers. *See, e.g.,* McGivern Reb. at 6-
19 10; Turner Reb. at 10-12. Both Staff and Arizona-American are in agreement that one
20 major area of benefit is the lower cost of capital that RWE enjoys as compared to
21 American Water Capital Corporation ("AWCC"), a subsidiary of AWW, which, as stated
22 above, provides debt capital to Arizona-American. As explained in the direct testimony
23 of Staff witness Joel Reiker, RWE's credit ratings are superior to those of AWCC at the
24 present time. Reiker Dir. at 3-4; *see also* McGivern Reb. at 7; Turner Reb. at 11-12.
25 Moreover, RWE has a substantially larger market capitalization than that available to
26 Arizona-American through AWW and AWCC, and therefore has greater equity and debt

1 financing capability. *Id.* In addition, RWE has access to the European capital markets as
2 well as the United States domestic market. *Id.* While precise quantification of these
3 benefits may be difficult due to factors such as the maturity dates of existing debt,
4 uncertainty concerning future levels of capital expenditures and financing requirements
5 and changes in interest rates and potential future changes in credit ratings, Staff
6 acknowledges that these benefits are tangible and likely to occur. Reiker Dir. at 4, 6;
7 Carlson Dir. at 5.

8 In addition to potential reductions in the cost of capital, there are other benefits
9 that are likely to result from the transaction. These benefits, which are explained in Mr.
10 McGivern's rebuttal testimony, generally result from Thames Water's extensive
11 experience in managing water and wastewater operations throughout the world.
12 McGivern Reb. at 6-10. This expertise, when combined with the existing expertise of
13 AWW's management, should enhance the quality of service provided to Arizona-
14 American utility customers. For example, Thames Water, which manages water
15 operations on six continents, has considerable experience in operating water systems in
16 regions where security has been a significant concern for decades. Tr. at 101-102;
17 McGivern Reb. at 6-7. Similarly, Thames Water has an outstanding track record in terms
18 of the quality of utility service it provides, and has established numerous programs to
19 improve the quality of service through capital investment in infrastructure and the use of
20 recent technological advances, as Mr. McGivern has also explained. Tr. at 96-99;
21 McGivern Reb at 7-9. In short, AWW and its subsidiaries, including Arizona-American,
22 will benefit by becoming a part of an organization with significant expertise, greater
23 access to capital, and greater economies of scale.

24 **III. ARGUMENT.**

25 **A. Overview of Arizona-American's Arguments.**

26 As stated, Arizona-American asserts three, alternative bases for granting its

1 requested relief: (1) the Commission lacks jurisdiction over the transaction under the
2 Affiliated Interests Rules, which apply only to transactions between public service
3 corporations and their affiliates; (2) Arizona-American has satisfied the standard for a
4 waiver from the Affiliated Interests Rules pursuant to R14-2-806; or (3) Arizona-
5 American has satisfied the three-part test for approval of the transaction pursuant to
6 R14-2-803. Staff disagrees with Arizona-American's first two arguments, and
7 recommends approval of the transaction pursuant to R14-2-803, subject, however, to the
8 imposition of 15 conditions on Arizona-American. *See* Carlson Dir. at 6-8. In order to
9 cooperate with Staff and resolve any dispute, Arizona-American proposed alternative
10 conditions, largely following Staff's initial recommendation. *See* Turner Reb. at 15-20
11 and Tab C. Ultimately, Staff and Arizona-American reached agreement on the language
12 of 13 of the 15 proposed conditions, with conditions 3 and 13 remaining in dispute.⁴
13 Staff's final conditions are set forth in Exhibit S-1, and a comparison of these proposed
14 conditions and Arizona-American's proposed conditions is set forth in Exhibit A-2.

15 Because Staff and Arizona-American currently disagree over only two conditions,
16 this brief will focus on the requirements and standard for approval of the transaction
17 under R14-2-803 and the conditions that either require clarification or remain in dispute.
18 Arizona-American does not waive its remaining arguments, and will briefly address those
19 arguments below following its discussion of the proposed conditions. However, the
20 Commission need not decide those issues if it determines that approval should be granted
21 under R14-2-803 subject to reasonable conditions.

22 **B. The Transaction Satisfies the Criteria Set Forth in R14-2-803.**

23 As stated, while Arizona-American and Staff disagree over the applicability of the
24 Affiliated Interests Rules to the subject transaction and Arizona-American's eligibility for

25 _____
26 ⁴ As explained below, several proposed conditions required clarification, which was
provided at the hearing.

1 a waiver from the rules, the parties have generally reached agreement with respect to the
2 conditions under which the transaction should be approved as a reorganization pursuant to
3 R14-2-803. As explained by Mr. Turner during the hearing, Arizona-American has
4 worked with Staff in order to reach a reasonable compromise under which the transaction
5 can proceed while satisfying the Commission and Staff that the transaction will not have
6 any adverse impacts on Arizona-American and its ability to provide utility service to local
7 customers. Tr. at 14. As a result, the parties are in agreement as to 13 of the 15 proposed
8 conditions (although several conditions require clarification), but disagree over two of the
9 conditions. Arizona-American submits that conditions 3 and 13, as proposed by Staff, are
10 overbroad and unnecessary, and that the Commission should approve Arizona-
11 American's versions of those conditions.

12 In summary, R14-2-803 requires any utility or affiliate intending to reorganize an
13 existing public utility holding company to notify Staff in writing at least 120 days prior to
14 the reorganization, and to provide certain specified information. A.A.C. R14-2-803(A).⁵
15 Following receipt of the notice of intent, Staff must notify the applicant of any questions
16 it may have concerning the notice, following which the Commission, within 60 days from
17 the receipt of the notice of intent, will determine whether to hold a hearing or approve the
18 reorganization without a hearing. A.A.C. R14-2-803(B).

19 Although the Commission may reject the proposed reorganization of the holding
20 company, it may do so only on one or more of three specific grounds:

- 21 (1) The transaction would impair the financial status of the public utility;
- 22 (2) The transaction would prevent the public utility from attracting capital at
23 fair and reasonable terms; or
- 24 (3) The transaction would impair the ability of the public utility to provide safe,
25 reasonable and adequate service.

26 ⁵ Under the definitions provided in the Affiliated Interests Rules, AWW is a holding company because it is an "affiliate that controls a public utility." A.A.C. R14-2-801(4).

1 A.A.C. R14-2-803(C). Unless the Commission determines that one or more of these
2 criteria would be violated, the reorganization must be approved. Put another way, if the
3 reorganization would be neutral as far as the Arizona utility is concerned, the
4 Commission cannot, under the rule, reject the proposed reorganization. In short, the rule
5 contains a “no harm” standard.

6 In this case, the evidence plainly shows that each of the three criteria is satisfied.
7 First, there is no evidence that the transaction “would impair the financial status” of
8 Arizona-American. The evidence shows that Arizona-American’s capital structure will
9 not change as a result of the transaction, nor will any expenses associated with the
10 transaction be passed on to Arizona-American. Instead, as explained, Arizona-American
11 will continue to exist as a wholly-owned subsidiary of AWW and effectively operate as a
12 stand-alone entity subject to this Commission’s jurisdiction. Presumably, for these
13 reasons, none of Staff’s witnesses expressed any concern regarding the impact of the
14 transaction on Arizona-American’s financial status. *See* Carlson Dir. at 4-5; Reiker Dir.
15 at 2-6.

16 The second criterion is also satisfied. There is simply no evidence that the
17 transaction would prevent Arizona-American “from attracting capital at fair and
18 reasonable terms.” In fact, both Staff and Arizona-American agree that to the extent the
19 transaction affects Arizona-American’s ability to attract capital, that impact will be
20 *positive* based on RWE’s superior credit ratings, RWE’s access to international capital
21 markets and RWE’s larger market capitalization. *See* Reiker Dir. at 3-4. As summarized
22 by the Staff’s financial analyst, “RWE’s favorable bond ratings may flow through to
23 AWCC, lowering the cost of debt to AWCC and ultimately, Arizona-American.
24 Assuming all other things are held constant, a lower cost of debt to Arizona-American
25 would result in a lower overall cost of capital in future rate cases.” Reiker Dir. at 5.

26 Similarly, Staff and Arizona-American agree that the final criterion in the rule is

1 satisfied. The Staff engineering witness investigated the impact of the transaction on
2 Arizona-American's ability to "provide safe, reasonable and adequate service," and
3 concluded that he foresees no adverse impact as a result of the transaction. Chelus Dir. at
4 4. He also testified, based on his investigation, that local management and staffing levels
5 will not change as a result of the transaction, which was confirmed by Mr. McGivern at
6 the August 8 hearing. *See* Chelus Dir. at 3-4; Tr. at 91-92. Moreover, due to Thames
7 Water's substantial experience and expertise in operating water systems throughout the
8 world, Arizona-American's operations and service are likely to benefit from the
9 transaction. *E.g.*, McGivern Reb. at 6-10.

10 There is no evidence that would allow the proposed reorganization to be rejected
11 under R14-2-803(C). In fact, the only issue identified by any of the Staff's witnesses,
12 following an investigation of the transaction that commenced last December when
13 Arizona-American's original application was filed, was a concern expressed by the Staff
14 accounting witness that the transaction "may present the opportunity for [Arizona-
15 American] to share customer data, some of which may be sensitive, with its affiliates for
16 business purposes." Carlson Dir. at 5. This concern, while perhaps legitimate given
17 recent events in the telecommunications arena, is not one of the three criteria that the
18 Commission has specified as grounds for rejecting the proposed reorganization of a
19 holding company under R14-2-803. Thus, even if there were evidence suggesting that, in
20 this case, Staff's concerns were well-founded, it is simply not relevant to the issue before
21 the Commission.⁶

22 In short, the evidence in the record supports a determination that the criteria set
23 forth in R14-2-803(C) have been satisfied. The transaction will not impair Arizona-
24 American's financial status and, in fact, is likely to assist the Company in attracting

25 ⁶ As discussed below, Arizona-American will agree to the imposition of limitations on its
26 use of sensitive customer information in connection with this application, in order to
address Staff's concerns.

1 capital on fair and reasonable terms. Further, as Staff has acknowledged, there is no
2 evidence that the transaction will impair the ability of Arizona-American to provide safe,
3 reasonable and adequate service to its water and wastewater utility customers.

4 **C. Arizona-American's Final Position Regarding the Conditions**
5 **Recommended by Staff Should Be Adopted by the Commission.**

6 Despite the fact that Staff generally agrees with Arizona-American's position that
7 the criteria set forth in R14-2-803(C) have been satisfied, Staff nevertheless recommends
8 approval of the reorganization pursuant to R14-2-803 subject to 15 separate conditions.
9 Carlson Dir. at 6-7. The legal basis for imposing these conditions in light of the plain
10 language of R14-2-803 has not yet been explained, although it appears that Staff may
11 maintain that there are additional, unstated requirements inherent in the rule, which allow
12 conditions and requirements to be imposed on the local utility even if the test in subpart
13 (C) of the rule has been satisfied. For example, the Staff accounting witness, Mr.
14 Carlson, testified in his direct testimony that "Conditions 1 through 14 are intended to
15 insure no harm. Condition 15 is intended to provide a benefit " Carlson Dir. at 8. This
16 testimony suggests that Staff is also reading a "quantifiable benefit" standard into R14-2-
17 803 when no such standard exists.

18 As stated, Arizona-American will agree to a modified version of the conditions
19 recommended by Staff in order to provide additional assurance that the transaction will
20 have no adverse impacts on Arizona-American. See Turner Dir. at 15; Tr. at 14.
21 Arizona-American's proposed conditions are attached to Mr. Turner's Rebuttal
22 Testimony (included in Exhibit A-1) at Tab C. Staff has in turn responded to Arizona-
23 American's proposal, and has presented certain revisions to Arizona-American's
24 proposed conditions. Exhibit S-1. Generally, the differences between Arizona-
25 American's proposal and Staff's proposal are minor with the exception of conditions 3
26 and 13. Exhibit A-2 compares Arizona-American's proposal to Staff's revised proposal,

1 highlighting the parties' differences.⁷

2 **1. Conditions Requiring Clarification.**

3 Two of Staff's modified conditions, set forth in Exhibit S-1, required clarification
4 at the hearing to ensure that there was no misunderstanding regarding those conditions'
5 scope and meaning. The first condition is condition 5, which states:

6 In future rate proceedings filed after the effective date of the
7 reorganization, AAWC [Arizona-American] shall have the
8 burden of demonstrating any cost overhead allocations and
9 direct charges resulting from the reorganization including, but
not limited to, the addition of layers of management, are
reasonable and provide a *net* benefit to AAWC and/or its
customers. [Italics supplied.]

10 As explained by Mr. Turner during the hearing, the use of the word "net" may have
11 different meanings depending upon whether "net" is used in a normal or lay sense, or is
12 used in an accounting or financial sense. Tr. at 18-23, 34-35. The Staff accounting
13 witness, Mr. Carlson, clarified that "net" is used in a lay sense, and is intended to indicate
14 only that Arizona-American must benefit in some respect from the service being
15 provided. There does not need to be a quantifiable dollar value associated with the
16 benefit. Tr. at 136. Mr. Carlson also testified that "there can be perceived benefits to
17 Arizona-American without benefits to ratepayers that we can still recognize as a benefit"
18 under the condition. Tr. at 132.

19 The second condition requiring clarification is condition 8. As shown in Exhibit
20 A-2, Staff deleted the second sentence from Arizona-American's proposed condition 8.
21 During the hearing, Mr. Carlson clarified that the deletion of the second sentence was not
22 intended to change the meaning of the condition and that Arizona-American would not be
23 precluded from making operational changes in connection with integrating the water and
24 wastewater systems acquired from Citizens earlier this year, or other operational changes
25 that relate to the provision of local services and are unconnected to the reorganization.

26 ⁷ A copy of Exhibit A-2 is attached for the Presiding Officer's convenience.

1 As explained by Mr. Carlson, Staff “felt that the extra [sentence] was just perfunctory,
2 unnecessary,” and its elimination does not affect the meaning of the condition. Tr. at
3 127-128.

4 Arizona-American will accept Staff’s modified conditions 5 and 8 subject to the
5 foregoing clarifications. However, to ensure that no confusion over these conditions
6 occurs in the future, if they are adopted by the Commission, Arizona-American
7 recommends that the decision specifically acknowledge the explanations provided by the
8 Staff witness regarding these conditions’ meanings.

9 **2. Conditions That Remain in Dispute.**

10 Based on Staff’s clarifications of conditions 5 and 8, the only conditions that
11 remain in dispute are conditions 3 and 13. Arizona-American maintains that those
12 conditions, as modified by Staff, are overbroad and unnecessary.

13 Arizona-American’s version of condition 3 provides:

14 AAWC (Arizona-American) and its affiliates will comply
15 with R14-2-801, et seq. pertaining to affiliated interests, or
16 seek Commission authorization for any waivers thereof,
17 including the provisions of R14-2-804 relating to the
transaction of business with and access to the books and
records of any affiliate, including the production of records at
AAWC’s local business headquarters or elsewhere.

18 Turner Reb., Tab C (condition 3). Staff’s modified condition 3 provides:

19 AAWC [Arizona-American] and its affiliates shall provide
20 their books and records upon request in the Phoenix
21 metropolitan area. AAWC and its affiliates shall also provide
access to their books and records where such documents are
maintained.

22 The fundamental problem with Staff’s condition is that the term “affiliate,” as defined in
23 the Affiliated Interests Rules, is extraordinarily broad and includes “any other entity
24 directly or indirectly controlling or controlled by, or under direct or indirect common
25 control with, the public utility.” A.A.C. R14-2-801(1). Consequently, Staff’s condition
26 covers entities with which Arizona-American has no business dealings. At the present

1 time, Arizona-American has approximately 60 affiliates. Turner Reb. at 4 and Tab A (list
2 of AWW subsidiaries). Once the transaction between AWW, RWE and Thames
3 Holdings is concluded, Arizona-American will have nearly 1,000 affiliates, including
4 various businesses controlled by RWE in Europe, North and South America, Africa and
5 Asia. Under Staff's version of condition 3, Staff could require any of those affiliates to
6 produce their books and records in Phoenix at any time, without regard to whether
7 Arizona-American transacts business with that particular affiliate. *Compare Ariz. Corp.*
8 *Comm'n v. State ex rel. Woods*, 171 Ariz. 286, 298, 830 P.2d 807, 819 (1992) (the
9 Affiliated Interests Rules "only regulate transactions between [public] utilities and their
10 affiliates"; emphasis supplied).

11 Under the Affiliated Interests Rules, Arizona-American is already prohibited from
12 transacting any business with an affiliate "unless the affiliate agrees to provide the
13 Commission access to the books and records of the affiliate to the degree required to fully
14 audit, examine or otherwise investigate transactions between the public utility and the
15 affiliate." R14-2-804(A). The rule also prohibits Arizona-American from obtaining any
16 financial interest in an affiliate, assuming the liabilities of any affiliate, lending money to
17 any affiliate or using utility funds to form a subsidiary without prior Commission
18 approval. A.A.C. R14-2-804(B). Any transaction made in violation of this rule is void.
19 A.A.C. R14-2-804(D). Moreover, Arizona-American must maintain a system of accounts
20 that "will include the necessary accounting records needed to record and compile
21 transactions with each affiliate." A.A.C. R14-2-804(E). In short, Arizona-American is
22 already subject to stringent limitations and requirements with respect to transactions with
23 affiliates under R14-2-804, which Arizona-American's condition 3 emphasizes.

24 When asked to explain why Staff believed it was necessary to go beyond what is
25 already required under R14-2-804, the Staff witness sponsoring the condition admitted
26 that he did not understand what the rule presently requires, and could not explain whether

1 Staff's version of condition 3 went beyond the rule. Tr. at 138-143. Ultimately, the Staff
2 witness could only indicate that the production of books and records by an affiliate might
3 be relevant in a future rate proceeding. E.g., Tr. at 146-150. However, the Staff witness
4 also acknowledged that if Arizona-American sought to recover a cost or expense resulting
5 from transactions involving an affiliate, Arizona-American would have the burden of
6 demonstrating to the Commission that the particular cost or expense was reasonable and
7 appropriate for recovery in rates. *Id.* at 150-153. In such a case, if Arizona-American
8 fails to meet that burden, the cost or expense can simply be disallowed. Therefore,
9 wholesale access to the business records of unrelated affiliates is not required.

10 In short, Staff has provided no basis for going substantially beyond what is already
11 required under the Affiliated Interests Rules and what would be required in other
12 regulatory contexts, such as ratemaking. As written, Staff's condition 3 would
13 theoretically permit Staff members to audit the books and records of RWE subsidiaries
14 operating in England, Malaysia or Chile, without regard to whether such audit has any
15 relationship to Arizona-American. There is simply no reason to grant Staff *carte blanche*
16 to examine the books and records of all RWE affiliates throughout the world, without
17 regard to whether that affiliate has business dealings with Arizona-American. Therefore,
18 Staff's version of condition 3 should be rejected, and the Company's version of that
19 condition, attached to Mr. Turner's rebuttal testimony at Tab C, should be approved.

20 The second condition proposed by Staff that is overbroad is condition 13, which
21 provides:

22 The cost of debt issued after the closing date of the
23 reorganization for purposes of setting rates in AAWC's rate
24 proceedings, filed within ten years from the effective date of
the reorganization, shall reflect a rating of A- (S&P) / Baa1
(Moody's) or higher.

25 The credit ratings contained in this condition are the current credit ratings of AWCC
26 which, as explained above, is a subsidiary of AWW and provides debt capital and

1 financial management services to AWW and its utility subsidiaries, including Arizona-
2 American. This condition effectively guarantees a minimum interest rate (cost) for any
3 debt that is issued for a period of 10 years after the transaction has closed, regardless of
4 any changes that may occur in the capital markets or otherwise.

5 This condition is both unprecedented and inappropriate. See Tr. at 27-30. The
6 basic justification for the condition is that, at present, RWE's credit ratings are superior to
7 those of AWCC and, as discussed above, may ultimately translate to a lower debt cost and
8 an overall decrease in Arizona-American's cost of capital. See Reiker Dir. at 3-4. While
9 RWE's favorable credit ratings may flow through to AWCC and, ultimately to Arizona-
10 American, Staff is concerned that the reverse could also be true, *i.e.*, RWE's credit ratings
11 could be downgraded in the future, resulting in a higher cost of debt. Thus, by using
12 AWCC's current credit ratings to set a floor on the cost of future debt for Arizona-
13 American, Staff hopes to reap the benefit of RWE's superior credit ratings, while
14 eliminating any downside.

15 A serious problem with this condition is that credit ratings involve subjective
16 determinations made by investment services. Tr. at 28. For example, AWCC's current
17 credit rating from Standard and Poor's, A-, is one notch greater than Moody's current
18 rating, Baa1. See Reiker Dir. at 4 and Exhibit JMR-1 (attached). Moreover, credit ratings
19 can be driven by a number of different factors that are beyond the control of RWE,
20 Thames Water or AWW. Thus, the credit rating of AWCC may be affected by changes in
21 regulatory requirements or other factors affecting the water utility industry or the
22 economy generally, regardless of the business activities of RWE or its subsidiaries. Tr. at
23 28-30. The Staff finance witness acknowledged this situation at the hearing:

24 Q. [By Mr. James] And bond ratings can be influenced by
25 a variety of factors, some of which are outside the
control of the company, correct?

26 A. [By Mr. Reiker] That is correct.

1 Q. So it's conceivable that the bond rating of American
2 Water Capital Corporation, the current lender for the
3 local affiliate here, could deteriorate for conditions that
4 have nothing to do with Thames' operations or RWE's
5 business activities, correct?

6 A. That is certainly possible.
7 Tr. at 165. Because credit ratings by investment services are subjective and, more
8 importantly, can be affected by circumstances beyond the company's control, it is
9 inappropriate to force Arizona-American to guarantee a particular minimum debt cost.
10 Moreover, as explained by Mr. Turner, this condition could weaken Arizona-American
11 financially and lead to more frequent rate increase applications to maintain cash flows
12 and debt service coverages. Tr. at 29-30.

13 Finally, Arizona-American has agreed to accept condition 14, under which
14 Arizona-American agrees that in any future Commission proceedings, it will not seek a
15 higher cost of capital than that which Arizona-American would have been authorized as a
16 stand-alone entity. As clarified by Mr. Reiker during the hearing, the interest rate and
17 other terms of any debt provided by AWCC (or any other affiliate) will be compared to
18 the interest rate and other terms that could be obtained by Arizona-American from a third-
19 party lender in the marketplace. Tr. at 161-164. Consequently, Arizona-American's cost
20 of capital can never be greater than the cost for Arizona-American to obtain debt and
21 equity financing on its own. Thus, condition 14 eliminates the possibility that an adverse
22 credit rating will cause Arizona-American's cost of debt in a future rate proceeding to
23 exceed the market cost of debt for a business organization comparable to Arizona-
24 American.

25 Despite these concerns, Arizona-American has, in good faith, agreed to condition
26 13, but proposes that this condition remain in effect for a period of *three* years from the
effective date of the transaction, as opposed to 10 years as proposed by Staff. For the
reasons set forth above, any guarantee concerning future debt costs is unreasonable and

1 may ultimately punish Arizona-American based on circumstances beyond its control and
2 the control of RWE and its affiliates. If a condition like condition 13 is imposed, the term
3 of such condition should be no more than three years.

4 **D. Summary of Arizona-American's Position on Jurisdiction and Waiver.**

5 **1. The Commission Does Not Have Jurisdiction over the**
6 **Transaction.**

7 As explained previously, while approval of the transaction subject to reasonable
8 conditions such as those offered by the Company would make it unnecessary to rule on
9 these issues, Arizona-American continues to maintain that the Commission's rules and,
10 more generally, its jurisdiction do not extend to this transaction. On their face, the
11 Affiliated Interests Rules apply only to public service corporations in the business of
12 furnishing utility service in Arizona. A.A.C. R14-2-802(A) ("Applicability"). The
13 limited scope of the Affiliated Interests Rules was recognized in *Ariz. Corp. Comm'n v.*
14 *State ex rel. Woods, supra*. In *Woods*, the Arizona Supreme Court affirmed the Affiliated
15 Interests Rules in response to a facial challenge to their validity, holding that the rules
16 constituted a permissible exercise of the Commission's constitutional authority to set rates
17 and charges. The court concluded that the "Commission must certainly be given the
18 power to prevent a public utility corporation from engaging in transactions that will so
19 adversely affect its financial position that the ratepayers will have to make good the
20 losses." 171 Ariz. at 297, 830 P.2d at 818. The court was careful to note, however, that
21 the Affiliated Interests Rules "apply only to public utilities subject to the Commission's
22 jurisdiction," and that the rules "*only* regulate transactions between those utilities and
23 their affiliates." *Id.* at 298, 830 P.2d at 819 (italics supplied). In this case, as explained
24 above, none of the parties to the agreement (AWW, RWE and Thames Holdings) are
25 Arizona corporations and none of them are public service corporations providing utility
26 service in Arizona.

1 Moreover, if the Commission attempted to assert jurisdiction over the subject
2 transaction, the Commission would be attempting to regulate a business transaction
3 between foreign corporations (*i.e.*, non-Arizona corporations) and their shareholders in
4 contravention of the Commerce Clause of the United States Constitution. U.S. Const.
5 Art. I, § 8, cl. 3. “When a state statute directly regulates or discriminates against
6 interstate commerce, or when its effect is to favor in-state economic interests over out-of-
7 state interests, we have generally struck down the statute without further inquiry.”
8 *Woods*, 171 Ariz. at 297, 830 P.2d at 818. The Commission itself has previously
9 determined that “a foreign corporation engaged in interstate commerce need not secure
10 the consent or approval of the Arizona Corporation Commission to issue stocks and stock
11 certificates, bonds, notes and other evidences of indebtedness,” even though the Arizona
12 legislature has delegated the Commission authority to review and approve such
13 transactions. *PHASER Advanced Metering Services*, Decision No. 61895 (Aug. 27, 1999)
14 at 2. *See also Citizens Utilities Company*, Decision No. 53560 (May 18, 1983);
15 *Southwest Gas Corporation*, Decision No. 52244 (June 18, 1981).⁸

16 Finally, it should also be noted that, under Arizona law, the Commission does not
17 have jurisdiction over the sale or other transfer of stock that is issued and outstanding.
18 *E.g.*, *Ariz. Corp. Comm’n v. Consolidated Stage Co.*, 63 Ariz. 257, 263, 161 P.2d 110,
19 112 (1945) (“Chaos would result . . . if the Corporation Commission, under the mantle of
20 state authority, were permitted to dictate to a corporation to whom to issue and transfer its
21 shares of stock.”). By attempting to regulate the subject transaction, the Commission
22 would be interfering with AWW’s shareholders’ right to sell their stock (which is publicly
23 traded), as well as AWW’s internal management, which would again unlawfully interfere
24 with interstate commerce. In sum, there is simply no legal basis for the Commission to

25 ⁸ Notably, both Southwest Gas and Citizens have extensive utility operations in Arizona
26 and are “public service corporations,” in contrast to AWW, RWE and Thames Holdings,
which are not.

1 extend its jurisdiction to this transaction under the agency's authority to set local utility
2 rates.

3 **2. The Commission Should Grant Arizona-American's Request for**
4 **Limited Waiver Pursuant to R14-2-806.**

5 Assuming the Commission does have jurisdiction, Arizona-American believes that
6 it has satisfied the requirements for a waiver from the Affiliated Interests Rules pursuant
7 to R14-2-806. This provision provides:

8 The Commission may waive compliance with any of the
9 provisions of this Article upon a finding that such waiver is in
the public interest.

10 Any affected entity may petition the Commission for a waiver
11 by filing a verified application for waiver setting forth the
12 specificity of the circumstances whereby the public interest
justifies non-compliance with all or part of the provisions of
this Article.

13 A.A.C. R14-2-806(A) and (B).

14 Staff believes, without any supporting authority, that "a benefit is necessary in
15 order for a waiver to be in the public interest." Carlson Dir. at 3. In this case, there is no
16 dispute that the transaction will provide benefits to Arizona-American. For example,
17 Staff witness Joel Reiker testified:

18 While it is uncertain how the reorganization will ultimately
19 affect Arizona-American, based on RWE's bond ratings
20 Arizona-American's access to capital markets could
potentially increase due to a higher bond rating of RWE. . . .
21 If the proposed reorganization is approved, Arizona-American
will be part of a multi-national corporation with a much larger
22 market capitalization than AWW. This larger market
capitalization might result in preferential treatment from
23 creditors, thereby reducing its cost of capital. Second, multi-
national corporations can enjoy reduced floatation costs due
to their relatively large issues of stocks and bonds.

24 Reiker Dir. at 4. *See also* McGivern Reb. at 6; Turner Reb. at 10-11. In addition,
25 Arizona-American has presented uncontested evidence indicating that Arizona-American
26 is likely to benefit in other respects based on Thames Water's extensive experience in

1 managing water and wastewater operations and increased economies of scale, as
2 discussed above. *E.g.*, McGivern Reb. at 6-10.

3 Nevertheless, while Staff acknowledges that the transaction is likely to result in
4 these benefits, Staff further contends (without providing any authority) that the benefits
5 must be either “measurable” or “quantifiable.”⁹ Arizona-American is not aware of any
6 Commission decision applying this standard, which would make it virtually impossible to
7 satisfy the criteria for a waiver under R14-2-806. Here, as previously explained, Arizona-
8 American will become part of a much larger, financially stable business organization,
9 which currently has approximately 170,000 employees worldwide and annual revenues of
10 nearly \$60 billion. While the benefits of this business combination may not be
11 immediately “quantifiable,” those benefits are nevertheless real and support a waiver
12 from the Affiliated Interests Rules.

13 **IV. CONCLUSION.**

14 It is undisputed that the transaction will have no adverse effect on Arizona-
15 American. Arizona-American will still be a wholly-owned subsidiary of AWW, its local
16 management and staffing will not change, its capital structure will not change and no
17 costs or expenses associated with the transaction will be pushed down to Arizona-
18 American. In addition, even Staff acknowledges that Arizona-American is likely to
19 benefit by becoming part of a larger, financially stable business organization with
20 substantially larger market capitalization and access to international capital markets, as
21 well as the expertise of Thames Water, which manages water systems on six continents.
22 Finally, Arizona-American will remain subject to the Commission’s regulatory
23 jurisdiction and requirements, including the Affiliated Interests Rules, which already
24 impose stringent requirements on Arizona-American’s dealings with affiliates.

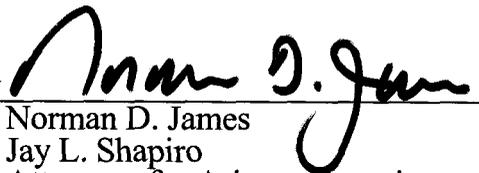
25 ⁹ The same Staff witness providing this opinion admitted during the hearing, however,
26 that he could not explain the requirements imposed under R14-2-804, raising serious
questions regarding his competency to testify. Tr. at 138-143.

1 Without waiving its jurisdictional and other arguments, Arizona-American has, in
2 good faith, agreed to the treatment of its application as an application for approval of the
3 reorganization of a public utility holding company pursuant to R14-2-803. As explained,
4 there are three criteria set forth in subpart (C) of that rule on which the Commission may
5 reject the proposed reorganization. The evidence shows that each of those criteria are
6 satisfied in this case, and, consequently, there is no basis to reject Arizona-American's
7 application. The conditions proposed by Staff, therefore, constitute a "belt-and
8 suspenders" approach that goes beyond the rule's requirement.

9 The foregoing notwithstanding, Arizona-American will agree to the imposition of
10 the conditions set forth in Exhibit S-1, as clarified during the hearing, with the exception
11 of proposed conditions 3 and 13. With respect to the latter conditions, Arizona-American
12 respectfully submits that Staff has gone beyond what is reasonable and necessary under
13 the Affiliated Interests Rules. Arizona-American requests that its proposed versions of
14 conditions 3 and 13, attached to Mr. Turner's rebuttal testimony at Tab C, be substituted
15 for Staff's proposed conditions, and that the transaction be approved subject to those
16 conditions.

17 RESPECTFULLY SUBMITTED this 6th day of September, 2002.

18 FENNEMORE CRAIG, P.C.

19
20
21 By 
22 Norman D. James
23 Jay L. Shapiro
24 Attorneys for Arizona-American
25 Water Company, Inc.
26

1 ORIGINAL and ten copies of the
2 foregoing was hand-delivered for filing this
3 24th day of September, 2002, to:

3 Docket Control
4 Arizona Corporation Commission
5 1200 W. Washington St.
6 Phoenix, AZ 85007

5 COPY of the foregoing was hand-
6 delivered this 24th
7 day of September, 2002, to:

7 Chairman William Mundell
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9 1200 W. Washington St.
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10 Commissioner James Irvin
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**PROPOSED COMPANY CONDITIONS WITH
STAFF'S PROPOSED CHANGES HIGHLIGHTED**

1. AAWC shall not seek recovery of any excess of cost over book value paid pursuant to the reorganization at anytime in the future from this Commission.
2. AAWC shall not seek recovery of any costs associated with the reorganization, including internal corporate costs, in any future Arizona rate proceeding.
3. AAWC and its affiliates ~~will comply with R14-2-801 et seq. pertaining to affiliated interests, or seek Commission authorization for any waivers thereof, including the provisions of R14-2-804 relating to transaction of business with and access to the~~**shall provide their** books and records of any affiliate, ~~including the production of records upon request at AAWC's local business headquarters or elsewhere,~~ in the Phoenix metropolitan area. **AAWC and its affiliates shall also provide access to their books and records where such documents are maintained.**
4. AAWC shall not adjust any existing account amounts as a result of the reorganization. AAWC may make normal accounting adjustments that would have occurred absent the reorganization.
5. In future rate proceedings filed after the effective date of the reorganization, AAWC shall have the burden of demonstrating that any cost overhead allocations and direct charges resulting from the reorganization including, but not limited to, the addition of layers of management, are reasonable and provide a **net** benefit to AAWC and/or its customers.
6. AAWC shall not allow the reorganization to diminish local (Arizona) staffing that would result in service degradation.
7. AAWC shall not allow its quality of service to diminish; the number of service complaints should not increase, the response time to service complaints should not increase, and service interruptions should not increase as a result of the reorganization.
8. AAWC shall continue to maintain its business headquarters in Arizona and fully operational local (Arizona) field offices, as appropriate to maintain the quality of its service. ~~However,~~

~~AAWC is not precluded from making local operational changes in connection with integrating the water and wastewater systems acquired from Citizens Communications and any future acquisitions into AAWC's local operations.~~

9. If AAWC ever plans to share with affiliates, or other entities, any information made available to AAWC solely by virtue of the company/customer relationship, such as billing information and services received by a customer, it shall notify the Commission at least 180 days in advance. Such notice shall, at a minimum, identify the intended use of the information. AAWC shall also, at the time of the filing of the 180-day notice, file a tariff setting forth appropriate customer notification procedures to inform customers about the sharing.
10. If AAWC ever shares any customer information with affiliates, or other entities, it shall maintain accurate records of revenues earned as a result and make those records available to Staff upon request with ten days notice. For the purpose of this condition and Condition 9 above, customer information that is prohibited from disclosure does not include a customer's name, address or service location, telephone number ~~and other information available by means of sources to which the general public may have access.~~
11. AAWC shall not use any utility plant or other property, that is used or necessary for the provision of utility service, for any unregulated activity unless AAWC maintains appropriate books and records of account detailing the nature of such unregulated activity and providing appropriate allocations of plant, revenue and expenses between activities relating to AAWC's provision of utility service and the unregulated activity. AAWC's books and records concerning all unregulated activities shall be subject to the Commission's review ~~on reasonable notice and will~~**shall** be made available in the Phoenix metropolitan area **or, at the Commission's request, where the records are maintained on ten days' notice.**
12. AAWC shall maintain a minimum common equity ratio of 35 percent of total capital. AAWC's total capital is defined as common equity, preferred equity, and long-term debt. AAWC shall not make remittances or pay dividends to AWW unless AAWC's common equity is at least 35 percent of total capital. If AAWC's common equity falls to 30 percent of

total capital, AWW shall provide a cash infusion of equity sufficient to bring AAWC's common equity ratio back to a minimum of 35 percent of total capital. AAWC shall not be prohibited from requesting that the foregoing equity percentages be decreased based on changes in capital markets or other conditions that make it prudent to alter AAWC's capital structure.

13. The cost of debt issued after the closing date of the reorganization, for purposes of setting rates in AAWC's rate proceedings, filed within ~~three~~ten years from the effective date of the reorganization, shall reflect a rating of A- (S&P) / Baa1 (Moody's) or higher. ~~For the purposes of this condition, the cost of debt shall be determined as of the date on which the interest rate or other debt cost is actually fixed by the lender.~~
14. AAWC and its affiliates agree that in future Commission proceedings, they shall not seek a higher cost of capital than that which AAWC would have been authorized ~~on its~~ as a stand-alone entity. Specifically, no capital financing costs (either debt or equity) should increase by virtue of the reorganization.
15. AAWC shall refrain from filing any non-emergency rate increase requests for one year from the closing date of the reorganization; ~~provided, however, that~~ AAWC may file rate increase requests prior to the reorganization's closing date, and any such requests ~~will~~shall not be subject to the conditions set forth herein.