COMMITTEE ON WATER
Infrastructure, Innovation, and Investment
Driving the Future of Regulation

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“Getting To Unleaded: Challenges and
Solutions in Facilitating the Removal of
Lead Service Lines”
Typical Inside Meter Installation

- Property Line
- Utility Ownership
- Customer Ownership
Typical Outside Meter Installation

- WATER METER
- PRESSURE-REDUCING VALVE
- SHUTOFF VALVE
- VAULT
- SERVICE LINE
- SHUTOFF VALVES (CURB VALVES)
- MAIN
- WATER UTILITY RESPONSIBILITY
- CUSTOMER RESPONSIBILITY

Property Line
Typical Investor-Owned System

Water Service Line Responsibilities

- Water Main
- Property Line
- Curb Stop
- Customer Service Line
- Internal Plumbing
Common Municipal System
Water Line Materials
Lead Service Pipes
Lead & Copper Rule Summary

• Action Levels:
  – Lead: 15 μg/L
  – Copper: 1.3 mg/L (1,300 μg/L)
  – Must be exceeded in more than 10% of the sampled services
  – Treatment Technique – NOT A HEALTH-BASED LIMIT

• MCLG for Lead: Zero mg/L
Treatment & Control

• Corrosion Control
• Partial Elimination
• Full Elimination
COMMITTEE ON WATER
“Getting To Unleaded: Challenges and Solutions in Facilitating The Removal of Lead Service Lines”

Jay L. Kooper
Vice President, General Counsel & Secretary
Middlesex Water Company
Lead Service Lines – Cuts Across Core Legal Subjects

**Torts** – Negligence and the Duty of Care

**Property** – Ownership and Control, Trespass

**Constitutional** – The Regulatory Compact/Ratemaking
Palsgraf v. Long Island Railroad
Torts – Negligence and the Duty of Care

Hopkins v. Lazo Realtors (Supreme Court of NJ)
Real Estate – Open House. Potential Buyer slips on basement steps while touring house.

Court – More expansive approach to common law application of Duty of Care. Homeowner and Seller’s Broker owed Duty of Care to inspect premises

Test – Fact-specific analysis of: (1) Relationship of parties; (2) Nature of Attendant Risk; (3) Opportunity and Ability To Exercise Care; (4) The Public Interest
Torts – Negligence and the Duty of Care

Application To Water Utility & Customer-Side LSL

- Current Customers
  - No question water utility has duty of care
  - Proactive warning and educating customer of options

- Future Customers if Current Customer Refuses
  - If water utility educates current customer and refusal to replace then current customer can reasonably foresee risk and utility has fulfilled duty to warn.
  - But Utility still exposed to risk of litigation
Property – Ownership and Control, Trespass

RIDDLE:

When is a water utility legally responsible for the portion of a water service line that it does not own, did not install, has not mapped, cannot find and cannot access?

ACCORDING TO THE DEPUTY ATTORNEY GENERAL OF NEW JERSEY:

If the water utility is “deemed to control” that portion of a water service line (In Re Readoption of N.J.A.C. 14:2). This argument was remanded by Superior Court of New Jersey, Appellate Division.
Constitutional – Regulatory Compact/Ratemaking

The Regulatory Compact: Provide investor-owned utilities with the fair opportunity to earn a just and reasonable return on their prudently invested capital (U.S. Const. amend. V & XIV) (FPC v. Hope Natural Gas, 320 U.S. 591 (1944))

York Water (PA PUC – Decided March 2017)
- LSL Replacement Costs treated as utility’s regulatory asset regardless of LSL ownership.
- Costs must be tracked
- Costs amortized without recovery of carrying costs
Constitutional – Regulatory Compact/Ratemaking

**PA American Water (PA PUC – Filed May 2017)**
- LSL Replacement Costs capitalized and included in Rate Base as “eligible property.”
- Recovery of LSL Replacement Costs through Base Rates and DSIC.

**NJ American Water (NJ BPU – Filed Sept. 2017)**
- Part of NJ American Rate Case Petition
- Seeks recovery for customer-side LSL replacements made through end of test year in base rates
- Seeks recovery for customer-side LSL replacements made post-test year through DSIC
Constitutional – Regulatory Compact/Ratemaking

**Indiana Public Law 91 (Enacted April 2017)**
- Allows Indiana URC to approve a utility’s request to fold the cost of LSL replacement into rates on condition of submission of plan that addresses 10 specific elements plus findings of reasonableness and in public interest.

**Wisconsin Senate Bill 48 (Introduced Feb. 2017)**
- Would allow Wisconsin PSC to approve a utility’s request to recover the cost of LSL replacement financial assistance programs in rates.
Constitutional – Regulatory Compact/Ratemaking

Common Thread of Various State/Utility Approaches
- Treats a customer-side LSL as a regulatory asset for purposes of allowing the water utility to replace a customer-side LSL.
- Retains the vesting ownership and responsibility for customer-side LSL with the customer.

Unanswered Question Going Forward
- Do these approaches solve the puzzle?
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