

# A Comparison of the First Three Approved Financial Assistance Programs for Private Lead Service Line Replacements

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The Public Service Commission of Wisconsin (PSC) has now received four applications from municipal water utilities to provide for ratepayer assisted private lead service line replacements pursuant to 2017 Wisconsin Act 137 (the Act). The PSC has approved three of the four applications, with the fourth having just been filed by Kaukauna Utilities on April 24, 2019. This article provides a partial analysis of the approval process and different approaches taken by the cities of Kenosha (docket 2820-LS-100), Manitowoc (docket 3320-LS-100), and Menasha (docket 3560-LS-100), as approved by the PSC.

## Timing for Approval

Where no hearing is held on the application, Wis. Stat. § 196.372(3)(d) requires the PSC to take final action within 90 days from the notice of opening a docket on an application.

For the first applicant, Kenosha, it took 135 days from the date Kenosha filed its application on April 3, 2018, to the date that the PSC approved the application on August 16, 2018. For the second applicant, Manitowoc, the duration was 177 days from filing the application on September 11, 2018, to approval on March 7, 2019. For the third applicant, Menasha, the duration was 205 days from filing the application on October 22, 2018, to approval on May 15, 2019.

The difference in timing is a result of how long it took the PSC to issue a notice of opening a docket after the application was filed. For all three applications, the PSC approved the

applications within, but close to, 90 days from the date of notice.

## Mandatory Replacement of Lead Service Lines

Wisconsin Stat. § 196.372(2)(a) allows the provision of financial assistance only if a municipality has an ordinance requiring the replacement of each customer-side service line containing lead. As submitted, Manitowoc's program did not require replacement of lead service lines unless the lead service line serving a property has failed or the property is a home and the water main was also being replaced. As a condition to approval, the PSC required a change to Manitowoc's ordinance to make it clear that all lead service lines must be replaced, regardless of the presence of the other preconditions. However, the PSC did not require Manitowoc to require replacement of all galvanized steel pipes.

## Galvanized Steel Pipes

The PSC does not require replacement of galvanized steel pipes; thus, each community has the ability to decide whether it wants to, or can, extend the utility's financial assistance program to cover the replacement. Based on community priorities, Kenosha's program only covers the replacement of lead service lines. Manitowoc provides financial assistance for the replacement of customer-side galvanized steel pipes, but only mandates replacement when a pipe fails. Menasha provides financial assistance for the replacement of customer-side galvanized steel pipes and requires their replacement in the same manner as the replacement of lead service lines.

## Financial Assistance

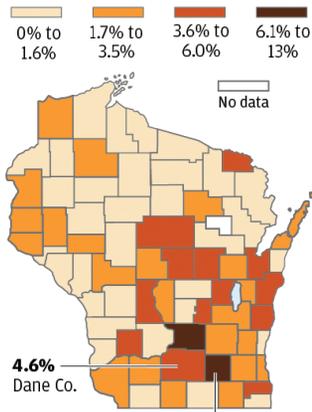
Wisconsin Stat. § 196.372(3) provides numerous conditions on how a water utility may provide financial assistance (see Boardman & Clark LLP's Municipal Law Newsletter January/February 2018 issue at <http://bit.ly/BoardmanClarkNewsletter>). Two conditions relevant to this comparison are Wis. Stat. § 196.372(3)(e)2.a., providing that grants may not exceed 50% of the replacement cost, and Wis. Stat. § 196.372(3)(e)3.a., providing that the percentage of the cost of replacing the property owner's portion of the service line must be the same for each owner in a customer class. While the approaches are divergent, the PSC has approved each of the three financial assistance programs proposed.

Kenosha provides financial assistance equal to 100% of the replacement cost. The financial assistance offered is a grant for 50% of the cost of replacement up to a maximum of \$2,000, and a low-interest rate loan for the remainder of the cost.

Manitowoc provides "100% financial assistance" in the form of a 10-year, 2.5% loan, up to a maximum of \$6,000. Grants are not being provided at this time. Consequently, where replacement costs exceed \$6,000, the total financial assistance may not equal 100% of the project cost for every owner. Without noting this issue, the PSC found that Manitowoc does offer the same financial assistance ("loan") amount to every owner in a customer class and Manitowoc's application is consistent with Wis. Stat. § 196.372(3)(e)3.a.

**Lead levels in Wisconsin drinking water**

Percent of water samples testing above the federal action level of 15 parts per billion of lead by county.



NOTE: The same household may have been sampled more than once.

SOURCE: Wisconsin Department of Natural Resources

Wisconsin Center for Investigative Journalism/ State Journal

The Menasha program also provides financial assistance to residential property owners equal to 100% of the replacement cost as follows: 1/3 of the cost as a grant from the City of Menasha (up to \$1,000 per residential property owner); 1/3 of the cost as a grant from Menasha Utilities (up to \$1,000 per residential property owner); and a five-year low interest loan from Menasha Utilities available for the remaining cost. Menasha’s ordinance provides that the grants provided by the utility may not exceed 50% of the total replacement cost. In finding that Menasha’s program appears to comply with Wis. Stat. § 196.372(3)(e)2., the PSC

looks as if it will not consider city grants as “financial assistance” for purposes of compliance. This is consistent with the Act regulating only the provision of financial assistance by utilities, and opens up options for communities to have combined city and utility funded lead service line replacement programs.

**Recoupment of Loans**

There have been two principal approaches for recoupment of loans: 1) annual repayment included on the property owner’s tax bill as a special charge (Kenosha); and 2) monthly repayment included on the property owner’s monthly water bill, with the tax roll used in the event of nonpayment (Manitowoc and Menasha).

In addition, Menasha and Manitowoc provide for acceleration of repayment. Menasha requires full loan repayment when a property is sold. Manitowoc requires full loan repayment when a “home” is sold or no longer becomes the homeowner’s primary residence. It is unclear if Manitowoc’s ordinance also applies to the sale of non-residential properties – a question not addressed by the PSC. In the event of a default, Manitowoc places the balance of the loan amount on the tax roll.

**Short-Term Impact on Rates**

Kenosha and Manitowoc did not predict that their programs will have any short-term impact on rates. Menasha predicted that its grant program, but not its loan program, would result in a 2% increase in rates for residential and multi-family customers. However, the PSC required all

three utilities to file full rate cases that include private lead service line replacement costs within two years of approval. In response, Menasha requested that the PSC consider providing an extension on that deadline, if necessary to allow the filing of one rate case combining both the financial assistance program and a large capital project. The PSC has not publicly addressed this request.

**Conclusion**

With the three approved utilities taking divergent approaches for providing and recovering financial assistance, it appears that the PSC is allowing utilities a degree of flexibility to meet the specific preferences and limitations of each community.

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**About the Author:**

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## Water Projects to Brag About!

**Pardeeville**

The Village of Pardeeville undertook an Emergency Bank Stabilization Project in March 2019 after a historic landslide.

- Erin M. Salmon, P.W.M., Director of Public Works, Village of Pardeeville



Before



After