

# MTBE LITIGATION AND THE REGULATORY TREATMENT OF DAMAGE AWARDS

## NARUC ANNUAL MEETING

Chicago, November 2009

Walton Hill, United Water  
[walton.hill@unitedwater.com](mailto:walton.hill@unitedwater.com)



# THE CASE

- NJ, CA litigation: “Bottom rail on top this time”
- 2003: In Re Methyl Tertiary Butyl Ether Products Liability Litigation
- Several actions commenced in state courts
- Consolidated “Multi District Litigation”—Southern District of New York
- Over 100 Plaintiffs (mostly municipal); including UWCT, UWNJ, UWNJ and UW Toms River
- BIG defendants
- Motions, discovery, United Water New York is one of four “focus cases”



# THE SETTLEMENT

- Fast forward to March 2008 (but not so fast)
- FOUR HUNDRED TWENTY THREE MILLION NINE HUNDRED SIXTY THREE THOUSAND FIVE HUNDRED SIXTY FOUR AND 67/100 DOLLARS—  
allocated to all Plaintiffs
- PLUS the “Future Treatment Obligation”: thirty years, 70% of treatment costs
- After attorneys’ fees (33%), before tax:
  - UWCT \$700,000
  - UWNJ \$3,700,000
  - UWNJ \$5,000,000
  - UWTR \$800,000



# REGULATORY ISSUES

- Can't just run to the bank (or the bar)
- Who is entitled to the settlement proceeds?
- Comprehensive settlement: individual Plaintiff damage awards not directly tied to actual damages
- In our cases, customers had not paid for remediation except partially in NY—no direct regulatory precedent
- No clear requirement for regulatory notice and action



# OUR REGULATORY SOLUTION

- Connecticut DPUC land sale treatment—special legislation recognizing the public interest in open space and water infrastructure
- Gains on land sales booked as income, but passed back to customers in a rate base deduction, amortized down over x years
- Company can record the gain as income, cash is available for infrastructure investment, and customers receive the benefit of rate base reductions
- Similar public policy considerations here:
  - Encourage utilities to be aware of and to participate in these kinds of actions
  - Establish a pool of funds that would be used for system improvements



# OUR PROPOSALS

- Request approval to:
  - Record the full amount of the net proceeds after tax and cost
  - No special dividend; cash to be invested in system
  - Establish a ratemaking account for the rate base deduction, amortized over 40 years, the average life of the new plant
  - Initial rate base deduction sufficient to produce present value revenue requirement reductions in rate cases equal to the amount of the net proceeds
  - Benefit of Future Treatment Obligation unquantifiable but substantial; 100% to customers



# THE RESULTS

- CT DPUC: general agreement resulting in Stipulation; amortization period reduced to 5.5 years to pass back savings earlier in rate cases
- NJBPU: general agreement resulting in Stipulation; rate base reduction increased to pass back additional savings to customers
- NYPSC: proposal rejected based on longstanding precedent regarding refunds of 90% of property tax refunds
  - due to differences in this case (NOT refunds), Company share increased to 20%

