

**TOWAMENCIN TOWNSHIP
TOWAMENCIN MUNICIPAL AUTHORITY
PROPOSED SALE OR LEASE OF SANITARY SEWER SYSTEM
FREQUENTLY ASKED QUESTIONS**

AS OF SEPTEMBER 2021

1. What stage is the Township in as it pertains to the possible sale or lease of its sewer system?

Currently the Township is still in the exploration phase. The Township has made no commitments to any potential buyer. At this stage, the Township has identified five potential interested parties for its sewer system and is in the process of drafting the various documents required to put the Township's sewer system out to bid. Note that putting the Township's sewer system out to bid **DOES NOT REQUIRE THE TOWNSHIP TO ACCEPT ANY BID THAT IT MAY RECEIVE**. The Township, throughout the process, including through the receipt of bid, has the option and authority to suspend or terminate the sale or lease exploration process at its discretion. It is the Township's view that, until formal bids are received, the Township cannot make an informed decision as to whether or not to keep, sell or lease its sewer system.

2. Who are the interested buyers and what type of transaction is the Township considering?

As of now, the Township is entertaining statements of interest from three (3) investor-owned utilities ("IOU") who are interested in purchasing the Township's sewer system; one (1) consortium of investment & operating companies interested in a long-term lease of the Towamencin sewer system; and one (1) neighboring municipal authority interested in the purchase of the Towamencin sewer system. Each of the various firms and each type of transaction has various positives and negatives that are being, and will continue to be, reviewed & evaluated by the Township.

3. Why would the Township and Sewer Authority consider selling the System?

The exploratory process has been underway since September 2020. The motivation includes:

- a) Monetizing the value of the assets to reduce or extinguish debt, reduce budgetary constraints, and reduce unfunded obligations.
- b) Avoiding needed short-term and long-term capital upgrades and replacements to the system which will result in additional debt and higher user fees.
- c) Reducing the risk of ever increasing federal and state regulatory mandates in a very heavily regulated industry.
- d) Reducing the risk of liability due to regulatory noncompliance.
- e) Recognizing that this type of utility can be more efficiently and economically operated by the private sector rather than government.
- f) With several retirements pending in the next few years, there is a concern with our ability to staff the plant with qualified individuals. There is a severe labor shortage in this industry and attracting personnel who have the desire and aptitude to operate and maintain the system at its' current high level is a concern. If unable to adequately staff the plant, we would be forced to hire a firm to manage the plant and system at an increased cost.

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4. What are the federal and state regulatory mandates facing the System?

There are numerous regulatory changes which have impacted the System in the past and will likely impact the System in the future. Some such potential mandates could include:

- a) Senate Bill 597 – Senate Bill 597 would require, among other things, minimum requirements for cyber security, GPS mapping and the implementation and execution of a formalized asset management plan.
- b) Five-year NPDES permit renewal – Every five years Towamencin is required to renew its NPDES permit. Through that process there is always a risk that additional changes in regulations would require capital projects to be completed as a condition of a renewed NPDES permit issuance.
- c) Ever changing total dissolved solids (“TDS”) limits & regulations - TDS are the amount of organic and inorganic materials dissolved in a particular volume of water. As these materials are not water, there is increased scrutiny over their levels as most wastewater effluent is discharged into various bodies of water.
- d) Future staffing requirements – Given Towamencin’s older workforce, it is likely that in the coming years additional staffing will be required. There is also a risk that in the future regulations would require additional licensing and certification for professions in the wastewater industry, increasing the costs and risks to Towamencin.
- e) Nitrogen & phosphorous levels – According to the Environmental Protection Agency, “Too much nitrogen and phosphorus in the water causes algae to grow faster than ecosystems can handle. Significant increases in algae harm water quality, food resources and habitats, and decrease the oxygen that fish and other aquatic life need to survive.” Given this risk, and the EPA’s ever increasing concern, it is possible that there would be increased future legislation on this issue.

5. What upgrades and replacements are needed to the System and what is the anticipated cost?

Based on the Township’s 10-year sewer conveyance capital plan, there are an identified anticipated costs of ~\$11 million over 10 years.

The Township/Authority is currently in the process of revising its treatment capital plan and is considering expanding it to a 10-year capital plan (the current capital plan is limited to only five years in scope). Current preliminary estimates are that, over the next 10 years, the treatment plant would require in excess of \$20 million.

6. What would my sewer rates likely be if the sale or lease does not take place?

Given the necessary upgrades, improvements, financing costs, and increased operational costs, it is predicted that rates will likely increase to the rates predicted if there is a sale or lease, if not more.

As of now, the Board is having preliminary discussions about a rate increase, to be become effective January 1, 2022, which would increase the Township’s rates to \$450.00 (up from \$375.00) per EDU per year in an effort to offset the revenues lost from the Upper Gwynedd Township disconnect.

Any future capital expenditures, of which there is an identified ~\$11 million over 10 years on the sewer conveyance side and ~\$10.5 million through 2025 for the sewer treatment side, would likely be funded through a combination of fund balance and publicly issued debt. Any publicly issued debt would likely be supported through future rate increases.

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Aside from the capital costs outlined the Township would also likely have to raise rates to keep pace with inflation and the effect it has on the various inputs that are used in the sewer collection and treatment process. Similarly, it is likely that there would be increased operational costs that are associated with permitting changes.

More information and analysis will be conducted on possible future rate impacts assuming the process continues and as more information becomes available.

7. What would my sewer rates likely be if the sale or lease does take place?

Currently the documents are being drafted to include a two-year rate freeze, during which no rate increases would be permissible.

Should the Township choose to release any request for bid, the bidders will be asked to provide their non-binding, indicative rates to be used in the Township's analysis of any possible sale or lease.

8. What is the selling price?

To be determined based on a competitive bidding process.

9. What could the Township do with the proceeds from the sale or lease?

- a) Pay off the debt of the System
- b) Reduce or extinguish Township debt & reduce unfunded Township obligations
- c) Create reserves for Township long term capital plan
- d) Proceeds will not be used to supplement annual operating budgets
- e) The creation of a "Rate Stabilization Fund" / "Customer Benefit Fund" to help mitigate future rate increases

10. Will the Township maintain control of future sewer extensions?

Yes. The Township will retain control of sewer extensions under the Act 537 sewage facilities planning program and the prior written approval of the Township will be a contractual requirement for any new sewer extension outside of the existing service area. In addition to availability of public sewer, many other factors influence growth and development within a community, for example: water, zoning, natural resource protection, comprehensive long-term planning, road network, work force, etc.

11. Will the new owner require properties on septic systems to connect to future sewer extensions?

No. Only the Township and PaDEP will have the legal right to mandate connections of existing properties with on-lot septic systems to future sewer extensions.

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12. If the system is sold, how would future sewer rates be determined?

The way in which future rate increases would occur depends on the type of buyer and/or the type of transaction.

- a) Sale to an Investor-Owned Utility (PUC regulated) – Should the Township sell its system to an IOU, any and all future rate increases would be vetted and approved by the PaPUC. While there is no guarantee, IOUs in PA may go to the PUC for a rate increase every three years. Once an IOU submits their request to the PUC for a rate increase their application is reviewed by Technical Utility Service (“TUS”) in order to ensure that the applicant’s application is correct and complete before approving to move forward in the process. Following TUS’s approval it moves along in the process where it is further reviewed by the Office of Consumer Advocate (“OCA”). Per the OCA’s website:

The OCA tries to keep utilities from charging more than they need to provide safe and adequate service to consumers. The OCA can appeal a PUC final decision if it believes the decision is in error and is harmful to consumers. The OCA has filed many appeals from PUC decisions. Some have gone as far as the Pennsylvania and United States Supreme Courts.

Apart from the OCA any and all customers of the IOU are encouraged to attend the public input hearings and voice their opinions on the proposed rate filing. Only after the public input hearings will the PUC ultimately accept the rate filing.

It should also be noted that it is by no means a foregone conclusion that the PUC will give the IOU the rates that they are asking for, rather in many instances they grant the IOU a rate different (typically lower) than what the IOU had initially requested.

- b) Sale to a Neighboring Municipality (Not regulated by the PUC) – Should any neighboring municipality/authority be the purchaser of the Township’s system, they would be subject to the Municipal Authorities Act (as Towamencin currently is), and as such, would be required under the Act to set rates that are “reasonable and uniform” across its rate payers.
- c) Long-term concession lease (Not regulated by the PUC) – Should the Township pursue a long-term lease of its system the responsibility and authority to set rates would remain with the Township. Each individual lease is different, however, generally, the lease explicitly outlines how any future rates increases would be determined by considering several factors, including but not limited to, inflation, operating expenses & required capital improvements, whereby such capital improvements would be identified, in advance, in a long-range capital plan that is agreed upon by both the Township and the lessor.

13. How would a possible sale or lease effect the current employees of the system?

Any purchaser, or lessor, of the Township’s system will be required to offer employment to all current sewer system employees at substantively similar, or better, compensation packages as they are currently receiving.

14. Would the responsibility of maintaining the sewer laterals from the curb to the main change?

Yes, should the Township sell or lease the system it is anticipated that the new owner/lessee will assume responsibility for all laterals between the curb stop and the main, thus relieving the homeowner from this responsibility.

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FREQUENTLY ASKED QUESTIONS**

15. How would customer service questions be handled should a sale or lease occur?

It is Towamencin's position that any purchaser/lessor of the system be required to have a customer service system similar to, or better than, the Township's current system. Some such examples could include, a 24-hour customer service number, online & automatic bill paying, maintaining a physical drop-box for those who do not wish to pay online or via mail, various educational resources for customers that explains wastewater best practices, maintaining a local office and fast response in emergency situations.

AS OF SEPTEMBER 2022

16. Will NextEra be able to recapture all \$115.3 million of their purchase price in rates?

The amount that NextEra will be able to recapture in its rates is determined during the current PUC preceding. The process of setting rates is also set by the PA PUC, not the underlying regulated utility. As part of the sale process, and as required by the PA PUC, the Township retained its existing engineer, Gilmore & Associates, to conduct an engineering assessment with the task of cataloging all the various sewer related assets that are to be sold as part of the sale. That portion of the sale process has now been completed. The next step is for the buyer and seller, to each retain a Utility Valuation Expert ("UVE") to determine a value for each of the assets listed in the engineering assessment. Once each of the UVEs has performed its analysis, both of their reports, along with the engineering assessment, will be submitted, as part of the buyer's application, to the PA PUC. In determining how much of NextEra's purchase price it will be able to recoup in rates, the PA PUC will take the average of the two UVE valuations and that average will serve as the ceiling to which NextEra will be allowed to recoup. In some past 1329 proceedings, the PA PUC has determined that an amount lower than that ceiling will be what the buyer is allowed to recoup.

17. Can the Township (whether in its current form of government as a Second Class Township or, if its form of government is ultimately changed, as a home rule charter) unilaterally and intentionally terminate the sewer system sale without cause?

No. The June 13, 2022 Asset Purchase Agreement ("APA") is a binding contract between the Township (as seller) and NextEra Water Pennsylvania LLC (as buyer). It expressly provides for the limited, permissible grounds upon which the APA can be terminated prior to Closing, **and no others**.

A unilateral and intentional termination of the APA by the Township **is not a permissible ground for termination** under the APA—**regardless of the Township's form of government** (i.e., whether in its current form of government as a Second Class Township or, if its form of government is ultimately changed, as a home rule charter). Such an impermissible termination constitutes a breach of the APA by the Township and carries with it potentially significant legal and financial consequences for the Township.

Specifically, NextEra could file a lawsuit due to the breach. Under the APA, NextEra would be entitled to specific performance (i.e., **the court stepping in and ordering the sale of the sewer system as**

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intended under the APA) and/or any other legal remedies available to it under Pennsylvania law, including significant money damages against the Township to compensate NextEra for the breach, including lost sewer rate revenue. Such money damages against the Township for the breach **could be in excess of tens of millions of dollars.**

Conversely, if NextEra breaches the APA, the Township could similarly file a lawsuit seeking the same remedies for such breach.

AS OF OCTOBER 2022

18. **Are (a) unilateral, intentional Township action or inaction as a home rule charter preventing the sewer system sale; and (b) a formal Township termination of the APA without cause, the same in terms of possible legal and financial consequence?**

Yes. It's been suggested that the Township, as a home rule charter, could somehow avoid the significant consequences of breaching the APA if the sewer system sale is stopped with certain Township action or inaction by way of the charter's provisions—such as repealing the sale-authorizing ordinance or constraining the Township from fulfilling the APA—as opposed to a formal Township termination of the APA without cause. **This is not legally accurate.** In terms of applicable legal and financial consequence, **they are one and the same.** They both would constitute a breach of the APA.

Specifically, **any** unilateral, intentional, formal or informal, action or inaction, taken by the Township, as a home rule charter preventing the sewer system sale without cause is a breach of the APA. Such a breach carries with it all the potentially significant legal and financial consequences for the Township (as described above in FAQ 17). Consequences could include specific performance (i.e., **the court stepping in and ordering the sale of the sewer system as intended under the APA)** and/or money damages against the Township for the breach possibly **in excess of tens of millions of dollars.**