

### **Introduction:**

I am an elected Supervisor in Towamencin Township and while I acknowledge that I do not represent the majority opinion of the board, I was elected most recently, I am likely the record holder vote getter in Towamencin Supervisor election history, and this is the 2nd time I've been elected to represent the people of Towamencin since the sewer sale started being explored. First being on the Government Study Commission who was charged with writing our current Home Rule Charter. I am comfortable speaking with a philosophical mandate even if I am short of the legal one.

I have some doubts that our special counsel at Dilworth Paxson was legally able to write the Township's comment. Notably, as a private citizen I have filed a lawsuit against the Township in relation to the sewer sale, and the Township voted to defend that lawsuit at a public meeting separate from the sewer sale engagement with Dilworth Paxson. I'm not of the belief that lobbying during this rulemaking process is covered under the Township's standard engagement with Dilworth Paxson. Any legal or pseudo legal arguments made by special counsel should have been made in Towamencin specific proceedings.

### **Responses:**

1. We are a Home Rule Charter Township for a reason.
  - a. Towamencin residents went through the extensive process of collecting 1000s of signatures to initiate a Government Study, they elected 7 anti-sale Government Study Commissioners to 7 available seats, and they approved a Home Rule Charter that explicitly prohibits the privatization of wastewater systems in the following language. Whether this provision is legally powerful enough is the subject of my lawsuit against the Township, but it is very clear that the people of Towamencin do not want to sell our wastewater system.
  - b. *"The Township, municipal authorities incorporated by the Township, or any other governmental entity that owns and/or operates a Potable Water System, a Wastewater system, or a Storm Water System in the Township, shall not permanently sell, transfer, assign, or deliver ownership or operation of the Potable Water System, the Wastewater System, or the Storm Water System to a non-governmental entity"* - Towamencin Home Rule Charter Section 601
2. The Township had discussions with residents, but did not listen.
  - a. The May 25th, 2022 Board of Supervisors Meeting where the sale to NextEra was approved fielded 38 public comments against the sale, and 3 in favor.
3. PA American Water's rates are not affordable.
  - a. Towamencin Township charges a flat sewer rate of \$590/year per household while PAWC charges \$1272/year on average
  - b. Towamencin's analysis published in March 2023 puts projected 2033 rates at \$920 a year which is remarkably \$352 a year less than PAWC's *current* rates

4. There would be no reason to incur cost of PUC approval if we didn't vote to sell
  - a. The Township could have listened to residents in 2021 and not approved a sale to NextEra
  - b. The Township could have negotiated with NextEra to get a clean termination when NextEra expressed interest in leaving the regulated water and wastewater industry
  - c. The Township can send and could have sent a letter of termination to PAWC with the Home Rule Charter prohibiting these sales being in force
5. The General Assembly made Section 1329 acquisitions pursuant to Section 1102 and therefore the determination of public interest is explicitly in the PUC's purview. A blanket determination of public interest was not implied by the passage of Section 1329
  - a. I'm not going to pretend to be an attorney but the PUC very explicitly has the power to deny 1329 applications, I don't see the argument that they cannot establish guidelines for doing so.
  - b. Section 11.03 of the asset purchase agreement between PAWC and Towamencin states that the PUC must issue an order approving an acquisition. I do not understand how the PUC setting guidelines for Section 1329 would represent an impairment of contract when the PUC currently has a right and has exercised its right to deny Section 1329 applications

**Conclusion:**

Towamencin and other municipalities who have chosen to engage in Section 1329 transactions repeatedly assure residents of the PUC's ability to regulate utilities and I find it inappropriate that so many of them are now expressing doubts about the PUC's insight on Section 1329. The PUC should feel comfortable with this implementation order and as a matter of fact, should make it stricter as Section 1329 does not have any theoretical good use cases compared to other acquisition procedures.

*Kofi Osei*