

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION**

In re:)	
)	
JEFFERSON COUNTY, ALABAMA,)	Case No. 11-05736-TBB
a political subdivision of the State of)	
Alabama,)	Chapter 9
)	
Debtor.)	

**FIRST PERIODIC STATUS REPORT
CONCERNING THE SEWER RATEMAKING PROCESS**

Pursuant to the *Interim Order on Motion to Lift or Condition the Automatic Stay Filed by Financial Guaranty Insurance Company* [Docket No. 967] entered May 7, 2012 (the “Interim Order”), Jefferson County, Alabama (the “County”), the debtor in the above-captioned chapter 9 case, respectfully submits this First Periodic Status Report Concerning the Sewer Ratemaking Process (the “Status Report”).

1. The First Public Hearing

On June 12, 2012, at the Birmingham-Jefferson Civic Center, the Jefferson County Commission (the “Commission”) held the first of several scheduled public hearings regarding sewer rates. The County published official notice of the hearing in several editions of the *Birmingham News* and by docket notice in this case, *see Notice of Sewer Rate Hearings* [Docket No. 1046], and the local press provided significant news coverage in the week prior to the hearing. In his opening remarks at the hearing, Commissioner David Carrington explained the context in which the Commission is acting:¹

Under Amendment 73 to the Alabama Constitution, the Jefferson County Commission[] [is] responsible for managing, operating, controlling, and administering the Jefferson County Sewer System.

¹ Tr. 3:7-4:21.

The present members of the Commission have not previously had the ability to carry out this constitutional function because before we took office, a State Court Judge had transferred full power over the sewer system, including rate setting, to John Young, as Sewer System Receiver.

* * *

Since none of the current Commissioners have set sewer rates before, the Commission has scheduled these public hearings to get input from everyone . . . who is affected by the sewer system or sewer rates.

Commissioner Carrington explained that there will be at least three public hearings at which invited witnesses will assist the Commission and the public in understanding the ratemaking process, and at which members of the community and parties in interest in the bankruptcy case will have the chance to share their input and concerns. Commissioner Carrington further stated that this process will precede the development and consideration of any rate proposal, because “these hearings are an opportunity for us to listen to the expert witnesses, to the community, and to anyone else [with a stake in] our county sewer system before we make any decisions about what needs to be done.” *Id.* at 11:4-9. Accordingly, the Commission is determined to take a fresh, unbiased look at the situation:²

I want to reemphasize that . . . there is no proposal on the table for the Commission to vote upon with regard to sewer rates. We are not yet at that stage. For today and the subsequent hearings, we are gathering the information we need to develop a proposal with the help of our experts.

Any sewer rate proposal will be available to the public in advance of a public hearing on the proposal. For now, we are listening and learning, and we do not intend to prejudge the merits of any possible future proposal.

* * *

² *Id.* at 11:10-12:11.

We want to consider all of the relevant data, and we want to hear from everyone who desires to be heard.

Following these opening remarks, David Denard (Director of the County's Environmental Services Department) testified about the operation of the sewer system, the value of the services it provides, the condition of system infrastructure, and the level of future capital expenditures that will be required to properly maintain the system and keep the system in compliance with applicable federal and state law. Next, Dr. Stephanie Rauterkus (a finance professor at the University of Alabama at Birmingham) testified concerning her ongoing work quantifying the level of burden on households and businesses in the community and analyzing how that burden compares with other areas. Finally, the Commission heard from fifteen members of the public about how sewer rates affect the community and how the Commission should proceed in its constitutional task.

A complete transcript of the June 12, 2012 sewer rate hearing is attached hereto as Exhibit A. The transcript and the witnesses' PowerPoint presentations are also available free of charge on a website created by the County – www.jeffcosewerhearings.org (the "Website") – at which members of the public can submit comments for consideration by the Commission. In addition to accepting comments via the Website, the Commission invites written submissions at the County Manager's office, and anticipates that all such materials (and any other materials, testimony or comments submitted or presented at future hearings) will be made available on the Website. Finally, the County will endeavor to make all the Website materials available for inspection at the County Manager's office free of charge for those without internet access.

2. Additional Public Hearings

The Commission has scheduled the next public hearing regarding sewer rates for July 24, 2012, in Bessemer. The County will announce the exact time and location of the hearing by

publication and docket notice at least one week prior to the hearing. The Commission has tentatively scheduled a third public hearing for August 21, 2012, at a time and location to be announced. At present, the Commission anticipates that these three public hearings will accommodate all witnesses, presentations and comments, and will provide a sufficient basis upon which the Commission can then proceed “in the exercise of a fair, enlightened and independent judgment in the light of all the relevant facts,” *Birmingham Elec. Co. v. Ala. Pub. Serv. Comm’n*, 47 So. 2d 455, 460 (Ala. 1950), with its constitutional task of making “reasonable and nondiscriminatory rules and regulations fixing rates and charges” for the sewer system. ALA. CONST. amend. 73. If warranted, however, the Commission may schedule additional public hearings.

In addition to the topics addressed at the first hearing, the Commission invites testimony, presentations and comments at future hearings about, *inter alia*: (i) the costs of operating and maintaining the sewer system in a sound, responsible manner, including appropriate renewal and rehabilitation of existing infrastructure; (ii) elasticity and the probable outcomes (in terms of both revenue and public health) of various levels of rate adjustments; (iii) the advisability and feasibility of adopting the GASB 34 modified approach on a going-forward basis; (iv) the impact on the revenue stream generated by the system absent appropriate levels of capital expenditures; (v) the advisability or necessity of a low income assistance program and the funding of such a program consistent with the requirements of Alabama law governing reasonableness and non-discriminatory rates; and (vi) creditor concerns. These topics are illustrative rather than exhaustive and the order in which they are listed above does not in any way equate to the relative importance of these matters. Put simply, the Commission welcomes information from any

interested persons – including customers, ratepayers, taxpayers, members of the community, employees and creditors – about any topic pertaining to sewer system rates and charges.

For the second public hearing in particular, the Commission intends to hear from Mr. Eric Rothstein, a nationally recognized expert with decades of experience in ratemaking and financial planning for municipal wastewater utilities. The Commission may also hear further testimony from Mr. Denard and Dr. Rauterkus, and intends to invite testimony from the sewer creditors and insurers who are plaintiffs in the adversary proceeding styled *The Bank of New York Mellon, as Indenture Trustee, et al. v. Jefferson County, Alabama*, Adv. Proc. No. 12-00016-TBB (the “Adversary Proceeding”), as well as from members of the community (including, for example, the homeowners who filed the *Motion for Leave to File Amicus Brief by Edgewood Boulevard Homeowners* [Docket No. 97 in the Adversary Proceeding]). The Commission is particularly interested in any expert testimony or data developed by the sewer creditors concerning the appropriate rate structure, fees and charges, and any other information deemed relevant by the creditors, as well as testimony by those who have been or worry they may be affected by any deterioration in system infrastructure (past, present or future).

3. Next Steps

Once the Commission has gathered sufficient data and has provided all interested persons with an opportunity to be heard, the Commissioners – in consultation with the County’s experts and sewer professionals – will fully consider the facts, opinions and comments gathered during the public hearing process. It is for this purpose that a complete record of the public hearings is being assembled, as that record will form the basis on which the Commission exercises its rate-setting responsibility. Once a specific proposal has been formulated, the County will make it available to all interested parties, and the Commission will hold a public hearing to consider the

proposal. Although the timing may change, the County currently anticipates releasing a specific proposal in September 2012, and holding a final hearing on the proposal in October 2012.

4. Conclusion

Unlike the Receiver, the Commissioners are elected officials with a responsibility to examine and set rates in a manner befitting a representative democracy. *See Marshall Durbin & Co. v. Jasper Util. Bd.*, 437 So. 2d 1014, 1019 (Ala. 1983) (“The municipality is *not* primarily involved in the utility business as a profit-oriented enterprise. Rather, the municipality carries on this municipal function in a service oriented context [and] is ‘subject to [the people’s] control through the democratic processes.’” (quoting *Mitchell v. City of Mobile*, 13 So. 2d 664, 667 (1943)), *overruled in part on other grounds by Ex parte Waterjet Sys., Inc.*, 758 So. 2d 505 (Ala. 1999); *see also id.* at 1023 (discussing required notice and opportunity to be heard as being satisfied by “public meetings scheduled on a regular basis”).

In the exercise of this public trust, the Commission is committed to ensuring that whatever result it reaches is supported by “substantial evidence,” *id.* at 1024, and is not “arbitrary or discriminatory,” *id.* at 1019 (quoting *Benson v. City of Andalusia*, 195 So. 443, 445-46 (Ala. 1940)). Thus, Commission will “examin[e] the relevant data and articulat[e] a satisfactory explanation for its action, including a rational connection between the facts found and the choice made.” *Ala. Dep’t of Human Res. v. Dye*, 921 So. 2d 421, 426 (Ala. Civ. App. 2005) (internal quotation marks omitted). The record being developed at the public hearings will ensure that the Commission does not “entirely fail[] to consider an important aspect of the problem, offer[] an explanation for its decision that runs counter to the evidence before [it],” or rely on any impermissible factors. *Id.* The County welcomes the participation of all interested parties – including the sewer creditors – in this important task.

The County will file its next Status Report on or before August 2, 2012, consistent with the Interim Order.

Respectfully submitted this 18th day of June, 2012.

By: /s/ Patrick Darby

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