

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

IN RE:)	
)	
JEFFERSON COUNTY, ALABAMA,)	
)	CASE NO.: 11-05736-TBB-9
Debtor.)	
)	CHAPTER 9
)	

**RESPONSE OF INDENTURE TRUSTEE AND THE NAMED WARRANTHOLDERS
AND INSURERS TO JEFFERSON COUNTY'S INVITATION TO ADDRESS THE
JEFFERSON COUNTY COMMISSION AT THE NEXT SEWER RATE HEARING**

The Bank of New York Mellon, in its capacity as Indenture Trustee (the "Trustee") for \$3.6 billion in original principal amount of special revenue sewer warrants (the "Sewer Warrants"), files this response to Jefferson County's Notice of Invitations to Address the Jefferson County Commission at the Next Sewer Rate Hearing (the "Debtor's Invitation"). The Trustee is filing this response on behalf of itself and certain Warrantholders and Insurers (the Named Warrantholders and Insurers (as defined in footnote 1 below) together with the Trustee, the "Invitees").¹ The Debtor's Invitation was filed on the docket in the above-referenced case on June 25, 2012 (Doc. No. 1090), and therefore, the Trustee is filing its response with the Court. The Invitees' position regarding sewer rates is now well known as it has been set forth and supported in numerous federal and state court hearings and pleadings. See e.g., The Receiver's

¹ The Notice filed by the Debtor indicated that invitations to "testify" at its next public hearing on sewer rates were sent to the Indenture Trustee, JPMorgan Chase Bank, N.A., Bank of America, Bank of Nova Scotia, Société Générale, Bank of New York Mellon, State Street Bank and Trust Company, Lloyds TSB Bank PLC, Assured Guaranty Municipal Corp. and Syncora Guarantee Inc. (the "Named Warrantholders and Insurers"). The Trustee understands that each of the Named Warrantholders and Insurers agrees with the Trustee's Response set forth herein and that none of them intend to appear at the public hearings. The Notice further indicates that Financial Guaranty Insurance Company ("FGIC") was also invited to "testify". The Trustee understands that FGIC reserves all of its rights and does not intend to appear at the public hearings.

First Interim Report. Consequently, the Invitees do not intend to participate in the Debtor's Sewer Rate Hearings. The Invitees are, however, willing to meet with the County's representatives to discuss their position, including their views on an appropriate rate structure, and to engage in good faith discussions regarding the terms of a plan of adjustment. For now, the Invitees' response to the Debtor's Invitation is as follows:

1. The "public hearings" that the Debtor and its Commission have scheduled are not a part of any rate-making procedures required under Alabama law, do not provide for sworn testimony subject to cross examination, and are not administrative hearings or adjudications. Rather, the hearings have been described by the County in its First Periodic Status Report Concerning the Sewer Ratemaking Process [Doc. No. 1070] as a learning process for the Commission and to "assist the Commission and the public in understanding the rate-making process." (Status Report, p. 2.) The Trustee, on its own behalf and on behalf of all Warrantholders and Insurers, reserves all rights and remedies under that certain Trust Indenture dated February 1, 1997, and all supplemental Indentures (the "Indenture"), the related documents and applicable law, and any participation or lack of participation in the Commission's public hearings is without prejudice to those rights and remedies.

2. The County received more than \$3.6 billion from the Warrantholders pursuant to the Indenture to pay for expansion and improvement of the Debtor's sewer system (the "System"), including paying for federally required improvements to (1) protect the health and welfare of all County residents and (2) improve the quality of the Cahaba and Black Warrior rivers.² Due to the County's continuous defaults under the Indenture since 2008, the Trustee has been forced to litigate with the Debtor for four years in a federal receivership action, an Alabama

² The Invitees note that despite the County-wide benefit of these improvements and expansions, to date, the County has determined that the substantial cost should be borne only by customers of the System.

state court receivership action, and now this chapter 9 bankruptcy case. The state receivership court appointed a receiver to manage the System due to these defaults, one of which is the County's failure, since January 1, 2008, to adhere to the rate covenant in the Indenture that requires it to raise sewer rates. Throughout all of those proceedings, the Trustee has consistently reiterated and supported its position that the County is obligated under the express terms of the Indenture to repay the Sewer Warrants in full, and to "fix, revise, and maintain" sewer rates sufficient to pay the Sewer Warrants and to operate and maintain the System. Put simply, the Debtor is required to comply with the rate covenant and the other covenants set forth in the Indenture. The County has chosen not to comply with its obligations. The Debtor does not need to extend an invitation to the Invitees to elicit these views, as they are already well known by the County Commission and have been well established in numerous hearings and pleadings in both state and federal courts over the last four years.

3. Not only are the County and the County Commission fully aware of the Trustee's views, but the County and County Commission have been repeatedly advised, at significant expense, over many years by their own past and present consultants, and by court-appointed special masters and a court-appointed receiver, that the sewer system rates can and should be raised. Implementing even some of these recommended rate increases would provide sufficient revenues to allow the County to pay all of the sewer obligations in full. Indeed, when the County Commission voted not to honor its rate covenant under the Indenture and suspended its 1997 Rate Adjustment Resolution on December 16, 2008, the County did so because "... [suspending] the Rate Adjustment Resolution will allow the Commission to act directly on System Rates after consulting with and considering the recommendation of the Special Masters and the County's consultants." Three and one-half years ago the Commission found that "... [t]his action is

necessary for the Commission to balance and discharge its duties to creditors, rate payers and the environment under the Indenture, the Consent Decree and applicable law.” See Jefferson County Commission resolution Dec. 16, 2008-1373.³ The Commission has in its possession at least seven reports advising the County that sewer rates should and can be increased, including the following: (i) the Red Oak Consulting Final Technical Report for the Jefferson County Environmental Services Department dated January 31, 2007; (ii) the Raftelis Financial Consultants, Inc., Jefferson County Commission Comprehensive Wastewater Cost of Service and Rate Study Report dated February 3, 2010; (iii) the BE & K Engineering Company 2003 Final Report; (iv) the Paul B. Krebs & Associates, Inc., Analysis of Sources of Revenue for the Jefferson County Environmental Services Department dated March 31, 2002; (v) the Raftelis Financial Consultants, Inc., 2008 draft report, (vi) the Report of the Special Master’s Assessment of the Jefferson County Environmental Services Department dated January 20, 2009 (Trial Exhibit M.3 to the November 2011 stay hearing, Doc. No. 257); and (vii) the Receiver’s First Interim Report on Finances, Operations, and Rates of the Jefferson County Sewer System filed in State Court Action CV-2009-02318 dated June 14, 2011 (Trial Exhibit M.4 to the November 2011 stay hearing, Doc. No. 257). In the past, the County Commission has ignored the advice of its own consultants to set rates at the level necessary to create a sound financial foundation for the System and to repay its sewer related obligations.

4. The Trustee and other Invitees are skeptical that these public hearings are anything but a further effort to delay the process, but are hopeful that the County Commission is finally serious about implementing the necessary (albeit politically unpopular) rate increases to return the System to financial health. The County’s inaction continues to irreparably harm the

³ The special masters referenced in the resolution filed their reports three and one-half years ago, but the County has still not raised rates.

Trustee and all of the Warrantholders and Insurers. As the Bankruptcy Court recognized, the delays in implementing rate increases, which merely forestall the inevitable, generally aggravate the problem. (Transcript of May 3, 2012 Bankruptcy Court Hearing, p. 11-12) Over the last four years, the County's water rates have increased 30%, yet the County has failed to raise sewer rates.⁴ Eric Rothstein, the consultant hired by the County's lawyers, has previously testified under oath that in ninety days he could design a complete program of rate increases to repay the sewer debt in full. (Transcript of April 12, 2012 Bankruptcy Court Hearing p.264 l.20-p.265 l.18). Likewise, a year ago the Receiver for the sewer system set out in detail, with technical support, the rate increases and structural changes that should have been implemented in 2011. Despite their own expert's testimony, a plethora of consultants' reports and studies, and the Special Master's and Receiver's recommendations, the County has failed during the six months it has regained control of the System to even announce, let alone implement, a program of rate increases. Moreover, the County has advised that it does not intend to do so until September 2012, at the earliest, despite the fact that the County has failed to raise rates since January 1, 2008, and continues to exhibit no urgency to do so.

5. The Invitees' counsel are available at a mutually agreeable time and place to discuss with the County's counsel the Invitees' view on a future rate structure which the County can and should implement. Since the commencement of this case, the County's counsel has not solicited the views of the Invitees' counsel to discuss rate structure proposals. Rather, the County has used the bankruptcy process as a forum to relitigate issues previously decided in the

⁴ See: http://blog.al.com/spotnews/2011/10/birmingham_water_works_board_a_2.html;
http://blog.al.com/spotnews/2010/12/water_bills_from_birmingham_wa.html;
http://www.birminghamwaterworks.com/index.php?option=com_content&task=view&id=228&Itemid=88;
http://blog.al.com/birmingham-news-commentary/2009/01/birmingham_water_works_13_perc.html;
http://www.birminghamwaterworks.com/index.php?option=com_content&task=view&id=158.

Receivership Case and to unsuccessfully try to rewrite the Indenture to the detriment of the Warrantholders.

6. The Trustee and the other Invitees expect the County Commission to take immediate, appropriate action to enable the County to repay the funds that it borrowed from the Warrantholders. While the Trustee and the other Invitees are prepared to discuss with the County an appropriate rate structure and plan of adjustment, the Trustee, the Insurers, the Invitees and Warrantholders reserve all of their rights to seek appropriate relief from the Bankruptcy Court or the state court at any time, including seeking an order directing the Debtor to implement rate enhancements in an amount necessary to pay back the money that the County has borrowed.

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CERTIFICATE OF SERVICE

I hereby certify that the foregoing was filed and served by the Court's electronic case filing and noticing system to all parties registered to receive electronic notices in this matter and via email or via first class mail as stated below to the following, this 17th day of July, 2012.

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<p>Gene J. Gonsoulin A Party in Interest c/o A. Wilson Webb Webb Law Firm 4416 Linpark Drive Birmingham, AL 35222 awilsonwebb@gmail.com</p>	<p>Elevator Maintenance and Repair, Inc. Creditor c/o Charles N. Parnell, III Parnell & Crum, P.A. P.O. Box 2189 Montgomery, AL 36102-2180 bkrp@parnellcrum.com</p>
<p>David Swanson Interested Party c/o Henry J. Walker Walker Law Firm 2330 Highland Ave. Birmingham, AL 35205 henryjwalker@bellsouth.net</p>	<p>Wells Fargo Bank, National Association as Indenture Trustee c/o Eric A. Schaffer c/o Luke A. Sizemore c/o Mike C. Buckley Reed Smith LLP 225 Fifth Ave., Suite 1200 Pittsburgh, PA 15230-2009 eschaffer@reedsmith.com lsizemore@reedsmith.com mbuckley@reedsmith.com</p>
<p>Bill George c/o Jon C. Goldfarb c/o Daniel Arciniegas c/o L. William Smith Wiggins, Childs, Quinn & Pantazis, LLC The Kress Building, 301 19th Street North Birmingham, AL 35203 wsmith@wcqp.com</p>	<p>Fraternal Order of Police Lodge 64 Robert Thompson, Aubrey Finley and William D. McAnally et al. on behalf of the Employees of the Jefferson County Sheriff's Office c/o Raymond P. Fitzpatrick 1929 Third Avenue North Birmingham, Alabama 35203 rpfitzpatrick@fcclawgroup.com</p>
<p>U.S. Pipe and Foundry Company, LLC c/o Jeffrey B. McClellan, Esq. 1200 Abernathy Road, NE Suite 1200 Atlanta, GA 30328 jmcclellan@muellerwp.com</p>	<p>Medical Data Systems Inc. c/o Bryan G. Hale Starnes Davis Florie LLP 100 Brookwood Place, 7th Floor Birmingham, AL 35209 bgh@starneslaw.com</p>

<p>City of Midfield, Alabama c/o David A. Sullivan 1728 3rd Avenue North Suite 400D Birmingham, AL 35203 dasnicole@bellsouth.net</p>	<p>Charlotte Breece Lillie Starks On behalf of all similarly situated persons in Breece, et al v. Jefferson County Tax Collector c/o Lee Wendell Loder Loder, P.C. P.O. Box 13545 Birmingham, AL 35202 loderlawfirm@aol.com</p>
<p>BBA Development, LLC c/o Amanda M. Beckett Burr & Forman LLP 420 North 20th Street, Suite 3400 Birmingham, AL 35203 abeckett@burr.com</p>	<p>B.A.S.L.L.P. c/o Salem Resha, Jr. The Resha Firm 1516 20th Street South, Suite A Birmingham, AL 35205 sresha@reshafirm.com</p>
<p>Lara Swindle c/o Ann C. Robertson c/o H. Wallace Blizzard Wiggins, Childs, Quinn & Pantazis, LLC The Kress Building 301 Nineteenth Street North Birmingham, AL 35203 arobertson@wcqp.com hwb@wcqp.com</p>	<p>Unisys Corporation Party in Interest c/o Dana S. Plon, Esq. 123 South Broad Street, Suite 2100 Philadelphia, PA 19109 dplon@sirlinlaw.com</p>
<p>John Madison, IV, inmates and others Similarly situated at the Jefferson County Jail c/o H. Doug Redd 5343 Old Springville Road Pinson, AL 35126 hdougredd@gmail.com</p>	<p>John Mason, IV c/o Anna L. Hart c/o Dan C. King, III Stewart & Stewart, P.C. 1826 3rd Avenue North, Suite 300 Bessemer, AL 35020 ahart@stewartandstewart.net dking@stewartandstewart.net</p>
<p>CSX Transportation, Inc. A party-in-interest c/o James H. White, IV Baker Donelson Bearman Caldwell & Berkowitz, P.C. 420 20th Street North 1600 Wells Fargo Tower Birmingham, AL 35203 jwhite@bakerdonelson.com</p>	<p>Owens & Minor, Inc. c/o Robert S. Westermann, Esq. c/o Sheila deLa Cruz, Esq. Hirschler Fleischer, P.C. P.O. Box 500 Richmond, Virginia 23218-0500 rwestermann@hf-law.com sdelacruz@hf-law.com</p>

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<p>James R. Crane c/o Steven D. Altmann c/o Charles L. Denaburg c/o Marvan E. Franklin Jajjar Denaburg, P.C. 2125 Morris Avenue Birmingham, AL 35203 saltmann@najjar.com cdenaburg@najjar.com mfranklin@najjar.com</p>	<p>City of Hoover c/o E. Dianne Gamble c/o Mark S. Boardman Boardman, Carr, Hutcheson & Bennett, P.C. 400 Boardman Drive Chelsea, AL 35043-8211 dgamble@boardmancarr.com mboardman@boardmancarr.com</p>
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<p>Wells Fargo Bank, National Association, Indenture Trustee c/o Russell M. Cunningham, IV Cunningham Firm, LLC Landmark Center, Suite 600 2100 First Avenue North Birmingham, AL 35203 Russell@cunninghamfirmllc.com</p>	<p>First Commercial Bank As Indenture Trustee c/o David B. Anderson c/o Deanna L. Weidner Anderson Weidner, LLC 505 20th Street North Financial Center, Suite 1450 Birmingham, AL 35203-4635 dbanderson@andersonweidner.com dlweidner@andersonweidner.com</p>
<p>Innovation Depot, successor-in-interest to Entrepreneurial Center, Creditor c/o Russell M. Cunningham, IV Cunningham Firm, LLC Landmark Center, Suite 600 2100 First Avenue North Birmingham, AL 35203 Russell@cunninghamfirmllc.com</p>	<p>George Carpinello Boies, Schiller & Flexner LLP 10 North Pearl Street, 4th Floor Albany, New York 12207 gcarpinello@bsfilp.com</p>
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The Depository Trust Company, on behalf of the holders of the Jefferson County, Alabama, General Obligation Capital Improvement Warrants, Series 2003-A and 2004-A 55 Water Street New York, NY 10041	Internal Revenue Service Centralized Insolvency Operation 600 Arch Street Philadelphia, PA 19106
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The Bank of New York Mellon Trust Company, N.A. (f/k/a The Bank of New York Trust Company of Florida, N.A.), as registrar, transfer agent and paying agent Attn: Charles S. Northen, IV 505 N. 20 th Street Suite 950 Birmingham, AL 35203	National Public Finance Guarantee Corp. (f/k/a MBIA Insurance Corp.), as insurer of the General Obligation Capital Improvement and Refunding Warrants, 2003-A and Series 2004-A Attn: Daniel McManus, General Counsel 113 King Street Armonk, NY 10504
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This the 17th day of July, 2012.

/s/ Larry B. Childs
Of Counsel