

## JEFFERSON COUNTY, ALABAMA SEWER SYSTEM

### RECOMMENDED RATE INCREASES vs. ACTUAL RATE LEVELS

The following chart reflects the recommendations made between 2002 and 2011 by the various rate consultants engaged by Jefferson County (the "County") and its counsel, and by the Special Masters and the Receiver, compared to the County's actual rate levels during that same period.

DATE	EXPERT	RECOMMENDED RATE LEVEL(ccf)	ACTUAL RATE LEVEL(ccf)
November 2002	2002 Krebs Report	<b>2003: \$5.05</b> <b>2004: \$6.26</b> <b>2005: \$7.18</b> <b>2006: \$7.83</b>  <i>In 2002, the rate was \$3.53 (ccf). The increases recommended by Krebs would have resulted in a 122% increase by 2006.<sup>1</sup></i>	<b>2003: \$4.90</b> <b>2004: \$5.39</b> <b>2005: \$5.93</b> <b>2006: \$6.35</b>
March 2003	2003 Krebs Report	<i>Estimated that the County would need to increase its sewer revenues by 89% over six years to avoid a shortfall in its required debt service coverage. In light of this projected shortfall under known conditions, Krebs made various recommendations to increase revenue.<sup>2</sup></i>  <i>"(w)hen the alternative of obtaining revenues through a plan over which the Commission has some control is compared with the action</i>	<i>Rather than adopt the Krebs</i>

<sup>1</sup> Paul B. Krebs & Associates, Inc., Report to the Commission of Jefferson County, November 5, 2002. *Bank of New York Mellon et al v. Jefferson County, Alabama, et al.* Civil Action No. CV-2009-02318 Evidentiary Stipulation dated 1/7/10, Ex .C, Ex. 34, pp. 3, 8. (Circuit Court of Jefferson County, Alabama 2010).

<sup>2</sup> Paul B. Krebs & Associates, Inc., Analysis of Sources of Revenue for the Jefferson County Environmental services Department, March 31, 2003. *Bank of New York Mellon et al v. Jefferson County, Alabama, et al.* Civil Action No. CV-2009-02318 Evidentiary Stipulation dated 1/7/10, Ex. C, Ex. 35, Consultant Letter, p. 1. (Circuit Court of Jefferson County, Alabama 2010).

		<i>of a receiver should the system go into default, there can be little question as to which course of action is preferable. There can also be no debate about the urgency for action; this is not a matter on which action can be long deferred without serious consequences”<sup>3</sup></i>	<i>recommendations, the County did not implement any additional rate increases, and did not make any of the rate structure design changes recommended in the report.<sup>4</sup></i>
2003	BE&K Report	<p>2004: \$5.51  2005: \$6.20  2006: \$6.98  2007: \$7.85  2008: \$8.83  2009: \$9.93  2010: \$11.17  2011: \$12.57</p> <p><i>Estimated that it would cost an additional \$611 million (over and above existing debt) to complete the improvement program and recommended the County increase rates 12.5% each year from 2004-2011.<sup>5</sup></i></p>	<p>2004: \$5.39  2005: \$5.93  2006: \$6.35  2007: \$6.87  2008: \$7.40  2009: \$7.40  2010: \$7.40  2011: \$7.40</p> <p><i>Rates were not increased to the recommended levels.</i></p> <p><i>In December 2008, the Commission suspended further rate increases. There have been no rate increases since January 2008.<sup>6</sup></i></p>
January 2007	Red Oak Final Technical Report	<p>2008: \$7.75  2009: \$8.10  2010: \$8.67</p> <p><i>Recommended that the County choose one of six different scenarios for annual rate increases from 2008 to 2010. The “most likely” scenario, listed above, called for an increase of 12.8% in 2008, 4.5%</i></p>	<p>2008: \$7.40  2009: \$7.40 (No increase)  2010: \$7.40 (No increase)</p> <p><i>County did not implement any of the</i></p>

<sup>3</sup> Paul B. Krebs & Associates, Inc., Draft Report of Analysis of Sources of Revenue for the Jefferson County Environmental Services Department, March 13, 2003. *Bank of New York Mellon et al v. Jefferson County, Alabama, et al.* Civil Action No. CV-2009-02318 Evidentiary Stipulation dated 1/7/10, Ex. C, Ex. 36. (Circuit Court of Jefferson County, Alabama 2010).

<sup>4</sup> *Bank of New York Mellon, et al. v. Jefferson County Alabama, et al.* Case No. 2:08-CV-01703-RDP Memorandum Opinion (the “Memorandum Opinion”) at 16 (N.D. Ala. Jun 12, 2009).

<sup>5</sup> BE&K Report. *Bank of New York Mellon et al v. Jefferson County, Alabama, et al.* Civil Action No. CV-2009-02318 Evidentiary Stipulation dated 1/7/10, Ex.C, Ex. 37, Executive Summary, pp. 2-9; Report, pp. 12-5 to 12-6. (Circuit Court of Jefferson County, Alabama 2010).

<sup>6</sup> December 2008 Automatic Rate Adjustment Suspension Resolution, *Bank of New York Mellon et al v. Jefferson County, Alabama, et al.* Civil Action No. CV-2009-02318 Evidentiary Stipulation dated 1/7/10, Ex.C, Exhibit 54. (Circuit Court of Jefferson County, Alabama 2010).

		<i>in 2009, and 7.0% in 2010. The scenario calling for the lowest level of increase required an increase in 2008 of 8%, then 6.3% in 2009, and 5.5% in 2010. The scenario that called for the highest level of rate increases required increases of 50.4% in 2008, 16.4% in 2009, and 6.7% in 2010.<sup>7</sup></i>	<i>recommended scenarios, raising rates only 7.7% in 2008, then suspending all rate increases in December of 2008.<sup>8</sup> There have been no rate increases since January 2008.</i>
2008	Raftelis Draft Report (Study conducted between March and June of 2008)	<p><b>2009: \$7.56</b></p> <p><i>Recommended the County at least increase sewer rates at the level equal to the Consumer Price Index (2.22%) to reflect a cost of living adjustment.<sup>9</sup></i></p> <p><i>RFC also suggests that in the longer term, the County should accelerate its increases and consider rate increases "at least consistent with the industry average[;]" and "RFC believes it would be imprudent to not consider rate increases in the near term."<sup>10</sup></i></p>	<p><b>2009: \$7.40 (No increase)</b></p> <p><i>Instead of following this advice, on December 16, 2008, the County suspended the automatic rate adjustment resolution it adopted in 1997, which effectively suspended all rate increases. In its repeal, the Commission stated that it would "act directly on System rates after consulting with and considering the recommendations of the Special Masters and the County's consultants"<sup>11</sup> Contrary to the resolution, there have been no rate increases since January 2008.</i></p>
January 20, 2009	Report of the Special Masters	<p><b>2009: \$9.25</b></p> <p><i>Recommended customer rates to support debt service should not increase more than 25% in any one year.<sup>12</sup> Recommends that the County "develop implementation plans and enact various revenue enhancements that result in ESD (Environmental Services District)</i></p>	

<sup>7</sup> Red Oak Final Technical Report to the Jefferson County Environmental Services Department. *Bank of New York Mellon et al v. Jefferson County, Alabama, et al.* Case No. CV-2009-02318 Evidentiary Stipulation dated 1/7/10, Ex.C, Exhibit 39, pp. 2-8 through 2-9. (Circuit Court of Jefferson County, Alabama 2010).

<sup>8</sup> Memorandum Opinion at 17-18

<sup>9</sup> March 5, 2009 Letter from Peiffer Brand of Raftelis Financial Consultants, Inc. to Patrick Darby. Deposition of Peiffer Brandt Ex. 103 (May 17, 2010) *Bank of New York Mellon et al v. Jefferson County, Alabama, et al.* Civil Action No. CV-2009-02318.

<sup>10</sup> Draft Report of Raftelis Financial Consultants, *Bank of New York Mellon et al v. Jefferson County, Alabama, et al.* Civil Action No. CV-2009-02318 Evidentiary Stipulation dated 1/7/10, Ex. C, Exhibit 40, pp. 2, 7. (Circuit Court of Jefferson County, Alabama 2010)

<sup>11</sup> December 2008 Automatic Rate Adjustment Resolution Suspension, *supra*.

<sup>12</sup> *Bank of New York Mellon et al v. Jefferson County Alabama*, Case No. 2:08-CV-01703-RDP, Dock. No. 48, Ex. A, Report of the Special Masters at 59 (N.D. Alabama, Feb. 10, 2009).

		<i>charges that more closely approximate the actual cost of services provided.”<sup>13</sup> At the February 25, 2009 hearing in the Federal action, the court explicitly directed the County not to remain disengaged, but to make a genuine response to the Special Masters’ recommendations in order for the court to understand what action, if any, the County intends to take.<sup>14</sup></i>	<b>2009: \$7.40 (No increase)</b>  <i>At a June 1, 2009 evidentiary hearing in the Federal Action, the Commissioners testified that they would not consider raising sewer rates.<sup>15</sup></i>
March 5, 2009	Letter from Peiffer Brandt to Patrick Darby	<b>2009: \$7.56</b>  <i>Recommended increase in sewer rates consistent with a cost of living adjustment, using consumer price index (2.22%)<sup>16</sup></i>	<b>2010: \$7.40 (No increase)</b>
October 15, 2009	Jefferson County Discussion Notes prepared by Raftelis Financial Consultants	<b>2010: \$8.80</b>  <i>Stated that a 20% rate increase would be reasonable.<sup>17</sup></i>	<b>2010: \$7.40 (No increase)</b>
February 2010	Raftelis Report	<b>2010: \$7.90</b>  <i>Recommended the County implement an immediate 6.76% increase, increase the minimum charge from \$2 to \$13, and increase the impact fee, along with various other revenue changes.<sup>18</sup></i>	<b>2010: \$7.40 (No increase)</b>
May 2010	Peiffer Brandt	<i>Testified that the County could raise rates by 150% without going over the “affordability” threshold considered by EPA when it is</i>	<b>2010: \$7.40 (No increase)</b>

<sup>13</sup> Report of the Special Masters, 4.

<sup>14</sup> Memorandum Opinion, 19. *See also* Hearing Transcript 6-8, 42-43, 47-48 (Feb. 25, 2009), Case No. 2:08-CV-01703-RDP.

<sup>15</sup> *See* Hearing Transcript 180-181 (June 1, 2009). *See also* Memorandum Opinion at 19.

<sup>16</sup> May 17, 2010 Deposition of Peiffer Brandt, Ex. 103. *Bank of New York Mellon et al v. Jefferson County, Alabama, et al.* Civil Action No. CV-2009-02318.

<sup>17</sup> May 17, 2010 Deposition of Peiffer Brandt, Ex. 114. *Bank of New York Mellon et al v. Jefferson County, Alabama, et al.* Civil Action No. CV-2009-02318.

<sup>18</sup> Raftelis Financial Consultants Comprehensive Wastewater Cost of Service and Rate Study Report, dated Feb. 3, 2010. May 17, 2010 Deposition of Peiffer Brandt, Ex. 104, at pp. ES-2, 12, 16, 19. *Bank of New York Mellon et al v. Jefferson County, Alabama, et al.* Case No. CV-2009-02318.

		<i>considering future rates to fund expenditures required to comply with its rules and regulations.</i> <sup>19</sup>	
August 2010	Eric Rothstein	<i>Testified that "25% rate increases for some period of time... may fall within the range of reasonableness."</i> <sup>20</sup>	<b>2011: \$7.40 (No increase)</b>
June 14, 2011	Receiver's First Interim Report	<b>2012: \$9.25</b> <i>Recommends 25% increase in rates. "Rates must be increased now, and must continue to increase in the future." (emphasis original).</i> <sup>21</sup>	<b>2011: \$7.40 (No increase)</b> <b>2012: \$7.40 (No increase)</b>
September 14, 2011	Proposed Terms and Conditions for Settlement and Refinancing	<b>November 2011: \$8.01</b> <b>2012: \$8.67</b> <b>2013: \$9.38</b> <i>The term sheet contemplated approximate rate increases of 8.2% for each of the first three years beginning November 1, 2011. These proposed rate increases assumed the outstanding principal balance of the Warrants would be reduced voluntarily by certain of the Warrantholders by more than \$1 billion in the aggregate as part of a refinancing of the Warrants.</i> <sup>22</sup>	<b>2011: \$7.40 (No increase)</b> <b>2012: \$7.40 (No increase)</b>

<sup>19</sup> May 17, 2010 Deposition of Peiffer Brandt at 135:12-136:4.

<sup>20</sup> Aug. 23, 2010 Deposition of Eric Rothstein at 229:12-23. *In re Jefferson County, Alabama*, Case No. 11-5736-TBB-9 (Bankr. N.D. Ala. 2011), Ex. M-78

<sup>21</sup> Receiver's First Interim Report, 55.

<sup>22</sup> Proposed Terms and Conditions for Settlement and Refinancing of Jefferson County's Outstanding Sewer Warrants, September 14, 2011. *In re Jefferson County, Alabama*, Ex. M-57, Case No. 11-5736-TBB-9 (Bankr. N.D. Ala. 2011).