
JEA trial: Witness for defense criticizes City Council Auditor's calculations

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Testimony wrapped up Tuesday in the trial of two former JEA executives as jurors heard dueling portrayals about how much a sale of JEA would have generated in incentive payouts to employees, one of the key pieces of evidence that jurors will weigh when they render verdicts on Aaron Zahn and Ryan Wannemacher.

Defense attorneys for Zahn, who was CEO of JEA, rested their case after calling an accountant expert who testified his analysis found the incentive payouts would have been about \$31 million, a fraction of the government's drumbeat of assertions that JEA employees stood to gain hundreds of millions of dollars.

Defense attorneys for Wannemacher, who was the utility's chief financial officer, told the jury about sworn statements made by Zahn in January 2020 when city attorneys questioned Zhan on what happened during the JEA sales process. That part of the trial occurred behind closed doors after U.S. District Judge Brian Davis ordered the public and prosecutors out of the courtroom.

Assistant U.S. Attorney A. Tysen Duva argued Davis should not close the courtroom. "The public has a right to be in a public trial," Duva said. He said it also would put prosecutors at a disadvantage to be outside the courtroom because they would not be able to evaluate that evidence in preparation for closing arguments.

Davis said he was being consistent with how he has previously handled situations that involved sworn statements compelled by the city of Jacksonville during the city's own investigation in 2020 of whether Zhan should be fired with cause.

Courts have ruled government employees have constitutional protections against compelled statements being used against them in a criminal proceeding.

Two juries are simultaneously hearing evidence in the conspiracy and fraud trial. When Wannemacher's attorneys presented statements made by Zahn, only the jury that will decide Wannemacher's case was in the courtroom. The judge removed the Zahn jury for that part of the trial that lasted several minutes.

Davis previously ruled Wannemacher could present evidence to the jury drawn from Zahn's sworn statements. The judge's order does not show the exact statements but says they "speak directly to how the performance unit plan would calculate payouts" and also "what Wannemacher said to Zahn and what Wannemacher understood regarding Zahn informing JEA board members."

Aside from that closed-door evidence, the bulk of testimony Monday and Tuesday immersed jurors in the complicated world of accounting with repeated references to GAAP (Generally Accepted Accounting Standards) and GASB (Governmental Accounting Standards Board) and how they do or do not apply to the JEA incentive plan.

That "performance unit plan" was called PUP for short, adding to the alphabet soup of acronyms jurors have digested during the trial that started Feb. 28.

Ernest Dixon of Berkley Research Group, who was hired by Zahn's defense team, testified the City Council Auditor's Office neglected to apply the necessary accounting standards when the auditor calculated how much the PUP would generate in payouts if JEA were sold.

Dixon said the city would have to use those accounting standards because anyone interested in buying city-issued bonds would only do so if the city's financial statements are in compliance.

"It had to happen," Dixon said of applying the standards. "Absolutely that is what would occur."

The major difference between Dixon's calculations and those done by the City Council Auditor is that Dixon said accounting standards require accounting for JEA's agreement to buying high-priced electricity from the Plant Vogtle nuclear plant in Georgia. That accounting would put a nearly \$3.9 billion liability on the city's financial statement if JEA were sold and that would have to be factored into the PUP formula, Dixon said.

His calculations put the cost for the PUP at about \$31 million in payouts if the city had sold JEA for just over \$11 billion. That would be in the same range as the \$30 million figure that Wannemacher told the JEA board the PUP plan could cost if the payouts for the long-term incentive plan were made based on JEA's financial performance over three years.

In response to board member questions, Wannemacher said at the July 2019 meeting a sale of JEA would accelerate the time frame for the payouts. He did not give the board a figure for what the PUP plan's value would be to employees in the event of a sale.

During cross-examination, prosecutors showed emails between Wannemacher and the City Council Auditor's staff in November 2019 when he wrote, "Your methodology is correct" as the auditor was working through the PUP calculations.

Duva also played video clips of Zahn and Wannemacher appearing before City Council members Rory Diamond and Ron Salem in December 2019. Wannemacher told them it's "pretty easy math" to figure out the PUP payouts.

Duva said through cross-examination that Zahn and Wannemacher had the "perfect opportunity" to explain at the time that the accounting standards would have resulted in a much lower payouts than what the auditor showed but they did not do so.

The testimony part of the trial ended Tuesday afternoon after prosecutors called Jeff Rodda, an auditor in the council auditor's office, as a rebuttal witness. Rodda said there was no need to account for the Plant Vogtle liability in the PUP calculations because of how a potential deal would have been structured to handle the Vogtle obligation.

He said the formula for the PUP payout is a "construct of whoever created the plan" and it didn't mention GAAP or GASBY standards. He said when Wannemacher wrote in 2019 the City Council Auditor's methodology was correct, he took that to mean "that we calculated it the same way he did."

The prosecution and defense could make their closing arguments on Wednesday.