

JEA trial: Government rests its case after weeks of witness testimony

David Bauerlein

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The trial of former JEA executives Aaron Zahn and Ryan Wannemacher headed into the homestretch Monday after the government rested its case and defense attorneys began calling their own witnesses in the federal courtroom where jurors have been hearing evidence since opening arguments on Feb. 28.

Zahn, the former CEO of JEA, and Wannemacher, the utility's former chief financial officer, then started their defense later Monday as they face charges of conspiracy and fraud in connection with an employee incentive plan that prosecutors said would have delivered hundreds of millions of dollars in payouts to JEA employees if the city has sold the utility.

An expert witness for Zahn testified Monday afternoon his own analysis of the plan showed it would have resulted in a much smaller payment of about \$31 million to JEA employees. Ernest Dixon of Berkley Research Group sharply disagreed with computations done in November 2019 by a City Council Auditor's Office that showed astronomical returns to employees.

"It was hypothetical," Dixon said of the council auditor's report. "There were many assumptions."

Back in 2019, JEA officials who devised and approved the employee incentive plan did not counter the City Council Auditor's report by making the kind of critique outlined by Dixon in his testimony. The auditor's report contributed to the demise of the attempt to negotiate a sale of JEA and also sparked the criminal investigations that brought charges against Zahn and Wannemacher.

The final witness called Monday morning by the federal government for its case was Herschel Vinyard, a former secretary for the state Department of Environmental Protection who later joined JEA in April 2019 as its chief financial officer.

Vinyard's testimony reprised his appearance Friday without the jury in court when U.S. District Judge Brian Davis ruled the government could add Vinyard to its witness list.

The government also was able to add former JEA human resources vice president Jon Kendrick to the witness list and he testified before Vinyard took the stand.

Vinyard and Kendrick were the latest in a string of JEA executives and board members called by the government who told the jury they did not know how an incentive plan would have translated to enormous payoffs to JEA employees when the board approved the performance unit plan in July 2019.

The charges against Zahn and Wannemacher allege they created an incentive plan that would steal money from taxpayers by enriching themselves from the proceeds of a sale. The government alleges they kept the true value of the plan concealed from board members and almost all other executives. Former chief operating officer Melissa Dykes is the only witness who has testified about understanding the value of the incentive plan when the board approved it.

Vinyard said that while he did not know how the mathematical calculations worked, he was concerned from the get-go about the performance unit plan, or PUP, because the concept of selling units to employees that they could later redeem based on JEA's financial performance sounded like a stock plan that couldn't be legally done in a government entity.

He testified he wanted to go outside Jacksonville and the law firms retained by JEA for a review of the plan. After the board approved it in July 2019, he told Zahn he wanted to get an opinion from the state Attorney General and then go to the Florida Commission on Ethics for its review.

Asked by Assistant U.S. Attorney A. Tysen Duval how he would have reacted if he'd known at the July 23, 2019 board meeting that the plan could have resulted in "tens of millions of dollars" of bonus payments to JEA employees in the event of a sale that netted \$4 billion to \$6 billion for the city, Vinyard said such information would have made it even more important to vet whether Florida law allowed such a plan.

Duva then had Vinyard read to the jury from the transcript of his testimony on Friday when Vinyard said he "probably would have left JEA" if he'd known the plan could have had those kinds of payouts.

Vinyard, who testified he told Zahn in early July 2019 that the public would "light themselves on fire" if Zahn got even \$1 from the PUP, said Monday that beyond the legal questions about the incentive plan, "I did not think it would work politically."

Under cross-examination by Eddie Suarez, a defense attorney for Zahn, Vinyard said he viewed his push to get opinions from the state Attorney General and from the Florida Commission on Ethics as "circuit-breakers" that could kill the plan if they objected to it.

He also said that based on the schedule JEA was operating under to negotiate bids with companies interested in buying JEA, he thought there was no way the incentive plan could be coupled with a sale of JEA because the negotiations were moving on a faster track than the Attorney General or ethics commission could provide their responses.

He said Zahn did not block him from setting up a process that required review by the Attorney General and the ethics commission.

"He could have stopped me but he didn't," Vinyard said.

While lawyers were examining the plan, the City Council Auditor's Office was doing its own digging into the financial side of the PUP plan.

A memo released by then City Council Auditor Kyle Billy in November 2019 showed if JEA employees bought 100,000 of the performance units at a cost of \$10 apiece, employees would pay a total of \$1 million for the units and stood to gain hurt returns if the city sold JEA.

A JEA sale that netted \$4 billion for the city after taking care of several billion dollars of obligations would have caused the redemption value of the units to soar to a total of \$315 million, the memo said.

The payout amount would climb even higher to \$636 million off an initial \$1 million investment if the JEA sale netted \$5 billion, the memo said.

Dixon, who was hired by Zhan's defense, testified Monday he applied the provisions of the PUP plan to what would have happened if the city had sold JEA for \$11.05 billion, which was the highest offer submitted during the negotiations.

Dixon said that based on applying governmental accounting standards, the specific terms of the PUP plan, and a sale of 30,000 units, the payout would have been about \$31 million to employees. His assessment included accounting for several billion dollars of obligations for purchasing high-priced power from the Plant Vogtle nuclear plant that wasn't in the auditor's analysis.

The PUP plan allowed for the sale of 100,000 units but the JEA board authorized 30,000 units so Dixon used the lower figure in crunching his numbers.