

1 budget, or did you review that 2023 audit in coming up
2 with your numbers?

3 A I reviewed the information submitted by Jay
4 Joyce. I believe he had a worksheet that broke
5 everything down as to how he came up with the revenue
6 requirement. So that's what I looked at.

7 Q So if you based any of your testimony on the
8 2023 audit, that would be --

9 A That would be what? I'm sorry.

10 Q Irrelevant.

11 A It could be if they didn't have that
12 information at the time they made the decision.

13 Q Have you been keeping up with the operational
14 issues out at Westwood Shores since this case was filed?

15 A No.

16 Q Now, you took issue with the reserve amount
17 that Mr. Joyce recommended. If I told you that the
18 District has spent all that reserve amount in
19 maintaining the District, would that change your
20 testimony?

21 MR. PIERCE: Objection, form.

22 Emily, you can answer.

23 A No, because this is for the 2023 rates, and so
24 at the time that this was -- these rates were set, that
25 money hasn't been spent. So if we're talking about 2025

1 rates, you know, that's a different set of
2 circumstances.

3 Q (BY MR. WILBURN) I understand, but if -- the
4 board based its rates on the budget. Correct?

5 A Correct.

6 Q And during the budget year, they spent down all
7 of the reserve amount maintaining the system, would that
8 change your testimony?

9 A Maintaining the system? Are we talking --
10 which reserve fund are you speaking of that they have
11 depleted?

12 Q Let's say, for example, the O&M reserve amount.

13 A The O&M reserve amount was not my area.

14 Q So what was your area?

15 A The debt service and the administrative and
16 general expenses, along with the rate case expenses.

17 Q So who reserved the O&M -- who reviewed the O&M
18 reserves?

19 A James Euton.

20 Q Well, we've been involved with several cases
21 involving municipalities, and I know there's an issue
22 that always comes up about what rules apply to retail
23 public utilities -- government utilities. What statutes
24 apply to government utilities like the MUD?

25 MR. PIERCE: Objection, form.

1 Emily, you can answer.

2 A There's very little, so I believe it's in
3 Chapter 13, and so there's just that -- I think it's
4 just the one section related to appeals.

5 Q (BY MR. WILBURN) So the one section being
6 13.043. Is that correct?

7 A Correct.

8 Q And that's the part that lays out how to appeal
9 the rates. Correct?

10 A Yes, and that the Commission hears the appeal
11 de novo and all that, yes.

12 Q What's your basis for saying anything that the
13 board did was not just and reasonable?

14 A Based on my experience and based on, you know,
15 what seems reasonable.

16 Q So what statute lays out what's reasonable?

17 MR. PIERCE: Objection, form.

18 Emily, you can answer.

19 A There isn't one. A lot of ratemaking is not
20 spelled out in the law.

21 Q (BY MR. WILBURN) And, in fact, the state gives
22 retail public utilities like MUDs a lot of leeway in
23 setting rates. Correct?

24 MR. PIERCE: Objection, form.

25 Emily, you can answer.

1 A Yes.

2 Q (BY MR. WILBURN) And you testified earlier
3 that you've not been involved in but maybe one MUD case.
4 Correct?

5 A I think there was two or three, but yes. Not
6 many.

7 Q Not a lot of experience. Correct?

8 A Not with MUDs specifically. Correct.

9 Q The rates at issue in this matter went into
10 effect February 1st, 2023. Correct?

11 A I believe so, yes.

12 Q And those rates ended January 31st, 2023.
13 Correct? Excuse me, 2024?

14 A I'm not a hundred percent certain, but that
15 sounds right.

16 Q In fact, the rates were replaced in February 1,
17 2024. Correct?

18 A That sounds correct.

19 Q So the only rates at issue are one year's worth
20 of rates. Correct?

21 A Correct.

22 Q What is the process for a municipal utility
23 district to raise tax rates?

24 MR. PIERCE: Objection, form.

25 Emily, you can answer.

1 A I don't know.

2 Q (BY MR. WILBURN) Do you own your own home
3 here, Ms. Sears?

4 MR. PIERCE: Objection, form.

5 Emily, you can answer.

6 A Not in the state of Texas.

7 Q (BY MR. WILBURN) Are you familiar with tax
8 rate setting rules in Texas?

9 MR. PIERCE: Objection, form.

10 Emily, you can answer.

11 A No.

12 Q (BY MR. WILBURN) How did you calculate your
13 revenue requirement that's found on Page 6 and 7 of your
14 testimony?

15 A I believe that I just -- okay. So on Page 6,
16 starting Line 18, I used Mr. Joyce's Exhibit JJJ-1 and
17 made adjustments for my recommendation and also by Staff
18 witness James Euton and came up with the overall and the
19 net annual revenue requirements.

20 Q What adjustments did you make to Mr. Joyce's
21 numbers?

22 A I adjusted the level for the debt service
23 reserves, and I believe the only other adjustment was to
24 the O&M reserves from Mr. Euton.

25 Q I'll represent to you that earlier today,

1 Mr. Euton said that if the O&M expenses were high, that
2 the O&M reserves should have been high as well. If that
3 were the case, would your numbers be incorrect?

4 A So if the numbers provided by Mr. Joyce were
5 incorrect, would my numbers be incorrect?

6 Q Mr. Euton -- Euton, I'm sorry. We learned it
7 was Euton.

8 A Oh, sorry.

9 If Mr. Euton changed his number, then my
10 number would also have to change.

11 MR. WILBURN: I hate to do this, but I
12 need to take a quick break. Had too much to drink at
13 lunch, so if we could take maybe a five-minute break,
14 I'd appreciate it.

15 MR. PIERCE: No problem here.

16 MR. WILBURN: Thank you.

17 (Recess: 2:04 p.m. to 2:08 p.m.)

18 MR. WILBURN: Let's go back on the record.
19 Thank you for that quick break.

20 Q (BY MR. WILBURN) Emily, which provision of the
21 water code regulate the finances of a municipal utility
22 district?

23 A I don't know.

24 Q Are you familiar with Section 54.521 of the
25 water code?

1 A No.

2 Q If I were to tell you that that allows a
3 district to reserve three years' worth of interest in
4 debt payment in a reserve, would you think that was
5 unjust or unreasonable?

6 A Having that amount in a reserve, I do not think
7 is unjust or unreasonable.

8 Q Okay. So your issue is not with the District's
9 reserves amounts; it's the timing of -- how much time
10 they went to collect the reserve amount?

11 A Correct.

12 Q And if like we talked about earlier, reserve
13 amounts had been spent down by prior boards, would it be
14 imperative to bring those up as quickly as possible?

15 MR. PIERCE: Objection, form.

16 Emily, you can answer.

17 A So the debt service reserves are specifically
18 supposed to be just for debt service payments. So if
19 they're spending -- if they're spending more than what
20 they have in their reserve, I think that would be
21 problematic.

22 Q (BY MR. WILBURN) So I will represent to you
23 that prior boards had spent down or not collected funds
24 for the debt service reserve amounts in violation of
25 their bond covenants. And the new board felt like they

1 needed to comply with the bond covenants as soon as
2 possible. Was it appropriate for the board to raise
3 rates to cover that bond covenant amount?

4 MR. PIERCE: Objection, form.

5 Emily, you can answer.

6 A So --

7 Q (BY MR. WILBURN) Earlier you said that it was
8 imperative that they have the amounts in what the bond
9 covenants require. Is that not correct?

10 A Correct. However, when I reviewed the bond
11 documents that I found, the only thing that I found was
12 that they have to have enough -- collect enough in taxes
13 in order to cover the bond amounts. I didn't see
14 anything about a debt service reserve fund, so I
15 don't -- I didn't see any problem with having them
16 collect it over the five-year period. Similar to when a
17 new bond is issued, they don't collect that in all one
18 year; they do it over five years, which is why I said
19 here as well it should be five years.

20 Q I think actually in Texas it's normally three
21 years, not five years.

22 Your issue is about the time frame for
23 collecting the reserve amounts, and it's your personal
24 opinion that it should not have been done in one year.
25 That's correct?

1 A Correct.

2 Q It's not based on statute or law. Correct?

3 A Based on professional experience. Correct.

4 Q But without any experience in front of MUDs,
5 this is experience involving investor-owned utilities
6 and other types of utilities. Correct?

7 MR. PIERCE: Objection, form.

8 Emily, you can answer.

9 A It also includes cities, which are very
10 similar, as you stated earlier, to districts. And so I
11 have spent a lot of time reviewing documents from those
12 types of entities, even if I didn't write testimony for
13 them.

14 Q (BY MR. WILBURN) How many MUD cases have you
15 reviewed?

16 A I don't know.

17 MR. WILBURN: Take five seconds. We might
18 be done.

19 (Pause)

20 MR. WILBURN: I think at this point we're
21 going to pass the witness.

22 MR. SMITH: I don't have any questions for
23 this witness.

24 MR. PIERCE: I have a handful of follow-up
25 questions I will ask very briefly.

EXAMINATION

BY MR. PIERCE:

Q Emily, can you hear me okay?

A Yes.

Q Great. I just have a couple of points I wanted to clarify from your testimony earlier today.

First, to your knowledge, does the TCEQ regulate the rates of utilities?

A They do not.

Q In your experience, to the best of your knowledge, is the funds in a debt service reserve fund something that can typically be used for the payment of operations or maintenance costs?

A No.

Q In your review of the materials provided in the docket, was there any indication that the MUD had depleted their debt service reserve fund?

A No.

Q In your review, was -- in the materials filed, was there any information indicating that the MUD had failed to make a bond payment?

A Not that I saw, no.

Q And then finally, if the numbers changed in terms of revenue requirement, that's to say if the information from Mr. Euton was incorrect, and it changed

1 your numbers that kind of flow through, would that
2 change your opinion on the timing of building up a debt
3 service reserve fund?

4 A No.

5 MR. PIERCE: Thank you, Emily.

6 I have no other questions.

7 MR. WILBURN: I have just a couple quick
8 follow-ups.

9 FURTHER EXAMINATION

10 BY MR. WILBURN:

11 Q Mr. Pierce just asked you about TCEQ
12 regulations regarding utilities, but regard to municipal
13 utility districts, the TCEQ is a regulatory entity.
14 Correct?

15 A The TCEQ is a regulatory entity; however, they
16 don't regulate the rates.

17 Q Rates include taxes?

18 A I don't think they do, but I'm not really sure
19 what the technical answer is for that.

20 Q Have you reviewed the definition of rate under
21 13.002?

22 A No.

23 Q Would a district have to go to TCEQ to get
24 bonds approved?

25 A I don't know.

1 MR. PIERCE: Objection, form.

2 But, Emily, you can answer.

3 THE WITNESS: Apologize.

4 A I don't know.

5 Q (BY MR. WILBURN) Would the TCEQ -- excuse me.
6 Would a district have to go to the TCEQ to get impact
7 fees approved?

8 MR. PIERCE: Objection, form.

9 Emily, you can answer.

10 A I don't know.

11 Q (BY MR. WILBURN) So there may be other rates
12 that the TCEQ reviews that you don't know about?

13 MR. PIERCE: Objection, form.

14 Emily, you can answer.

15 A I suppose it's possible.

16 MR. WILBURN: Those are all the questions
17 I had. Thank you.

18 MR. PIERCE: I have no follow-ups.

19 THE REPORTER: Okay. Are we done?

20 MR. WILBURN: I think so.

21 MR. SMITH: None for me.

22 (Proceedings concluded at 2:18 p.m.)

23 (Signature was waived)

1 SOAH DOCKET NO. 473-23-22448.WS

2 PUC DOCKET NO. 54713

3 PETITION BY RATEPAYERS) BEFORE THE STATE OFFICE
4 APPEALING THE WATER AND)
SEWER RATES ESTABLISHED BY) OF
5 WESTWOOD SHORES MUNICIPAL)
6 UTILITY DISTRICT) ADMINISTRATIVE HEARINGS

7 REPORTER'S CERTIFICATION

8 ORAL DEPOSITION OF EMILY SEARS

9 Friday, January 10, 2025

10 (Via Zoom Videoconference)

11 I, Lorrie A. Schnoor, Certified Shorthand Reporter
12 in and for the State of Texas, hereby certify to the
13 following:

14 That the witness, EMILY SEARS, was duly sworn and
15 that the transcript of the deposition is a true record
16 of the testimony given by the witness;

17 That examination and signature of the witness to
18 the deposition transcript was waived by the witness with
19 the agreement of the parties at the time of the
20 deposition;

21 That the original deposition was delivered to
22 Mr. Randall B. Wilburn, Custodial Attorney.

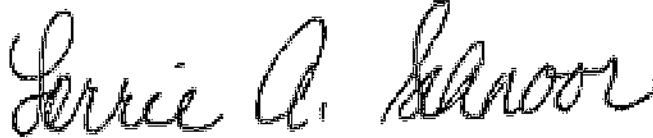
23 That pursuant to information given to the
24 deposition officer at the time said testimony was taken,
25 the following includes all parties of record and the

1 amount of time used by each party at the time of the
2 deposition:

3 Mr. Paul A. Smith (0h0m)
4 Attorney for Petitioners
5 Ms. Erin R. Selvera and Mr. Randall B. Wilburn
6 (0h43m)
7 Attorneys for Respondent
8 Mr. Kevin Pierce (0h2m)
9 Attorney for Commission Staff

10 I further certify that I am neither counsel for,
11 related to, nor employed by any of the parties in the
12 action in which this proceeding was taken, and further
13 that I am not financially or otherwise interested in the
14 outcome of this action.

15 Certified to by me on this 13th day of January,
16 2025.

17 
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21 Expiration Date: 01/31/26

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