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CIVIL DISTRICT COURT

CIVIL DISTRICT COURT FOR THE PARISH OF ORLEANS  
STATE OF LOUISIANA

CASE NO. 18-3843

DIVISION "T"

SECTION 14

THE SOUTHERN CENTER FOR ENVIRONMENTAL JUSTICE, INC. d/b/a/ DEEP SOUTH  
CENTER FOR ENVIRONMENTAL JUSTICE, VAYLA NEW ORLEANS,  
JUSTICE AND BEYOND, 350 NEW ORLEANS, SIERRA CLUB,  
MR. THEODORE QUANT, AND MS. RENATE HEURICH

VERSUS

THE COUNCIL OF THE CITY OF NEW ORLEANS, THE UTILITY, CABLE,  
TELECOMMUNICATIONS AND TECHNOLOGY COMMITTEE OF THE NEW ORLEANS  
CITY COUNCIL, JASON R. WILLIAMS, HELENA MORENO, JOSEPH I. GIARRUSSO,  
JAY H. BANKS, KRISTIN GISLESON PALMER, JARED C. BROSSETT, AND CYNDI  
NGUYEN

FILED: \_\_\_\_\_

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Deputy Clerk

**AMENDED PETITION TO ENFORCE THE LOUISIANA OPEN MEETINGS  
LAW, FOR DECLARATORY JUDGMENT, INJUNCTION, AND  
ATTORNEYS' FEES AND COSTS**

NOW INTO COURT, through undersigned counsel, comes The Southern Center for Environmental Justice, Inc. d/b/a/ Deep South Center for Environmental Justice, VAYLA New Orleans, Justice and Beyond, 350 New Orleans, Sierra Club, Mr. Theodore Quant, and Ms. Renate Heurich ("Petitioners"). Petitioners bring this enforcement action of the Open Meetings Law pursuant to La. R.S. 42:25(C). Specifically, Petitioners request that this Honorable Court issue a declaratory judgment and injunction against the Council of the City of New Orleans ("City Council") and its members, and the Utility, Cable, Telecommunications and Technology ("UCTT") Committee of the New Orleans City Council and its members (collectively, "Defendants"), for violations of the Louisiana Constitution, Article XII, Section 3 and the Open Meetings Law,<sup>1</sup> La. R.S 42:12 *et seq.*; and void the Defendants' actions taken at two public meetings. The Defendants convened, participated, and took actions in two public meetings that

<sup>1</sup> Section 3-108 of the Home Rule Charter of the City of New Orleans ("City Charter Section 3-108") provides that "meetings of the Council and its committees shall be open to the public in accordance with applicable state and municipal law." Thus, the City Council has acknowledged that the Open Meetings Law applies not only to City Council meetings, but to committee meetings as well.

violated the Open Meetings Law and the Louisiana Constitution.<sup>2</sup> These violations resulted in irreparable injury to Petitioners as well as other New Orleans residents who attended or attempted to attend the meetings, by excluding them from participation in the meetings and denying them the right to offer comments on a matter of interest to the public. The actions taken at these unlawful meetings should be declared unlawful and voided pursuant to La. R.S. 42:24, and Defendants should be directed to fully comply with the Open Meetings Law in the future. In support of this petition, Petitioners respectfully state:

#### **LOUISIANA CONSTITUTION AND OPEN MEETINGS LAW**

1. Louisiana Constitution, Article XII, Section 3 states: “No person shall be denied the right to observe the deliberations of public bodies and examine public documents, except in cases established by law.” The Open Meetings Law was enacted to implement this provision and to ensure the rights of people to observe and participate in the deliberations of public bodies.<sup>3</sup>
2. The Open Meetings Law provides that “[e]very meeting of any public body shall be open to the public unless closed pursuant to R.S. 42:16, 17, or 18.”<sup>4</sup> Moreover, all public bodies are required to allow public comment prior to taking action on an agenda item on which a vote is to be taken.<sup>5</sup>
3. The Open Meetings Law further provides that all public bodies “shall give written public notice of any regular, special, or rescheduled meeting no later than twenty-four hours, exclusive of Saturdays, Sundays, and legal holidays, before the meeting” and that “[t]he agenda shall not be changed less than twenty-four hours, exclusive of Saturdays, Sundays, and legal holidays, prior to the scheduled time of the meeting.”<sup>6</sup>

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<sup>2</sup> Petitioners recognize that Defendants Moreno, Giarrusso, Banks, Gisleson Palmer, and Ngyuen were not members of the City Council or UCTT Committee at the time of the two public meetings at issue in this case. However, Petitioners name these current Councilmembers as Defendants in their official capacity in this Amended Petition because these Defendants are successors to the Councilmembers who presided over these meetings. *See, e.g., Sommer v. State, Dep't of Transp. & Dev.*, 97-1929 (La. App. 4th Cir. 3/29/00); 758 So. 2d 923, 936 (citing *Kentucky v. Graham*, 473 U.S. 159, 165 (1985)).

<sup>3</sup> *Wagner v. Beauregard Par. Police Jury*, 525 So. 2d 166, 168 (La. App. 3d Cir. 1988).

<sup>4</sup> La. R.S. 42:14(A).

<sup>5</sup> La. R.S. 42:14(D).

<sup>6</sup> La. R.S. 42:19(A)(1)(b)(i), (ii)(aa).

4. Pursuant to La. R.S. 42:24, actions taken in violation of the Open Meetings Law are void if a suit to void these actions is filed within 60 days of the violation's occurrence.
5. On February 21, 2018, the UCTT Committee of the City Council held a public meeting to consider a Resolution and Order Regarding the Application of Entergy New Orleans, Inc. for Approval to Construct New Orleans Power Station and Request for Cost Recovery and Timely Relief ("ENO's Application"), Docket No. UD-16-02.
6. At some time prior to 9:15 am, the doors to the meeting room were opened for the UCTT Committee meeting that was scheduled to begin at 10:00 am. However, by 9:15 am, the doors were closed and locked, and no other members of the public were permitted to enter. Over 50 to 60 community members who arrived at 9:30 am to attend the meeting were prevented from entering the meeting room by security personnel.
7. As explained below and in the accompanying memorandum, the UCTT Committee violated the rights of Petitioners and other New Orleans residents to observe the UCTT Committee meeting and comment during that meeting.
8. Specifically, the following actions of the UCTT Committee constitute violations of the Open Meetings Law.
  - a) In violation of La. R.S. 42:14(A), the UCTT Committee did not allow many members of the public, including individuals who were parties to the underlying City Council adjudication proceeding concerning ENO's Application as well as members of community organizations opposed to Entergy's proposed gas plant, to enter the meeting room for hours even when seats were available.
  - b) In violation of La. R.S. 42:14(D), the UCTT Committee effectively denied the right to comment to many members of the public who left the area outside the locked meeting room because they had no expectation they would be admitted after a long period of waiting to enter. Moreover, members of the public who

waited outside the meeting room in hopes of being permitted to speak could not hear the names being called and thus had no way of knowing whether they had missed their opportunity to comment.

c) In violation of La. R.S. 42:19(A)(1)(b)(ii)(aa), the UCTT Committee conducted the meeting in a manner that was contrary to the agenda notice of the meeting, effectively denying residents their right to know the agenda of the meeting and how the meeting would be conducted as required by the Open Meetings Law.

9. On March 8, 2018, the full City Council held a public meeting to consider the UCTT Committee's approval of ENO's Application. Once again, members of the public were prevented from observing the public meeting for a significant time period. As but one example, members of the public were told to stand in line outside the City Council Chambers, but before the public was allowed in, special arrangements were made to usher more than a dozen Entergy employees and supporters into the City Council Chambers through a private, back entrance to occupy seats. As a result, approximately 20 to 30 individuals were forced to stand outside City Council Chambers for hours, waiting for someone to leave the meeting so they could enter. Thus, the City Council once again violated La. R.S. 42:14(A) and La. R.S. 42:14(D).

## **PARTIES**

### **Petitioners**

10. The Southern Center for Environmental Justice, Inc. d/b/a/ Deep South Center for Environmental Justice ("Deep South Center for Environmental Justice" or "DSCEJ") is a non-profit organization incorporated in the State of Louisiana with a main office located in New Orleans East. DSCEJ is dedicated to improving the lives of children and families harmed by pollution and vulnerable to climate change in the Gulf Coast Region by providing research, education, and advocacy for policy change as well as health and safety training for environmental careers. DSCEJ works locally, regionally, and globally as a resource for communities, scientific researchers, and

- policymakers on issues involving environmental justice. DSCEJ serves civic organizations and faith-based groups in New Orleans East by finding solutions to environmental issues that adversely affect the health and quality of life of residents.
11. VAYLA New Orleans (“VAYLA”) is a progressive, multi-racial, community-based non-profit organization in New Orleans that empowers youth and families through supportive services for cultural enrichment and positive change. Founded in 2006 by young community leaders, VAYLA New Orleans is committed to youth development, community empowerment, higher education, and cultural awareness. VAYLA New Orleans exists to reinforce and uphold integrity, empowerment, inclusion, tradition, leadership, and critical consciousness in a passionate and youth-centered way.
  12. Justice and Beyond is a community-based organization in New Orleans that was created to fight for justice in the Greater New Orleans area. Justice and Beyond convenes a weekly city-wide dialogue forum and helps build community coalitions within New Orleans.
  13. 350 New Orleans is a non-profit, volunteer-led local organization whose purpose is to connect the Louisiana region to the international climate change movement led by 350.org. 350 New Orleans’ mission is to lend support to initiatives in New Orleans to raise consciousness and promote sound policy around climate change, which poses unprecedented threats to our lives. 350 New Orleans prioritizes locally-grown initiatives and collaboration with existing New Orleans-based groups working for climate justice.
  14. The Sierra Club is a non-profit corporation with more than 822,000 members nationwide, including more than 3,300 members residing in Louisiana, dedicated to the protection of public health and the environment. One of the Sierra Club’s priority national conservation campaigns involves promoting cost-effective clean energy alternatives and energy efficiency measures. The Sierra Club’s goal is for a just transition to a renewable energy future for Louisiana.

15. Mr. Theodore Quant, a person of the age of majority domiciled in Orleans Parish, is the retired Director of the Twomey Center for Peace Through Justice at Loyola University New Orleans and a member of Justice and Beyond. Mr. Quant attended both the UCTT Committee meeting on February 21, 2018, and the City Council meeting on March 8, 2018. He was thus directly affected by the UCTT Committee's and the City Council's actions when conducting those meetings.
16. Ms. Renate Heurich, a person of the age of majority domiciled in Orleans Parish, is the Vice President of 350 New Orleans. Ms. Heurich attended both the UCTT Committee meeting on February 21, 2018, and the City Council meeting on March 8, 2018. She was thus directly affected by the UCTT Committee's and the City Council's actions when conducting those meetings.

**Defendants<sup>7</sup>**

17. Councilmember-at-Large Jason R. Williams, a person of the age of majority, in his official capacity, who, at all times pertinent hereto, was the President of the City Council and the Chair of the UCTT Committee, and currently is the President of the City Council and a member of the UCTT Committee.
18. Councilmember-at-Large Helena Moreno, a person of the age of majority, in her official capacity, who currently is the Vice-President of the City Council and the Chair of the UCTT Committee.

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<sup>7</sup> In this Amended Petition, Petitioners substitute the current Councilmembers, who officially took office on May 7, 2018, for those Councilmembers who held office during the public meetings at issue and at the time of the filing of the original petition on April 19, 2018. When an official sued in his or her official capacity is replaced in office, the successor is substituted and automatically assumes this role in the litigation. *Sommer v. State, Dep't of Transp. & Dev.*, 97-1929 (La. App. 4th Cir. 3/29/00); 758 So. 2d 923, 936 (citing *Kentucky v. Graham*, 473 U.S. 159, 165 (1985)). Moreover, while La. R.S. 42:28 provides that a civil penalty may be assessed against those Councilmembers who are determined to have contributed to the violations of the Open Meetings Law, Petitioners have elected not to seek civil penalties. Thus, Petitioners further amend the petition to reflect the fact that no Councilmember is being sued in his or her individual capacity and therefore the substitution of current Councilmembers as parties is appropriate. *See Driscoll v. Stucker*, 2004-0589 (La. 1/19/05); 893 So. 2d 32, 52 ("Personal or individual capacity suits seek to impose personal liability upon a government official for actions he takes under color of state law causing the deprivation of a constitutional right.").

19. District "A" Councilmember Joseph I. Giarrusso, a person of the age of majority, in his official capacity, who currently is a member of the City Council and the UCTT Committee.
20. District "B" Councilmember Jay H. Banks, a person of the age of majority, in his official capacity, who currently is a member of the City Council and the UCTT Committee.
21. District "C" Councilmember Kristin Gisleson Palmer, a person of the age of majority, in her official capacity, who currently is a member of the City Council.
22. District "D" Councilmember Jared C. Brossett, a person of the age of majority, in his official capacity, who, at all times pertinent hereto, was a member of the City Council and the UCTT Committee, and currently is a member of the City Council and the UCTT Committee.
23. District "E" Councilmember Cyndi Nguyen, a person of the age of majority, in her official capacity, who currently is a member of the New Orleans City Council.
24. The City Council is a public body subject to the Open Meetings Law.
25. The Utility, Cable, Telecommunications and Technology Committee ("UCTT") is a standing committee of the City Council and a public body subject to the Open Meetings Law.
26. The manner in which the UCTT Committee conducted the public meeting of February 21, 2018 violated the Louisiana Constitution, Article XII, Section 3; the Louisiana Open Meetings Law, La. R.S. 42:14(A), (D); and La. R.S. 42:19 (A)(1)(b)(i), (ii)(aa). Thus, all actions taken at that meeting are void.
27. The manner in which the City Council conducted the public meeting of March 8, 2018 violated the Louisiana Constitution, Article XII, Section 3 and the Louisiana Open Meetings Law, La. R.S. 42:14(A), (D). Thus, all actions taken at that meeting are void.

## JURISDICTION AND VENUE

28. This Court has jurisdiction over the subject matter of this action pursuant to Louisiana Constitution, Article V, Section 16.
29. The venue is proper under La. R.S. 42:27, which requires that this action be brought in the district court for the parish in which the meeting took place. Both the UCTT Committee meeting and the City Council meeting took place in the Parish of Orleans.

## STATEMENT OF FACTS

### Background

30. The two meetings at issue in this enforcement action stem from a request by Entergy New Orleans (“ENO” or “Entergy”) for authorization to build a gas-fired generation station in New Orleans East. In its initial application, ENO proposed to construct a 226 MW gas plant.
31. On November 3, 2016, the City Council issued Resolution No. R-16-506, which set the procedural schedule for ENO’s Application. In Resolution No. R-16-506, the City Council asserted its intention to assure public involvement in the decision process, stating:
- [T]he Council intends to provide the residents of the City of New Orleans with an open and transparent process that will allow for multiple opportunities for the public to communicate its views to ENO and the Council . . . .<sup>8</sup>
32. ENO later amended its Application, seeking approval to construct either a 226 MW gas plant or several smaller units totaling 128 MW.
33. On August 10, 2017, the City Council issued Resolution No. R-17-426, which, among other things, directed the Council Utilities Regulatory Office (“CURO”) to conduct one public meeting on ENO’s Application in the City Council Chambers. This meeting was scheduled on October 16, 2017. In an email dated October 13, 2017, Mr. Tom Stratton, Director of CURO, informed the parties to ENO’s Application proceeding that only one representative of an intervening party would be

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<sup>8</sup> New Orleans City Council, Resolution No. R-16-506 at 8 (Nov. 3, 2016).



permitted to speak and only after all non-intervenor members of the public had spoken.<sup>9</sup>

#### **October 16, 2017 Evening Public Hearing**

34. While the meeting conducted by CURO at the direction of the City Council on October 16, 2017 is not a subject of Petitioners' enforcement action, it is important to understand what occurred at this meeting because the events that transpired illustrate that the City Council was made aware of the large numbers of citizens who wished to speak on the issue of ENO's Application well before the February 21 and March 8 meetings.
35. On October 16, 2017, members of the public, many of whom opposed ENO's Application, arrived well before the announced start time of 5:30 pm for the public hearing.<sup>10</sup> Those individuals who arrived early were informed that the meeting room doors would be unlocked around 5:00 pm, 30 minutes before the scheduled start time for the meeting.<sup>11</sup> However, ENO supporters, who arrived in two buses at 4:00 pm, were immediately permitted to enter the City Council Chambers.<sup>12</sup>
36. Significant numbers of people who expected to provide public comment were effectively shut out of obtaining seats in the meeting room. Not only did ENO's supporters, who were easily identifiable by their orange pro-gas plant t-shirts, occupy a significant number of seats, but some supporters placed their signs in other seats, thus further preventing the participation of affected New Orleans residents in the meeting.<sup>13</sup>
37. At least some of the Entergy supporters at the hearing were paid actors posing as members of the public. Entergy contracted with companies that recruited and paid

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<sup>9</sup> Email from Tom Stratton, Director, Council Utilities Regulatory Office, to Docket No. UD-16-02 Service List (Oct. 13, 2017, 3:52:46 CST). Exhibit 1 to the original Petition filed by Petitioners on April 19, 2018. All previously filed exhibits in this case are incorporated by reference, and are referred to according to their identification in the original Petition.

<sup>10</sup> Affidavit of Renate Heurich, ¶ 26 ("Heurich Affidavit"). Exhibit 2.

<sup>11</sup> *Id.*

<sup>12</sup> *Id.* ¶ 27.

<sup>13</sup> See Michael Isaac Stein, *Pumping problems, hurricane scares play into debate over new Entergy power plant*, The Lens (Oct. 20, 2017), <https://thelensnola.org/2017/10/20/pumping-problems-hurricane-scares-play-into-debate-over-new-entergy-power-plant/>. Exhibit 3.

actors to attend this public hearing and, in some cases, testify at the hearing in favor of Entergy's proposed gas plant from scripts provided to them by the recruiters.<sup>14</sup> It has been reported that the actors were "paid \$60 each time they wore the orange shirts to meetings in October and February. Some got \$200 for a 'speaking role'"<sup>15</sup> Moreover, subsequent to this meeting, on March 1, 2018, a man later identified as Mr. Andrew Wiseman attended a church meeting and informed the attendees that he and others had been paid \$125 to wear the orange pro-gas plant t-shirts supporting Entergy, attend the public hearing, and fill up the room.<sup>16</sup> WWL reported that Mr. Wiseman said that he was told to "[j]ust sit down, wear a t-shirt, don't talk, don't open your mouth."<sup>17</sup> Mr. Wiseman "heard about the gig through one of his acting buddies" and said that they "weren't told what they were going to be doing before they walked in the council meeting."<sup>18</sup>

38. Many people wanted to speak at the October 16, 2017 public hearing but were not allowed in the room or left when it became clear that they would not be able to comment.<sup>19</sup> Moreover, approximately one hour into the meeting, it was announced that there would not be enough time for everyone to give comments so people should stop filling out comment cards.<sup>20</sup> At one point, then-Councilmember Susan Guidry asked people to leave the room when they were done speaking so that others who

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<sup>14</sup> See Kristin Picrce, *City Council could face lawsuit following public hearing on Entergy plant*, WWL (Mar. 7, 2018), <http://www.wwltv.com/article/news/local/city-council-could-face-lawsuit-following-public-hearing-on-entergy-plant/526747370> ("WWL report"); Michael Isaac Stein, *Actors were paid to support Entergy's power plant at New Orleans City Council meetings*, The Lens (May 4, 2018), <https://thelensnola.org/2018/05/04/actors-were-paid-to-support-entergys-power-plant-at-new-orleans-city-council-meetings/> ("The Lens article"); Affidavit of Michael L. Brown Affidavit, ¶¶ 13, 16 (and accompanying pictures) ("Brown Affidavit"). Exhibit 4. Jessica Williams, *Entergy says contractor hired actors, without its knowledge, to urge power plant approval*, The New Orleans Advocate (May 10, 2018), [http://www.theadvocate.com/new-orleans/news/article\\_1f6d47b6-5469-11e8-8980-6744316001b9.html](http://www.theadvocate.com/new-orleans/news/article_1f6d47b6-5469-11e8-8980-6744316001b9.html); Matt Kasper, *Hawthorn Group, PR group behind paid actor scandal in New Orleans, has long record of being paid by utilities to lie to the public*, Energy and Policy Institute (May 10, 2018), <http://www.energyandpolicy.org/hawthorn-group-pr-firm-paid-actors-new-orleans-entergy/>.

<sup>15</sup> The Lens article.

<sup>16</sup> See Affidavit of Ted Quant, ¶ 14 ("Quant Affidavit"). Exhibit 5.

<sup>17</sup> WWL report.

<sup>18</sup> *Id.*

<sup>19</sup> Brown Affidavit, ¶ 10 (Exh. 4).

<sup>20</sup> Affidavit of Grace Morris, ¶ 18 ("Morris Affidavit"). Exhibit 6.

were outside could come in and provide comment. However, few, if any, of the Entergy supporters in the orange pro-gas plant t-shirts left.<sup>21</sup>

#### **February 21, 2018 UCTT Committee Public Meeting**

39. The UCTT Committee issued an agenda notice for the meeting scheduled on February 21, 2018. This agenda notice stated that the Committee would only consider one agenda item: the Resolution and Order Regarding the Application of Entergy New Orleans, Inc. for Approval to Construct New Orleans Power Station and Request for Cost Recovery and Timely Relief, Docket No. UD-16-02. This Resolution and Order approved ENO's Application to construct a gas plant on the Michoud site in New Orleans East. At the conclusion of the meeting, four of the five committee members voted in favor of this Resolution and Order. Their vote moved the Resolution and Order forward for consideration by the full City Council at a subsequent meeting.
40. The UCTT Committee did not make the 188-page Resolution and Order available to the public until the day of the public meeting, thus precluding a meaningful opportunity for public comments based on a review of this proposed decision document.
41. The agenda notice of the UCTT Committee public meeting specifically states that each party to the proceeding would be allowed 15 minutes for closing argument. The agenda notice further states that "[e]ach public speaker, *not a party*, will be allowed 2 minutes."<sup>22</sup>
42. Based on the agenda notice, representatives of some parties to the proceeding did not speak during the public comment period that followed the closing arguments.<sup>23</sup> However, the UCTT Committee did not follow its own meeting rule and allowed

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<sup>21</sup> Brown Affidavit, ¶ 11 (Exh. 4); Heurich Affidavit, ¶ 29 (Exh. 2).

<sup>22</sup> UCTT Committee Agenda Notice (Feb. 16, 2018) (emphasis added). Exhibit 7.

<sup>23</sup> Affidavit of Dr. Beverly L. Wright, ¶ 23 ("Wright Affidavit"). Exhibit 9. Morris Affidavit, ¶ 14 (Exh. 6).

representatives of other parties who had presented closing arguments to also public comment in contradiction of the agenda notice.<sup>24</sup>

43. Many members of the public and Petitioners, who arrived approximately 30 minutes prior to the start of the UCTT Committee public meeting, were locked out of the meeting room.<sup>25</sup> Approximately 50 to 60 people were denied entry to the meeting prior to the meeting's 10:00 am start time, allegedly because there was no more space in the meeting room.<sup>26</sup>

44. Mr. Pat Bryant of Justice and Beyond approached security personnel several times after the start of the meeting and requested to be let into the meeting room, but security personnel refused to let him enter the room.<sup>27</sup> Mr. Bryant also noticed that approximately ten Entergy employees were permitted to enter the meeting room without being searched or screened and despite security's claim that the room was full.<sup>28</sup> At approximately 10:00 am, Mr. Bryant and others again requested that they be allowed to enter the meeting room. Security personnel refused to allow them to enter and threatened to arrest some of the people who were waiting to enter.<sup>29</sup> The majority of people who were denied entry to the UCTT Committee meeting were residents of New Orleans East and the Lower Ninth Ward.<sup>30</sup>

45. VAYLA, a multi-racial, community-based organization in New Orleans East, organized two buses to transport 67 community members from New Orleans East to the meeting. Approximately 15 others joined the group at the meeting site.<sup>31</sup> These individuals arrived at the auditorium at approximately 9:20 am, well before the previously announced 10:00 am start time for the meeting. However, VAYLA

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<sup>24</sup> Heurich Affidavit, ¶ 19.

<sup>25</sup> Affidavit of Margaret "Meg" Logue Affidavit, ¶ 5 ("Logue Affidavit"). Exhibit 8. Wright Affidavit ¶¶ 13, 15 (Exh. 9). Affidavit of Dynisha Dianne Hugle, ¶ 9 ("Hugle Affidavit"). Exhibit 10.

<sup>26</sup> Heurich Affidavit, ¶ 8 (Exh. 2); Affidavit of Patrick Henry Bryant, ¶ 9 ("Bryant Affidavit"). Exhibit 11.

<sup>27</sup> Bryant Affidavit, ¶ 9 (Exh. 11).

<sup>28</sup> *Id.* ¶ 8.

<sup>29</sup> *Id.* ¶ 10.

<sup>30</sup> Logue Affidavit, ¶ 5 (Exh. 8); Bryant Affidavit, ¶ 9 (Exh. 11)

<sup>31</sup> Affidavit of Minh Thanh Nguyen, ¶ 6 ("Nguyen Affidavit"). Exhibit 12.

representatives were informed that the room was at capacity and none of their members would be admitted.<sup>32</sup> According to Ms. Dynisha Huggle, security personnel refused to allow anyone wearing a “No Gas Plant” t-shirt to enter the meeting room.<sup>33</sup> These individuals and others were not admitted even though there were empty seats in the meeting room.<sup>34</sup>

46. When several Councilmembers passed through the crowd, people explained the situation, told the Councilmembers they wanted to observe and comment, and asked for help. However, the Councilmembers did not address their concerns.<sup>35</sup> The chanting of the locked out individuals could be heard inside the meeting room.<sup>36</sup>

47. At approximately 12:00 pm, two hours after the UCTT Committee meeting started, security personnel began allowing some people in but offered no explanation regarding how they were determining if and when to admit more people.

48. Many members of the public waited outside of the meeting room for three hours or more without being admitted to the meeting.<sup>37</sup> Many others became discouraged and left because they had no expectation of being permitted to enter the meeting room or provide their comments to the UCTT Committee.<sup>38</sup> In fact, despite waiting approximately four to five hours, only three individuals from VAYLA were permitted to comment, and very few other members of VAYLA were allowed to enter the room.<sup>39</sup>

49. Ms. Renate Heurich, Vice President of 350 New Orleans, a party to the underlying ENO gas plant proceeding, arrived at the meeting room at 10:00 am only to be told

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<sup>32</sup> Nguyen Affidavit, ¶¶ 6, 8 (Exh. 12); Huggle Affidavit, ¶ 9 (Exh. 10).

<sup>33</sup> Huggle Affidavit, ¶ 9 (Exh. 10). Mr. Happy Johnson also felt that whether an individual was allowed to enter the meeting room depended upon what they were wearing. Affidavit of Happy Johnson, ¶ 8 (“Johnson Affidavit”). Exhibit 13.

<sup>34</sup> Brown Affidavit, ¶ 12 (Exh. 4); Logue Affidavit, ¶ 7 (Exh. 8); Nguyen Affidavit, ¶¶ 9, 10 (Exh. 12); Wright Affidavit, ¶ 18 (Exh. 9); Bryant Affidavit, ¶ 11 (Exh. 11). Affidavit of Robert Desmarais Sullivan, ¶ 12. Exhibit 14.

<sup>35</sup> Affidavit of Jacob Horwitz, ¶ 13 (“Horwitz Affidavit”). Exhibit 15. Affidavit of Andrew Wells, ¶ 10. Exhibit 16.

<sup>36</sup> Nguyen Affidavit, ¶ 11 (Exh. 12); Morris Affidavit, ¶ 10 (Exh. 6); Wright Affidavit, ¶ 19 (Exh. 9).

<sup>37</sup> Logue Affidavit, ¶¶ 9, 10 (Exh. 8); Quant Affidavit, ¶ 12 (Exh. 5).

<sup>38</sup> Logue Affidavit, ¶ 6 (Exh. 8).

<sup>39</sup> Nguyen Affidavit, ¶¶ 13-15 (Exh. 12).

that she could not enter because the room was at capacity.<sup>40</sup> At 12:30 pm, she entered the room as someone was leaving. She observed approximately 30 empty seats. The security officer ordered her to leave despite the empty seats. Ms. Heurich left the room.<sup>41</sup> After a few minutes, one of the City Council's Advisors informed the security guard that Ms. Heurich was an intervenor and should be let into the meeting room. The security guard still refused to let Ms. Heurich into the room.<sup>42</sup> Several minutes later, the security guard told Ms. Heurich she could enter the room.<sup>43</sup>

50. The UCTT Committee, like the City Council, uses a comment card process whereby an individual fills out a card and gives that card to a designated City Council employee. During the public comment period, the Chair of the UCTT Committee uses these cards to call individuals up to speak. An individual who does not fill out a comment card is not permitted to speak during the public comment period.

51. Many of the individuals who were locked out of the meeting filled out comment cards. Ms. Grace Morris of the Sierra Club attempted to give these comment cards to Mr. Keith Lampkin, Chief of Staff to then-UCTT Committee Chair and Councilmember Jason R. Williams, so that those who were locked out of the meeting could get in the queue to speak. Mr. Lampkin told Ms. Morris that he could only accept comment cards from people inside the room and that "there would be no way to facilitate everyone speaking [that day]."<sup>44</sup> Mr. Lampkin also refused to ask people to leave after they made public comments so that others could come inside the meeting room and comment.<sup>45</sup>

52. People who were forced to wait outside the locked meeting room could not observe the meeting. There was no audio system for people outside to hear what was being

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<sup>40</sup> Heurich Affidavit, ¶ 7 (Exh. 2).

<sup>41</sup> *Id.* ¶ 14.

<sup>42</sup> *Id.* ¶ 15.

<sup>43</sup> *Id.* ¶ 16.

<sup>44</sup> Morris Affidavit, ¶ 12 (Exh. 6).

<sup>45</sup> *Id.* ¶ 12.

said inside the meeting room.<sup>46</sup> Thus, individuals locked out of the meeting room could not hear their names called through the door to provide comment.<sup>47</sup> Moreover, at no time during the public meeting were the people who were locked out of the meeting room informed regarding whether they would ever be permitted into the room or whether they would be permitted to speak.

53. Further aggravating the conditions that blocked New Orleans residents from observing and making comments at the public meeting, was the tactic used by Entergy's contractors to recruit and hire professional actors to pose as concerned residents in support of ENO's Application.<sup>48</sup> These actors took up several seats inside the meeting room, wore the orange pro-gas plant t-shirts, and some made comments from a script that was provided to them by the recruiters.<sup>49</sup> This tactic not only created sham support and false record of such support for Entergy's proposed gas plant, but it also resulted in depriving the real concerned residents of New Orleans the seating space in the meeting room and the time for comments. Thus, the use of the paid actors served to deny New Orleans residents their right to observe and comment on the UCTT Committee public meeting.

54. During the public comment period, the Chair failed to follow the Committee's own rule that was in the agenda notice.<sup>50</sup> The rule expressly stated that parties would not be allowed to speak during the public comment period.<sup>51</sup> While the Chair did not enforce this rule, or even inquire if a speaker was a member of any of the parties, he never announced that the meeting rule was abandoned. Thus, Dr. Beverly Wright, Executive Director of The Southern Center for Environmental Justice, Inc. d/b/a Deep South Center for Environmental Justice, a party to the underlying ENO gas plant proceeding, never filled out a comment card and never spoke during the public

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<sup>46</sup> Heurich Affidavit, ¶ 12 (Exh. 2).

<sup>47</sup> Hogle Affidavit, ¶ 11 (Exh. 10).

<sup>48</sup> See The Lens article; Brown Affidavit, ¶¶ 13, 16 (and accompanying pictures) (Exh. 4); Williams, *supra* note 14; Kasper, *supra* note 14.

<sup>49</sup> See The Lens article.

<sup>50</sup> See UCTT Committee Agenda Notice (Exh. 7).

<sup>51</sup> The Agenda Notice provided that "[e]ach public speaker, *not a party*, will be allowed 2 minutes." *Id.* (emphasis added).

comment period because the agenda notice expressly stated that the parties would be prevented from speaking during the public comment session.<sup>52</sup> Similarly, Ms. Grace Morris of the Sierra Club, a party to the underlying ENO gas plant proceeding, did not fill out a comment card because her understanding was that the parties were only allowed to have one person speak during the closing argument period.<sup>53</sup> Ms. Renate Heurich of 350 New Orleans, a party to the underlying ENO gas plant proceeding, initially did not fill out a comment card because it was also her understanding that she could not comment. However, one of the City Council's Advisors informed Ms. Heurich that she could comment so she filled out a comment card and ultimately was allowed to speak.<sup>54</sup> Moreover, it is impossible to know how many members of DSCEJ, the Sierra Club, 350 New Orleans, and other parties to the underlying ENO gas plant proceeding did not speak during the public comment session because they reasonably believed, based on the agenda notice, that they would not be permitted to speak.

55. After asking the City Council's Advisors questions, each of the Councilmembers delivered remarks, and then they voted on the proposed Resolution and Order approving ENO's Application. The final vote was 4 to 1 in favor of the Resolution and Order, thus giving initial approval of ENO's Application. The meeting ended at approximately 6:00 pm.<sup>55</sup>

56. The failure to permit residents to observe the February 21, 2018 public meeting and provide comments at that meeting violated the Louisiana Constitution, Article XII, Section 3 and the Louisiana Open Meetings Law, La. R.S. 42:14(A) and (D). The failure of the City Council to follow the UCTT Committee agenda notice violated La. R.S. 42:19(A)(1)(b)(i) and (ii)(aa).

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<sup>52</sup> Wright Affidavit, ¶ 23 (Exh. 9).

<sup>53</sup> Morris Affidavit, ¶ 14 (Exh. 6).

<sup>54</sup> Heurich Affidavit, ¶ 19 (Exh. 2).

<sup>55</sup> Nguyen Affidavit, ¶ 14 (Exh. 12).



57. Directly after this meeting, Ms. Renate Heurich sent an email to the City Council regarding the manner in which the UCTT Committee meeting was conducted.

Specifically, Ms. Heurich stated:

I understand that approximately 50-60 community members who arrived at 9:30 this morning were not able to go inside the auditorium due to limited space inside. However, when we kept receiving text messages with pictures of empty seats we became upset and started shouting to be let in. After waiting for about 90 minutes, a limited number of people were allowed access. But even as more and more people left the building, nobody else was allowed to enter, except for another small group a good while later.

Around 12:30, 2 1/2 hours into the meeting, about 20 people were still waiting outside, some of them sitting on the floor. Many others had given up and left. When someone else exited, I entered the room and saw at least 20/30 empty seats right where I was. Security told me I was not allowed in, but I proceeded down the steps, pointing to the many empty seats. Consequently, security motioned a second security guard to escort me out. I told him that I wanted to sit in one of the numerous empty seats, but he insisted that I leave the room. I complied because I didn't want to get arrested even though I just wanted to participate in a public meeting.

Ms. Heurich received no response to her email.<sup>56</sup>

58. Similarly, after the February 21, 2018 meeting, Justice and Beyond filed a letter with the City Council requesting, among other things, that the March 8, 2018 meeting venue hold at least 500 people.<sup>57</sup> Once again, the City Council failed to respond to this request.

59. On March 6, 2018, attorneys representing 350 New Orleans sent a letter to the City Council informing the Councilmembers that the manner in which the UCTT Committee conducted the February 21 meeting constituted a significant violation of the Open Meetings Law as well as requesting that the City Council require the UCTT Committee to conduct a second meeting which complies with the requirements of the law.<sup>58</sup> The City Council never responded to this letter.

### **March 8, 2018 City Council Public Meeting**

60. The full City Council considered the Resolution and Order approving ENO's Application at its March 8, 2018 public meeting. In contrast to the UCTT

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<sup>56</sup> Heurich Affidavit, ¶ 21 (Exh. 2).

<sup>57</sup> Bryant Affidavit, ¶ 13 (Exh. 11).

<sup>58</sup> See Letter from William P. Quigley, Susan Stevens Miller, and Jill Tauber to the New Orleans City Council (Mar. 6, 2018). Exhibit 17.

Committee agenda notice, the City Council agenda notice contained a significant number of other agenda items.

61. New Orleans residents, including more than 100 residents living in the New Orleans East neighborhood that is near the site selected for Entergy's proposed gas plant, many of whom were Vietnamese Americans, arrived at City Hall at least one hour before the 10:00 am City Council meeting.<sup>59</sup> Despite the number of residents waiting in long lines, Entergy employees were escorted to a separate entrance and were seated in the meeting room prior to the general public.<sup>60</sup> Mr. Pat Bryant observed the Entergy employees being led inside the meeting room through a back door.<sup>61</sup> Mr. Bryant and others attempted to enter the room through this same door.<sup>62</sup> An Entergy employee attempted to physically block Mr. Bryant, but he was able to enter through the back door with others from Justice and Beyond.<sup>63</sup>
62. Like the February 21, 2018 meeting, members of the public were prevented from attending the March 8, 2018 City Council meeting.<sup>64</sup> Approximately 20 to 30 individuals were forced to stand outside the meeting room for hours, waiting for someone to leave the meeting so they could enter.<sup>65</sup> Once again, the chanting of the locked out individuals could be heard from inside the meeting room.<sup>66</sup>
63. The failure to admit individuals to the March 8, 2018 City Council public meeting, depriving them of their right to observe the meeting and provide public comment, violated the Louisiana Constitution, Article XII, Section 3 and the Louisiana Open Meetings Law, La. R.S. 42:14(A) and (D).

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<sup>59</sup> Hugle Affidavit, ¶¶ 14, 15 (Exh. 10); Morris Affidavit, ¶ 15 (Exh. 6).

<sup>60</sup> Johnson Affidavit, ¶ 11 (Exh. 13).

<sup>61</sup> Bryant Affidavit, ¶ 14 (Exh. 11).

<sup>62</sup> *Id.*

<sup>63</sup> *Id.*

<sup>64</sup> Quant Affidavit, ¶ 16 (Exh. 5); Nguyen Affidavit, ¶¶ 16-17 (Exh. 12)

<sup>65</sup> Logue Affidavit, ¶¶ 11-12 (Exh. 8); Heurich Affidavit, ¶ 24 (Exh. 2).

<sup>66</sup> Nguyen Affidavit, ¶ 17 (Exh. 12).

## Actors Paid to Feign Support for Entergy's Proposed Gas Plant at City Council Public Meetings

64. In the months since the City Council's public meetings, disturbing details have emerged establishing that professional actors were paid by Entergy contractors to create sham support for Entergy's proposed gas plant at the public meetings convened by the City Council on October 16, 2017 and February 21, 2018.
65. The first evidence to emerge was from a WWL TV News interview with a professional actor who admitted to being paid for his participation in the City Council public hearing on October 16, 2017.<sup>67</sup> Actor Andrew Wiseman, who appeared in the HBO series *Treme*, told WWL that he was paid \$120 in cash to attend a City Council meeting concerning Entergy's proposed gas plant. Mr. Wiseman said that he was told to "[j]ust sit down, wear a t-shirt, don't talk, don't open your mouth."<sup>68</sup> Mr. Wiseman "heard about the gig through one of his acting buddies" and said that they "weren't told what they were going to be doing before they walked in the council meeting."<sup>69</sup>
66. An investigative report published by The Lens revealed that "[a]t least four of the people in orange shirts were professional actors. One actor said he recognized 10 to 15 others who work in the local film industry. They were paid \$60 each time they wore the orange shirts to meetings in October and February. Some got \$200 for a 'speaking role'"<sup>70</sup> The Lens article provides troubling details into how this scheme worked, and its intent to deceive the City Council and the public.
67. The Lens article also detailed communications which indicate, among other things, that a) participating actors had to sign non-disclosure agreements; b) an actor was told that speaking roles were available; c) an actor was repeatedly instructed to "[t]ell nobody you're being paid"; d) after participating in the City Council's public meeting on October 16, 2017, an actor was told that "[t]here's another project

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<sup>67</sup> See WWL report.

<sup>68</sup> *Id.*

<sup>69</sup> *Id.*

<sup>70</sup> The Lens article.

coming up on 2/21”; and e) regarding the February 21, 2018 City Council public meeting, an actor was informed that the “[p]ay site will be about 2 blocks from the meeting spot.”

68. In response to The Lens article, Councilmember Williams recognized the process has been “compromised.”<sup>71</sup>

69. On May 7, 2018, DSCEJ, VAYLA, Justice and Beyond, 350 New Orleans, and Sierra Club submitted a letter to the Louisiana Attorney General, the Louisiana Ethics Administration Program, the Orleans Parish District Attorney, and the City Council requesting an investigation into the paid actor scandal.<sup>72</sup>

70. On May 10, 2018, following the Lens article and the groups’ request to government authorities for an investigation, Entergy revealed that one of its own subcontractors, Crowds on Demand, recruited, trained, and paid cash to numerous individuals to take up seats and speak from scripts at two public meetings conducted by the City Council.<sup>73</sup> Entergy also revealed that Crowds on Demand was hired by its contractor, the Hawthorn Group.<sup>74</sup> Thus, Entergy confirmed that through its contractors professional actors were paid cash to pose as concerned residents of New Orleans as well as attend and provide public comment in support of Entergy’s proposed gas plant at public meetings convened by the City Council.<sup>75</sup>

71. In response to Entergy’s revelation, Councilmember Williams stated that “[t]he harmful impact of this nefarious practice is unfortunate, unappreciated and in

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<sup>71</sup> Travers Mackel, *Entergy says it didn’t hire actors to attend council meeting*, WDSU News (May 10, 2018), <http://www.wdsu.com/article/entergy-says-its-not-behind-hiring-actors-to-attend-council-meeting/20639622>; Advocate staff report, *Entergy ‘confirms’ it didn’t pay actors at council meeting, but will cooperate with probe*, The New Orleans Advocate (May 9, 2018), [http://www.theadvocate.com/new-orleans/news/article\\_1c4c973a-539c-11e8-803a-b3fa13eb458f.html](http://www.theadvocate.com/new-orleans/news/article_1c4c973a-539c-11e8-803a-b3fa13eb458f.html) (internal quotation marks omitted).

<sup>72</sup> May 7, 2018, Investigation Request Letter. Attached as Exhibit 18.

<sup>73</sup> See Entergy, *Report of Investigation New Orleans Power Station Advocacy* at 3 (May 10, 2018), <http://www.entergy.com/NOPS/NOPSInvestigationReport.pdf> (“Entergy report”) (“We now know, as a result of our investigation, that Crowds on Demand did in fact compensate most, if not all, of the other individuals it recruited to appear at the [October 16, 2017] meeting. . . . [H]owever, we now know that Crowds on Demand also recruited and compensated people to attend this [February 21, 2018] meeting.”).

<sup>74</sup> Entergy report at 1.

<sup>75</sup> See Entergy report.

contravention to true democratic deliberative process,” and “we cannot move forward until this issue is resolved.”<sup>76</sup> Councilmember Williams subsequently stated that “[t]his wasn’t just a perversion of the vote on this plant, it’s a perversion of our entire deliberative process.”<sup>77</sup>

72. On May 14, 2018, DSCEJ, VAYLA, Justice and Beyond, 350 New Orleans, Sierra Club, and the Alliance for Affordable Energy filed a request with the City Council asking that the City Council exercise its authority to order rehearing of Resolution No. R-18-65. The City Council has not responded to this request.<sup>78</sup>

73. On May 16, 2018, the City Council directed Entergy to preserve all documents related to the paid actor scandal.

74. On May 24, 2018, the City Council voted to open a formal investigation into a campaign to pay actors to show up at meetings to support Entergy’s proposed gas plant.<sup>79</sup> The City Council also voted to seek bids for an investigator to lead the probe.<sup>80</sup> In announcing the investigation, Councilmember Williams stated that [the campaign to pay actors] “perverted the process,” and “[i]t flies in the face of public comment and the true purpose of public comment.”<sup>81</sup>

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<sup>76</sup> Edward Klump, *Entergy: Crowds on Demand paid actors to support gas plant*, E&E News, (May 11, 2018), <https://www.eenews.net/energywire/2018/05/11/stories/1060081461> (internal quotation marks omitted).

<sup>77</sup> Michael Isaac Stein and Charles Maldonado, *Entergy acknowledges astroturfing campaign for power plant, but says it didn’t know about it*, The Lens (May 10, 2018), <https://thelensnola.org/2018/05/10/entergy-says-a-public-relations-firm-hired-people-to-speak-on-behalf-of-its-new-power-plant/> (internal quotation marks omitted).

<sup>78</sup> May 14, 2018, Rehearing Request. Attached as Exhibit 19. Councilmember Palmer expressly acknowledged that the City Council can reconsider the decision to approve ENO’s Application. Caresse Jackman, *New Orleans City Council Members respond to Entergy’s investigation into paid actors*, WWL (May 10, 2018), <https://www.wvltv.com/article/news/local/new-orleans-city-council-members-respond-to-entergys-investigation-into-paid-actors/289-551113178>.

<sup>79</sup> New Orleans City Council, Motion M-18-196 (May 24, 2018).

<sup>80</sup> New Orleans City Council, Motion M-18-197 (May 24, 2018).

<sup>81</sup> Charles Maldonado, *New Orleans City Council opens investigation into campaign to pay actors to support power plant*, The Lens (May 24, 2018), <https://thelensnola.org/2018/05/24/new-orleans-city-council-opens-investigation-into-campaign-to-pay-actors-to-support-power-plant/> (internal quotation marks omitted).

**VIOLATIONS OF THE LOUISIANA CONSTITUTION  
AND THE OPEN MEETINGS LAW**

75. Louisiana guarantees the right to observe the deliberations of public bodies.

Louisiana Constitution, Article XII, Section 3 provides: “No person shall be denied the right to observe the deliberations of public bodies and examine public documents, except in cases established by law.”

76. Building upon this Constitutional foundation, the Louisiana State Legislature enacted the Open Meetings Law to ensure “that public business be performed in an open and public manner and that the citizens be advised of and aware of the performance of public officials and the deliberations and decisions that go into the making of public policy.”<sup>82</sup> Thus, the Louisiana Constitution and the Open Meetings Law guarantee a citizen’s right to both observe the meetings of a public body and comment on items under consideration by that public body.

77. In order to effectuate a citizen’s right to observe and comment, the Open Meetings Law also provides that “[a]ll public bodies, except the legislature and its committees and subcommittees, shall give written public notice of any regular, special, or rescheduled meeting no later than twenty-four hours . . . before the meeting.”<sup>83</sup> Advanced notice of agenda items ensures that if a member of the public wants to be heard on a matter or observe a public body’s deliberations on an issue, he or she can check the agenda posted twenty-four hours in advance to see if the matter is scheduled for consideration.<sup>84</sup>

78. With regard to public comment, La. R.S. 42:14(D) states “each public body conducting a meeting which is subject to the notice requirements of R.S. 42:19(A) shall allow a public comment period at any point in the meeting prior to action on an agenda item upon which a vote is to be taken.”

79. La. R.S. 42:24 provides that any action taken in violation of the Open Meetings Law shall be voidable and a suit to void any action must be filed within 60 days of the

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<sup>82</sup> La. R.S. 42:12.

<sup>83</sup> La. R.S. 42:19(A)(1)(b)(i).

<sup>84</sup> La. Atty. Gen. Op. No. 15-0122 at 7 (La. A.G. Jan. 8, 2016).

violation's occurrence. Thus, actions taken in violation of the Open Meetings Law are void so long as the complaint challenging these actions is filed within 60 days of the violation's occurrence.

80. On February 21, 2018, the UCTT Committee meeting convened to consider the approval of ENO's Application. The meeting room doors were locked prior to the meeting's start time, leaving 50 to 60 individuals who attempted to attend the meeting outside with no way to observe the conduct of the meeting. This lock-out occurred for hours, even though there were empty seats in the meeting room.

81. It is clear that the UCTT Committee knew that members of the public were not allowed to enter the meeting room. The chant of "Let us in" was repeatedly shouted by people locked outside of the meeting room and could be heard by the committee members as well as everyone else inside the meeting room.<sup>85</sup> However, the UCTT Committee did not allow the people to enter. At one point during the public meeting, then-Councilmember Guidry expressly asked that people in the meeting room give up their seat so that individuals "waiting" outside could come into the meeting room and make comments.<sup>86</sup> At her request, a few people were allowed to enter, but many remained waiting outside of locked doors.<sup>87</sup> The UCTT Committee violated the right of people to observe this public meeting and constitutes the first violation of the Open Meetings Law.<sup>88</sup>

82. Conducting the meeting in the manner set forth above rendered the public's right to comment illusory. Mr. Keith Lampkin, Chief of Staff to then-UCTT Committee Chair and Councilmember Jason R. Williams, initially tried to reject comments cards from those individuals trapped outside the meeting room, stating he could "only accept comment cards from people who were inside the room."<sup>89</sup> After being persuaded to accept the comment cards of the individuals who were locked out of the

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<sup>85</sup> Nguyen Affidavit, ¶ 11 (Exh. 12); Morris Affidavit, ¶ 10 (Exh. 6); Horwitz Affidavit, ¶ 11 (Exh. 15).

<sup>86</sup> Morris Affidavit, ¶ 13 (Exh. 6).

<sup>87</sup> *Id.*

<sup>88</sup> *See* La. R.S. 42:14(A).

<sup>89</sup> Morris Affidavit, ¶ 12 (Exh. 6).

meeting, Mr. Lampkin stated that “there would be no way to facilitate everyone speaking today.”<sup>90</sup> Thus, the UCTT Committee appeared to not even understand that it had a legal obligation to permit every individual to speak and apparently had no intention of ensuring that everyone got the chance to speak. Additionally, members of the public who waited outside the meeting room for hours and received no information from the City Council or City Council employees regarding whether they would ever be admitted or permitted to speak ultimately left the meeting. Since there was no audio system for people waiting outside to hear the meeting, they had no way of knowing when their name was called for comment, thus missing their opportunity to speak, assuming that opportunity had even been offered. The UCTT Committee violated the right of people to make comments at this public meeting, which constitutes the second violation of the Open Meetings Law.<sup>91</sup>

83. During the public comment period, the UCTT Committee Chair failed to follow the instructions provided in the official agenda notice. The agenda notice expressly stated that parties would not be allowed to speak during the public comment period. While the Chair did not enforce this rule, or even inquire if a speaker was a member of any of the parties, he never announced that this meeting rule limiting who could speak was being abandoned. Thus, individuals who are members of parties did not fill out comment cards and never spoke during the public comment period.

Moreover, it is impossible to know how many members of the Deep South Center for Environmental Justice, the Sierra Club, 350 New Orleans, and other parties did not attend the meeting under the mistaken belief that they would not be permitted to speak. The UCTT Committee conducted the public meeting in a manner contrary to the agenda notice, which constitutes the third violation of the Open Meetings Law.

84. On March 8, 2018, the full City Council considered the UCTT Committee’s approval of ENO’s Application. In contrast to the UCTT Committee agenda, the City Council agenda contained a significant number of items. Thus, the City

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<sup>90</sup> *Id.*

<sup>91</sup> *See* La. R.S. 42:14(D).



Council should have anticipated that a significant number of citizens would intend to attend the meeting. Long lines formed prior to 9:00 am to get into the 10:00 am meeting. Once again, members of the public were prevented from attending the meeting and could not observe the public process. Approximately 20 to 30 individuals were forced to stand outside the meeting room for hours, waiting for someone to leave the meeting so they could enter. This constitutes the fourth violation of the Open Meetings Law.<sup>92</sup>

85. The City Council also has uncontroverted evidence demonstrating that in at least two public meetings convened by the City Council and the UCTT Committee, professional actors were directed to wear orange pro-gas plant t-shirts with a printed message in support of Entergy's proposed gas plant and present public comments as though they were concerned residents in support of Entergy's proposed gas plant. This tactic not only created sham support for Entergy's proposed gas plant, but it also resulted in taking away from the real concerned residents of New Orleans the seating space in the meeting rooms and the time for comments. In each of those public meetings, real concerned residents were denied access into the meeting room where they could observe and/or make comments for the purported reason that there were no seats available. The real concerned residents either waited for as much as several hours to be allowed in the meeting room or left in frustration after considerable time spent waiting. The use of the paid actors served to deny New Orleans residents their right to observe and comment on the public meetings convened by the City Council and the UCTT Committee.

86. The manner in which the UCTT Committee conducted the public meeting on February 21, 2018, and the City Council public meeting on March 8, 2018, violated both the letter and the spirit of the Louisiana Constitution and the Open Meetings Law, and resulted in the suppression of the right of numerous people, including Petitioners, to participate in the public's business.

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<sup>92</sup> See La. R.S. 42:14(A).

### PRAYER FOR RELIEF

87. In light of the foregoing, the Court should issue a declaratory judgment that the Defendants violated the Louisiana Constitution (Article XII, Section 3) and the Open Meetings Law by (i) denying the right of persons to observe the public meeting of the UCTT Committee on February 21, 2018, and the City Council public meeting on March 8, 2018; (ii) denying the right of persons to make comments at these public meetings; and (iii) conducting the UCTT Committee meeting in a manner contrary to the agenda notice.
88. Given that the Defendants repeated the same violations at two public meetings, it is evident that the Defendants lack a fundamental understanding of the Open Meetings Law, which causes irreparable harm to people interested in participating in meetings of the City Council and its committees. Of necessity, the Court should issue an injunction directing the Defendants to strictly adhere to the Open Meetings Law.
89. Because the UCTT Committee and its members violated the Louisiana Constitution and the Open Meetings Law at the February 21, 2018 meeting, the Court should declare the UCTT Committee's action approving ENO's Application void and without legal effect.
90. Similarly, because the City Council and its members violated the Louisiana Constitution and the Open Meetings Law at the March 8, 2018 City Council meeting, the Court should declare the City Council's action approving ENO's Application void and without legal effect.
91. Finally, the costs of this proceeding and reasonable attorneys' fees should be awarded against the Defendants and in favor of the Petitioners.

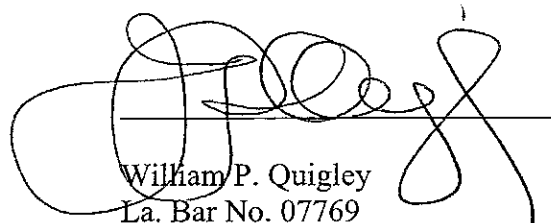
WHEREFORE, Petitioners respectfully pray that Defendants, the City Council, UCTT Committee, Williams, Moreno, Giarrusso, Banks, Gisleson Palmer, Brossett, and Nguyen, appear and show cause on a day and time convenient to the Court, as to why this Court should not render judgment in favor of the Petitioners as prayed for and why this Court should not:

1. Issue a declaratory judgment finding that the UCTT Committee and its members conducted the public meeting on February 21, 2018, in violation of the Louisiana Constitution and the Louisiana Open Meetings Law;
2. Issue a declaratory judgment finding that the City Council and its members conducted the public meeting on March 8, 2018, in violation of the Louisiana Constitution and the Louisiana Open Meetings Law;
3. Issue an injunction directing the Defendants to strictly adhere to the Louisiana Constitution and the Louisiana Open Meetings Law;
4. Issue a declaratory judgment finding that the UCTT Committee's action on February 21, 2018 approving ENO's Application to construct a 128 MW gas plant is void and without legal effect;
5. Issue a declaratory judgment finding that the City Council's action on March 8, 2018 approving ENO's Application to construct a 128 MW gas plant is void and without legal effect; and
6. Award the costs of these proceedings and reasonable attorneys' fees in favor of the Petitioners.

Respectfully submitted,

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