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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: _____

Deputy Clerk

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

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, and Sierra Club ("Petitioners") file the accompanying Amended Petition to enforce the Open Meetings Law pursuant to La. R.S. 42:25(C).¹ As discussed below, the Defendants² conducted two public meetings in a manner that violated the Louisiana Constitution and the Open Meetings Law, resulting in irreparable injury to New Orleans residents, including Petitioners, 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 facts show that community members were locked out of the meetings or forced to wait several hours before entering. As a result, many who wanted to provide public comment were unable to do so. The

¹ La. R.S. 42:25(C) provides: "Any person who has been denied any right conferred by the provisions of this Chapter or who has reason to believe that the provisions of this Chapter have been violated may institute enforcement proceedings."

² The Defendants include the Council of the City of New Orleans ("City Council"); the Utility, Cable, Telecommunications and Technology ("UCTT") Committee of the New Orleans City Council; and Councilmembers Williams, Moreno, Giarrusso, Banks, Gisleson Palmer, Brossett, and Nguyen in their official capacity as Councilmembers and/or members of the UCTT Committee.

facts further show that Entergy New Orleans (“ENO” or “Entergy”), through special treatment provided to its employees and supporters, was given clear and improper preferential access to the meetings, which were supposed to be open to all members of the general public. Moreover, both Entergy and the City Council have conceded that actors were hired to distort the public record of these critical meetings and interfere with the rights protected by the Open Meetings Law. Indeed, Councilmember Williams correctly observed that the process has been “compromised.”³ Therefore, the actions taken by the City Council and the UCTT Committee to approve Entergy’s proposed gas plant at these unlawful meetings should be voided by this Court.⁴

The Court should find that the exclusion of the public from both the February 21, 2018 UCTT Committee meeting and the March 8, 2018 City Council meeting caused irreparable harm to the constitutionally and legally protected interest to observe and provide comment in meetings of the City Council and its committees. Accordingly, the Court should issue an injunction directing the Defendants to strictly adhere to the Open Meetings Law.

STATEMENT OF FACTS

The two meetings at issue in this enforcement action stem from a request by Entergy for authorization to build a gas-fired generation station in New Orleans East. On June 20, 2016, Entergy filed its initial application, requesting approval to construct a 226 MW unit. On November 3, 2016, the City Council issued Resolution No. R-16-506, which set the procedural schedule for Entergy’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 Council⁵

³ 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> (“WDSU News report”); 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 (“Advocate staff report”) (internal quotation marks omitted).

⁴ See La. R.S. 42:24.

⁵ New Orleans City Council, Resolution No. R-16-506 at 8 (Nov. 3, 2016).

On July 6, 2017, Entergy later amended its application (“ENO’s Application”) to request approval for either the 226 MW gas plant or several smaller units totaling 128 MW.

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 hearing on ENO’s Application in the City Council Chambers. This meeting was scheduled on October 16, 2017.

A. October 16, 2017 Evening Public Hearing⁶

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. They were informed that the meeting room doors would be unlocked at 5:00 pm, 30 minutes before the scheduled start time for the meeting.⁷ Two buses of Entergy supporters arrived around 4:00 pm. The individuals on these buses were immediately permitted to enter the City Council Chambers.⁸

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, as a result of the large crowd which had been admitted early and remained in their seats throughout the meeting, they would not be able to comment.⁹

Months later, an actor revealed that he and other actors were recruited and paid to pretend as though they were concerned residents in support of the Entergy’s proposed gas plant at the October 16, 2017 public hearing.¹⁰ Subsequent to this revelation, the Lens published an article

⁶ While Petitioners are not bringing this enforcement action based on the October 16, 2017 public hearing, this meeting provides relevant background.

⁷ Affidavit of Renate Heurich, ¶ 26 (“Heurich Affidavit”). Exhibit 2 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.

⁸ *Id.* ¶ 27.

⁹ Affidavit of Michael L. Brown, ¶ 10 (“Brown Affidavit”). Exhibit 4.

¹⁰ Subsequent to the October 16, 2017 public meeting, on March 1, 2018, Mr. Andrew Wiseman attended a church meeting and informed the other attendees that he and others had been paid \$120 to wear shirts supporting Entergy, attend the meeting, and fill up the room. Affidavit of Ted Quant, ¶ 14 (“Quant Affidavit”). Exhibit 5. See Kristin Pierce, *City Council could face lawsuit following public hearing on Entergy plant*, WWL (Mar. 7, 2018), <http://www.wvlw.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->

which provided significant details regarding the actors participation in the meeting. These actors were paid \$60 simply to attend the meeting and some received up to \$200 for delivering a prewritten speech during the public meeting. Those actors seeking speaking roles were required to audition for those roles. The actors selected were required to sign non-disclosure agreements and were expressly directed to “tell nobody you’re being paid.” Finally, the hired actors were instructed to arrive early; “you guys have to be there first thing because as soon as they open the door, we want you guys in there so if there are any protestors we got the whole room filled.”¹¹ Not only did Entergy supporters, who were easily identifiable by their orange pro-gas plant t-shirts, occupy a significant number of seats, but some supporters also placed their signs in other seats, thus further preventing the participation of people waiting outside—most of whom were opposed to the proposed gas plant—in the meeting.¹²

Moreover, an hour into the meeting, City Council staff announced that there would not be time for everyone to comment so people should stop filling out comment cards.¹³ At one point, then-Councilmember Susan Guidry asked people to leave the room when they were done speaking so that others who 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.¹⁴

Before the October 16, 2017 public meeting, CURO instructed Petitioners, other public interest organizations, and businesses, who were intervenors in the proceeding on ENO’s Application, that only one representative of their organization or company would be allowed to speak after all members of the public not affiliated with any of the intervenors had spoken, if there was time remaining.¹⁵ Given that the public meeting was scheduled for two hours from 5:30 pm to 7:30 pm, CURO’s instruction had the effect of preventing all persons affiliated with the intervenors from participating in the public meeting. Exacerbating this restriction is the fact

orleans-city-council-meetings/ (“The Lens article”); Brown Affidavit, ¶¶ 13, 16 (and accompanying pictures) (Exh. 4).

¹¹ The Lens article (internal quotation marks omitted).

¹² 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.

¹³ Affidavit of Grace Morris, ¶ 18 (“Morris Affidavit”). Exhibit 6.

¹⁴ Brown Affidavit, ¶ 11 (Exh. 4); Heurich Affidavit, ¶ 29 (Exh. 2).

¹⁵ 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.

that one or more employees of Entergy, clearly a party to the proceeding on ENO's Application, were allowed to speak at the public meeting.

B. February 21, 2018 UCTT Committee Public Meeting

On February 16, 2018, the UCTT Committee issued a public notice of the agenda for its February 21, 2018 meeting. This agenda only included one 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. The purpose of the meeting was to decide whether to approve ENO's Application. If approved, ENO's Application would then be considered by the full City Council. The agenda notice specifically stated that each party to the proceeding would be allowed 15 minutes for closing argument.¹⁶ The agenda notice further stated that "[e]ach public speaker, *not a party*, will be allowed 2 minutes."¹⁷

Many members of the public and Petitioners arrived at the designated meeting site at approximately 9:30 am, 30 minutes before the meeting was scheduled to begin. At that time, the doors to the meeting room were locked and no one was allowed to enter.¹⁸ Approximately 50 to 60 people were denied entry to the meeting by security, allegedly because there was no more space in the meeting room.¹⁹ The majority of these individuals were residents of New Orleans East and the Lower Ninth Ward.²⁰

For example, VAYLA New Orleans ("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. These individuals arrived at the meeting room at approximately 9:20 am.²¹ However, VAYLA New Orleans representatives were informed that

¹⁶ See UCTT Committee Agenda Notice (Feb. 16, 2017). Exhibit 7.

¹⁷ *Id.* (emphasis added).

¹⁸ Affidavit of Margaret "Meg" Logue, ¶ 5 ("Logue Affidavit"). Exhibit 8; Affidavit of Dr. Beverly L. Wright, ¶¶ 13, 15 ("Wright Affidavit"). Exhibit 9. Affidavit of Dynisha Dianne Hogle, ¶ 9 ("Hogle Affidavit"). Exhibit 10.

¹⁹ Quant Affidavit, ¶¶ 8, 10 (Exh. 5); Logue Affidavit, ¶ 5 (Exh. 8); Heurich Affidavit, ¶ 8 (Exh. 2); Morris Affidavit, ¶ 9 (Exh. 6); Affidavit of Patrick Henry Bryant, ¶ 9 ("Bryant Affidavit"). Exhibit 11. Affidavit of Robert Desmarais Sullivan, ¶ 17 ("Sullivan Affidavit"). Exhibit 14. Affidavit of Jacob Horwitz, ¶ 7. Exhibit 15. Affidavit of Andrew Wells, ¶ 8. Exhibit 16.

²⁰ Logue Affidavit, ¶ 5 (Exh. 8); Bryant Affidavit, ¶ 8 (Exh. 11).

²¹ Affidavit of Minh Thanh Nguyen, ¶ 16 ("Nguyen Affidavit"). Exhibit 12. Hogle Affidavit, ¶ 7 (Exh. 10).

the room was at capacity and that none of their members would be admitted.²² According to Ms. Dynisha Hugle, security personnel refused to allow anyone wearing a “No Gas Plant” t-shirt to enter the meeting room.²³ These members of the New Orleans East community were not allowed in the meeting even though there were empty seats in the room.²⁴

There are other examples of community members and even parties to the case being locked out. Mr. Pat Bryant of Justice and Beyond arrived at approximately 9:30 am. He approached security several times and requested to be let into the meeting room, but security refused to allow him to enter the room.²⁵

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 that she could not enter because the room was at capacity.²⁶ 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.²⁷ Several minutes later, 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 allow Ms. Heurich into the room.²⁸ Several minutes later, the security guard told Ms. Heurich she could enter the room.²⁹

Chants of “Let us in!” made by people frustrated with waiting outside the meeting room could be heard by the UCTT Committee members and other attendees inside the meeting room.³⁰

²² Nguyen Affidavit, ¶¶ 6, 8 (Exh. 12); Hugle Affidavit, ¶ 9 (Exh. 10).

²³ Hugle 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.

²⁴ 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); Sullivan Affidavit, ¶ 12 (Exh. 14).

²⁵ Bryant Affidavit, ¶ 9 (Exh. 11).

²⁶ Heurich Affidavit, ¶ 7 (Exh. 2).

²⁷ *Id.* ¶ 14.

²⁸ *Id.* ¶ 15.

²⁹ *Id.* ¶ 16.

³⁰ Wright Affidavit, ¶ 19 (Exh. 9); Nguyen Affidavit, ¶ 11 (Exh. 12); Morris Affidavit, ¶ 10 (Exh. 6). The February 21 meeting constituted the *third* time that Councilmembers shut the public out of a proceeding. Not only were citizens shut out of the October 16 meeting, but in January, while the City Council considered a resolution promoted as part of the movement known as Boycott, Divest and Sanction, citizens were kept outside the meeting room. See Kevin Litten, *Chamber renovation creates headaches for N.O. City Council*, The Times-Picayune (Mar. 7, 2018), http://www.nola.com/politics/index.ssf/2018/03/city_hall_renovation_council.html.

The security guards created an atmosphere of intimidation, threatening the members of the public who were locked out of the meeting with arrest.³¹

During the meeting, Councilmembers acknowledged that people had been shut out of the proceeding. Then-Councilmember Susan Guidry observed that Entergy “bused in a lot of people early and so it filled up the room so people couldn’t get in. I’m just saying, hey, it’s a strategy.”³²

At approximately 12:00 pm, security personnel started allowing into the meeting room some people who were previously locked out of the meeting but offered no explanation regarding how they were determining if and when to admit more people. Many members of the public waited outside of the meeting room for three hours or more without being admitted to the meeting.³³ In fact, despite VAYLA members 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.³⁴

The UCTT Committee uses a comment card process whereby an individual fills out a card to provide comment 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 fails to fill out a comment card is not permitted to speak during the public comment period.

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].”³⁵ Mr. Lampkin also refused

³¹ Bryant Affidavit, ¶ 10 (Exh. 11).

³² See Litten, *supra* note 30.

³³ Logue Affidavit, ¶¶ 9, 10 (Exh. 8); Quant Affidavit, ¶ 12 (Exh. 5).

³⁴ Nguyen Affidavit, ¶¶ 13-15 (Exh. 12).

³⁵ Morris Affidavit, ¶ 12 (Exh. 6).

to ask people to leave after they made public comments so that others could come inside the meeting room and comment.³⁶

There was no audio system outside of the meeting room. Individuals could not hear what was occurring in the meeting room.³⁷ Thus, individuals locked out of the room could not hear the names being called to provide comment, and the UCTT Committee provided no method designed to inform those locked out that their name had been called. Moreover, at no time during the meeting were those citizens 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.

Here again, the evidence demonstrates that professional actors were recruited and paid to attend the meeting and present public comments as though they were concerned citizens in support of Entergy's proposed gas plant.³⁸ 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 the public meetings on October 16, 2017 and February, 21, 2018, real concerned residents were denied access to the meeting room where they could observe and/or make comments for the purported reason that there were no seats available.

Additionally, during the public comment period, the Chair failed to follow the instructions provided in the official agenda notice.³⁹ The agenda notice expressly stated that parties would not be allowed to speak during the public comment period. The Chair did not enforce this rule or even inquire if the speaker was a party. However, he never announced that the provision of the agenda notice limiting who could speak was being 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 comment period

³⁶ *Id.*

³⁷ Heurich Affidavit, ¶ 12 (Exh. 2); Hogle Affidavit, ¶ 11 (Exh. 10).

³⁸ See The Lens article.

³⁹ See UCTT Committee Agenda Notice (Exh. 7).

because the written directive in the agenda notice expressly stated that parties would be prevented from speaking.⁴⁰

Similarly, Ms. Grace Morris of the Sierra Club did not fill out a comment card because her understanding was that intervenors were only allowed to have one person comment.⁴¹ Ms. Renate Heurich initially did not fill out a comment card because it was also her understanding that as an intervenor she could not comment. However, one of the City Council Advisors informed Ms. Heurich that she could comment, so she filled out a comment card and ultimately was allowed to speak.⁴² 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 to ENO's Application proceeding did not attend all or part of the meeting because they believed, based on the agenda notice, that they would not be permitted to speak during the public comment session.

After asking the City Council Advisors questions, each of the Councilmembers delivered remarks, and then voted on ENO's Application. The final vote was 4 to 1 to approve ENO's Application. The meeting ended at approximately 6:00 pm.⁴³

Directly after this meeting, Ms. Renate Heurich, Vice President of 350 New Orleans, 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.

⁴⁰ Wright Affidavit, ¶ 23 (Exh. 9).

⁴¹ Morris Affidavit, ¶ 14 (Exh. 6).

⁴² Heurich Affidavit, ¶ 19 (Exh. 2).

⁴³ Nguyen Affidavit, ¶ 14 (Exh. 12).

Ms. Heurich received no response to her email.⁴⁴

Similarly, Justice and Beyond sent a letter to the City Council after the meeting requesting, among other things, that the March 8, 2018 meeting venue hold at least 500 people.⁴⁵ The City Council failed to respond to this request.

On March 6, 2018, attorneys representing 350 New Orleans sent a letter to the City Council stating 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 that complies with the requirements of the law.⁴⁶ The City Council never responded to this letter.

C. March 8, 2018 City Council Public Meeting

The full City Council considered the UCTT Committee's approval of ENO's Application at its March 8, 2018 meeting. In contrast to the UCTT Committee agenda, the City Council agenda contained a significant number of items.

The general public started standing in line prior to 9:00 am for the 10:00 am meeting. While the general public was standing in line in the hallway to get into the meeting, Entergy employees and supporters were escorted to a separate entrance (not accessible to the public) and were seated in the meeting room before people waiting in line were allowed in the room.⁴⁷ Mr. Pat Bryant observed the Entergy employees being led into the meeting room through this separate entrance, a back door to the City Council Chambers.⁴⁸ Mr. Bryant and others attempted to enter the room through this same door.⁴⁹ An Entergy employee attempted to block Mr. Bryant physically, but he was able to enter through the back door with others from Justice and Beyond.⁵⁰

⁴⁴ Heurich Affidavit, ¶ 21 (Exh. 2).

⁴⁵ Bryant Affidavit, ¶ 13 (Exh. 11).

⁴⁶ See Letter from William P. Quigley, Susan Stevens Miller, and Jill Tauber to the New Orleans City Council (Mar. 6, 2018). Exhibit 17.

⁴⁷ Johnson Affidavit, ¶ 11 (Exh. 13).

⁴⁸ Bryant Affidavit, ¶ 14 (Exh. 11).

⁴⁹ *Id.*

⁵⁰ *Id.*

Like the February 21, 2018 meeting, many members of the public were prevented from attending the meeting.⁵¹ Approximately 20 to 30 individuals were forced to wait outside the meeting room for hours, and some left after waiting for hours.⁵²

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

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. 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, 2017.⁵³ 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."⁵⁴ 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."⁵⁵

After seeing this report and based on his impression that some of the comments given by Entergy supporters seemed scripted, Mr. Michael Brown reviewed the video recording of the October 16 public hearing in an attempt to determine if any of the commenters were actors.⁵⁶ Mr. Brown conducted a basic internet search and discovered that at least three of the commenters were professional actors.⁵⁷

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

⁵¹ Quant Affidavit, ¶ 16 (Exh. 5); Nguyen Affidavit, ¶¶ 16-17 (Exh. 12).

⁵² Logue Affidavit, ¶¶ 11-12 (Exh. 8); Heurich Affidavit, ¶ 24 (Exh. 2).

⁵³ See WWL report.

⁵⁴ *Id.*

⁵⁵ *Id.*

⁵⁶ Brown Affidavit, ¶ 14 (Exh. 4).

⁵⁷ *Id.* ¶ 16.

in October and February. Some got \$200 for a ‘speaking role.’”⁵⁸ The Lens article provides troubling details into how this scheme worked, and its intent to deceive the Council and the public.

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 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.”⁵⁹

In response to The Lens article, Councilmember Williams recognized the process has been “compromised.”⁶⁰

On May 7, 2018, Deep South Center for Environmental Justice, 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.⁶¹

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.⁶² Entergy also revealed that Crowds on Demand was hired by its contractor, the Hawthorn Group.⁶³ The City Council has

⁵⁸ The Lens article.

⁵⁹ *Id.*

⁶⁰ WDSU News report; Advocate staff report (internal quotation marks omitted).

⁶¹ May 7, 2018, Investigation Request Letter. Attached as Exhibit 18.

⁶² 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.”).

⁶³ Entergy report at 1.

announced plans for an investigation into the payment of actors to support Entergy's proposed gas plant at its meetings but maintains its controversial approvals of the gas plant.

SUMMARY OF VIOLATIONS OF THE OPEN MEETINGS LAW

1. The first violation occurred at the very start of the February 21, 2018 public meeting of the UCTT Committee and continued throughout the meeting. By 9:30 am the doors to the meeting room were locked, and the members of the public who arrived to attend that meeting were barred from entering by security.
2. The second violation stems from the first violation. The members of the public who were barred from entering the meeting room were denied their right to comment on the agenda item under consideration by the UCTT Committee.
3. The third violation occurred when the UCTT Committee abandoned the agenda it issued for the February 21, 2018 public meeting without giving at least twenty-four hours notice to the public that the agenda would not be followed during the meeting.
4. The fourth violation occurred during the March 8, 2018 City Council meeting where once again members of the public were denied access to the meeting and forced to wait outside the meeting room while supporters and employees of Entergy were given special access not available to the general public.

ARGUMENT

A. Louisiana Law Guarantees the Right to Observe Deliberations of Public Bodies and the Right to Comment on Issues Before the Public Body Performs Its Official Duties

Louisiana guarantees the right of all people to observe the deliberations of public bodies. The Louisiana Constitution, Article XII, Section 3 expressly provides that “[n]o person shall be denied the right to observe the deliberations of public bodies and examine public documents, except in cases established by law.” Building upon this Constitutional foundation, the Louisiana State Legislature enacted the Open Meetings Law.⁶⁴ The purpose of this law is set forth in La. R.S. 42:12(A):

⁶⁴ La. R.S. 42:12(A). *See also Wagner v. Beauregard Par. Police Jury*, 525 So. 2d 166, 169 (La. App. 3d Cir. 1988) (The Open Meetings Law was enacted to ensure the rights of citizens to observe and participate in the deliberations of public bodies).

It is essential to the maintenance of a democratic society 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. Toward this end, the provisions of [La. R.S. 42:11 through La. R.S. 42:28] shall be construed liberally.

The Open Meetings Law requires that “[e]very meeting of any public body shall be open to the public,” with limited exceptions.⁶⁵ Public bodies have been defined to include the board of any political subdivision, and *any committee or subcommittee* thereof.⁶⁶ The Louisiana Attorney General has determined that the City Council, as well as any committee or subcommittee of the City Council, is a “public body” for purposes of the Open Meetings Law.⁶⁷

A meeting of a public body occurs when a quorum, or a simple majority of the total membership of the public body, convenes to deliberate or act on any matter over which the public body has supervision, control, jurisdiction, or advisory power.⁶⁸ Considered together, these provisions guarantee the public the right to observe the meetings of any public body whenever that public body meets to perform its official duties.

Louisiana law further requires that each public body accept public comment. Thus, 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.⁶⁹ The importance of public comment is highlighted by a Louisiana Court of Appeal’s finding that:

In determining the reasonableness of the Commission’s decision, we must review the opinions and concerns raised at the public hearing, as well as the testimony presented at trial. Expressions of opinion made by citizens to a legislative body serve as a manner by which the legislative body learns the will of the people and determines what may benefit the public good.⁷⁰

In order to effectuate the right to observe and comment described above, the Louisiana State Legislature adopted a notice provision. Thus, the Open Meetings Law provides that “[a]ll

⁶⁵ La. R.S. 42:14(A).

⁶⁶ La. R.S. 42:13(A)(2), (A)(3) (emphasis added).

⁶⁷ La. Atty. Gen. Op. No. 10-0121 (La. A.G. June 7, 2010).

⁶⁸ La. R.S. 42:13(A)(2), (A)(4). Thus, even when a committee serves only an advisory function, that committee is a public body, and the convening of a quorum of the committee for the purpose of serving any official function, including advisory matters, constitutes a meeting as defined in La. R.S. 42:13. *See* La. Atty. Gen. Op. No. 16-0170 (La. A.G. Dec. 5, 2016); *see also Tectrans, Inc. v. New Orleans Aviation Bd.*, 695 F. Supp. 2d 313 (E.D. La. 2010), *aff’d*, 464 Fed. Appx. 199 (5th Cir. 2010).

⁶⁹ La. R.S. 42:14(D).

⁷⁰ *Prest v. Parish of Caddo*, 41,039 (La. App. 2d Cir. 6/2/06); 930 So. 2d 1207, 1211.

public bodies . . . shall give written public notice of any meeting no later than twenty-four hours . . . 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.”⁷¹

B. The Defendants Violated the Open Meetings Law When They Locked People Out of Public Meetings and Denied People Their Right to Comment

Under the Open Meetings Law,⁷² the public has a right to observe public meetings and is entitled to direct participation in deliberations.⁷³ The Open Meetings Law makes the rules clear beyond question: the public **must** be given the opportunity to comment before an agenda item is taken up by the UCTT Committee or the full City Council; **all** members of the public who wish to address the UCTT Committee or City Council must be given the opportunity to speak; and **all** members of the public have an absolute right to observe the meeting.

The Defendants violated the Open Meetings Law when members of the public were excluded from the meetings at issue. Locking members of the public out of a public meeting and denying them opportunity to comment is a clear and egregious violation of fundamental rights guaranteed to Louisiana citizens—rights that are “essential to the maintenance of a democratic society.”⁷⁴

In these instances, the public’s right to observe and comment was egregiously violated by both the UCTT Committee and the full City Council. This UCTT Committee and the City Council’s failure in their responsibility to protect the rights of New Orleans citizens is illustrated by, among other things: (1) Councilmembers being aware during the UCTT Committee meeting that citizens had been shut out of the proceeding and took no steps to remedy the situation; (2) informing citizens locked out of the UCTT Committee meeting that comment cards would only be accepted from people inside the room and that there was no way to facilitate everyone speaking that day; (3) the City Council’s failure to resolve the issue of citizens being locked out

⁷¹ La. R.S. 42:19(A)(1)(b)(i), (ii)(aa).

⁷² Section 3-108 of the Home Rule Charter of the City of New Orleans 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 Open Meetings Law provides the applicable rules regarding when a meeting of the Council and its committees occurs.

⁷³ See, e.g., *Wagner* 525 So. 2d at 169.

⁷⁴ La. R.S. 42:12(A).

of meetings despite the repeated occurrence of this violation; (4) the City Council receiving at least three communications after the February 21, 2018 meeting and before the March 8, 2018 meeting but failing to take any steps to ensure that the same violations would not occur in future meetings; and (5) the City Council or its staff providing favorable treatment to Entergy employees and supporters by permitting them to enter the room and obtain seats prior to residents who had gathered to speak on the issue.

The UCTT Committee and the City Council certainly are under a legal obligation to protect the public's right to observe and comment at public meetings. The Court should note that the Open Meetings Law violations that occurred at the February 21, 2018 UCTT Committee meeting was the third known instance in just a four-month period in which citizens were denied access to a City Council public meeting.⁷⁵ Rather than take steps to resolve these violations of the law despite requests to do so,⁷⁶ less than a month later, at the March 8, 2018 City Council meeting, the City Council simply allowed citizens to once again be denied access to a public meeting.

The protections afforded by the Open Meetings Law, the right of citizens to observe and comment at public meetings, were eviscerated by the actions of the UCTT Committee and the City Council. Every New Orleans resident has a stake in the performance of and governance by its City Council, and the citizens' views must be taken into account before any action or discussion of an agenda item occurs. The UCTT Committee and the City Council rendered public participation in the February 21 and March 8 public meetings a sham, thereby depriving residents of their constitutionally and legally protected rights.

C. The UCTT Committee's Alteration of the Agenda Notice Violated the Open Meetings Law

As noted above, on February 16, 2018, the UCTT Committee issued the agenda notice for the UCTT Committee's February 21, 2018 meeting. This agenda notice specifically stated that each party to the proceeding would be allowed 15 minutes for closing argument. The agenda notice further stated that "[e]ach public speaker, *not a party*, will be allowed 2

⁷⁵ See Litten, *supra* note 30.

⁷⁶ Heurich Affidavit, ¶ 21 (Exh. 2); Bryant Affidavit, ¶ 13 (Exh. 11).

minutes.”⁷⁷ As a result of this explicit instruction, at least three members of intervenor organizations in the underlying ENO gas plant proceeding did not fill out comment cards because pursuant to the agenda instructions they would not be permitted to speak.⁷⁸

During the public comment period, the UCTT Committee Chair failed to follow the instructions provided in the official agenda notice. The Chair did not enforce the rule that parties would not be allowed to speak during the public comment period, or even inquire if the speaker was a party. Moreover, he never announced that the provision of the agenda notice limiting who could speak was being abandoned.

This change in the agenda violates the Open Meetings Law, which provides 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.”⁷⁹ Moreover, altering the instructions set forth in an agenda notice defeats the purpose of prior notification. Advanced notice of agenda items ensures that if a member of the public wants to be heard on a matter, he or she can check the agenda posted twenty-four hours in advance to see if the matter is scheduled for consideration.⁸⁰ This is more than a technical violation of the notice requirement. Rather, this violation resulted in several parties losing the opportunity to provide public comment. In this instance, members of the Deep South Center for Environmental Justice, the Sierra Club, and 350 New Orleans complied with the agenda. The UCTT Committee Chair’s decision to abandon the agenda without notice as required by law created an unfair process for public comments, which barred some and allowed others who are members of intervenor organizations to speak during the public comment session. It is impossible to know how many members of these organizations did not attend all or part of the meeting because they believed, based on the meeting agenda, that they would not be permitted to speak.

⁷⁷ See UCTT Committee Agenda Notice (Exh. 7) (emphasis added).

⁷⁸ Heurich Affidavit, ¶ 19 (Exh. 2); Morris Affidavit, ¶ 14 (Exh. 6); Wright Affidavit, ¶ 23 (Exh. 9).

⁷⁹ La. R.S 42:19(A)(1)(b)(i), (ii)(aa).

⁸⁰ La. Atty. Gen. Op. No. 15-0122 (La. A.G. Jan. 8, 2016).

D. Actors Paid to Feign Support for Entergy's Proposed Gas Plant at City Council Public Meetings Interfered with Rights Protected by the Open Meetings Law

The Open Meetings Law protects the right of people to observe and comment on public meetings.⁸¹ This right was trampled on by the City Council's failure to recognize its responsibilities under the Open Meetings Law and its failure to maintain control of its own public meetings. The City Council and Entergy have conceded—and uncontroverted evidence demonstrates—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.⁸² In response to the revelations regarding the use of actors by Entergy contractors, Councilmember Williams stated that “[t]his wasn't just a perversion of the vote on this plant, it's a perversion of our entire deliberative process.”⁸³

This tactic not only created sham support for the 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.

CONCLUSION

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

⁸¹ La. R.S 42:12 *et seq.*

⁸² *See, e.g.,* the Lens article.

⁸³ 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).

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.

Because the UCTT Committee and its members clearly 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. Similarly, because the City Council and its members clearly violated the Louisiana Constitution and the Open Meetings Law at the March 8, 2018 meeting, the Court should declare the City Council's action approving ENO's Application void and without legal effect.

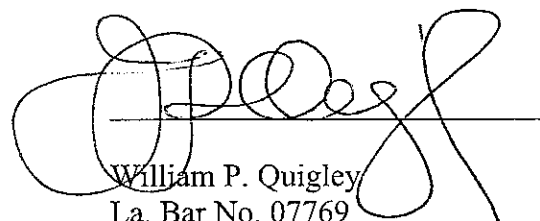
The Court should further find that the exclusion of the public from both the February 21, 2018 UCTT Committee meeting and the March 8, 2018 City Council meeting, caused irreparable harm to the public's constitutionally and legally protected interest in participating in meetings of the City Council and its committees. Accordingly, the Court should issue an injunction directing the Defendants to strictly adhere to the Open Meetings Law.

Finally, the costs of this proceeding and reasonable attorneys' fees should be awarded against the Defendants and in favor of the Petitioners.

Respectfully submitted,

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