

CIVIL DISTRICT COURT FOR THE PARISH OF ORLEANS
STATE OF LOUISIANA

FILED
2018 NOV -7 P 1:00
SECTION 14
CIVIL
DISTRICT COURT

CASE NO. 18-3843

DIVISION "I"

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

PETITIONERS' MOTION FOR FURTHER CONTINUANCE

NOW INTO COURT, through undersigned counsel, come 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") and respectfully request that this Honorable Court grant a further continuance in the above-captioned proceeding. In support of this motion, Petitioners state as follows:

1. On April 19, 2018, Petitioners brought the above-captioned enforcement action under the Open Meetings Law (La. R.S. 42:25(C)) requesting that this Honorable Court issue a declaratory judgment and injunction against the Council of the City of New Orleans ("City Council") for violations of the Louisiana Constitution and the Open Meetings Law and void the Defendants' actions taken at the two public meetings where these violations occurred.

2. On August 1, 2018, the Court granted Petitioners' motion for a continuance. In its Judgment, the Court continued the case until the Council completed its investigation of Entergy New Orleans ("ENO") concerning the paid actor scandal and the resulting report of the independent investigators was provided to the Court and parties.¹

¹ Judgment on Motion for Continuance, Case No. 18-3843 (Aug. 1, 2018).

3. On October 5, 2018, the Court granted Petitioners' unopposed motion for continuance based on Council Motion No. M-18-387 (September 6, 2018) extending the timeline for the investigation of the ENO paid actor scandal to October 19, 2018. In its Order, the Court continued the status conference until after the investigation concludes.²

4. On October 29, 2018, the independent investigators filed their report with the City Council. In this report, the investigators found, among other things, that numerous individuals were paid to attend and/or speak in support of ENO and that ENO knew or should have known that such conduct occurred or reasonably might occur.³

5. On October 31, 2018, the City Council held a public meeting to consider a resolution to institute a show cause proceeding to address the imposition of sanctions against ENO based upon the report of the investigators, Resolution No. R-18-474 ("Resolution"). In the Resolution, the Council Utility Regulatory Office is directed to deliver the investigation report and the Resolution to this Court. The Resolution provides a 30-day time period for ENO to respond to the show cause proceeding and interested members of the public to submit written comments.

6. At that meeting, and prior to the City Council vote on the Resolution, Council President Jason Williams and Council member Jared Brossett both made public statements regarding the possibility of re-voting on Resolution No. R-18-65 approving ENO's proposed gas plant, which is the subject of the two public meetings at issue in this Open Meetings Law enforcement action. Specifically, Council President Williams stated:

Today we are deciding and talking about a fine that I think, as a person who voted in favor of this plant, that **we still need to have a conversation about whether or not we need to have another vote.** Now I say that because the people who came in here didn't say over and over again, "No plant, no plant, no plant." What you said was this process was not a good process. You said we were held out of the room. Now I was there. I ran the meeting. Nobody was blocked from being present; **however, seats were taken by people who were paid. And that's wrong. And that is offensive I plan on meeting with my colleagues to discuss the next steps because I don't think our work is done here yet.**⁴

7. Similarly, Council member Brossett stated:

I agree with Council President Williams. I believe the vote was necessary based upon the evidence that we were presented with by our experts -- plain and simple. However, after hearing today the many months of discussion and debate in the

² Order Granting Petitioners' Unopposed Motion for Continuance, Case No. 18-3843 (Oct. 5, 2018).

³ Resolution No. R-18-474 at 4.

⁴ City Council, Special City Council Meeting, at Resolution 18-474 (start time: 1:48:36 - end time: 1:51:05) (Oct. 31, 2018) (emphasis added), http://cityofno.granicus.com/MediaPlayer.php?view_id=3&clip_id=3127.

public, **I am, too, open to re-voting on this matter.** And I'd like to hear my colleagues on that as well.⁵

8. In describing the next steps that would occur after the City Council vote on the Resolution, Council Vice-President Helena Moreno stated:

Procedurally speaking, here's what's going to take place. Today we are voting to open this docket. From there we will receive comments from people who want to intervene in this particular docket. . . . Once we receive input from the intervenors, along with Entergy, we will come up with what will be a final motion in 30 days. So what you're seeing here today [Resolution 18-474] could be revised. I just wanted to make that point clear to everyone. This is the first step. Next comes your voice through the intervening process.⁶

9. Thus, it is clear that the City Council's vote on Resolution No. R-18-474 is not the City Council's final action on this matter and that at least some City Council members are considering whether to re-vote on the underlying resolution that was considered at the two public meetings at issue in this case.

10. Further action taken by the City Council may directly impact this enforcement action, particularly if the City Council votes to reconsider or revote on the resolution that was the subject of the two public meetings at issue in this case.

11. WHEREFORE, Petitioners respectfully request that the Court further continue this proceeding until the City Council takes final action on the show cause proceeding with respect to the independent investigators' report filed with the City Council on October 29, 2018.

Dated: November 7, 2018

Respectfully submitted,



Monique Harden
La. Bar No. 24118
Deep South Center for Environmental Justice
3157 Gentilly Boulevard, #145
New Orleans, LA 70122
Phone: (504) 510-2943
Email: moniquecovharden@gmail.com

*Counsel for The Southern Center for Environmental Justice, Inc. d/b/a
Deep South Center for Environmental Justice*

⁵ City Council, Special City Council Meeting, at Resolution 18-474 (start time: 1:51:14 - end time: 1:51:57) (Oct. 31, 2018) (emphasis added), http://cityofno.granicus.com/MediaPlayer.php?view_id=3&clip_id=3127.

⁶ City Council, Special City Council Meeting, at Resolution 18-474 (start time: 1:42:17 - end time: 1:43:20) (Oct. 31, 2018) (emphasis added), http://cityofno.granicus.com/MediaPlayer.php?view_id=3&clip_id=3127.

/s/ Alexander Bollag
Alexander "Sascha" Bollag
La. Bar No. 34447
Green Justice Legal
540 Broadway Street, Room 304
New Orleans, LA 70118
Phone: (504) 913-7740
Email: sbollag@greenjusticelegal.org

/s/ William P. Quigley
William P. Quigley
La. Bar No. 07769
Loyola University New Orleans
7214 St. Charles Avenue
New Orleans, LA 70118
Phone: (504) 861-5591
Email: quigley@loyno.edu

*Counsel for VAYLA New Orleans, Justice and Beyond, 350 New Orleans, Sierra Club,
Mr. Theodore Quant, and Ms. Renate Heurich*

/s/ Susan Stevens Miller
Susan Stevens Miller
Earthjustice
1625 Massachusetts Avenue, N.W.
Suite 702
Washington, D.C. 20036
Phone: (202) 667-4500
Email: smiller@earthjustice.org
Admitted Pro Hac Vice

/s/ Jill M. Tauber
Jill M. Tauber
Earthjustice
1625 Massachusetts Avenue, N.W.
Suite 702
Washington, D.C. 20036
Phone: (202) 667-4500
Email: jtauber@earthjustice.org
Admitted Pro Hac Vice

Counsel for VAYLA New Orleans, Justice and Beyond, 350 New Orleans, and Sierra Club

CERTIFICATE OF SERVICE

FILED

I certify that a copy of the above and foregoing pleading has been forwarded to opposing counsel, via electronic mail, on November 7, 2018.

2018 NOV 14 PM 1:00

CIVIL DISTRICT COURT

Tronique Harde

Counsel

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THE COUNCIL OF THE CITY OF NEW ORLEANS, THE UTILITY, CABLE,
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H. BANKS, KRISTIN GISLESON PALMER, JARED C. BROSSETT, AND CYNDI NGUYEN

FILED: _____

Deputy Clerk

PROPOSED ORDER

Considering Petitioners' Motion for Further Continuance filed on November 7, 2018;

IT IS ORDERED that the Motion is granted and this proceeding is continued until after
the Council of the City of New Orleans takes final action on the show cause proceeding with
respect to the independent investigators' report filed with the City Council on October 29, 2018.

NEW ORLEANS, LOUISIANA, this _____ day of November, 2018.

JUDGE