

FILED

2018 JUL -3 P 2:51

CIVIL DISTRICT COURT

CIVIL DISTRICT COURT FOR THE PARISH OF ORLEANS

STATE OF LOUISIANA

NO. 2018-03843

DIVISION "I"

SECTION: 6

DEEP SOUTH CENTER FOR ENVIRONMENTAL JUSTICE, ET AL

VERSUS

THE COUNCIL OF THE CITY OF NEW ORLEANS, ET AL

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

\_\_\_\_\_  
DEPUTY CLERK

**THE COUNCIL OF THE CITY OF NEW ORLEANS'  
OPPOSITION TO PETITIONERS' REQUEST FOR  
DECLARATORY JUDGMENT, INJUNCTION,  
AND ATTORNEY'S FEES AND COSTS**

**NOW INTO COURT**, through undersigned counsel, comes The Council of the City of New Orleans, et al. (hereinafter the "Council"),<sup>1</sup> named defendants in this matter, who file this Opposition to Petitioners' Request for Declaratory Judgment, Injunction, and Attorneys' Fees and Costs. Petitioners allege that the Open Meetings Law was violated because some individuals were purportedly unable to observe and provide comment at the February 21 and March 8, 2018 Council meetings, despite the fact that hundreds of individuals attended each meeting, at least one hundred sixty-five (165) people provided public comment, both meetings could be watched live *via* the internet, and video recordings of both meetings are still available to the public. Given the Petitioner's allegations, this Court is tasked with determining whether or not the Council's meetings held on February 21 and March 8, 2018 were conducted in compliance with the open meetings law. The Council asserts that this inquiry can only be answered in the affirmative.

---

<sup>1</sup> 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.

## I. INTRODUCTION

This action was filed by opponents to the construction by Entergy New Orleans, LLC (“ENO”) of a new power plant in New Orleans East. On March 8, 2018, after nearly two years of proceedings in Council Docket No. UD-16-02 on ENO’s application for approval to construct the New Orleans Power Station (“NOPS”), the Council approved the new plant by adopting Council Resolution No. R-18-65, entitled “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” (“Resolution R-18-65”). In the course of the 188-page resolution, the Council explained why the new plant is necessary to maintain reliable electric service in New Orleans and therefore is in the public interest. More specifically, the Council found that NOPS will address a “critical and urgent reliability need” and “the risk of cascading outages that will leave 49,000 ENO customers without power for extended periods of time, particularly in New Orleans East.”<sup>2</sup>

The Petition to Enforce the Louisiana Open Meetings Law, for Declaratory Judgment, Injunction, Attorneys’ Fees and Costs, and Memorandum in Support (the “Petition”), filed by the Deep South Center for Environmental Justice (“DSCEJ”), VAYLA New Orleans, Justice and Beyond, 350 New Orleans, Sierra Club, Mr. Theodore Quant, and Ms. Renate Heurich (collectively, the “Petitioners”), seeks a judgment declaring that the Council violated the Louisiana Constitution and the Louisiana Open Meetings Law at a February 21, 2018 Utility, Cable, Telecommunications and Technology Committee (“UCTTC” or the “Committee”) meeting and at the March 8, 2018 meeting of the full City Council. The Petition further seeks an unprecedented declaration that Resolution R-18-65 is “void and without legal effect.” Such a declaration would disserve the public interest that the Council addressed after years of focus on the City’s electric reliability needs. Furthermore, as the Council establishes herein, under the facts of this case, the Open Meetings Law neither permits nor requires the Court to declare Resolution R-18-65 null and void. The Petition should be dismissed.

---

<sup>2</sup> Exhibit A – Resolution R-18-65 at 71, 73.

## II. BACKGROUND

A. *Resolution R-18-65 reflects extensive efforts by the Council to address the City's electric reliability needs and to permit public participation in the consideration of the NOPS application.*

Pursuant to the Constitution of the State of Louisiana and the Home Rule Charter of the City of New Orleans, the Council is the governmental body with the power of supervision, regulation, and control of utilities providing service within the City of New Orleans.<sup>3</sup> ENO is the public utility that provides electric and natural gas service to the citizens of New Orleans.<sup>4</sup> For more than 50 years, the Michoud Generating Station in New Orleans East served as the “cornerstone” of ENO’s electric system, with the transmission system being designed and evolving around the Michoud plant, which had 781 megawatts (“MW”) of local generating capacity.<sup>5</sup> Because of the age of the units and related maintenance and operational issues, ENO deactivated Michoud in June 2016, and that left New Orleans with no local electric generating resource within the City.<sup>6</sup>

For most of the life of the retired Michoud units, ENO was part of the Entergy System Agreement, under which ENO and other Entergy Operating Companies in Arkansas, Louisiana, Mississippi, and Texas operated as a single integrated and coordinated utility system.<sup>7</sup> In 2015, when consideration of the retirement of the last Michoud unit began, the Council was also involved in negotiations under the auspices of the Federal Energy Regulatory Commission (“FERC”) to terminate the Energy System Agreement.<sup>8</sup> At that time, “the Council was deeply concerned about ENO’s ability to continue to provide reliable service at a reasonable cost with no generation in the City, and particularly with no resource in the eastern region of ENO.”<sup>9</sup> After formal settlement proceedings before a FERC Administrative Law Judge (“ALJ”), an agreement was reached under which ENO was to pursue the development of at least 120 MW of

---

<sup>3</sup> Exhibit A – Resolution R-18-65 at 1.

<sup>4</sup> *Id.*

<sup>5</sup> *Id.* at 2.

<sup>6</sup> *Id.* at 2-3.

<sup>7</sup> *Id.* at 3.

<sup>8</sup> *Id.* at 3-4.

<sup>9</sup> *Id.* at 3.

new-build peaking generation within the City of New Orleans and to fully evaluate the Michoud property as a potential site for a new plant.<sup>10</sup> Apart from the FERC settlement proceedings, an extensive Council-required study of ENO's long-term resource needs identified a need for new generation in the City.<sup>11</sup>

ENO filed its original application to construct NOPS in June 2016 and a supplemental and amending application in July 2017.<sup>12</sup> Through those applications, ENO presented the Council with two options for NOPS: (1) a combustion turbine resource with a capacity of 226 MW, or alternatively, (2) seven Wärtsilä 18V50SG Reciprocating Internal Combustion Engine Generator sets with a total capacity of 128 MW ("RICE Alternative"). ENO proposed to construct both NOPS options at the Michoud property. The Council set procedural schedules on those applications that afforded interested parties and the public at large substantial notice and opportunity to be heard concerning the NOPS proposals.<sup>13</sup> The Council established a mechanism for interested parties to receive email notice of any public meetings or hearings concerning NOPS, provided for the Council Utilities Regulatory Office to conduct a public meeting in the Council Chamber, and required ENO to conduct no less than five well-advertised public outreach meetings (one in each Council district).<sup>14</sup> In total, ENO held at least 21 public meetings regarding NOPS, including several meetings in New Orleans East, and notices for the meetings and handouts provided at the meetings were available in English, Spanish, and Vietnamese in order to further participation by affected communities.<sup>15</sup>

In addition to the public meetings, members of the public had the opportunity to intervene and participate in a formal evidentiary process.<sup>16</sup> Parties and intervenors in Council

---

<sup>10</sup> *Id.* at 4. The FERC proceeding and the related proceeding in front of the Council to approve the Settlement Agreement both allowed members of the public to participate in the proceedings. *Id.* at 4, 6, 139:

<sup>11</sup> *See id.* at 6-9, 120.

<sup>12</sup> *See id.* at 10-11.

<sup>13</sup> *See id.* at 12-13 (discussing Council Resolution Nos. R-16-506 and R-17-426).

<sup>14</sup> *See id.* at 12-13.

<sup>15</sup> *Id.* at 12.

<sup>16</sup> As recited in Resolution R-18-65, the following parties intervened in the Council docket examining the NOPS proposal: Alliance for Affordable Energy, PosiGen, Air Products,

Docket No. UD-16-02 were given the opportunity to file written testimony and conduct extensive discovery (including depositions) on ENO's proposals.<sup>17</sup> Three of the Petitioners in this action – DSCEJ, 350 New Orleans, and the Sierra Club – intervened, engaged in discovery, and jointly presented testimony from seven witnesses in opposition to NOPS.<sup>18</sup> They also participated with the other parties in a five-day evidentiary hearing in front of a Council-appointed Hearing Officer in mid-December 2017, at which hearing the parties were given the opportunity to cross-examine witnesses.<sup>19</sup> At the end of that process, the Council received over 2,700 pages of testimony and exhibits, as well as extensive post-hearing briefing from the parties (including DSCEJ, 350 New Orleans, and the Sierra Club).<sup>20</sup> The Hearing Officer certified the record to the Council on January 22, 2018.<sup>21</sup>

**B. *The UCTTC Meeting of February 21, 2018.***

Resolution R-18-65 was before the UCTTC as the sole item on the agenda of its February 21, 2018 meeting.<sup>22</sup> The agenda for the February 21 UCTTC Meeting additionally noted:

Each party to the proceeding, which includes ENO, each intervenor and our Advisors, will be allowed 15 minutes to make their closing arguments. Parties will not be able to cede time to other parties. Each public speaker, not a party, will be allowed 2 minutes. Speakers will not be allowed to cede time to other speakers.<sup>23</sup>

The agenda did not change less than twenty-four hours before the February 21 UCTTC meeting, nor did the UCTTC modify or abandon the agenda during the meeting.<sup>24</sup>

---

DSCEJ, New Orleans Cold Storage & Warehouse Co. Ltd., Gulf States Renewable Energy Industries Association, Sierra Club, and 350 Louisiana – New Orleans. *See id.* at 13-14.

<sup>17</sup> *Id.* at 14. *See also id.* at 140 (“**WHEREAS**, the Council finds that through the over 21 community meetings, the opportunity for any interested party to intervene and participate in this docket, including by providing testimony in the case, the opportunity for members of the public to make formal comments in the docket at the public hearing as well as the ongoing ability of the public to write and contact their Councilmembers stating their opinion on the matter, the public has had sufficient opportunity for input into the Council’s decision regarding ENO’s application . . .”).

<sup>18</sup> *See id.* at 13-14.

<sup>19</sup> *See id.* at 14.

<sup>20</sup> *See id.* at 15.

<sup>21</sup> *Id.* at 14.

<sup>22</sup> *See* Exhibit B – Affidavit of Keith D. Lampkin (“K. Lampkin Affidavit”), at ¶ 5.

<sup>23</sup> *Id.* at ¶ 6.

<sup>24</sup> *Id.* at ¶ 7.

The meeting was held at 601 Poydras Street, in the 11th Floor Auditorium, because the Council's Chambers was under renovation and unavailable for the meeting.<sup>25</sup> The auditorium had a maximum occupancy of 252 people, and security personnel, who were provided by the building and worked in conjunction with New Orleans Police Department ("NOPD") officers, monitored and controlled access into the auditorium.<sup>26</sup> Seating for the public was on a first-come, first-served basis.<sup>27</sup> The Council did not instruct security to exclude anyone based on appearance, personal characteristics, or position held.<sup>28</sup>

The UCTTC meeting was scheduled to begin at 10:00 a.m., and, according to their own affidavits, the Petitioners planned and staged a press conference in front of the building at 601 Poydras Street before the meeting.<sup>29</sup> Petitioner VAYLA had arranged for buses to transport over 60 community members from New Orleans East,<sup>30</sup> and Petitioners Ms. Heurich, 350 New Orleans, and the Sierra Club set up a table outside the building to provide t-shirts and information to members of the public.<sup>31</sup> Ms. Heurich recalls the buses arriving at around 9:30 a.m. and that the residents who arrived on those buses did not begin filing into the building until around 9:45 a.m., after the press conference had concluded.<sup>32</sup> Ms. Heurich and other organizers did not make it to the 11th floor until 10:00 a.m. or later.<sup>33</sup>

As the Petitioners conducted their press conference, one of their affiants noticed a "small group of Entergy supporters" heading inside to attend the meeting.<sup>34</sup> The auditorium filled up as the meeting approached, and capacity limitations did not allow for immediate entry of all the community members who arrived at the auditorium after the press conference.<sup>35</sup> In the words of

---

<sup>25</sup> *Id.* at ¶ 3.

<sup>26</sup> *Id.* at ¶¶ 8-9.

<sup>27</sup> *Id.* at ¶ 10.

<sup>28</sup> *Id.*

<sup>29</sup> Petitioners' Exhibit 2 – Affidavit of Renate Heurich ("Heurich Affidavit"), at ¶¶6-7.

<sup>30</sup> Petitioners' Exhibit 10 – Affidavit of Dynisha Dianne Huggle ("Huggle Affidavit"), at ¶7.

<sup>31</sup> *See* Petitioners' Exhibit 2 – Heurich Affidavit at ¶6.

<sup>32</sup> *See id.* at ¶7.

<sup>33</sup> *See id.* at ¶7; Petitioners' Exhibit 6 – Affidavit of Grace Morris ("Morris Affidavit"), at ¶8.

<sup>34</sup> Petitioners' Exhibit 6 – Morris Affidavit at ¶7.

<sup>35</sup> *See* Exhibit C – Affidavit of Alvin Walton ("Walton Affidavit"), at ¶¶8-9, 11; Exhibit C-1 – Affidavit of Herman Shushan ("Shushan Affidavit"), at ¶¶8-9, 11.

one affiant, this created a “very charged scene.”<sup>36</sup> Several of the affiants describe interactions with security that would have commanded some time and attention from security personnel.<sup>37</sup> Other affiants (including Petitioners Mr. Quant and Ms. Heurich) describe “an impromptu civil rights rally in the hall, with people singing and chanting, and then testifying to what they would have said had they been allowed to address the meeting.”<sup>38</sup> There were chants demanding that people wearing suits be removed from the auditorium,<sup>39</sup> and several affiants describe efforts that could have been disruptive of the meeting: “When the meeting room doors opened, we started chanting to make sure that the people inside the meeting, including the City Council members, were aware that there was a large group of people outside that were not being allowed into the meeting.”<sup>40</sup>

Because of the activity outside of the auditorium, security personnel did their best to keep the doors closed to avoid disruptions to the meeting.<sup>41</sup> But, contrary to some of the Petitioners’ suggestions, the designated entry door to the auditorium was not “locked.”<sup>42</sup> Indeed, Petitioners’ affiant Mr. Pat Bryant states that he “opened the door” and looked inside when security stepped away from the door.<sup>43</sup> And the Councilmembers were mindful that people outside of the auditorium may have been waiting to get in and comment, and they encouraged speakers to make room after they had spoken and instructed the security personnel to help fill empty seats.<sup>44</sup> Security personnel worked throughout the meeting to allow people to enter the auditorium while

---

<sup>36</sup> Petitioners’ Exhibit 6 – Affidavit of Grace Morris (“Morris Affidavit”), at ¶10.

<sup>37</sup> See Petitioners’ Exhibit 2 – Heurich Affidavit at ¶14; Petitioners’ Exhibit 11 – Affidavit of Patrick Bryant (“Bryant Affidavit”), at ¶10.

<sup>38</sup> Petitioners’ Exhibit 5 – Affidavit of Ted Quant (“Quant Affidavit”), at ¶9; see also Petitioners’ Exhibit 2 – Heurich Affidavit at ¶¶10-11.

<sup>39</sup> Petitioners’ Exhibit 5 – Affidavit of Ted Quant (“Quant Affidavit”), at ¶9.

<sup>40</sup> Petitioners’ Exhibit 2 – Heurich Affidavit at ¶11; see also Petitioners’ Exhibit 15 – Affidavit of Jacob Horwitz (“Horwitz Affidavit”), at ¶11; Petitioners’ Exhibit 5 – Quant Affidavit at ¶9; Petitioners’ Exhibit 8 – Affidavit of Meg Logue (“Logue Affidavit”), at ¶6.

<sup>41</sup> See Exhibit C – Walton Affidavit at ¶13; see also Exhibit C-1 – Shushan Affidavit at ¶13.

<sup>42</sup> *Id.* at ¶8.

<sup>43</sup> Petitioners’ Exhibit 11 – Bryant Affidavit at ¶11; see also Petitioners’ Exhibit 5 – Quant Affidavit at ¶11.

<sup>44</sup> Exhibit D – Transcript of 2/21/18 UCTTC Mtg. (“Tr. 2/21”), at 106, 112.

also maintaining order and complying with room-capacity limitations.<sup>45</sup> Indeed, some people chose to remain in the hallway outside the auditorium when offered the opportunity to go inside.<sup>46</sup>

The Committee began the meeting around 10:20 a.m. by allowing the parties to deliver closing arguments; Petitioners DSCEJ, 350 New Orleans, and the Sierra Club each took advantage of that opportunity.<sup>47</sup> The meeting was recorded and broadcast live on the City Council's YouTube channel, where it remains available for viewing by any member of the public.<sup>48</sup> A link to the City Council's YouTube channel was provided on the City Council's website. Additionally, following the completion of the February 21 meeting, the video was published to and is available for viewing on the City Council's website.<sup>49</sup> The public comment period began around 12:25 p.m.;<sup>50</sup> by that time, Ms. Heurich recalls that security had allowed at least two groups of people who had been waiting in the hallway to enter the auditorium.<sup>51</sup> Ms. Heurich further recalls that by around 12:45 p.m., two hours before the public comment period ended, security had allowed everyone inside.<sup>52</sup>

During the course of the meeting, Councilmember Williams addressed directly the Petitioners' suggestions that people were admitted to the meeting room based on their appearance:

CHAIRMAN WILLIAMS:

There was nobody singled out because of race or political --

\* \* \*

What happened was these doors were opened up at a certain time, and whoever got in these seats first got in these seats first regardless of race, creed, class, or where you live, and I am not going to let that go.

---

<sup>45</sup> See Exhibit C – Walton Affidavit” at ¶11; Exhibit C-1 – Shushan Affidavit at ¶11.

<sup>46</sup> See Exhibit C – Walton Affidavit” at ¶16; Exhibit C-1 – Shushan Affidavit at ¶16.

<sup>47</sup> Exhibit D – 2/21 Tr.at 37-83; *see also* Exhibit E – Video of February 21, 2018 UCTTC Meeting;

<sup>48</sup> Exhibit B – K. Lampkin Affidavit, at ¶ 11;

<sup>49</sup> *Id.*; *see also* [http://cityofno.granicus.com/MediaPlayer.php?view\\_id=7&clip\\_id=2904](http://cityofno.granicus.com/MediaPlayer.php?view_id=7&clip_id=2904).

<sup>50</sup> *Id.* at ¶ 13.

<sup>51</sup> Petitioners' Exhibit 2 – Heurich Affidavit at ¶13.

<sup>52</sup> *Id.* at ¶17.



\* \* \*

It would be nice if we were in the City Council chambers. That's where I would like to be, but we are not.

\* \* \*

We can't be there. We got the biggest space we could find, but I am not about to let it go that a certain group was ostracized to outside this building . . .<sup>53</sup>

At the conclusion of the extensive public-comment period, which exceeded two hours, the Committee voted 4-1 in favor of moving Resolution R-18-65 to the full Council for further deliberation.

**C. *The Full Council Meeting of March 8, 2018.***

On March 8, 2018, the full Council took up Resolution R-18-65, heard nearly five hours of public comment, and voted to adopt the Resolution. The Council was aware of the potential for large public turnout at the meeting; therefore, the Council rushed renovations of the Council Chamber so that it would be available for the meeting.<sup>54</sup> The Council Chamber has a maximum occupancy of 258 people, and NOPD officers monitored and controlled access to the Council Chamber on March 8.<sup>55</sup> The Council did not instruct security to exclude anyone based on appearance, personal characteristics, or position held.<sup>56</sup> The public was seated on a first-come, first-served basis.<sup>57</sup> The meeting was also recorded and broadcast live through the City Council's website for those who could not attend in person, and it remains available for viewing by any member of the public to this day.<sup>58</sup>

Petitioners clearly had notice of the meeting and came prepared to participate. Petitioners' affiants anticipated that the meeting may overflow and arrived early to ensure that

---

<sup>53</sup> Exhibit D – Tr. 2/21, at 202-04. Councilmember Williams was responding to comments by Mr. Ben Gordon, who observed that the overcrowding issue had resolved by the time he was speaking. *See id.* at 202 (“I want to start off by saying that I was a little disappointed that the Vietnamese community was held outside because of overcrowding and the last ones to be let in here. Now I think they are all in here, which is good.”).

<sup>54</sup> Exhibit F – Video of March 8, 2018 Council Meeting (“Video 3/8”) at 0:32:25, 0:59:20 (also available at [http://cityofno.granicus.com/MediaPlayer.php?view\\_id=7&clip\\_id=2894](http://cityofno.granicus.com/MediaPlayer.php?view_id=7&clip_id=2894)).

<sup>55</sup> Exhibit G – Affidavit of Lora W. Johnson (“L. Johnson Affidavit”), at ¶¶6-7.

<sup>56</sup> *Id.* at ¶8.

<sup>57</sup> *Id.*

<sup>58</sup> *Id.* at ¶9; *see also* Exhibit F – Video 3/8.

they would be able to enter the Council Chamber.<sup>59</sup> Petitioner VAYLA participated in busing in roughly 150 community members from New Orleans East.<sup>60</sup> Petitioners set up a table outside the Council Chamber with signs for attendees to hold,<sup>61</sup> handed out interpretation headphones,<sup>62</sup> and provided food and beverages to those waiting to be let into the Council Chamber.<sup>63</sup> Video from the beginning of the public comment period on Resolution R-18-65 shows a full Council Chamber, with many individuals wearing “NO GAS PLANT” t-shirts and/or holding “NO GAS PLANT” signs.<sup>64</sup>

The Council meeting began around 10:20 a.m.<sup>65</sup> Resolution R-18-65 was Item 45 on the regular agenda, and that was the first regular-agenda item discussed after preliminary matters, special orders of business, and the consent agenda.<sup>66</sup> Discussion of Item 45 began around 11:10 a.m., and the public comment period began around 11:20 a.m.<sup>67</sup>

Petitioners acknowledge that seating was available inside the Council Chamber as late as fifteen minutes before the Council meeting began.<sup>68</sup> The Chamber was full at the start of the public comment period, and some people waited in the hallway until a seat became available inside the Council Chamber. But people were moving in and out of the room throughout meeting.<sup>69</sup> Attendees could enter the Council Chamber as long as NOPD could confirm that a seat was available.<sup>70</sup> Councilmembers also asked that attendees who had already given public

---

<sup>59</sup> Petitioners’ Exhibit 2 – Heurich Affidavit at ¶23; Petitioners’ Exhibit 6 – Morris Affidavit at ¶15; Petitioners’ Exhibit 12 – Affidavit of Minh Nguyen (“Nguyen Affidavit”), at ¶16.

<sup>60</sup> Petitioners’ Exhibit 12 – Nguyen Affidavit at ¶16.

<sup>61</sup> Petitioners’ Exhibit 6 – Morris Affidavit at ¶15.

<sup>62</sup> Petitioners’ Exhibit 10 – Huggle Affidavit at ¶17.

<sup>63</sup> *Id.* at ¶15.

<sup>64</sup> Petitioners’ Exhibit 5 – Quant Affidavit at ¶15; *see also* Exhibit F – 3/8 Video at 1:56.

<sup>65</sup> Exhibit G – L. Johnson Affidavit at ¶9.

<sup>66</sup> *Id.* at ¶10.

<sup>67</sup> *Id.* at ¶¶11-12.

<sup>68</sup> Petitioners’ Exhibit 5 – Quant Affidavit at ¶15.

<sup>69</sup> Exhibit G – L. Johnson Affidavit at ¶12.

<sup>70</sup> *See* Petitioners’ Exhibit 2 – Heurich Affidavit at ¶24; Petitioners’ Exhibit 8 – Logue Affidavit at ¶12; Petitioners’ Exhibit 11 – Bryant Affidavit at ¶15. One of Petitioners’ affiants relays that NOPD made an exception for one petitioner who had lost his seat by allowing him to remain standing inside chambers. Petitioners’ Exhibit 12 – Nguyen Affidavit at ¶18.

comment volunteer their seat to attendees in the hallway so that they could enter the Chamber and provide comment when their name was called.<sup>71</sup> Video of the meeting shows that by around 1:00 p.m., three hours before the public comment period ended, seats were becoming available in the Council Chamber.<sup>72</sup> And despite Petitioners' conclusory assertion that "many members of the public were prevented from attending the meeting,"<sup>73</sup> one of Petitioners' affiants acknowledges that, by 3:00 p.m., one hour before the public comment period ended, *no one* remained outside in the hallway.<sup>74</sup> During the public comment period, moreover, Chairman Williams directed his staff to collect comment cards from anyone who wished to submit one, including attendees who were waiting in the hallway.<sup>75</sup>

Comment cards were submitted and accepted throughout the meeting.<sup>76</sup> The Council worked through the comment cards, and a total of 94 people spoke during the public comment period.<sup>77</sup> As the transcript and video of the meeting reflect, 22 people spoke in favor of Resolution R-18-65, and 72 people spoke in opposition to the resolution.<sup>78</sup> A translator was available to translate all public comments into Vietnamese and a speaker who chose to have his/her comments translated was allowed additional time to compensate for the translation.<sup>79</sup> The Council also allowed one speaker to show a pre-recorded video that had been recorded at a local school.<sup>80</sup>

The public comment period on Item 45 ended around 4:00 p.m.<sup>81</sup> After discussion by the Councilmembers, the final vote on Item 45 was taken around 4:52 p.m., with a 6-1 vote in favor of adopting Resolution No. R-18-65.<sup>82</sup>

---

<sup>71</sup> Exhibit H – Transcript of 3/8/18 Council Mtg. ("Tr. 3/8"), at 26, 33. *See also* Petitioners' Exhibit 5 – Quant Affidavit at ¶ 16.

<sup>72</sup> Exhibit F – Video 3/8 at 3:25.

<sup>73</sup> Petitioners' Memorandum in Support of Amended Petition, p. 11.

<sup>74</sup> Petitioners' Exhibit 10 – Huggle Affidavit ¶ 19.

<sup>75</sup> Exhibit H – Tr. 3/8 at 4.

<sup>76</sup> Exhibit G – L. Johnson Affidavit at ¶13.

<sup>77</sup> *Id.* at ¶14.

<sup>78</sup> *Id.*

<sup>79</sup> *Id.* at ¶12.

<sup>80</sup> *Id.*

<sup>81</sup> *Id.* at ¶15.

**D. Resolution R-18-65 sets forth the Council's conclusions on matters of critical public interest.**

In approving ENO's construction of the RICE Alternative, the Council concluded in Resolution R-18-65 that "the NOPS RICE Alternative serves the public convenience and necessity and is in the public interest, and therefore prudent."<sup>83</sup> In support of this conclusion, the Council found that "ENO has conclusively demonstrated a critical and urgent reliability need,"<sup>84</sup> and that "it is urgent to address ENO's reliability issue to prevent degradation in system reliability, leading to the risk of cascading outages that will leave 49,000 ENO customers without power for extended periods of time, particularly in New Orleans East."<sup>85</sup> The Council further found that "the RICE Alternative has the ability to resolve ENO's current transmission system reliability issues, mitigate risk and provide operational flexibility."<sup>86</sup> In addition to meeting ENO's reliability needs, the Council found that the RICE Alternative is in the public interest because it meets "the City's anticipated capacity needs, . . . support[s] incorporation of renewables into ENO's generation portfolio, . . . [and] has on-site black-start capability, which will support ENO's critical loads in the event of an outage and will aid in restoration efforts after a storm, a very valuable feature given the City's susceptibility to extreme weather."<sup>87</sup>

The Petitioners now seek to use the Open Meetings Law to nullify these findings and set aside a public-interest determination by the Council with which they disagree. This effort runs contrary to the democratic principles underlying the Open Meetings Law, particularly because the Council fully considered the Petitioners' arguments and concerns. In the affidavits submitted with their Petition, the Petitioners relay concerns with pollution, flooding, alternatives to gas generation, the impact of NOPS on minority populations, and project costs.<sup>88</sup> Petitioners DSCEJ, 350 New Orleans, and the Sierra Club raised and briefed those very concerns in the

---

<sup>82</sup> *Id.* at ¶16.

<sup>83</sup> Exhibit A – Resolution R-18-65 at 187.

<sup>84</sup> *Id.* at 73.

<sup>85</sup> *Id.* at 71.

<sup>86</sup> *Id.* at 107.

<sup>87</sup> *Id.* at 108–09.

<sup>88</sup> *See, e.g.*, Petitioners' Exhibit 2 – Heurich Affidavit at ¶5; Petitioners' Exhibit 5 – Quant Affidavit at ¶6.

NOPS docket, and the Council addressed their arguments in significant detail in Resolution R-18-65 and rejected them as a basis for denying certification of the NOPS Rice Alternative.<sup>89</sup> Furthermore, as she acknowledges in the affidavit submitted by the Petitioners, Dr. Beverly Wright submitted written testimony in the NOPS docket on behalf of DSCEJ, the Alliance for Affordable Energy, 350 New Orleans, and the Sierra Club.<sup>90</sup> Resolution R-18-65 specifically addressed Dr. Wright's testimony and concerns and set forth the Council's reasons for finding that "siting the NOPS plant at Michoud is reasonable," and that "there is no perpetuation of racial injustice where a new plant is sited on the location of a prior plant that has higher emissions than the new plant."<sup>91</sup> In short, Resolution R-18-65 proves that the Council was meticulous in gathering, understanding, and responding to the concerns about NOPS that were held by opponents to the plant.

### III. LAW AND ARGUMENT

#### A. *Louisiana's Open Meetings Law is intended to prevent "secret decisions" by public bodies.*

The Petitioners' action to declare Resolution R-18-65 null and void depends on the following interpretation of Louisiana's Open Meetings Law, La. R.S. 42:11-28, that they set forth in their memorandum:

[T]he 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.

Mem. Supp. Am. Pet. at 15 (emphasis in original). The Petitioners provide no legal citations to support this interpretation, and, more to the point, the Open Meetings Law does not provide the sort of "absolute" rights that the Petitioners advocate. Even fundamental rights secured by the

---

<sup>89</sup> See Exhibit A – Resolution R-18-65 at 18-19, 26-29, 31, 51-66, 73, 76-82, 96-101, 115-19, 151-56, 173, 175, 184, 185 (relaying the arguments of the Joint Intervenors, which included DSCEJ, 350 New Orleans, and the Sierra Club); see also *id.* at 41-43, 70-73, 90-91, 107-09, 137-41, 170-71, 186-88 (setting forth the Council's findings and responses to the arguments raised by the parties).

<sup>90</sup> Petitioners' Exhibit 9 – Affidavit of Dr. Beverly L. Wright, at ¶5.

<sup>91</sup> Exhibit A – Resolution R-18-65 at 171. See also *id.* at 152-54, 159-60, 162-64, 168-71 (discussing the testimony of Dr. Wright and the responses to that testimony).

federal and Louisiana constitutions are not absolute;<sup>92</sup> indeed, the Open Meetings Law implements a provision of Louisiana's constitution that is expressly subject to exceptions "in cases established by law."<sup>93</sup>

The Open Meetings Law is focused on the process of conducting public business and not on giving dissenter's rights to an individual who disagrees with the policy determinations of a governmental body. It follows that "[t]he primary purpose of the Open Meeting Law and the constitutional provision insuring the right of citizens to participate in the deliberations of public bodies is to protect citizens from secret decisions made without any opportunity for public input." *Delta Dev. Co. v. Plaquemines Par. Comm'n Council*, 451 So. 2d 134, 138 (La. App. 4th Cir. 1984). "The Open Meetings Law was designed to allow the public to observe and evaluate public officials, public conduct, and public institutions." *Daigre v. Terrebonne Ass'n for Retarded Citizens*, 543 So. 2d 1108, 1109 (La. App. 1st Cir. 1989). Accordingly, violations of the Open Meetings Law have been found when public bodies failed to provide written notice of their meetings or failed to open those meetings to the public. *See, e.g., Tectrans, Inc. v. New Orleans Aviation Bd.*, 695 F. Supp. 2d 313, 322 (E.D. La. 2010).

In this case, as the Council discusses further below, there was no failure to provide notice or to open the challenged meetings to the public. The Petitioners complain, instead, that not all members of the public could access the meeting rooms when the meetings started. It does not appear that Louisiana's courts have previously applied the Open Meetings Law to address meeting rooms filled to capacity, but the New Mexico Supreme Court, under similar facts, held that open meetings laws do not require a public body to provide a location sufficient to accommodate all members of the public who show up for a meeting. *Gutierrez v. City of Albuquerque*, 631 P.2d 304, 306 (N.M. 1981).

---

<sup>92</sup> *See State v. Wiggins*, 139 So. 3d 1, 7 (La. App. 1st Cir. 2014) (noting that "fundamental rights are not absolute").

<sup>93</sup> La. Cnst. Art. XII, §3 ("No person shall be denied the right to observe the deliberations of public bodies and examine public documents, except in cases established by law."). In *St. Mary Anesthesia Assocs. Inc. v. Hosp. Serv. Dist. No. 2 of Parish of St. Mary*, 836 So. 2d 379, 388 (La. App. 1st Cir.), *writ denied*, 840 So. 2d 577 (La. 2003), the court held that Art. XII, § 3's right to observe deliberations of public bodies is not a "fundamental, inalienable" constitutional right.

In *Gutierrez*, the plaintiffs challenged the Albuquerque City Council's approval of an application to sell alcohol within 300 feet of a school because the Council Chambers, which had a maximum capacity of 156 persons, was not large enough to accommodate all of the large crowd that appeared to attend the meeting. *Id.* at 305. Unlike the Louisiana Open Meetings Law, the New Mexico Open Meetings Act provided, with respect to public meetings, that "all persons so desiring shall be permitted to attend and listen to the deliberations and proceedings." *Id.* But, consistent with the purposes of the act, the court construed that language to mean only that the governmental entity must allow *reasonable* public access for those who wish to attend and listen to the proceedings. *Id.* at 307. Noting the City Council's substantial compliance with the act and that the council went beyond the requirements of the act by allowing over two hours of public comment, the court dismissed the challenge to the council's approval of the application for reasons that are particularly instructive here:

Petitioners focus upon the language "attend and listen" and contend that all must be in the room or in the presence of the Council members, regardless of the size of the crowd and the limitations of the meeting hall. This narrow view would permit invalidation of any action by a public body by the simple method of overflowing the Chambers. Thus, the Council, to be safe, would have to hire the football stadium or hold its meetings in a wide open space. Even then, *reductio ad absurdum*, if a tree or other obstruction stood between an individual and the Council, he could claim that he was not permitted to "attend".

To "attend and listen" is equally susceptible of an interpretation that persons desiring to attend shall have the opportunity to do so, that no one will be systematically excluded or arbitrarily refused admittance, and that the meeting will not be "closed" to the public. The circumstances of this case make manifest the reasonableness of such an interpretation. Everyone desiring to attend the City Council meeting was afforded an opportunity to do so, but once the hall was filled, no others could be admitted.

*Id.* at 306. The *Gutierrez* court cited multiple cases throughout the country in which courts also applied the doctrine of substantial compliance,<sup>94</sup> and that doctrine finds support in Louisiana law

---

<sup>94</sup> See *City of Flagstaff v. Bleeker*, 600 P.2d 49, 51 (Ariz. Ct. App. 1979) ("The next issue is whether the proceedings before the Board complied with the open meeting law. Substantial compliance will satisfy its requirements where a technical violation has no demonstrated effect on a complaining party."); *McConnell v. Alamo Heights Indep. Sch. Dist.*, 576 S.W.2d 470, 474 (Tex. Civ. App. 1978) ("The law appears settled that the notice provisions of the Texas Open Meetings Act are subject to the substantial compliance rule."); *Houman v. Mayor and Council of Borough of Pompton Lakes*, 382 A.2d 413, 169-70 (N.J. Super. Ct. Law Div. 1977) (regarding open meetings laws, "substantial compliance is all that is normally required"); *Edwards v. City Council of the City of Seattle*, 479 P.2d 120, 124 (Wash. Ct. App. 1970) ("Such substantial compliance with the intent of the statute is sufficient, we think.").

as well.<sup>95</sup> More importantly, like the New Mexico act, the Louisiana Open Meetings Law contains provisions that make clear that “the Legislature did not intend to unduly burden the appropriate exercise of governmental decision-making and ability to act.” *See id.* at 307.<sup>96</sup>

Finally, the doors to a meeting room need not be physically open for the meeting to be open to the public. *Allen v. Bd. of Cty. Comm'rs of Lincoln Cty.*, 178 Colo. 354, 357, 497 P.2d 1026, 1027 (1972). Notably, the *Allen* court relied on the fact that “the reason for closing [the door to the meeting room] was to reduce noise in the room.” *Id.* at 1027.

**B. *The UCTTC Meeting and the March 8 Council Meeting were “open to the public.”***

The Petitioners contend that the Council violated La. R.S. 42:14(A) and 42:14(D) at both the February 21 UCTTC Meeting and the full Council Meeting of March 8 primarily because some people had to wait to enter the meeting rooms. This contention provides no legal basis for finding a violation of the Open Meetings Law. All indicia and requirements under Subsections 14(A) and 14(D) for a meeting “open to the public” were satisfied on both February 21 and March 8:

- First, for both meetings, the Council provided public notice in accordance with the Open Meetings Law, La. R.S. 42:19, and the attendance at both meetings confirms public awareness of the meetings.<sup>97</sup>
- Second, neither meeting was conducted in secret or in executive session; both meetings were recorded, and votes were taken on the record.<sup>98</sup>
- Third, the Committee and the Council allowed a public comment period at both meetings. Comment cards were accepted throughout each meeting, the

---

<sup>95</sup> *See Adkins v. Huckabay*, 755 So. 2d 206, 218 (La. 2000) (holding substantial compliance with absentee voting statutes was sufficient and defining substantial compliance as “actual compliance with respect to the provisions essential to the reasonable objectives” of the statute); *Lucas v. Berkett*, 98 So. 2d 229, 234 (La. 1957) (holding the legislature substantially complied with the Louisiana Constitution in proposing an amendment since its actions were “sufficient to clearly identify the proposed amendment”).

<sup>96</sup> *See, e.g.*, La. R.S. 42:17 (setting forth exceptions to open meetings); La. R.S. 42:24 (making actions taken in violation of Open Meetings Law “voidable,” not void, and establishing a 60-day peremptive period for challenges).

<sup>97</sup> *See* Exhibit B – K. Lampkin Affidavit; Exhibit G – L. Johnson Affidavit.

<sup>98</sup> *Id.*



Committee and the Council worked through those cards, and the public comment period lasted over two hours on February 21 and nearly five hours on March 8.<sup>99</sup>

The Petitioners also have asserted vague allegations that some Entergy employees and supporters were provided “favorable treatment” by permitting them to enter the Council Chamber through a back door on March 8. But Mr. Bryant, their affiant on this allegation, contends that he and other members of Justice and Beyond obtained access to the Council Chamber at the same time and in the same manner.<sup>100</sup> Mr. Bryant also asserts that security opened the front doors to the Council Chamber upon seeing him enter through the back door.<sup>101</sup> Furthermore, the video of the March 8 meeting shows that opponents to the NOPS plant were the dominant presence in the Council Chamber,<sup>102</sup> as confirmed by the 72 speakers against the plant out of a total of 94 public speakers.<sup>103</sup> So there is no factual basis for concluding that Entergy accessed the meeting in a way that others did not, and this allegation also provides no legal basis for setting aside the Council’s actions on March 8 under the Open Meetings Law.

In summary, although the Petitioners allege that some people were not permitted to observe the entirety of the meetings, and that some left without giving comments, the record is clear that other members of the public did observe and did provide comments. Any limitations on entering the meeting rooms were functions of preventing overcrowding and maintaining order; nobody was systematically excluded based on who they were or what position they supported.

The record also is clear that the Council did take reasonable steps to facilitate access to the meetings and permit as many members of the public to speak as possible. As in *Gutierrez*, there is no evidence that anyone was denied the *opportunity* to attend and provide comment at either meeting. Both meetings, moreover, were live-streamed and recorded, which means that, to this day, any interested member of the public can review and observe the deliberations of the

---

<sup>99</sup> *Id.*

<sup>100</sup> See Petitioners’ Exhibit 11 – Bryant Affidavit at ¶14.

<sup>101</sup> *Id.*

<sup>102</sup> Exhibit F – Video 3/8 at 1:56:18.

<sup>103</sup> Exhibit G – L. Johnson Affidavit at ¶14.

Committee and the Council at those meetings. Because the meetings were in no way secret, and extensive public comment was received, the essential purpose and requirements of the Open Meetings Law were fulfilled.

**C. *The UCTTC did not alter the agenda of the February 21 meeting.***

The Petitioners argue that the UCTTC changed the agenda of the February 21 meeting in violation of La. R.S. 42:19(A)(1)(b)(ii)(aa). They are incorrect; the Committee never changed the agenda that had been properly noticed in accordance with the Open Meetings Law. The agenda provided that each party to the proceeding would be allowed 15 minutes for closing arguments and that “[e]ach public speaker, not a party, will be allowed 2 minutes.”<sup>104</sup> Some people affiliated with the Petitioners allegedly interpreted this quoted language from the agenda to prohibit all “representatives” of parties from submitting public comments.<sup>105</sup> Petitioners’ affiant Ms. Morris of the Sierra Club explains that it was her “understanding” that she could not submit public comments “because intervenors were only allowed comments from one person.”<sup>106</sup> But the meeting agenda itself did not set forth such prohibitions and limitations, and the law does not permit a Council resolution to be nullified based on a subjective interpretation of a meeting agenda.

Nevertheless, the Petitioners accuse the Committee of improperly changing the agenda when it allowed Ms. Heurich, Vice President of 350 New Orleans, to provide comments after the organization’s attorney had already delivered a closing argument.<sup>107</sup> But Ms. Heurich herself was not a party in the NOPS docket, and nothing on the agenda prohibited her from commenting.<sup>108</sup> The argument that the agenda was modified or abandoned has no merit, and it is ironic that the Petitioners accuse the UCTTC of violating the Open Meetings Law by *allowing* Ms. Heurich to provide comments in opposition to NOPS at an open public meeting.

---

<sup>104</sup> Petitioners’ Exhibit 7.

<sup>105</sup> See Petition at ¶ 42.

<sup>106</sup> Petitioners’ Exhibit 6 – Morris Affidavit at ¶14.

<sup>107</sup> See Petition at ¶ 42.

<sup>108</sup> See Exhibit A – Resolution R-18-65 at 13-14 (listing the intervenor parties).

**D. *Petitioners' request to declare Resolution R-18-65 null and void is out of proportion to the scope of the alleged violations.***

When a public body does take action in violation of the Open Meetings Law, that action is not absolutely null and void; it is merely “voidable.” *Delta Dev. Co.*, 451 So. 2d at 138 (“[A]ction taken by a public body without compliance with the Open Meeting Law is not an absolute nullity.”); La. Stat. Ann. § 42:24 (“Any action taken in violation of this Chapter shall be voidable by a court of competent jurisdiction.”). Under La. R.S. 42:26, in an enforcement proceeding, “the court *may* grant any or all” of the listed forms of relief, including rendering the action void—but this does not mandate that the action *must* be voided. La. R.S. 42:26(A) (emphasis added).

Because an action taken in violation of the Open Meetings Law is not automatically void, the district court has the discretion to assess the weight of the violation and determine an appropriate form of relief (or deny relief) based on the intent and purpose of the Open Meetings Law. The district court in *Daigre*, 543 So. 2d at 1110–11, found technical violations of the Open Meetings Law when the former executive director of the Terrebonne Association for Retarded Citizens was terminated during a meeting of the Board of Directors that should have been public and should have included recorded votes. *Id.* Nevertheless, the court refused to void the Board’s action based on those “technical violations,” finding that the plaintiff had actual notice of the meeting and was not prejudiced by the violations. *Id.* at 1111. The First Circuit agreed that the district court acted within its discretion to deny the plaintiff relief, even though he had established technical violations of the law. *Id.* at 1110.

In this case, even if there were technical violations of the Open Meetings Law (there were not), the Court still should decline to declare Resolution R-18-65 void. That resolution concerns the vital issue of reliable electric service—a service on which the City and its residents depend. The proceedings in the NOPS docket took almost two years and examined several complicated issues. During that period, the Petitioners had and took advantage of multiple opportunities to communicate their opposition to NOPS to the City Council. The Council did not accept their positions, which is its prerogative as a utility regulator. To set aside the Council’s policy determinations because access to meeting rooms was limited for portions of two public meetings

would be grossly disproportionate to the alleged violations of the Open Meetings Law. That is particularly true considering the Council's efforts to facilitate public awareness of and participation in the NOPS docket.

In *Bradford Area Educ. Ass'n by Lutz v. Bradford Area Sch. Dist.*, a Pennsylvania court affirmed the trial court's decision not to void a proposal adopted by the defendant public entity, despite a violation of the open meetings law. 132 Pa. Cmwlth. 385 at 389–90, 572 A.2d 1314 at 1316. It reasoned:

Here the Board held extensive public meetings. The public had ample opportunity to voice both objections and support for the plan. The plaintiff's officers and members met several times with Dr. Myers and the Board and commented at length on the feasibility and advisability of the proposal. This was not a plan adopted in secret and then foisted on the unsuspecting public.

If the Board's vote in adopting the proposal was set aside it would delay for a full year the implementation of any meaningful reorganization plan . . . . It would be a year marked by uncertainty among the professional staff and students, escalating costs for the taxpayers, and additional delay in making the reforms which the Board has concluded are necessary for the healthy functioning of the system. We think the harm to the students, teachers, taxpayers, and the educational process itself occasioned by such a delay far outweigh any benefits that would accrue from setting aside the adopted plan and requiring the board to begin anew the procedure leading to the same inevitable result.

*Id.* (quoting Opinion of trial court, 8/25/88, pp. 5–6).

Just like the Board in *Bradford*, the Council held extensive public meetings before voting to approve Resolution R-18-65. The public had ample opportunity to voice their concerns and/or support for the proposed ENO facility. The Council did not hide this process from the public and there is no basis to void the vote to approve Resolution R-18-65.

Finally, the Open Meetings Law does not require the Council to disregard all concerns for public safety and order.<sup>109</sup> To the contrary, the City has the “authority to impose laws and regulations which are reasonably related to protection or promotion of a public good, such as health, safety or welfare.” *City of New Orleans v. Benson*, 665 So. 2d 1196, 1199 (La. App. 4 Cir. 11/29/95). This authority extends to enforcing “fire and building code regulations designed to protect the public from injury to life, limb and property caused by fire.” *Id.* And Louisiana law has long recognized that overcrowding in an assembly hall raises genuine life-safety

---

<sup>109</sup> See, e.g., La. R.S. 42:17(C) (“The provisions of this Chapter shall not prohibit the removal of any person or persons who willfully disrupt a meeting to the extent that orderly conduct of the meeting is seriously compromised.”).

concerns.<sup>110</sup> Accordingly, the Court should not fault the Council, the NOPD, or security personnel for any precautions taken at the February 21 and March 8 meetings to prevent overcrowding and manage what the Petitioners themselves submit was a “very charged scene” on February 21.

**E. *Any irregularity with the UCTTC Meeting does not affect the validity of Council Resolution R-18-65.***

The Council was aware of the Petitioners’ concerns with the February 21, 2018 Committee meeting and was careful to explain at the start of the March 8, 2018 meeting why those concerns did not compromise the Council’s consideration of Resolution R-18-65. Councilmember Williams began the March 8 meeting with the following statements:

First, I know there was some concern about the committee meeting where this item was preliminarily discussed. I want to note for the record that that committee vote was not a legally binding vote. It was, in fact, a mere recommendation. In this circumstance, only the vote of the full Council, today, carries the legal weight and is outcome determinative. Although the committee meeting was conducted in compliance with the law, it is today’s vote and today’s public hearing where the rubber meets the road and a real decision is made.

...

The vote at the Utility Committee meeting was to move this docket to the full Council for the actual legal vote which will have determining effect so that all members of the City Council can vote. The City Council is the regulatory authority, not the committee.

Today we will hear from all parties. I know there are several people feel as though they were not heard from at the committee hearing and that is what today is for.

I have directed my staff, as well as members of the clerk’s office who are assisting us, who will be collecting public comment cards from folks in the hallway. We will have a robust discussion. We will hear from the public. We will hear from experts. We will hear from Entergy. And we are here to conduct a full public hearing and receive public comment on this very important issue.

All comments today will be made part of the formal record. And if time permits today, we would like to hear from every single person that wants to weigh in today.<sup>111</sup>

---

<sup>110</sup> See La. Admin. Code 55:V.1505 (providing that “[t]here shall be no more individuals permitted in [an] auditorium or place of public assembly than can be accommodated by the number of seats and the arrangement of said seats as approved by the fire marshal or a certified local authority.”); La. R.S. 40:1563.4 (authorizing the State Fire Marshal to impose civil fines for violations of the statutes, rules, and regulations that he/she is charged with enforcing).

<sup>111</sup> Exhibit H – Tr. 3/8 at 2-4.

The law fully supports Councilmember Williams’s explanation of the significance of the vote on March 8. The Home Rule Charter of the City of New Orleans does not require that the Council’s utility orders first be approved by the UCTTC. Pursuant to Charter Section 3-130(6), orders of the Council in utility matters “shall be upon a resolution or an ordinance in open council meeting and passed *by an affirmative vote of a majority of all members of the Council.*” Home Rule Charter § 3-130(6) (emphasis added). The Petitioners can cite no law, rule, or regulation that requires a recommendation or vote of the UCTTC before the Council can hear and adopt a resolution such as Resolution R-18-65.

The March 8 meeting is the only meeting at which the full Council took binding legal “action” on the proposed Resolution R-18-65. Although the UCTTC meeting was subject to the Open Meetings Law, a violation at the Committee meeting could not serve as a basis to void the Council’s later action adopting the Resolution. The Fourth Circuit has held that when violations of the Open Meetings Law are found, “the injury or harm to the public [is] cured when [a] ratification resolution [is] adopted.” *Delta Dev. Co.*, 451 So. 2d at 138. To the extent there was any violation of the Open Meeting Law at the February 21 committee meeting, any injury or harm to the public was cured when the Council adopted the Resolution on March 8.

**F. *Any alleged violation regarding the October 16, 2017 public meeting is perempted, and the discussion of “paid actors” is irrelevant.***

The Petitioners include in their Petition and memorandum extensive discussion of an October 16, 2017 public meeting in the Council Chamber and assertions that actors were paid to speak in favor of NOPS at that meeting and at the February 21, 2018 UCTTC meeting.<sup>112</sup> This discussion is irrelevant and improper.

First, as the Petitioners acknowledge, the October 2017 hearing is not a proper subject of their enforcement action under the Open Meetings Law.<sup>113</sup> Not only did the Council take no official action at the October 2017 meeting, but also suits seeking to void any action under the Open Meetings Law must be “commenced within sixty days of the action.” La. R.S. 42:24. This suit was not brought until April 19, 2018—well past the 60-day deadline. The 60-day period,

---

<sup>112</sup> See Petition at ¶¶34-38, 64-74; Petitioners’ Memorandum at 3-5, 8, 11-13.

<sup>113</sup> See Petition at ¶34.

moreover, is peremptive, not prescriptive. *Hoffpauir v. State, Dep't of Pub. Safety & Corr.*, 762 So. 2d 1219, 1222 (La. App. 1st Cir. 2000). Accordingly, any allegations regarding the October 16, 2017 meeting cannot be a basis to void the Council's resolution approving the NOPS application.

Also irrelevant are the allegations 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."<sup>114</sup> Those allegations, which concern actions by third parties, do not give rise to a cause of action against the Council under the Open Meetings Law. Indeed, those allegations do not indicate the violation of any law or regulation.<sup>115</sup> A person is not precluded from providing public comment simply because he or she is being paid to appear at a meeting. Furthermore, the Petitioners' suggestion that a governmental body should discriminate in favor of "real concerned residents" when conducting public meetings raises serious constitutional questions that are well beyond the scope of this action under the Open Meetings Law.<sup>116</sup> Because the discussion of paid actors is not relevant to the statutory violations alleged in the Petition,<sup>117</sup> the Court should not admit or consider the Petitioners' exhibits and argument on that issue when it decides this matter.<sup>118</sup>

#### IV. CONCLUSION

For the foregoing reasons, the Council respectfully requests that this Court deny all relief requested by the Petitioners, dismiss the Petition, and assess all costs of these proceedings against the Petitioners.

---

<sup>114</sup> Petition at ¶64.

<sup>115</sup> At the time of the October 16, 2017, and February 21, 2018, meetings, applicable law, as well as the rules in effect at the Council, did not preclude the very conduct that Petitioners address in their allegations. In fact, the Council's current rules require speakers to disclose whether they are being compensated, but do not preclude compensated speakers from appearing before the Council.

<sup>116</sup> See Petitioners' Memorandum at 18.

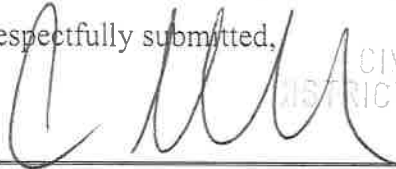
<sup>117</sup> See Petition at ¶¶8-9.

<sup>118</sup> Exhibits subject to this objection include Petitioners' Exhibits 4, 18, and 19.

FILED

2018 JUL -3 P 2:52

Respectfully submitted,



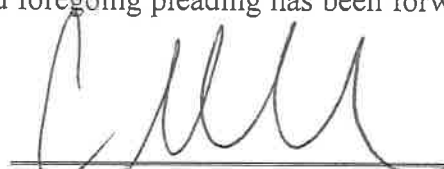
CIVIL  
DISTRICT COURT

---

**CORWIN ST. RAYMOND, LSB#31330**  
DEPUTY CITY ATTORNEY  
**WILLIAM GOFORTH, LSB# 33153**  
ASSISTANT CITY ATTORNEY  
**CHERRELL R. SIMMS, LSB#28227**  
SENIOR CHIEF DEPUTY CITY ATTORNEY  
**SUNNI J. LEBEOUF, LSB#28633**  
CITY ATTORNEY  
1300 Perdido Street, Ste. 5E03  
New Orleans, Louisiana 70112  
Telephone: 504-658-9920  
Facsimile: 504-658-9868

**CERTIFICATE OF SERVICE**

I certify that a copy of the above and foregoing pleading has been forwarded to opposing counsel, via e-mail, on July 3, 2018.



---

CORWIN ST. RAYMOND