

CIVIL DISTRICT COURT
PARISH OF ORLEANS
STATE OF LOUISIANA

ALLIANCE FOR AFFORDABLE ENERGY, ET AL NO.2017-5208
VERSUS CIVIL ACTION
THE COUNCIL FOR THE CITY OF N.O. DIVISION "I"

Testimony and Notes of Evidence heard in
the above entitled cause of action held in Open Court
before the HONORABLE PIPER D. GRIFFIN, judge
presiding in Division "I" on FRIDAY, the 14th day of
JUNE of 2019.

Reported By:

SHANNON DERUISE'
Official Court Reporter

1 * * * A T T O R N E Y S * * *

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4 REPRESENTING PLAINTIFF:

5 Attorney Monique Harden

6 FOR DEEP SOUTH CENTER FOR
7 ENVIRONMENTAL JUSTICE

8 Attorney Susan Stevens MILLER

9 FOR ALLIANCE FOR AFFORDABLE
10 ENERGY AND 350-NEW ORLEANS

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12 REPRESENTING DEFENDANTS:

13 Attorney Basile J. Uddo

14 Attorney Pressley R. Reed, Jr.

15 FOR THE CITY OF NEW ORLEANS

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17 Attorney W. Raley W. Alford, III

18 FOR ENTERGY NEW ORLEANS

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1 * * * P R O C E E D I N G S * * *

2 FRIDAY, JUNE 14, 2019

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6 THE COURT:

7 We're going to
8 deal with 2 cases today, everybody knows
9 that. We're going to deal with both the
10 Alliance for Affordable Energy et al versus
11 The City Council of New Orleans, 2018-03471
12 as well as 2018-03843, Deep South Center
13 for Environmental Justice versus The
14 Council for The City of New Orleans. First
15 I was going to have you guys say which one
16 you wanted to hear first, One is a written
17 judgment and I know that I've taken quite a
18 bit of time because I wanted to get it what
19 I considered right.

20 During the process
21 I learned a lot, a lot about the process
22 that the City and the City Council goes
23 through. I've learned that the citizens of
24 New Orleans are deeply concerned about,
25 both the City Council and the citizens of
26 New Orleans are deeply concerned about
27 making sure that we not only have the
28 appropriate energy necessary to power the
29 City but that we also do everything in an
30 appropriate way. I'm going to first, I
31 think the counsels in front of me, some of
32 whom are different from the other case,

1 deal with 2018-38436. That's the one that
2 deals with, among other things, the issue
3 of the open meetings laws. One thing I did
4 determine, and I will applaud and ya'll can
5 take it the way you wish to take it, I do
6 applaud the City Councilmembers who were
7 there who did their due diligence and make
8 sure that ya'll understand the City
9 understands that my judgment, though
10 applauding the City, does rule against the
11 City. And let me explain to you why. The
12 Open Meetings Laws were designed and
13 continue to be designed to ensure that the
14 citizens, that their voices be heard and
15 that they have an opportunity to have a
16 seat at the table when decisions are made
17 by those that they've elected to make those
18 decisions. My review of that, I don't get
19 to decide whether I agree or disagree,
20 that's not the issue. The issue upon
21 appeal is whether or not there was a
22 substantial compliance, the City Council,
23 and I guess my judgment won't make sense to
24 everybody since I'm going to make this
25 statement because I will make this
26 statement, I don't see that they did
27 anything wrong, but even though they did
28 nothing wrong the reality becomes this;
29 the citizens of New Orleans have to believe
30 in the process and trust the process. And
31 to believe in and trust the process they
32 have to have an appreciation that the

1 process itself is one in which their voices
2 are heard. The City's investigation showed
3 they were paid citizens, that those paid
4 citizens were present and to some extent
5 may have skewed the presentation, that does
6 not mean that, again, that the Council did
7 anything wrong or that the views
8 ultimately, that the decision ultimately
9 made by the Council was at all wrong, but
10 in making this decision I have to look at
11 and have in my own opinion and looking at
12 whether there is substantial compliance
13 make sure that there is...there is in fact
14 adherence to the policy behind the Open
15 Meetings Laws. And so after having
16 reviewed all the record, and I'm only
17 vacating the judgment because I want to
18 make sure that as the City Council has the
19 meetings that there is no, that the
20 citizen's voices are heard, that the
21 citizen's voices are in the room to the
22 extent they choose to be in the room and
23 that there is a true appreciation for both
24 the pros, cons and in essence what I'm
25 saying is that Energy's actions undermined
26 the Public Meetings Laws. I can't say it
27 any differently. That being said, that is
28 my judgment in that case. I would ask that
29 Petitioners simply prepare a judgment that
30 vacates the original ruling finding that
31 the Open Meetings laws were not adhered to
32 as relates to the meaning and policy behind

1 the Open Meetings Laws.

2 We now move on to
3 2018-03471, and that's a written judgment
4 and we will give, who are the attorneys in
5 that? Let's change seats. We are copying
6 that judgment, that judgment is 26 pages
7 long, it's taking a minute. I'm going to
8 do for purposes, you will get the judgment,
9 Tawanda is making one of my staff members
10 is making a copy. In that instance, in
11 that case involved whether or not the
12 City's determination and the Council's
13 determination in allowing Entergy to build
14 the plant in some what violated the due
15 process rights of the Petitioners, it did
16 not. And in that instance I rule squarely
17 in favor of the City and find that the
18 City, in looking at the Resolution and the
19 settlement agreement and all of the history
20 that, and you, ya'll will have, the lawyers
21 will have my judgment to look at. The
22 reality is this, from what I could see the
23 City did a very good job of making sure
24 notice of hearings were had, the City in
25 it's concern for what was clearly taking
26 place in the industry meaning that in the
27 energy industry there were these agreements
28 there were being massaged, is probably the
29 best word to say, but they were being dealt
30 with as Entergy the Corporation bought
31 several subsidiaries and subsequently
32 figured out a way to make sure that these

1 subsidiaries were able to stand on their
2 own. Because of these changes the City did
3 it's due diligence, I can't say it any
4 different, they had multiple meetings, they
5 did investigation, they made a
6 determination based on lots of evidentiary,
7 lots of evidentiary hearings. This is one
8 of the things I know and I know that one of
9 the things the Petitioners says that they
10 didn't know, clearly the City notified
11 everybody of what was going on. I don't
12 think people appreciated the magnitude of
13 what was happening until the ninth hour.
14 And it is clear from what I read and from
15 the information provided to me that the
16 City and it's advisors, I know one of the
17 arguments made by Petitioners is that the
18 presence of the advisors in some way was
19 also a violation of due process, again I
20 feel that it was not. The only way that
21 the City functions is if it has people who
22 have knowledge within an area that are able
23 to do the investigation necessary. I
24 looked at the case law regarding ratemaking
25 versus rule determination and determined
26 that the City as it was acting in this
27 particular matter as the entity responsible
28 for the utilities and more specifically for
29 energy, that it did not, it was not
30 inappropriate for it to have the advisors
31 and have the advisors both help them
32 through the process and help them make a

1 decision that was good for the citizens at
2 large. The determination of the type of
3 plant needed was done after much
4 negotiations, and again, the opinion is 26
5 pages, and it's 26 pages because I wanted
6 the Petitioners to understand that I looked
7 at everything. I didn't want them to think
8 I did not have an appreciation for all of
9 their arguments and all everything that
10 they said, but I just did not find that
11 given the circumstances and given the
12 actions taken by the City that there was
13 any failure by the City to both give
14 notice, to both act appropriately and do a
15 due diligence investigation and to make a
16 determination that they believe was in the
17 best interest of the citizens of New
18 Orleans. One of the things that the
19 Petitioners do talk about is the failure to
20 consider all the alternatives as relates to
21 or options other than building a new
22 facility, it's talked about. Everything
23 that I believe the Petitioners suggest was
24 not considered, it's in the Resolution,
25 they considered it and they for whatever
26 reasons, and again, my role is not to
27 decide that I would have done it better,
28 that's not my role. My role is to
29 determine whether or not they acted
30 arbitrary and capricious and whether or not
31 any evidence, whether there is sufficient
32 evidence up the record to suggest that they

1 did something that violated again, due
2 process in not, in making the determination
3 that they made. I'm not going to go
4 through all 26 pages but I am going to say
5 that is my judgment, it is a written
6 judgment, it is signed today and if you
7 want your copy of the judgment we have it
8 for you, you can take it. We just need you
9 to sign for it. If you want us to mail it
10 to you we can mail it to you. If citizens
11 want a copy of the judgment we have to
12 figure that out because it's 26 pages.

13 Thank you all very much
14 for your patience. I know to some extent,
15 and I've been very, what's the word...
16 general, in my comments relative to both
17 judgments but I think that the parties who
18 are participating understand my ruling. If
19 they don't understand my ruling you can
20 raise your hand and I can try to give you
21 some level of clarity, but my rulings are
22 what they are. Thank ya'll very much.
23 Anybody have any questions? Thank you.

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R E P O R T E R ' S P A G E

I, Shannon Deruise, Official Court Reporter for Civil District Court, Orleans Parish, do hereby state on the record that due to the interaction and the spontaneous discourse of these proceedings, dashes (--) have been used to indicate pauses, changes in thought, interruptions and/or simultaneous speech; that this is the proper method for a court reporter's transcription of the proceedings; and that the dashes (--) do not indicate that words or phrases have been left out of the transcript. Any words and/or names which could not be verified through reference material have been denoted with the phrase "(phonetic)."



SHANNON DERUISE, CCR

OFFICIAL COURT REPORTER

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