

Supreme Court of Louisiana

NO. \_\_\_\_\_

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  
Plaintiffs-Respondents

V.

The Council of the City of New Orleans, the Utility, Cable, Telecommunications and Technology Committee of New Orleans City Council, Jason R. Williams, Stacy Head, Susan G. Guidry, LaToya Cantrell, Nadine M. Ramsey, Jared C. Brossett, and James A. Gray, II  
Defendants-Applicants

On Application for Writ of Certiorari to the Court of Appeal, Fourth Circuit, Case No. 2019-CA-0774 c/w 2019-CA-0775, Honorables James F. McKay III, Paula A. Brown, and Dale N. Atkins;  
On Appeal from Civil District Court, Parish of Orleans, Case No. 2018-3843, Honorable Piper D. Griffin, presiding

Civil Proceeding

Original Application for Writ of *Certiorari*  
VOL. 1 of 2

James M. Garner #19589  
Debra J. Fischman #5578  
Stuart D. Kottle #37194  
SHER GARNER CAHILL RICHTER  
KLEIN & HILBERT, L.L.C.  
909 Poydras Street, Suite 2800  
New Orleans, LA 70112  
Telephone: (504) 299-2102  
Facsimile: (504) 299-2300  
E-mail: jgarner@shergarner.com  
dfischman@shergarner.com  
skottle@shergarner.com

Sunni J. LeBeouf #28842  
CITY ATTORNEY  
Donesia D. Turner #23338  
Sr. Chief Deputy City Attorney  
William R. H. Goforth # 33153  
Assistant City Attorney  
Corwin M. St. Raymond #31330  
Deputy City Attorney  
1300 Perdido Street – Room 5E03  
New Orleans, LA 70112  
Telephone: (504) 658-9800  
Facsimile: (504) 658-9868  
E-mail: sunni.lebeouf@nola.gov  
donesia.turner@nola.gov  
wrgoforth@nola.gov  
cmstraymond@nola.gov

Adam J. Swensek #30751  
Executive Counsel  
NEW ORLEANS CITY COUNCIL  
1300 Perdido Street, Room 1E6  
New Orleans, LA 70112  
Telephone: (504) 658-1109  
E-mail: adam.swensek@nola.gov

Attorneys for Defendants-Applicants, the Council of the City of New Orleans, the Utility, Cable, Telecommunications and Technology Committee of New Orleans City Council, Jason R. Williams, Stacy Head, Susan G. Guidry, LaToya Cantrell, Nadine M. Ramsey, Jared C. Brossett, and James A. Gray, II

TABLE OF CONTENTS

TABLE OF CONTENTS..... ii

TABLE OF AUTHORITIES ..... iii

TABLE OF APPENDICES ..... iv

WRIT GRANT CONSIDERATIONS ..... 1

MEMORANDUM ..... 3

I. Statement of the Case..... 3

    A. Entergy New Orleans’ application to construct the New Orleans Power Station..... 4

    B. The Utility, Cable, Telecommunications and Technology Committee meeting of February 21, 2018..... 4

    C. The full City Council meeting of March 8, 2018..... 5

    D. District Court proceedings ..... 5

    E. Court of Appeal..... 6

II. Assignments of Error ..... 7

III. Summary of the Argument..... 7

IV. Argument ..... 9

    A. The Court of Appeal erred by finding that the UCTTC violated the Open Meetings Law at its February 21, 2018 meeting ..... 9

    B. The Court of Appeal erred because the UCTTC meeting was conducted in accordance with the agenda for the meeting..... 11

CONCLUSION..... 12

TABLE OF AUTHORITIES

Louisiana Revised Statutes:

La. R.S. 42:11 .....1, 9

La. R.S. 42:19 .....2, 7, 8, 9, 10, 11, 12

Louisiana Constitution:

Louisiana Constitution Article 12, Section 3 .....9, 10

Cases:

*Alliance for Affordable Energy, et al. v. Council of the City of New Orleans,*  
No. 2018-3471 .....3

*Courvelle v. La. Recreational and Used Motor Vehicle Comm’n,*  
2008-0952 at \*5-6 (La. App. 1 Cir. 6/19/09), 21 So. 3d 340.....10

*Delta Dev. Co. v. Plaquemines Par. Comm’n Council,*  
451 So.2d 134 (La. App. 4 Cir. 1984) .....9

*Greemon v. City of Bossier City,* 2010-2828 (La. 7/1/11),  
65 So.3d 1263 .....10

## **TABLE OF APPENDICES**

Appendix 1	District Court Judgment, dated July 2, 2019
Appendix 2	Court of Appeal ruling, dated February 12, 2020
Appendix 3	February 21, 2018 UCTTC Meeting Agenda
Appendix 4	Affidavit of Keith D. Lampkin
Appendix 5	Affidavit of Lora Johnson
Appendix 6	Affidavit of Alvin Walton
Appendix 7	Affidavit of Herman Shushan
Appendix 8	Transcript March 8, 2018 Meeting (Excerpts)

## **MAY IT PLEASE THE COURT:**

### **WRIT GRANT CONSIDERATIONS**

If this Court grants Plaintiffs' writ application, which it should not, then the City Council respectfully requests this Honorable Court grant this writ application and reverse the Court of Appeal's finding of violations of the Open Meetings Law.<sup>1</sup>

On March 8, 2018 the New Orleans City Council voted to adopt Resolution R-18-65, which authorized the construction of a power plant in New Orleans East. Opponents of the power plant filed suit against the City Council claiming a violation of the Open Meetings Law, *see* La. R.S. 42:11, *et seq.*,<sup>2</sup> at public meetings that considered Resolution R-18-65. The resolution was considered by the Utility, Cable, Telecommunications and Technology Committee ("UCTTC" or "committee meeting") at its February 21, 2018 meeting. At the committee meeting, the proponent of the plant, Entergy New Orleans ("ENO"), hired citizens to bolster the appearance of public support. On March 8, 2018, the full City Council considered Resolution R-18-65. No such hired citizens were present at this later meeting conducted by the full City Council, at which the full City Council voted to approve the resolution to construct the power plant. Nonetheless, based on the presence of paid citizens at the committee meeting, the District Court nullified the vote of the City Council, despite finding that the City Council "did nothing wrong" when it approved the power plant. Appendix 1, District Court Judgment. The Court of Appeal *correctly reversed* the District Court's nullification of the vote, but, nonetheless, *erroneously affirmed* the District Court's finding a violation of the Open Meetings Law.

Plaintiffs, Deep South Center for Environmental Justice, VAYLA New Orleans, Justice and Beyond, 350 New Orleans, Sierra Club, Mr. Theodore Quant and Ms. Renate Heurich (collectively "Plaintiffs"), filed a writ application on March 13, 2020, seeking review of the Court of Appeal's reversal of the District Court's nullification of the City Council's vote. *See* Plaintiffs' Writ Application, Case No. 2020-C-419 (3/13/20). This Court should deny Plaintiffs' writ application because the Court of Appeal correctly ruled that the District Court erred by voiding the vote of the City Council. If the Court grants Plaintiffs' writ application, which it should not,

---

<sup>1</sup> Plaintiffs filed their writ application on March 13, 2020. Ordinarily, "any other party may also apply for certiorari to the supreme court . . . within ten days of the transmission by the supreme court clerk of the notice of first application for certiorari in the case. . . ." La. C.C.P. art. 2166. Because March 23, 2020 fell within this Court's June 5, 2020 Order providing that "[a]ll filings which were or are due to this Court between Thursday, March 12, 2020 through Monday, June 15, 2020 shall be considered timely if filed no later than Tuesday, June 16, 2020," this writ application, filed on June 16, 2020, is timely.

<sup>2</sup> La. R.S. 42:11 provides that "[t]his Chapter shall be known and may be cited as the 'Open Meetings Law.'"

then the City Council respectfully requests this Honorable Court grant this writ application filed by the City Council and reverse the Court of Appeal's finding of a violation of the Open Meetings Law, an important issue for all government bodies in the state.

*First*, the Court of Appeal erred by finding that the UCTTC violated the Open Meetings Law at its February 21, 2018 meeting. The Court of Appeal erroneously rejected the City Council's argument that "Entergy's actions—though they were those of a private entity—could not have led to a violation of the Open Meetings Law." *Deep S. Ctr. for Envtl. Justice v. Council of City of New Orleans*, 2019-0774, p. 9 (La. App. 4 Cir. 2/12/20), 292 So.3d 973, 980; *see also* Appendix 2. The Court of Appeal also went well beyond the text of the Open Meetings Law and the District Court's factual findings and, instead, improperly relied on Plaintiffs' evidence to find a violation based on "the barring of comments from members of the public who were made to wait in the hallway due to limited space." *Id.* at 981 The Court of Appeal ruling is not premised on the text in the statute and, as a result, the ruling injects uncertainty into every public body vote and opens the floodgates to litigation over the Open Meetings Law. Despite the Court of Appeal's selective reading of the facts, the opponents of the NOPS facility were adequately represented during hours of public comment and the presence of paid citizens in support of proponents of the NOPS facility does not create a violation of the Open Meetings Law.

*Second*, the Court of Appeal erroneously ruled that the UCTTC did not follow the published agenda for its meeting. *Deep South*, 292 So.3d at 981. The Court of Appeal accepted Plaintiffs' allegation that the procedure for the agenda was made less than twenty-four hours before the meeting in violation of a notice provision in the Open Meetings Law, which provides that "notice shall include the agenda, date, time, and place of the meeting. The 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." La. R.S. 42:19(A)(1)(b)(ii)(aa); *see also Deep South*, 292 So.3d at 981. 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." *See* Appendix 3, February 21, 2018 UCTTC Meeting Agenda. Plaintiffs complained that procedure for allowing public comment was changed to allow anyone, including parties, to make comments during the open period. Although some representatives of parties did provide comments at the meeting, this occurrence was not a change in the procedure outlined in the published agenda before the meeting. Instead, Plaintiffs incorrectly interpreted the agenda to prohibit all "representatives"

of parties from submitting public comments or delivering oral comments. Plaintiffs' interpretation of the agenda does not establish that the agenda was altered less than twenty-four hours before the meeting, nor does it establish a violation of the Open Meetings Law.

The Court of Appeal erroneously found legally and factually unsupported Open Meetings Law violations. If this Court grants Plaintiffs' writ application, which it should not, then the City Council respectfully requests this Honorable Court grant this writ application and reverse the Court of Appeal's finding of violations of the Open Meetings Law.

## **MEMORANDUM**

### **I. Statement of the Case**

Entergy New Orleans ("ENO") is the public utility that provides electric and natural gas service to the citizens of New Orleans. Resolution R-18-65, at 1.<sup>3</sup> After an extensive study by the City Council of ENO's long-term resource needs, the City Council identified a great need for a new power source in New Orleans. *See* Resolution R-18-65, at 6–9, 120. Based on the great need for a reliable and new source of electricity, the City Council concluded that there was a need to construct a new power plant, the New Orleans Power Station ("NOPS"). *See* Resolution R-18-65, at p. 188. The City 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." *See* Resolution R-18-65, at 71, 72. The City Council further determined that NOPS "serves the public convenience and necessity and is in the public interest, and therefore prudent." *See* Resolution R-18-65, at 188. The City Council's action was rationally related to the legitimate state purpose of providing power and infrastructure to its citizens. *See Alliance for Affordable Energy, et al. v. Council of the City of New Orleans*, No. 2018-3471 (CDC, Div. I-14) (a companion case in which the District Court found that the City Council's determination to approve NOPS was reasonable).<sup>4</sup>

---

<sup>3</sup> *See* [https://cityofno.granicus.com/MetaViewer.php?view\\_id=42&clip\\_id=2894&meta\\_id=402614](https://cityofno.granicus.com/MetaViewer.php?view_id=42&clip_id=2894&meta_id=402614); Resolution R-18-65 is also in the court record below.

<sup>4</sup> Prior to the study concluding the need for the new power plant, Entergy, Inc. ("Entergy"), the parent company of ENO, previously operated as a single, integrated unit with its six subsidiary companies, all of which would share costs, resources and profits. *See* Resolution R-18-65, at 3. After years of discussions and litigation among Entergy, its subsidiary companies, the City Council, and federal regulators, Entergy and the Federal Energy Regulatory Commission reached a settlement, which was filed on August 14, 2015 and approved by the City Council on November 5, 2015. *See id.*, at 3–4. The settlement dissolved the operational and cost-sharing structure of Entergy. *See id.*, at 6. With ENO being the most affected by the termination of the operational and cost-sharing structure of Entergy, the settlement provided that ENO had the option to evaluate and consider building a new power plant in the City of New Orleans. *See id.*, at 9.

**A. Entergy New Orleans’ application to construct the New Orleans Power Station**

ENO filed its original application to construct NOPS in June 2016, followed by a supplemental and amending application in July 2017. *See* Resolution R-18-65, at 10. The City Council established Council Docket No. UD-16-02 to consider matters related to the approval of NOPS. *See id.*, at 9. ENO held at least 21 public meetings regarding NOPS. *See id.*, at 12. A five-day evidentiary hearing was held on December 15, and 18–21, 2017, at which parties were given the opportunity to cross-examine the witnesses who had provided written testimony. *See id.*, at 14. The City Council received more than 2,700 pages of testimony and exhibits, as well as extensive post-hearing briefing from the parties. *See id.*, at 15. Among those parties to Council Docket No. UD-16-02 were Deep South Center for Environmental Justice, 350 New Orleans, and the Sierra Club, which are three of the Plaintiffs in this case. *See id.* The Hearing Officer certified the record to the City Council on January 22, 2018. *See id.*, at 14.

**B. The Utility, Cable, Telecommunications and Technology Committee meeting of February 21, 2018**

Resolution R-18-65 was considered by the UCTTC at its February 21, 2018 meeting.

According to the agenda for the meeting:

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.

*See* App’x 3. Resolution R-18-65 was the sole item on the UCTTC’s agenda. *See* Appendix 4, Affidavit of Keith D. Lampkin (Chief of Staff for Councilmember Jason Williams), at ¶ 5. Each party to the proceedings in Council Docket No. UD-16-02 received an opportunity to make closing arguments. *See id.*, at ¶ 6. After two hours of public comment, the UCTTC voted 4-1 in favor of moving proposed Council Resolution No. R-18-65 to the full City Council for further deliberation. *See id.*, at ¶¶ 16, 18.

As would later be found, private citizens were paid to attend or speak at the February 21, 2018 UCTTC meeting in support of ENO and its application for approval to construct NOPS.<sup>5</sup> *See* R. 595–656. There was no state or city action involved in arranging the presence of private, paid citizens at the committee meeting, and at that time, the City Council was unaware of their presence.

---

<sup>5</sup> In Council Resolution R-19-78, adopted on February 21, 2019, the City Council approved a settlement with ENO after a “show cause” proceeding relating to allegations that people were paid to attend and/or speak at public meetings in connection with ENO’s application to construct NOPS. R. 670–684.



**C. The full City Council meeting of March 8, 2018**

On March 8, 2018, the full City Council considered Resolution R-18-65. The agenda for the March 8, 2018 meeting included:

Application of Entergy New Orleans, Inc. for Approval to Construct New Orleans Power Station and Request for Cost Recovery and Timely Relief 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.

Appendix 5, Affidavit of Lora Johnson (Clerk of Council for the City Council), at ¶ 4 (all caps removed). The meeting occurred at the Council Chamber, which has a maximum occupancy of 258 people. Appendix 6, Affidavit of Alvin Walton, at ¶ 20. New Orleans police officers monitored and controlled access to the Council Chamber, allowing the public to be seated on a first-come, first-served basis. *See id.*, at ¶ 24. Three officers of the New Orleans Police Department were present at the meeting to maintain public order. *See id.*, at ¶ 18. According to Alvin Walton, Executive Security for the New Orleans City Council and employee of the New Orleans Police Department:

No member of the public was excluded from the March 8 meeting based upon their appearance, personal characteristics, position held, or whether they were present to support or oppose any agenda item.

*See id.*, at ¶ 29; *see also* Appendix 7, Affidavit of Herman Shushan (Reserve officer for the New Orleans Police Department), at ¶ 29. 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. *See App’x 5*, Affidavit of Lora Johnson, at ¶ 9. Comment cards were also submitted and accepted throughout the meeting. *See id.*, at ¶ 13. The City Council worked through the comment cards, and a total of 94 people spoke during the public comment period. *See id.*, at ¶ 14.

After nearly five hours of public comment, *compare with id.*, at ¶ 15, the City Council voted to adopt Resolution R-18-65, in a 6-1 vote. App’x 5, Johnson Aff., at ¶¶ 11, 15–16. The City Council concluded that NOPS “*serves the public convenience and necessity and is in the public interest, and therefore prudent.*” Resolution R-18-65, at 188 (emphasis added).

**D. District Court proceedings**

Plaintiffs’ original Petition and Amended Petition to Enforce the Louisiana Open Meetings Law, for Declaratory Judgment, Injunction, Attorneys’ Fees and Costs, and Memorandum in Support (the “petition”) sought a declaration that the UCTTC and its members and the City Council

and its members conducted the February 21, 2018 UCTTC meeting and the March 8, 2018 City Council meeting in violation of the Louisiana Constitution and the Louisiana Open Meetings Law. Based on La. R.S. 42:14(A) and La. R.S. 42:14(D), R. 139–140, Plaintiffs alleged that persons were denied the right to make comments at the public meetings and requested that the court declare the City Council’s action adopting Resolution R-18-65 void.

On July 2, 2019, the District Court signed a judgment in favor of Plaintiffs and against the City Council. App’x 1. In the Judgment, the District Court found that the City Council “did nothing wrong,” and that “Entergy’s actions undermined” the Open Meetings Law. *Id.* Despite these findings, the District Court found that “the Open Meetings Law was violated” at the February 21, 2018 UCTTC meeting. *Id.* Concerning the March 8, 2018 full City Council meeting, the District Court noted that it “**does not** find that the Open Meetings Law was violated.” *Id.* (emphasis added). Despite the District Court’s finding that the Open Meetings Law was not violated at the March 8, 2018 meeting (at which the City Council voted on the Resolution No. R-18-65), the District Court reasoned that the “February 21, 2018 action” was a “necessary component” of the full City Council’s decision to adopt Resolution No. R-18-65. As a result, the District Court concluded that action taken later at the full City Council meeting, despite being conducted in compliance with the Open Meetings Law, was “void *ab initio*.” *Id.*

#### **E. Court of Appeal.**

The Court of Appeal reversed in part and affirmed in part the decision of the District Court. *See Deep S. Ctr. for Envtl. Justice v. Council of City of New Orleans*, 2019-0774 (La. App. 4 Cir. 2/12/20), 292 So.3d 973; *see also* Appendix 2.

Regarding the February 21, 2018 UCTTC meeting, the Court of Appeal rejected the City Council’s argument that “Entergy’s actions—though they were those of a private entity—could not have led to a violation of the Open Meetings Law.” *Deep South*, 292 So.3d at 979. Further, the Court of Appeal found two violations of the Open Meetings Law at the February 21, 2018 meeting. *First*, the Court of Appeal ruled that the UCTTC did not follow the published agenda for the meeting. *Id.* at 981. According to the Court of Appeal, the agenda provided that “[e]ach public speaker, not a party, will be allowed two minutes” during a public comment period, but, nonetheless, the procedure was altered “to allow anyone, including parties to the proceeding, to make comments during the open comment period.” *Id.*; *see also* App’x 3, February 21, 2018 Agenda. The Court of Appeal also found that “members of the public were deprived of the

opportunity to observe the meeting and provide comments during the public comment period at the Committee meeting due to the barring of comments from members of the public who were made to wait in the hallway due to limited space.

Regarding the March 8, 2018 full City Council meeting, the Court of Appeal found that the meeting was conducted in compliance with the Open Meetings Law. *First*, the Court of Appeal found the record supported that “the Council made efforts before the meeting to ensure that the Open Meetings Law requirements were met, including broadcasting the meeting and streaming it online, as well as stating that it would remedy the issues that arose at the Committee meeting by providing an opportunity for observation and comment to everyone.” *Deep South*, 292 So.3d at 982. “[T]he Council allowed those citizens who were waiting in the hallway to fill out comment cards to provide comment and that the Council allowed comments for several hours at the Council meeting.” *Id.* *Second*, the Court of Appeal determined that “the Council’s agenda item to consider the construction of the NOPS is sufficiently specific under La. R.S. 42:19(A)(1)(b)(ii)(bb).” *Id.* at 983.

Last, the Court of Appeal reversed the District Court’s judgment that voided the resolution. *Id.* at 984–85. The Court of Appeal ruled that the District Court “erred in determining that the Committee meeting was a ‘necessary component’ of the Resolution’s passage, and violations that occurred at the Committee meeting could render the Resolution voidable.” *Id.* at 985.

## **II. Assignments of Error**

1. The Court of Appeal erred by finding that the UCTTC violated the Open Meetings Law at its February 21, 2018 meeting.
2. The Court of Appeal erred by ruling that the UCTTC did not follow the published agenda for the meeting.

## **III. Summary of the Argument**

If this Court grants Plaintiffs’ writ application, which it should not, then the City Council respectfully requests this Honorable Court grant this writ application and reverse the Court of Appeal’s finding of violations of the Open Meetings Law.

*First*, the Court of Appeal erred by finding that the UCTTC violated the Open Meetings Law at its February 21, 2018 meeting. The Court of Appeal erroneously rejected the City Council’s argument that the actions of a private entity could not have led to a violation of the Open Meetings Law. The Court of Appeal also went beyond the text of the Open Meetings Law and the factual

findings of the District Court to find a violation based on “the barring of comments from members of the public who were made to wait in the hallway due to limited space.” *Deep South*, 292 So.3d at 981. The opponents of the NOPS facility were adequately represented during hours of public comment and the presence of paid citizens in support of proponents of the NOPS facility does not create a violation of the Open Meetings Law.

*Second*, the Court of Appeal erroneously ruled that the UCTTC did not follow the published agenda for its meeting. *Deep South*, 292 So.3d at 981. The Court of Appeal accepted Plaintiffs’ allegation that the procedure for the agenda was made less than twenty-four hours before the meeting in violation of a notice provision in the Open Meetings Law, which provides that “notice shall include the agenda, date, time, and place of the meeting. The 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.” La. R.S. 42:19(A)(1)(b)(ii)(aa); *see also Deep South*, 292 So.3d at 981. 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.” *See* Appendix 3, February 21, 2018 UCTTC Meeting Agenda. Plaintiffs complained that the procedure for allowing public comment was changed to allow anyone, including parties, to make comments during the open period. That some party representatives provided comments at the meeting was not a change in the outlined procedure. Instead, Plaintiffs incorrectly interpreted the agenda to prohibit all “representatives” of parties from submitting public comments or delivering oral comments. The Court of Appeal erred by relying on Plaintiffs’ interpretation of the agenda to find a violation of the Open Meetings Law. This holding requires this Court’s attention to provide clear direction to all state court governments and Louisiana citizens.

#### IV. Argument

##### A. The Court of Appeal erred by finding that the UCTTC violated the Open Meetings Law at its February 21, 2018 meeting

The Court of Appeal erred by finding a violation of the Open Meetings Law *without identifying a particular standard that was violated*. *Deep South*, 292 So.3d at 981–82. According to the Court of Appeal:

The record shows that members of the public who attended the meeting were prohibited from entering the meeting room and were told that there was no available space. They were also told they could not fill out comment cards to provide comments unless they were in the meeting room. The record also reflects that the individuals whom Entergy paid to attend the meeting and show support for the NOPS did not leave the meeting room once they made comments, and many members of the public left without having the opportunity to observe the Committee meeting or provide comment because they believed they would not be able to enter the meeting at all.

*Id.* The Court of Appeal has essentially rewritten the Open Meetings Law to impose requirements that appear nowhere in the statute. More troublingly, the Court of Appeal ruling establishes a rule that allows private conduct beyond the City Council’s control to delay public action, even though the City Council has acted entirely in good faith.

Article 12, Section 3 of the Louisiana Constitution of 1974 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*.” La. Const. art. XII, § 3 (emphasis added). This constitutional fiat was codified two years later as the Louisiana Open Meetings Law, La. R.S. 42:11, *et seq.* *Delta Dev. Co. v. Plaquemines Par. Comm’n Council*, 451 So. 2d 134, 138 (La. App. 4 Cir. 1984). These laws do not establish an unequivocal right to observe every action of every public official. To the contrary, these laws are subject to a host of exceptions and restrictions aimed at balancing the rights of the public with the pragmatic realities of governance.

The requirements of the Open Meetings Law are straightforward and few:

- Meetings of any public body must be open to the public. *See* La. R.S. 42:14(A).
- Public bodies may not vote by proxy or use secret ballots. *See* La. R.S. 42:14(B).
- Votes must be recorded and made public. *See* La. R.S. 42:14(C).
- Public comment must be allowed prior to action on an agenda item requiring a vote, subject to reasonable restrictions. *See* La. R.S. 42:14(D).
- Public meetings must be appropriately noticed. *See* La. R.S. 42:19.
- Public bodies must keep written minutes. *See* La. R.S. 42:19.

Ignoring these clear directives of the Open Meetings Law, the Court of Appeal erred by finding a violation at the February 21, 2018 meeting. The Court of Appeal's finding a violation was not based on the text of the Open Meetings Law.

*First*, the Court of Appeal erroneously rejected the City Council's argument that "Entergy's actions—though they were those of a private entity—could not have led to a violation of the Open Meetings Law." *Deep South*, 292 So.3d at 980. Meetings of a public body must be reasonably open to the public, have votes recorded and made public, allow public comment (subject to reasonable restrictions), and be appropriately noticed. La. R.S. 42:14(A), (C), (D); La. R.S. 42:19. The duties created by that statute are imposed exclusively upon *public* bodies, not private parties who fill the chamber. The presence of individuals who Entergy paid in the meeting room cannot serve as a basis for finding a violation of the Open Meeting Law. The Court of Appeal could not (and cannot) point to any case finding a violation under similar circumstances—because there is none.

*Second*, the Open Meetings Law only requires that a governmental body provide a reasonable period for public comment, which was provided in this case. Article XII, Sec. 3 of the Louisiana Constitution addresses a right to "observe deliberations of a public body," but it does not mention a right to provide comment. The Louisiana Constitution only addresses a right to observe the deliberations of a public body because the purpose of the Open Meetings Law is "to protect citizens from secret decisions made without any opportunity for public input." *Courville v. La. Recreational and Used Motor Vehicle Comm'n*, 2008-0952 at \*5-6 (La. App. 1 Cir. 6/19/09), 21 So. 3d 340, 345. In the broadest terms, the Open Meetings Law prohibits public business from occurring behind closed doors. *See, e.g., Greemon v. City of Bossier City*, 2010-2828, p. 10 (La. 7/1/11), 65 So. 3d 1263, 1269 (noting plaintiffs did not allege an "illegal, closed-door meeting."). Those protections were provided at the February 21, 2018. The City Council did not instruct security to exclude anyone based on appearance, personal characteristics, or position held. App'x 4, Lampkin Aff., at ¶ 4. Comment cards were submitted and accepted throughout the meeting and called during the comment period. *Id.* at ¶ 14. People who entered the auditorium after the meeting began were afforded the opportunity to provide comment. *Id.* A total of 71 people spoke during the public comment period, which exceeded two hours. *Id.* at ¶¶ 15–16. In short, at the UCTTC meeting, a reasonable period for public comment was provided, and the Court of Appeal erred by finding otherwise.

The Court of Appeal ruling renders every City Council vote vulnerable to a claim that a public commenter failed to disclose a financial affiliation or because someone claims they waited outside a meeting room, which represents a real and present threat to the efficient administration of government, particularly in an area as vital as utility regulation. The Court of Appeal's deviation from the text and purpose of the Open Meetings Law will cause public leaders to become confused as to how to comply with the Open Meetings Law.

**B. The Court of Appeal erred because the UCTTC meeting was conducted in accordance with the agenda for the meeting**

The Court of Appeal erroneously ruled that the UCTTC did not follow the published agenda for the meeting. *Deep South*, 292 So.3d at 981. Plaintiffs, in their brief to the Court of Appeal, did not raise the issue of whether the UCTTC changed the agenda of the February 21, 2018 meeting in violation of La. R.S. 42:19(A)(1)(b)(ii)(aa). The District Court did not make any finding on this issue. It appears the Court of Appeal *sua sponte* analyzed whether the UCTTC changed the agenda without notice because Plaintiffs alleged such a violation in their lower court petition. After improperly considering this issue, the Court of Appeal erroneously found a violation of the Open Meetings Law.

According to the Court of Appeal, “members of the public were deprived of the opportunity to observe the meeting and provide comments during the public comment period at the Committee meeting due to both the change in procedure and the barring of comments from members of the public who were made to wait in the hallway due to limited space.” *Deep South*, 292 So.3d at 981. The Court of Appeal accepted Plaintiffs' allegation that the procedure for the agenda was made less than twenty-four hours before the meeting in violation of a notice provision in the Open Meetings Law, which provides that “notice shall include the agenda, date, time, and place of the meeting. The 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.” La. R.S. 42:19(A)(1)(b)(ii)(aa); *see also Deep South*, 292 So.3d at 981. 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.” *See* Appendix 3, February 21, 2018 UCTTC Meeting Agenda.

Although one representative of a party did offer comments during the public comment period, this was not a change in the procedure outlined in the published agenda before the meeting. Plaintiffs alleged in their petition at paragraph 42 the following:

Based on the agenda notice, representatives of some parties to the proceeding did not speak during the public comment period that followed the closing arguments. However, the UCTT Committee did not follow its own meeting rule and allowed representatives of other parties who had presented closing arguments to also public comment in contradiction of the agenda notice.

Plaintiffs incorrectly interpreted, however, the published agenda to prohibit all “representatives” of parties from submitting public comments. The meeting agenda did not prohibit or limit representatives of parties from submitting public comments and, therefore, Plaintiffs’ interpretation of the agenda notice cannot form a basis for a violation of the Open Meetings Law. Further, Plaintiffs incorrectly accused the UCTTC 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>6</sup> Ms. Heurich, herself, was not a party in the NOPS docket and nothing on the agenda prohibited her from commenting.

The Court of Appeal’s finding of a violation of the notice provision in the Open Meetings Law was erroneous because the agenda was not modified or abandoned. The alleged violation of La. R.S. 42:19(A)(1)(b)(ii)(aa) was not considered by the District Court in its reasons for judgment and was not briefed by Plaintiffs to the Court of Appeal. Despite having no District Court analysis or appellate briefing on this issue, the Court of Appeal found a violation of La. R.S. 42:19(A)(1)(b)(ii)(aa) based on Plaintiffs’ misinterpretation of the agenda for the February 21, 2018 meeting. The lack of factual or legal support for this portion of the Court of Appeal’s opinion creates a malleable precedent that allows for anyone to attack the sufficiency of the notice and agenda of a meeting by offering their own interpretation of an agenda to establish a change in procedure.

## **CONCLUSION**

If this Honorable Court grants Plaintiffs’ writ application, which it should not, then the City Council respectfully requests this Honorable Court grant this writ application and reverse the Court of Appeal’s erroneous finding of violations of the Open Meetings Law.

---

<sup>6</sup> It is ironic that Plaintiffs accused the UCTTC of violating the Open Meetings Law by allowing Ms. Heurich to provide comments in opposition to NOPS at an open public meeting.



Respectfully submitted,

/s/James M. Garner

James M. Garner #19589  
Debra J. Fischman #5578  
Stuart D. Kottle #37194  
SHER GARNER CAHILL RICHTER  
KLEIN & HILBERT, L.L.C.  
909 Poydras Street, Suite 2800  
New Orleans, LA 70112  
Telephone: (504) 299-2102  
Facsimile: (504) 299-2300  
E-mail: jgarner@shergarner.com  
dfischman@shergarner.com  
skottle@shergarner.com

Sunni J. LeBeouf #28842  
CITY ATTORNEY  
Donesia D. Turner #23338  
Sr. Chief Deputy City Attorney  
William R. H. Goforth # 33153  
Assistant City Attorney  
Corwin M. St. Raymond #31330  
Deputy City Attorney  
1300 Perdido Street – Room 5E03  
New Orleans, LA 70112  
Telephone: (504) 658-9800  
Facsimile: (504) 658-9868  
E-mail: sunni.lebeouf@nola.gov  
donesia.turner@nola.gov  
wrgoforth@nola.gov  
cmstraymond@nola.gov

Adam J. Swensek #30751  
Executive Counsel  
NEW ORLEANS CITY COUNCIL  
1300 Perdido Street, Room 1E6  
New Orleans, LA 70112  
Telephone: (504) 658-1109  
E-mail: adam.swensek@nola.gov

Attorneys for Defendants-Applicants the  
Council of The City of New Orleans, the  
Utility, Cable, Telecommunications and  
Technology Committee Of New Orleans City  
Council, Jason R. Williams, Stacy Head, Susan  
G. Guidry, Latoya Cantrell, Nadine M.  
Ramsey, Jared C. Brossett, and James A. Gray,  
II

## **CERTIFICATE OF SERVICE**

I hereby certify that a copy of the above and foregoing has been served to all counsel of record by e-mail this 16<sup>th</sup> day of June, 2020. A copy of the above and foregoing will also be mailed to the District Court and Court of Appeal.

/s/ James M. Garner  
JAMES M. GARNER

### **SERVICE LIST**

<p>William P. Quigley #07769 Loyola University New Orleans 7214 St. Charles Avenue New Orleans, LA 70118 Telephone: 504-861-5591 <a href="mailto:quigley@loyno.edu">quigley@loyno.edu</a></p> <p><i>Counsel for VAYLA New Orleans, Justice and Beyond, 350 New Orleans, Sierra Club, Mr. Theodore Quant, and Ms. Renate Heurich</i></p>	<p>Alexander “Sascha” Bollag #34447 Green Justice Legal 540 Broadway Street, Room 304 New Orleans, LA 70118 Telephone: 504-913-7740 E-mail: <a href="mailto:sbollag@greenjusticelegal.org">sbollag@greenjusticelegal.org</a></p> <p><i>Counsel for VAYLA New Orleans, Justice and Beyond, 350 New Orleans, Sierra Club, Mr. Theodore Quant, and Ms. Renate Heurich</i></p>
<p>Susan Stevens Miller Earthjustice 1625 Massachusetts Ave., N.W. Suite 702 Washington, D.C. 20036 Telephone: 202-667-4500 E-mail: <a href="mailto:smiller@earthjustice.org">smiller@earthjustice.org</a> <i>Pro Hac Vice</i></p> <p><i>Counsel for VAYLA New Orleans, Justice and Beyond, 350 New Orleans, Sierra Club</i></p>	<p>Monique Harden #24118 Deep South Center for Environmental Justice 3157 Gentilly Blvd. – Suite 145 New Orleans, LA 70122 Telephone: 504-510-2943 E-mail: <a href="mailto:moniquecoharden@gmail.com">moniquecoharden@gmail.com</a></p> <p><i>Counsel for Deep South Center for Environmental Justice</i></p>
<p>W. Raley Alford, III #27354 Kathryn W. Munson #35933 Stanley, Reuter, Ross, Thornton &amp; Alford, L.L.C. 909 Poydras Street, Suite 2500 New Orleans, LA 70112 Telephone: 504-523-1580 Facsimile: 504-524-0069 E-mail: <a href="mailto:wra@stanleyreuter.com">wra@stanleyreuter.com</a> <a href="mailto:kwm@stanleyreuter.com">kwm@stanleyreuter.com</a></p> <p><i>Counsel for Entergy New Orleans, LLC in Docket No. 2019-CA-0775</i></p>	<p>Timothy S. Gragin #22313 Harry Barton #29751 Entergy Services, LLC 639 Loyola Avenue New Orleans, LA 70113 Telephone: 504-576-2603 Facsimile: 504-576-5579 E-mail: <a href="mailto:tcragin@entergy.com">tcragin@entergy.com</a> <a href="mailto:hbarton@entergy.com">hbarton@entergy.com</a></p> <p><i>Counsel for Entergy New Orleans, LLC in Docket No. 2019-CA-0775</i></p>
<p>Hon. Piper D. Griffin, Judge Division "I" - Section 14 421 Loyola Avenue, Room 405 New Orleans, LA 70112 Phone: (504) 407-0280 FAX: (504) 558-0950 <a href="mailto:pgriffin@orleanscdc.com">pgriffin@orleanscdc.com</a></p>	

Civil District Court for the Parish of Orleans  
STATE OF LOUISIANA

No: 2018 - 03843

Division/Section: I-14

DEEP SOUTH CENTER FOR ENVIRONMENTAL JUSTICE ETAL ET AL

versus

THE COUNCIL OF THE CITY OF NEW ORLEANS ETAL ET AL

Date Case Filed: 4/19/2018

NOTICE OF SIGNING OF JUDGMENT

TO:

Alexander H Bollag Esq 34447  
404 S Jefferson Davis Pkwy  
New Orleans, LA 70119

Corwin M St Raymond Esq 31330  
1300 Perdido Street  
City Attorney's Office  
New Orleans, LA 70112

William P Quigley Esq 07769  
Loyola Law School  
7214 Saint Charles Ave  
New Orleans, LA 70118-3538

Monique C Harden Esq 24118  
2332 Dublin St  
New Orleans, LA 70118-1015

In accordance with Article 1913 C.C.P., you are hereby notified that Judgment  
in the above entitled and numbered cause was signed on July 2, 2019

New Orleans, Louisiana  
July 2, 2019

*Alexander H. Bollag*  
7-8-2019  
VERIFIED

*Tawanda Brown*  
MINUTE CLERK

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

---

JUDGMENT

---

Petitioners' Amended Petition to Enforce the Louisiana Open Meetings Law, for  
Declaratory Judgment, Injunction, and Attorneys' Fees and Costs came before this Court for  
hearing on July 19, 2018.

Present at the hearing in court were:

William Quigley, Monique Harden, Alexander Bollag, Susan Stevens Miller, and  
Jill Tauber, for petitioners; and

Corwin St. Raymond, William Goforth, and Cherrell S. Taplin, for defendants.

After considering the pleadings and memoranda filed with this Court, the evidentiary  
record, and the arguments of counsel, this Court announced its ruling in open court on June 14,  
2019. The Court explained this judgment is to make sure that "citizens voices are heard" at City  
Council meetings. Regarding the February 21, 2018 meeting of the Utilities, Cable,  
Telecommunications and Technology Committee of the New Orleans City Council ("UCTTC")  
and the March 8, 2018 meeting of the New Orleans City Council (the "Council"), the Court found  
that the Council "did nothing wrong." The Court acknowledged the Council's own investigatory  
findings that, as a result of Entergy New Orleans' actions, "paid citizens were present" at public

VERIFIED  
Celeste [Signature]  
7-8-2019

meetings held on October 16, 2017 and February 21, 2018. The Court further found that "Entergy's actions undermined" the Open Meetings Laws, La. R.S. 42:11, *et seq.* Finally, the Court found that "the Open Meetings Laws were not adhered to as relates to the meaning and policy behind the Open Meetings Laws."

Regarding the February 21, 2018 meeting of the Utilities, Cable, Telecommunications and Technology Committee of the New Orleans City Council, the Court finds that the Open Meetings Law was violated.

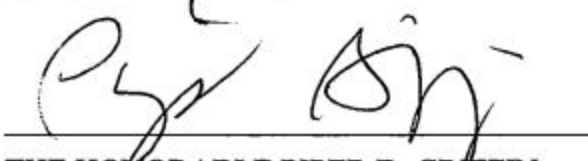
Regarding the March 8, 2018 meeting of the New Orleans City Council, the Court *does not* find that the Open Meetings Law was violated. However, the February 21, 2018 action was a necessary component of the full council's decision to adopt Resolution No. 18-65. As such, the full council's vote to adopt the resolution was void *ab initio*.

IT IS ORDERED, ADJUDGED AND DECREED that, for the reasons stated in open court on June 14, 2019, there be judgment in FAVOR of petitioners, 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, and AGAINST defendants, 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; and

IT IS FURTHER ORDERED, ADJUDGED and DECREED that, for the reasons stated in open court on June 14, 2019, the action of the then-sitting members of the UCTTC at its February 21, 2018 meeting is VOID; and

IT IS FURTHER ORDERED, ADJUDGED and DECREED that, for the reasons stated in open court on June 14, 2019, the action of the then-sitting members of the New Orleans City Council adopting Council Resolution No. R-18-65 at a March 8, 2018 meeting is VOID.

New Orleans, Louisiana, this 2<sup>nd</sup> day of July 2019.

  
\_\_\_\_\_  
THE HONORABLE PIPER D. GRIFFIN  
DISTRICT COURT JUDGE, DIVISION "T"

VERIFIED  
  
7-8-2019

DEEP SOUTH CENTER FOR  
ENVIRONMENTAL JUSTICE,  
VAYLA NEW ORLEANS,  
JUSTICE AND BEYOND, 350  
NEW ORLEANS, SIERRA  
CLUB, MR. THEODORE  
QUANT AND MS. RENATE  
HEURICH

\* NO. 2019-CA-0774  
\*  
\* COURT OF APPEAL  
\*  
\* FOURTH CIRCUIT  
\*  
\* STATE OF LOUISIANA

\* \* \* \* \*

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, STACY  
HEAD, SUSAN G. GUIDRY,  
LATOYA CANTRELL,  
NADINE M. RAMSEY, JARED  
C. BROSSETT, AND JAMES A.  
GRAY, II

CONSOLIDATED WITH:

DEEP SOUTH CENTER FOR  
ENVIRONMENTAL JUSTICE,  
VAYLA NEW ORLEANS,  
JUSTICE AND BEYOND, 350 NEW  
ORLEANS, SIERRA CLUB, MR.  
THEODORE QUANT AND MS.  
RENAME 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,  
STACY HEAD, SUSAN G.  
GUIDRY, LATOYA CANTRELL,  
NADINE M. RAMSEY, JARED C.  
BROSSETT, AND JAMES A.  
GRAY, II

CONSOLIDATED WITH:

NO. 2019-CA-0775

APPEAL FROM  
CIVIL DISTRICT COURT, ORLEANS PARISH  
NO. 2018-03843, DIVISION "I-14"  
Honorable Piper D. Griffin, Judge

\* \* \* \* \*

**Judge Dale N. Atkins**

\* \* \* \* \*

(Court composed of Chief Judge James F. McKay, III, Judge Paula A. Brown,  
Judge Dale N. Atkins)

Monique C. Harden  
DEEP SOUTH CENTER FOR ENVIRONMENTAL JUSTICE  
9801 Lake Forest Blvd.  
New Orleans, LA 70127

William Patrick Quigley  
LOYOLA UNIVERSITY - SCHOOL OF LAW  
7214 St. Charles Avenue  
Box 902  
New Orleans, LA 70118

Alexander "Sascha" Bollag  
GREEN JUSTICE LEGAL  
540 Broadway Street, Room 304  
New Orleans, LA 70118

Susan Stevens Miller  
EARTHJUSTICE  
1625 Massachusetts Avenue, N.W.  
Suite 702  
Washington, DC 20036

COUNSEL FOR PLAINTIFF/APPELLEE

Richard C. Stanley  
W. Raley Alford, III  
Kathryn W. Munson  
STANLEY, REUTER, ROSS, THORNTON & ALFORD, L.L.C.  
909 Poydras Street  
Suite 2500  
New Orleans, LA 70112

Corwin M. St. Raymond  
Deputy City Attorney  
William R. H. Goforth  
Assistant City Attorney  
Donesia D. Turner  
Senior Chief Deputy City Attorney  
Sunni J. LeBeouf  
CITY ATTORNEY  
1300 Perdido Street  
City Hall - Room 5E03  
New Orleans, LA 70112

Adam J. Swensek  
Executive Counsel  
NEW ORLEANS CITY COUNCIL  
1300 Perdido Street, Room 1E6  
New Orleans, Louisiana 70112

Timothy S. Cragin  
Harry M. Barton  
ENTERGY SERVICES, INC.  
639 Loyola Avenue  
L-ENT-26E  
New Orleans, LA 70113

James M. Garner  
Debra J. Fischman  
Stuart D. Kottle  
SHER GARNER CAHILL RICHTER KLEIN & HILBERT, L.L.C.  
909 Poydras Street  
Suite 2800  
New Orleans, LA 70112

COUNSEL FOR DEFENDANT/APPELLANT

**AFFIRMED IN PART AND REVERSED IN PART  
FEBRUARY 12, 2020**



Appellants, Entergy New Orleans, LLC (“Entergy”) and The Council of the City of New Orleans (the “Council”), appeal the trial court’s June 14, 2019 judgment voiding the Council’s March 8, 2018 decision to adopt Resolution R-18-65 (the “Resolution”), which granted Entergy authorization to build the New Orleans Power Station (the “NOPS”) in New Orleans East due to the violations of the Open Meetings Law, La. R.S. 42:11, *et seq.* that occurred at the Council’s February 21, 2018 Utility, Cable, Telecommunications, and Technology Committee (the “Committee”) meeting. For the reasons that follow, we affirm the decision of the trial court in part and reverse in part.

#### **FACTUAL AND PROCEDURAL BACKGROUND**

On June 20, 2016, Entergy filed an initial application with the Council for authorization to build the NOPS. The Council established Council Docket No. UD-16-02 to consider the application. The Council set a procedural schedule for Entergy’s application, which directed, among other things, that Entergy hold public meetings on the NOPS to give information to members of the public and provide the public an opportunity to comment. The Council adopted another resolution on August 10, 2017, which ordered an additional public hearing to be held in the

Council Chamber on October 16, 2017.<sup>1</sup> Several public interest groups intervened as parties to the Council Docket No. UD-16-02, including Deep South Center for Environmental Justice, 350 New Orleans, and the Sierra Club.

Following the completion of the procedural schedule under the Council Docket No. UD-16-02, the Committee met on February 21, 2018, to consider the Resolution to construct the NOPS. If approved by the Committee, the Resolution would then be recommended to be considered by the full Council. An agenda published five days prior to the meeting stated that each party to the proceeding would be given fifteen minutes for closing argument, and each non-party would be allowed two minutes for comment. However, while supporters of Entergy (who were later discovered to be actors paid to attend the meeting and show support for Entergy) were given preferential access to the meeting room, approximately fifty to sixty members of the public were prohibited from entering the meeting due to purported limited space. The procedures outlined in the agenda regarding who was allowed to speak at the meeting were not followed. Representatives of Entergy, which was a party to the proceeding, were allowed to give public comment during the portion of the meeting reserved for non-party comment, while representatives of other interested parties did not give a comment due to their belief that it was prohibited by the agenda. At the conclusion of the meeting, the Committee voted four-to-one to refer the Resolution to the full Council.

---

<sup>1</sup> The October 16, 2017 meeting is not before this Court on appeal. However, there were several members of the public who attended this meeting, and not all those who attended were able to enter the meeting. Appellees argue that, because many members of the public were prohibited from entering the meeting room due to limited space while Entergy supporters were seemingly allowed immediate entry into the meeting on October 16, 2017, the Council should have anticipated the interest in Entergy's application to build the NOPS, and planned accordingly for the Committee and Council meetings.

A full Council meeting was held on March 8, 2018. Once again, there was a large attendance at the meeting, and some attendees were not given immediate access due to limited space. However, unlike the Committee meeting, all those who wished to observe the meeting and provide comments were eventually given an opportunity to do so. At the conclusion of the meeting, the Council voted six-to-one to approve the construction of the NOPS.

On April 19, 2018, Deep South Center for Environmental Justice, VAYLA New Orleans, Justice and Beyond, 350 New Orleans, Sierra Club, Mr. Theodore Quant, and Ms. Renate Heurich (collectively, the “Appellees”) filed a Petition to Enforce the Louisiana Open Meetings Law, For Declaratory Judgment, Injunction, Attorneys’ Fees and Costs, and Memorandum in Support (“the Petition”) in Orleans Parish Civil District Court. The Appellees asked the trial court to declare that the February 21, 2018 Committee meeting and March 8, 2018 Council meeting violated Open Meetings Law; to declare the Resolution of the March 8, 2018 meeting void; and to enjoin Appellants from constructing the NOPS.

Appellees alleged that, because members of the public were prevented from entering the meeting for observation and comment and supporters of Entergy were given preferential access to the meetings, the Open Meetings Laws were violated at both the Committee and the Council meetings. As attachments to the Petition, Appellees included the affidavits of several individuals who attested to being prevented from observing the meetings and providing comment after being told there was no available space, while also seeing representatives of Entergy being allowed to enter the meeting room. The affidavits attached to Appellees’ Petition also included accounts from individuals who claimed they were made to stand in the hallway outside the Committee meeting for several hours and were threatened

with arrest by security guards if they attempted to enter the meeting. An affidavit of Ms. Heurich, one of the Appellees, stated she attended the Committee meeting and was told there was no available space in the meeting room, but when she snuck past security and entered the room, she was made to leave, even though she observed approximately thirty empty seats inside.

Appellees stated that the agenda for the Committee meeting was changed while the meeting was in progress, in violation of the Open Meetings Law because representatives of parties to Council Docket No. UD-16-02 were allowed to speak during the public comment period at the Committee meeting despite the agenda expressly prohibiting this. They also alleged that the agenda for the Council meeting did not provide a sufficiently specific description of the Council's consideration of the Resolution. On July 7, 2018, Appellees filed an Amended Petition alleging that there were paid actors present at the Committee meeting who prevented community members from entering the meeting and making comments, which was also a violation of Open Meetings Law.

The Council answered the Petition, arguing that both the Committee meeting and the Council meeting complied with the Open Meetings Law as both were open to the public, were streamed live for concerned people to watch online, and allowed for several hours of public comment. The Council argued that the Open Meetings Law does not require that every single person who wishes to observe a meeting of a public body be able to observe it and be present, only that the meetings be reasonably open to the public. The Council further asserted the meetings were reasonably open, but that the rooms in which the meetings were held simply could not accommodate the amount of people who were present. They argued that security was used to keep the meeting from being disrupted and to

ensure adherence to fire codes. The Council also argued that voiding the Resolution would be a disservice to the public interest because of the City's need for the NOPS.

A hearing on Appellees' Petition was held on July 19, 2018. At the conclusion of the hearing, the trial court took the matter under advisement. After several delays,<sup>2</sup> the trial court rendered judgment on June 14, 2019, in favor of Appellees, declaring the Resolution void because the policy behind the Open Meetings Law was not properly adhered to. The trial court found that actions by Entergy amounted to Open Meetings Law violations at the Committee meeting on February 21, 2018, which the trial court stated was a "necessary component" in the Council's adoption of the Resolution at the Council meeting on March 8, 2018, and which rendered the Resolution void. The trial court found no violations occurred at the Council meeting.

This appeal<sup>3</sup> followed.

## **DISCUSSION**

Although Appellants filed separate briefs and worded their assignments of error differently, they both argue that the district court erred in declaring the actions by the Council violated the Open Meetings Law and in voiding the Resolution for the same three reasons. First, they argue the Open Meetings Law

---

<sup>2</sup> The delays were requested by Appellees because the Council had launched an investigation into the allegations of paid actors being at the Committee meeting, and both Appellees and the trial court believed the report from the investigation would be relevant to the trial court's decision. The investigation report was issued in the fall of 2018 and found that, indeed, paid actors were present at the Committee meeting. It further found that Entergy knew or should have known that its contractor, Hawthorn, procured these actors. The report included evidence that Charles Rice, President and CEO of Entergy, discussed in text messages and emails with representatives of Hawthorn about having supporters for the NOPS present at Council meetings, and even discussed costs associated with having them.

<sup>3</sup> Though Entergy was not named as a party in the Petition, Entergy moved for an appeal pursuant to La. C.C.P. art. 2086, which allows an appeal when an unnamed party could have properly intervened in the trial court.

applies only to public bodies, and because Entergy is not a public body, any action Entergy may or may not have taken does not render the Resolution voidable because Entergy is a private entity. Second, Appellants argue that any violation which may have occurred at the Committee meeting was cured by the Council meeting, and that the trial court erred in finding that the Committee meeting was a “necessary component” of the Council meeting because the Home Rule Charter does not require the Council to hold a committee meeting. Finally, Appellants argue that, even if there were violations of the Open Meetings Law that were not cured, the trial court abused its discretion in voiding the Resolution. We address each argument in turn.

### **STANDARD OF REVIEW**

Article XII, § 3 of the Louisiana Constitution states 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.” This constitutional provision is meant to ensure that citizens are able to observe deliberations of public bodies and protect them from secret decisions being made without any opportunity for input. *Joseph v. Hosp. Serv. Dist. No. 2 of Par. of St. Mary*, 2001-1951, p. 14 (La. App. 1 Cir. 12/28/01), 805 So.2d 400, 409 (citing *Delta Development Company, Inc. v. Plaquemines Parish Commission Council*, 451 So.2d 134, 138 (La. App. 4 Cir.), *writ denied*, 456 So.2d 172 (La. 1984).

The Louisiana legislature enacted the Open Meetings Law, La. R.S. 42:11, *et seq.*, to ensure that the protections of Article XII, § 3 are fulfilled. La. R.S. 42:12(A) states the purpose of the Open Meetings Law:

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.

Under the Open Meetings Law, every meeting of a public body must be open to the public, unless it is one of those few that are closed subject to statutory provisions. La. R.S. 42:14. The provisions of the Open Meetings Law shall be construed liberally. La. R.S. 42:12. Actions taken in violation of the Open Meetings Law are voidable by a court of competent jurisdiction. La. R.S. 42:24.

The trial court's ruling voiding the Resolution based on the finding that the policy behind the Open Meetings Law was not adhered to concerns both issues of interpretation of the Open Meetings Law, as well as its application. "Regarding issues of law, the standard of review of an appellate court is simply whether the court's interpretive decision is legally correct." *Duhon v. Briley*, 2012-1137, p. 4 (La. App. 4 Cir. 5/23/13), 117 So.3d 253, 257-58 (citing *Glass v. Alton Ochsner Medical Foundation*, 2002-412, p. 3 (La. App. 4 Cir. 11/6/02), 832 So.2d 403, 405. "Accordingly, if the decision of the trial court is based upon an erroneous application of law rather than on a valid exercise of discretion, the decision is not entitled to deference by the reviewing court." *Id.* See also *Pelleteri v. Caspian Grp. Inc.*, 2002-2141, 2002-2142, p. 7 (La. App. 4 Cir. 7/2/03), 851 So.2d 1230, 1235; *Ohm Lounge, L.L.C. v. Royal St. Charles Hotel, L.L.C.*, 2010-1303, p. 4 (La. App. 4 Cir. 9/21/11), 75 So.3d 471, 474. Meanwhile, whether the Open Meetings Law has been violated is a question of law, subject to *de novo* review. *Harper v. State ex rel. Its Dep't of Health & Hosps.*, 2014-0110, p. 7 (La. App. 4 Cir. 9/9/15), 176 So.3d 479, 486.

## **I. Applicability of Open Meetings Law**

Appellants argue that Entergy, as a private entity, is not required to comply with the Open Meetings Law and any violations Entergy may have committed cannot properly lead to voiding the Resolution. Appellees counter that the Committee is a public body that must ensure its proceedings comply with the Open Meetings Law. Thus, if the Committee—and by extension, the Council—did not ensure compliance with the Open Meetings Law, it is of no moment how the violations occurred for the action to be voidable. We agree.

La. R.S. 42:13(A)(3) defines a public body:

“Public body” means village, town, and **city governing authorities**; parish governing authorities; school boards and boards of levee and port commissioners; boards of publicly operated utilities; planning, zoning, and airport commissions; and any other state, parish, municipal, or special district boards, commissions, or authorities, and those of any political subdivision thereof, where such body possesses policy making, advisory, or administrative functions, **including any committee or subcommittee of any of these bodies** enumerated in this paragraph. (Emphasis added).

Here, it is undisputed that the Council, as a governing authority of the City of New Orleans is a “public body” subject to Open Meetings Law. The Utility, Cable, Telecommunications, and Technology Committee is a committee of the Council and as such is a “public body” under La. R.S. 42:13(A)(3). Therefore, all of the Committee’s meetings, including the meeting of February 21, 2018, must be in compliance with the Open Meetings Law.

As public bodies, both the Committee and the Council have the responsibility of ensuring that their meetings comply with the Open Meetings Law. Under La. R.S. 42:24, if the Committee or the Council do not ensure the Open Meetings Law is not violated at its meetings, the actions taken at the meeting are voidable and the cause of the violation is not relevant. Therefore, we find no merit



to Appellants’ argument that Entergy’s actions—though they were those of a private entity—could not have led to a violation of the Open Meetings Law.

## **II. Violations of Open Meetings Law and Ratification**

Next, we turn to whether there were, in fact, violations of the Open Meetings Law at either the Committee meeting or the Council meeting. Appellees contend that there were violations of the Open Meetings Law at both meetings. First, they argue that, because citizens were prevented from entering both meetings for observation and comment, Article XII, § 3 of the Louisiana Constitution and the Open Meetings Law were violated because not *all* interested citizens were allowed to observe the deliberations and provide comment. Second, they argue that the agendas were untimely changed in violation of the Open Meetings Law. For the Committee meeting, Appellees argue that, by allowing parties to the proceedings to provide comment during the public comment portion of the meeting despite the explicit wording of the agenda that stated each party to the proceeding would be given fifteen minutes for closing argument and each non-party would be allowed two minutes for comment, the agenda was changed less than twenty-four hours prior to the meeting, in violation of La. R.S. 42:19(A)(1)(b)(ii)(aa). La. R.S. 42:19(A)(1)(b)(ii)(aa) provides that public bodies must give written public notice of meetings, and the notice “shall include the agenda, date, time, and place of the meeting. The 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.” For the Council meeting, Appellees argue that the agenda item regarding the Resolution was not described with reasonable specificity, in violation of La. R.S. 42:19(A)(1)(b)(ii)(bb).

Appellants dispute that there were Open Meetings Law violations at either the Committee meeting or the Council meeting, arguing that there was opportunity for citizens to observe the meetings in person or through television broadcast and online streaming, making the meetings reasonably open. They contend that Appellees' argument that all interested citizens be able to observe meetings in person places an unreasonable expectation on public bodies. Further, Appellants argue it would be unreasonable to expect the Committee or the Council to shut out citizens from attending meetings based on any financial or other motives they may have for being present, or for the Council to be expected to ascertain those motives in advance. Appellants further rely on the trial court's finding that no violation of the Open Meetings Law occurred at the Council meeting to support their argument that the Council meeting "cured" or "ratified" any violations that may have occurred at the Committee meeting.

***The Committee Meeting on February 21, 2018***

Based on our review of the record, we find, as the trial court did, that the Committee violated the Open Meetings Law at its February 21, 2018 meeting. The record reflects that the Committee published its agenda for the February 21, 2018 meeting on February 16, 2018. The agenda included one item: the Resolution and Order Regarding the Application of Entergy New Orleans, Inc. for Approval to Construct the NOPS, Docket No. UD-16-02. The agenda further provided that each party to the proceeding would be allowed fifteen minutes for closing argument and that "[e]ach public speaker, not a party, will be allowed two minutes" during a public comment period. The Committee did not follow the agenda for the meeting as published. The record shows, however, that the procedure for allowing public comment was altered—apparently *ad hoc* as the meeting was in progress—to allow

anyone, including parties to the proceeding, to make comments during the open comment period. As a result, some representatives of parties who attended the meeting attempted to adhere to the procedure stated in the agenda and not make comments during the public comment period, while representatives of Entergy, who was also a party, were allowed to make comments during the public comment period in addition to making closing arguments. This change to the procedure of the agenda was made less than twenty-four hours before the meeting, in violation of La. R.S. 42:19(A)(1)(b)(ii)(aa), which prohibits the change of an agenda “less than twenty-four hours, exclusive of Saturdays, Sundays, and legal holidays, prior to the scheduled time of the meeting.”

Appellants contend that, even if the agenda was not completely adhered to, this amounted to only a “technical” violation of the Open Meetings Law. We disagree. The notice requirement in La. R.S. 42:19(A)(1)(b)(ii)(aa) serves to advance the purpose of the Open Meetings Law because it “ensure[s] that if a member of the public wants to be heard on a matter or observe a public body's deliberations on an issue, he or she can check the agenda posted twenty-four hours in advance to see if the matter is scheduled for consideration.” La. Op. Att’y Gen. No. 15-0122 (2016). In this instance, the agenda procedure also served to help ensure that those who wanted to provide comments at the Committee meeting were given that opportunity and were aware of when they could or could not speak.

Not only was the agenda untimely changed in violation of the Open Meetings Law, but the record reflects that members of the public were deprived of the opportunity to observe the meeting and provide comments during the public comment period at the Committee meeting due to both the change in procedure and the barring of comments from members of the public who were made to wait in the

hallway due to limited space. The record shows that members of the public who attended the meeting were prohibited from entering the meeting room and were told that there was no available space. They were also told they could not fill out comment cards to provide comments unless they were in the meeting room. The record also reflects that the individuals whom Entergy paid to attend the meeting and show support for the NOPS did not leave the meeting room once they made comments, and many members of the public left without having the opportunity to observe the Committee meeting or provide comment because they believed they would not be able to enter the meeting at all. The purpose of the Open Meetings Law is to allow members of the public to observe the meetings of their governing bodies and voice their opinions in the decision-making process, and this purpose was not served at the Committee meeting. La. R.S. 42:12(A); *Joseph*, 2001-1951, p. 14, 805 So.2d at 409; *Delta Development Company, Inc.*, 451 So.2d at 138. Thus, we find that the Committee violated the Open Meetings Law at its February 21, 2018 meeting.

***The Council Meeting on March 8, 2018***

Next, we address the alleged violations that occurred at the Council meeting. Appellees contend that the Council violated the Open Meetings Law by: (1) again preventing members of the public from entering the meeting and providing comment as the Committee did in its meeting of February 21, 2018; and (2) publishing an agenda that was not specific enough under La. R.S. 42:19(A)(1)(b)(ii)(bb). We disagree.

First, unlike the Committee meeting, the record does not reflect that members of the public were barred from observing the Council meeting or providing comment. The record shows that the Council made efforts before the

meeting to ensure that the Open Meetings Law requirements were met, including broadcasting the meeting and streaming it online, as well as stating that it would remedy the issues that arose at the Committee meeting by providing an opportunity for observation and comment to everyone. While the Council meeting was widely attended and not all members of the public who wished to enter the meeting were able to at first, the record reflects that, eventually, all those citizens who attended the meeting and wished to observe it and provide comment were given the opportunity, as the Council said. The record also reflects that the Council allowed those citizens who were waiting in the hallway to fill out comment cards to provide comment and that the Council allowed comments for several hours at the Council meeting.

Second, the record contradicts Appellees' argument that the agenda for the Council meeting was not specific enough under La. R.S. 42:19(A)(1)(b)(ii)(bb). In support of their argument, Appellees cite *Hayes v. Jackson Par. Sch. Bd.*, 603 So. 2d 274 (La. App. 4th Cir. 1992). In *Hayes*, the administrative body of the Jackson Parish Head Start Educational Program submitted a proposal to the school board for additional space for the program. The proposal was to be taken up at the school board's regular bi-monthly meeting, and the agenda item for the proposal read "[c]onsider request from Pine Belt Multi-Purpose Agency for additional space for the Head Start Program." *Id.* at 274. This Court held that the agenda item description was not sufficiently specific under the Open Meetings Law because it did not alert the public that part of the proposal was the decision to close an elementary school and merge it with another school to provide the additional space for a Head Start Program. This Court found that "the primary solution to the problem [of finding space for the program] entailed closing one school and

consolidating it with another, [which] exceeded the scope of the agenda item as posted.” *Id.* at 276.

Here, item number forty-five on the published agenda for the Council meeting provided:

RESOLUTION - NO. R-18-65 BY: COUNCILMEMBERS  
WILLIAMS, HEAD, GUIDRY, BROSSETT AND GRAY

Brief:

APPLICATION OF ENTERGY NEW ORLEANS, INC. FOR  
APPROVAL TO CONSTRUCT NEW ORLEANS POWER  
STATION AND REQUEST FOR COST RECOVERY AND  
TIMELY RELIEF 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 TIMEL  
RELIEF DOCKET NO. UD-16-02.

Unlike the description found in *Hayes*, the description of the Council’s agenda item to consider the construction of the NOPS is sufficiently specific under La. R.S. 42:19(A)(1)(b)(ii)(bb). It describes the Resolution number, the Applicant (Entergy), and the subject of the application, *i.e.* “approval to construct” the NOPS. Given that the Council went on to consider (and approve) the construction of the NOPS under the Resolution, the agenda item adequately states the scope of the action taken by the Council. Additionally, because the record reflects that there was a substantial amount of people present at the meeting to comment on this particular item, the statement in the agenda was sufficient to give the public notice of what the Council would be considering. Unlike the Committee meeting, there is nothing in the record to suggest that the Council did not adhere to its agenda, or that the Council did not otherwise comply with the mandates of the Open Meetings Law.

Appellants argue that, because there was no violations of the Open Meetings Law at the Council meeting, the Council meeting cured or ratified the violations that occurred at the Committee meeting. Alternatively, Appellants argue that, because only the Council had the authority to approve the Resolution, the Committee and its recommendation were not necessary to adopt the Resolution, and thus could not be a “necessary component” of the adoption process, as the trial court ruled.

As this Court held in *Delta Development Company, Inc.*, 451 So.2d at 137 (La. App. 4th Cir. 1984), when a public body takes an action in such a way to violate the Open Meetings Law, the injury caused by the prior violation “may be corrected by ratification provided the ratification is adopted after full compliance with the law.” Ratification occurs when the public body “reconsider[s]...action taken at a previous meeting which was in violation of the open meetings law.” *Wagner v. Beauregard Par. Police Jury*, 525 So.2d 166, 170 (La. App. 3<sup>rd</sup> Cir. 1988). Alternatively, the public body can also “reconsider, repudiate and recall the earlier improper action.” *Id.*

The Rules and Regulations of the Council provides at Rule 39 that the Committee is a “standing committee.” Rule 39 further provides that, as a standing committee, the Committee “**shall** make recommendations to the full Council on Council...Resolutions...and such other reports as in their judgment will advance the interests of...the people of the City of New Orleans.” (Emphasis added). Rule 39A(2) states that recommendations made by committees “shall be adopted by the Council in a regular or special meeting...A committee only makes recommendations to the full Council.” Further, the Home Rule Charter of the City of New Orleans does not require that the City Council’s utility orders first be

approved by the Committee. Pursuant to Charter Section 3-130(6), orders of the City 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.” Thus, Appellants correctly point out that, under the Rules and Regulations of the Council and the Home Rule Charter, the Committee’s action had no binding effect on the Council, as it was only a recommendation to the Council on the Resolution.

The distinction between the purposes of and actions taken by the Committee and the Council is precisely why actions taken at the Council meeting could not serve to “ratify” the actions taken at the Committee meeting: the two meetings served two different purposes and two different actions were taken. The Committee meeting was meant to provide the full Council with a recommendation on Entergy’s application for the NOPS construction, and the Committee took the action of making such a recommendation, as it is required to do under the Council’s own regulations. Though the Council was free to accept, reject, or modify the recommendation of the Committee, the Council meeting was meant to put the recommendation of the Committee to full vote, adopting the Resolution and giving Entergy approval to build the NOPS. Even if the Council meeting was in full compliance with Open Meetings Law, the actions taken at the Committee and Council meetings were different and served different purposes. Therefore, the actions taken at the Council meeting could not ratify those taken at the Committee meeting.

### **III. Voiding the Resolution**

When the Open Meetings Law is violated, a court of competent jurisdiction may void the action. La. R.S. 42: 24. La. R.S. 42:26 states that:



A. In any enforcement proceeding the plaintiff may seek and the court may grant any or all of the following forms of relief:

(1) A writ of mandamus.

(2) Injunctive relief.

(3) Declaratory judgment.

(4) Judgment rendering the action void as provided in R.S. 42:24.

(5) Judgment awarding civil penalties as provided in R.S. 42:28.

Trial courts are vested with great discretion in deciding to grant or to deny declaratory relief and, on appellate review, the judgment of the trial court is reviewed under an abuse of discretion standard. *Delta Admin. Servs., L.L.C. v. Limousine Livery, Ltd.*, 2015-0110, p. 6 (La. App. 4 Cir. 6/17/15), 216 So.3d 906, 910 (citing *Edgar Benjamin Fontaine Testamentary Trust v. Jackson Brewery Marketplace*, 2002-2337, pp. 4-5 (La. App. 4 Cir. 5/7/03), 847 So.2d 674, 677).

Based on our review of the record, we find that the trial court should not have voided the Resolution. As discussed, while we agree the Open Meetings Law was violated at the Committee meeting, we also find that there were no Open Meetings Laws violations at the Council meeting. Though the Council's committee procedure disingenuously implies to the public that the Committee's decisions are binding on the Council, the Council's Rules and Regulations and the Home Rule Charter make it clear that the Council is not bound by the actions of the Committee. The Council is free to accept, modify, or reject any or all of the Committee's recommendations. Therefore, the trial court erred in determining that the Committee meeting was a "necessary component" of the Resolution's passage, and violations that occurred at the Committee meeting could render the Resolution voidable. Because it is only the Council's decision which ultimately has binding

effect, and no violations occurred at the Council's meeting, no remedy is necessary where no violations occurred.

**DECREE**

For the foregoing reasons, we affirm the trial court's finding that there was a violation of the Open Meetings Law at the Committee meeting and reverse the trial court's judgment voiding the Council's vote to approve the Resolution at the Council meeting.

**AFFIRMED IN PART AND REVERSED IN PART**