

BEFORE THE
LOUISIANA PUBLIC SERVICE COMMISSION

DIAMOND INFRASTRUCTURE
SOLUTIONS
EX PARTE

DOCKET NO. _____

PETITION FOR JURISDICTIONAL DETERMINATION

NOW COMES, Dow InfraCo, LLC, (together with its wholly owned subsidiaries, known as Diamond Infrastructure Solutions or “Diamond”), who is authorized to transact business in Louisiana, through undersigned counsel, who submits this Petition for Jurisdictional Determination and respectfully states:

BACKGROUND

1.

The Dow Chemical Company (“TDCC”) is a subsidiary of Dow Inc. TDCC, and its subsidiaries deliver a range of technology based products and solutions, such as packaging, industrial intermediates, electronics, and coatings. In 2022, TDCC’s corporate parent, Dow Inc., had net sales of more than \$57 billion, employed approximately 37,800 people worldwide, and operated 104 sites in 31 countries across the globe. TDCC is also the largest petrochemical company in Louisiana, adding \$1 billion annually to the State’s economy.

2.

TDCC formerly owned a chemical manufacturing complex located near Plaquemine, Louisiana in both Iberville and West Baton Rouge Parish (“Plaquemine Site”). The Plaquemine Site was established in 1956 and employs more than 4,500 people. The site includes 21 production units producing more than 50 intermediate and specialty chemical products as well as a 908 MW generation complex, consisting of multiple generating facilities (“Plaquemine

Diamond Infrastructure Solutions
Petition for Jurisdictional Determination

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Facilities”). The Plaquemine Facilities are primarily used to support on-site chemical manufacturing by TDCC and on-site tenants. Backup and stand-by power is provided by Entergy Louisiana, LLC (“Entergy”) to Diamond and its Affiliates.

3.

The Plaquemine facilities are self-certified with the Federal Regulatory Commission (“FERC”) as Qualifying Facilities (“QF”) pursuant to the Public Utility Regulatory Policies Act of 1978 (“PURPA”) and FERC’s implementing regulations.¹ TDCC previously sold excess electric power from the Plaquemine Facilities into the wholesale market administered by the Midcontinent Independent System Operator, Inc. (“MISO”).²

4.

Union Carbide Corporation (“UCC”) is a wholly owned subsidiary of TDCC. TDCC, through UCC, previously owned a chemical manufacturing complex located near Hahnville in St. Charles Parish, which was first established in 1966 (“St. Charles Site”) and employs more than 1,500 people. The site also includes 17 production units producing intermediate and specialty chemical products as well as a ~296 MW (nominal rating) generation complex, consisting of multiple generating facilities (“St. Charles Facilities”). The St. Charles Facilities are primarily used to support on-site chemical manufacturing by UCC and other on-site tenants.

5.

The St. Charles Facilities are also certified with FERC as Qualifying Facilities pursuant to PURPA and FERC’s implementing regulations. UCC also previously sold excess electric

¹ Power Units 1 and 2 were certified together as a QF based on their combined operations. See FERC Docket Nos. QF82-140 and QF82-142. Power Unit 3 was certified as a QF on a stand-alone basis. See FERC Docket No. QF02-10.

² Diamond is a FERC-licensed wholesale power marketer.

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power from such facilities into the wholesale market administered by the Midcontinent Independent System Operator, Inc. (“MISO”).

6.

As a result of a 2023 corporate restructuring, more particularly discussed below, ownership of the Plaquemine and St. Charles Sites and Facilities was transferred to Diamond.

COMMISSION JURISDICTION

7.

The Louisiana Public Service Commission (“LPSC” or “Commission”) has subject matter jurisdiction over this action pursuant to Article IV, Section 21 of the Louisiana Constitution and La. R.S. 45:1161 *et seq.* Article IV, Section 21(B) provides that:

The Commission shall regulate all common carriers and public utilities and have such other regulatory authority as provided by law. It shall adopt and enforce reasonable rules, regulations, and procedures necessary for the discharge of its duties, and shall have other powers and perform other duties as provided by law.

La. R.S. 45:1163(A)(1) provides that:

The Commission shall exercise all necessary power and authority over any street railway, gas, electric light, heat, power, waterworks, or other local public utility for the purpose of fixing and regulating the rates charged or to be charged by and service furnished by such public utilities.

La. R.S. 45:121 defines an electric utility as:

[A]ny person furnishing electric service within this state, the parish of Orleans excepted, including any electric cooperative transacting business in this state, provided, however, that said term shall not be construed to apply to any person owning, leasing and/or operating an electric generation facility provided such person is not primarily engaged in the generation, transmission, distribution, and/or sale of electricity, and provided that such person:

(a) Consumes all of the electric power and energy generated by such facility for its own use at the site of generation...

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(b) Only consumes a portion thereof in such manner and sells the entire remaining portion of such electric power and energy to an electric public utility as herein defined; or

(C) Sells the entire production of electric power and energy generated by such facility to an electric public utility as herein defined.

La. R.S. 45:1161 defines a public utility as:

[A]ny person, public or private, subject to the general jurisdiction of the commission...However, "public utility" shall not include any person owning, leasing, and/or operating an electric generation facility provided such person is not primarily engaged in the generation, transmission, distribution and/or sale of electricity, and provided that such person:

(a) Consumes all of the electric power and energy generated by such facility for its own use at the site of generation..

(b) Only consumes a portion thereof in such manner and sells the entire remaining portion of such electric power and energy generated to an electric public utility as defined in R.S. 45:121; or

(c) Sells the entire production of electric power and energy generated by such facility to an electric public utility as defined in R.S. 45:121.

Lastly, La. R.S. 45:1164(C) provides that:

The provisions of this Section and of R.S. 45:1163, 1176, 1177, 1180, 1181, 1182, and 1183 shall not apply to any person owning, leasing, and/or operating an electric generation facility if such person is not primarily engaged in the generation, transmission, distribution, and/or sale of electricity, and if such person:

(a) Consumes all of the electric power and energy generated by such facility for its own use at the site of generation...

(b) Only consumes a portion thereof in such manner and sells the entire remaining portion of such electric power and energy generated to an electric public utility as defined in R.S. 45:121; or

(c) Sells the entire production of electric power and energy generated by such facility to an electric public utility as defined in R.S. 45:121.

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8.

To summarize, the definition of *electric public utility* generally includes any person furnishing electric service within Louisiana.³ However, this definition expressly excludes any person owning, leasing, and/or operating an electric generation facility provided such person is not primarily engaged in the generation, transmission, distribution, and/or sale of electricity and provided such person consumes all of the electric power and energy generated by the facility for its own use at the site of generation, only consumes a portion thereof and sells the entire remaining portion of the electric power and energy generated by the facility to an electric public utility, or sells the entire production of electric power and energy generated by the facility to an electric public utility.⁴

9.

The Louisiana Supreme Court has held that “in determining whether a particular business is or has become a public utility, investigation of its characteristics is essential.”⁵ In conformity therewith, the Commission has investigated the characteristics of the transactions and entities involved with respect to its prior jurisdictional determinations, as more fully illustrated below.

STAFF OPINION LETTER

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³ La. R.S. 45:121.

⁴ La. R.S. 45:121.

⁵ *Gulf States Utilities Co. v. Louisiana Pub. Serv. Comm'n*, 62 So.2d 250, 254 (La. 1952).

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⁷ See Occidental Chemical Corporation, Order Nos. U-24192 (7/30/99), U-24192-A (3/22/00), and U-24192-B (7/25/01); Bayou Verret Energy and Triad Nitrogen Order, No. U-26140 (12/19/01); Lake Charles Cane-Lacassine Mill, LLC and Louisiana Green Fuels, LLC, Special Order No. 36-2008, Docket No. S-30602 (7/16/08).

⁸ The term “electric public utility” as used in this Chapter means any person furnishing electric service within this state, the parish of Orleans excepted, including any electric cooperative transacting business in this state, provided, however, that said term shall not be construed to apply to any person owning, leasing and/or operating an electric generation facility provided such person is not primarily engaged in the generation, transmission, distribution, and/or sale of electricity, and provided that such person... (b) only consumes a portion thereof in such manner and sells the entire remaining portion of such electric power and energy generated to an electric public utility as herein defined... See La. R.S. 45:121(B).

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LPSC DOCKET NO. S-33436

16.

On October 21, 2014, TDCC filed a Petition for Jurisdictional Determination requesting a declaration that the divestiture of certain chlorine and chlorine manufacturing facilities (“Chlorine Facilities”) located at the Plaquemine Site to a third party purchaser, Blue Cube Operations, LLC a wholly owned subsidiary of Olin Corporation (“Olin”), then referred to as NewCo, and related ownership, lease, management, operation and maintenance, power and steam transfers, and other interests relating thereto would not render the Facilities, TDCC, or Olin (“Parties in Interest”) either individually or collectively, a *public utility* or an *electric public utility* as those terms are used or defined in Section 21 of Article IV of the Louisiana Constitution of 1974, La. R.S. 45:121, La. R.S. 45:1161, or La. R.S. 45:1164, or otherwise subject the Facilities or the Parties in Interest to regulation as a *public utility* or *electric public utility* by the Commission pursuant to the Louisiana Constitution, or any relevant statute, Commission rule, order, regulation or practice.⁹

17.

The Plaquemine Facilities would continue to be owned and operated by TDCC.¹⁰ The Chlorine Facilities would be owned by Olin, but remain dependent upon the Plaquemine Facilities to meet their electric power requirements.¹¹ Such requirements would be satisfied through Olin’s acquisition of a Leasehold Interest in the Plaquemine Facilities equivalent to the 288 MW necessary to operate the Chlorine Facilities at full capacity.¹² Olin would also lease an undivided interest in TDCC’s on site distribution and interconnection facilities sufficient to

⁹ LPSC Docket No. S-33436, Petition for Jurisdictional Determination, page 1 and 4.

¹⁰ LPSC Docket No. S-33436, Petition for Jurisdictional Determination, page 4.

¹¹ LPSC Docket No. S-33436, Petition for Jurisdictional Determination, page 4.

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deliver the Leasehold electric power to the Chlorine Facilities as well as any excess electric power to Entergy's substation.¹³

18.

In exchange, Olin would be required to make fixed lease payments subject to annual adjustment, irrespective of the amount or value of power produced as well as retain TDCC under an O&M Agreement addressing the day-to-day management, maintenance, and operations for its Leasehold Interest.¹⁴ Pursuant to the O&M Agreement, Olin would be required to pay TDCC a monthly charge ("O&M Charge") based on Olin's portion of production related costs.¹⁵

19.

Any electric power produced by the Leasehold Interest not required for internal consumption ("Olin Excess Power") at the Chlorine Facilities will be sold by TDCC, for the benefit of Olin, to an electric public utility or in the wholesale market, subject to FERC jurisdiction, with the revenues received therefrom being credited toward a portion of the O&M Charge.¹⁶

20.

The Plaquemine Facilities would continue to operate as Qualifying Facilities as well as to supply TDCC's electric power needs.¹⁷ However, in no event would TDCC be permitted to receive power in excess of its unleased interest in the facilities.¹⁸ Rather, any excess power not required for internal consumption at the Plaquemine manufacturing facilities ("TDCC Excess

¹² LPSC Docket No. S-33436, Petition for Jurisdictional Determination, pages 4-5

¹³ LPSC Docket No. S-33436, Petition for Jurisdictional Determination, page 5.

¹⁴ LPSC Docket No. S-33436, Petition for Jurisdictional Determination, pages 5-6.

¹⁵ LPSC Docket No. S-33436, Petition for Jurisdictional Determination, pages 5-6.

¹⁶ LPSC Docket No. S-33436, Petition for Jurisdictional Determination, pages 5-6 and 10.

¹⁷ LPSC Docket No. S-33436, Petition for Jurisdictional Determination, pages 6-7.

¹⁸ LPSC Docket No. S-33436, Petition for Jurisdictional Determination, page 6.

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Power”) would be sold to an electric public utility or in the wholesale market, subject to FERC jurisdiction.¹⁹

21.

In no event would any TDCC or Olin Excess Power be sold to a retail customer.²⁰ Nor would the Parties in Interest have captive customers, jurisdictional assets, a rate base subject to regulation, or be primarily engaged in the generation, transmission, distribution, and/or sale of electricity.²¹ Additionally, all project risks would be borne by TDCC and Olin, not by any utility or its ratepayers.²²

22.

Based on a review of the characteristics of the transaction and entities involved, including the restriction of Olin’s and TDCC’s capacity entitlements to their respective leased and unleased interests, the Commission found that TDCC, Olin and the Facilities will not, either individually or collectively, be considered an electric public utility as defined in La. R.S. 45:121, La. R.S. 45:1161 and La. R.S. 45:1164, or otherwise be subject to regulation as an electric public utility by the Commission pursuant to any other relevant state statute, LPSC rule, regulation, order, or practice.²³ More particularly, the Commission found that TDCC and Olin fall within the exception to the definition of an electric public utility provided in La. R.S. 45:121, La. R.S. 45:1161, and La. R.S. 45:1164.

¹⁹ LPSC Docket No. S-33436, Petition for Jurisdictional Determination, pages 6 and 10.

²⁰ LPSC Docket No. S-33436, Petition for Jurisdictional Determination, pages 6 and 7.

²¹ LPSC Docket No. S-33436, Petition for Jurisdictional Determination, page 10.

²² LPSC Docket No. S-33436, Petition for Jurisdictional Determination, page 10.

²³ LPSC Order No. 33463, dated April 8, 2015, pages 5-6.

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23.

Such determination was subject to the following primary conditions: (1) Notification of any material change in the facts and circumstances, including changes to the Parties, the percentages of Leasehold and Unleased Interest, and the financial structure of the project.; (2) The Facilities retaining their status as Qualifying Facilities.; (3) Any sales of electricity by TDCC, for itself or on behalf of Olin, must be made to an electric public utility or wholesale sales subject to FERC jurisdiction.; (4) No lease payments made for the Leasehold Interest shall be based on or tied to power production or to the value of capacity and/or energy sold into the wholesale market.; (5) TDCC and Olin shall separately be in control of any sales of their respective excess power into the wholesale market, although TDCC may act as Olin's agent and make such sales for Olin's benefit. Any such sales may be made through a FERC— authorized wholesale power marketer. Olin will obtain the necessary authorization from FERC to make sales of the excess power into the wholesale market; and (6) In the event that Olin elects to purchase stand-by/backup power, it shall secure its own contract with Entergy for such power and in no event shall Olin purchase, share, or otherwise receive the stand-by/backup purchased by TDCC under its contract with Entergy.^{24, 25}

²⁴ LPSC Order No. 33463, dated April 8, 2015, pages 8-9.

²⁵ Modifications to Olin's Leasehold Interest were subsequently made and approved by the Commission in LPSC Dockets S-36156 and S-34196. The associated utility orders expressly note that the relevant changes did not impact the Commission's prior jurisdictional determination. *See* LPSC Order No. S-34196, dated September 28, 2016, and Order No. S-36156, dated January 12, 2022.

LPSC DOCKET NO. U-36793

24.

In 2023, TDCC underwent a corporate restructuring and planned to transfer its generating and related assets in the Gulf Coast Region (“Transaction”), including the St. Charles and Plaquemine Sites, to a to-be-created affiliate.

25.

On May 9, 2023, TDCC filed a Petition for Jurisdictional Determination (“Petition”) seeking a determination that the Transaction, proposed facilities leases, and other related agreements; the ownership, management, operation, and maintenance, power transfers; and any and all interest whether arising from lease, mortgage, encumbrance, sublease, or assignment in and/or related to the facilities will not cause TDCC, UCC, and then to be created Affiliate (“Parties in Interest”), either individually or collectively, to be considered an *electric public utility* or *electric utility* as defined in Louisiana Constitution Article IV Section 21, La. R.S. 45:121, La. R.S. 45:1161, and La. R.S. 45:1164 otherwise subject to parties to regulation as an electric public utility by the Commission pursuant to any other relevant state statute, LPSC rule, regulation, order, or practice.²⁶

26.

The proposed Transaction contemplated the transfer of full ownership of the Plaquemine and St. Charles Sites and related facilities and infrastructure to the Affiliate, with TDCC owning a controlling interest in the Affiliate.²⁷ The Plaquemine and St. Charles Facilities would continue to provide TDCC and UCC power necessary to operate the production units at the Sites, through

²⁶ LPSC Docket No. U-36793, Petition for Jurisdictional Determination, page 6.

²⁷ LPSC Docket No. U-36793, Petition for Jurisdictional Determination, pages 2-3.

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undivided Leasehold Interests in electric power and steam generated from the Plaquemine and St. Charles Facilities, respectively.²⁸

27.

With respect to the TDCC Leasehold Interest, TDCC would lease approximately 160 MW of electric generation in the Plaquemine Facilities from the Affiliate, subject to revision based on TDCC's power requirements and notification requirements.²⁹ Furthermore, any power generated in excess of the Leasehold Interest would be sold by the Affiliate on TDCC's behalf into the wholesale power market or to an electric public utility, as previously accomplished by TDCC itself.³⁰

28.

With respect to the UCC Leasehold Interest, UCC would lease approximately 155 MW of electric generation, subject to revision based on UCC's power requirements and notification requirements.³¹ Similarly, any power generated in excess of the Leasehold Interest would be sold by the Affiliate on UCC's behalf into the wholesale power market or to an electric public utility, as previously accomplished by UCC itself.³²

29.

In consideration of the UCC and TDCC Leasehold Interests, UCC and TDCC were to make periodic, fixed lease payments unrelated to the amount or value of power produced.³³ Such leases were also to be supplemented by separate O&M Agreements with the Affiliate addressing

²⁸ LPSC Docket No. U-36793, Petition for Jurisdictional Determination, page 3.

²⁹ LPSC Docket No. U-36793, Petition for Jurisdictional Determination, page 3.

³⁰ LPSC Docket No. U-36793, Petition for Jurisdictional Determination, page 4.

³¹ LPSC Docket No. U-36793, Petition for Jurisdictional Determination, page 3.

³² LPSC Docket No. U-36793, Petition for Jurisdictional Determination, page 4.

³³ LPSC Docket No. U-36793, Petition for Jurisdictional Determination, page 4.

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the day-to-day management, maintenance, and operations for the Leasehold Interests.³⁴ Thereunder, TDCC and UCC will pay the Affiliate a monthly charge based on their respective share of production related costs of the facilities, with revenues from the wholesale sales of excess TDCC and UCC power being credited towards a portion of the O&M charge.³⁵

30.

Lastly, the Petition set forth the following facts in support of the assertion that none of the Parties in Interest should be considered a *public utility* or *electric public utility* under Louisiana law:³⁶ **[BEGIN CONFIDENTIAL**

³⁴ LPSC Docket No. U-36793, Petition for Jurisdictional Determination, page 12.

³⁵ LPSC Docket No. U-36793, Petition for Jurisdictional Determination, page 12.

³⁶ LPSC Docket No. U-36793, Petition for Jurisdictional Determination, pages 10-13.

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31.

On December 5, 2023, LPSC Staff filed its *Report and Recommendation*. Therein, Staff concluded that the Parties in Interest and the Facilities should not be considered as providing electric utility service subject to the jurisdiction of the Commission or be considered an *electric public utility* or *public utility* under Louisiana law.³⁷ Such recommendation was rooted in Staff's determination that the interested parties fall within the exceptions outlined in La. R.S. 45:121, La. R.S. 45:1161 and La. R.S. 45:1164.³⁸ Specifically, Staff found that while the parties would constitute persons owning, leasing, and/or operating an electric generation facility, the parties would not be *primarily engaged* in the generation, transmission, distribution, and/or sale of electricity and any wholesale sales of TDCC or UCC Excess power will constitute wholesale sales subject to FERC's jurisdiction.³⁹ Staff's finding was also subject to the requirement that TDCC'S and UCC's capacity entitlement remain equal to their Leasehold Interests and that the Affiliate's entitlement remain equal to its unleased interest therein.

32.

Following consideration at the December 13, 2023, Business and Executive Session, the Commission adopted Staff's recommendation, subject to the following primary conditions:⁴⁰

- The Commission reserves the right to review the transaction structures in the future in order to ensure that they are in compliance with the provisions of this Order. TDCC shall provide a copy of the Facilities Leases-under seal-to the LPSC Staff.
- This Order is based upon, and limited to, the facts and circumstances as set forth by TDCC in its Petition...including but not limited to the requirement that TDCC's and UCC's capacity entitlement must remain equal to its Leasehold Interest, respectively, and

³⁷ LPSC Docket No. U-36793, Staff Report and Recommendation, page 9.

³⁸ LPSC Docket No. U-36793, Staff Report and Recommendation, page 9.

³⁹ LPSC Docket No. U-36793, Staff Report and Recommendation, pages 9-10.

⁴⁰ LPSC Order No. U-36793, dated January 17, 2024.

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Affiliate's capacity entitlement must remain equal to its Unleased Interest in the Facilities.

- Petitioner shall provide the Commission with notice of any material change in the facts and circumstances set forth herein, including any changes in the percentage of Leasehold or Unleased Interest in the Facilities or in the project structure, which shall be subject to Staff's review and approval, with notice and opportunity to comment to be given to the parties in this proceeding.
- The identity of Affiliate will be provided to the Commission within 30 days of such determination.
- This Order is conditioned upon the Facilities retaining their status as QFs, including but not limited to satisfying the requirements set forth in PURPA, 16 U.S.C. § 796, et seq., and FERC regulations, 18 C.F.R. § 292.201, et seq., for qualifying facility status.
- Any sales of electricity by Affiliate, for itself or on behalf of TDCC or UCC, must be to an electric public utility as defined by La. R.S. 45:121, or wholesale sales subject to FERC jurisdiction.
- No lease payments made for the Leasehold Interest shall be based on or tied to power production or to the value of electricity sold into the wholesale market.
- Affiliate shall be in control of any sales of its respective excess power into the wholesale market. Any such sales may be made through a FERC-authorized wholesale power marketer.

33.

Thereafter, the Affiliate contemplated in the Petition was created and named Diamond and full ownership of the St. Charles and Plaquemine Sites and related infrastructure was transferred to Diamond.

JURISDICTIONAL DETERMINATION CHARACTERISTICS

34.

Diamond acknowledges that the Commission's orders declaring non-jurisdictional status have been based on the facts of each particular case and are non-precedential. That said, such

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orders identify the characteristics appropriate for investigation. Said characteristics are as follows (“Jurisdictional Determination Characteristics”):

- The Facilities will continue to be owned by and supply power to the Lessor.
- Electric generation will be provided to the Lessee pursuant to a Leasehold Interest in the output of the Qualifying Facilities.
- The Lessee will obtain an undivided interest in the Lessor’s on-site distribution and interconnection facilities sufficient to deliver the Leasehold Interest and any excess power.
- Any excess power not required for internal consumption will be sold to an electric public utility as defined by La. R.S. 45:121, or as wholesale sales subject to FERC jurisdiction by a FERC-authorized wholesale power marketer.
- Any adjustments to the Leasehold Interest will be commensurate with the Lessee’s generation needs.
- The capacity entitlements of the Parties in Interests will remain equal to their Leased and Unleased Interests.
- The Facilities will retain their status as Qualifying Facilities and satisfy the requirements set forth in PURPA, 16 U.S.C. § 796, et seq., and FERC regulations, 18 C.F.R. § 292.201, et seq., for qualifying facility status.
- The Leasehold payments shall be fixed and unrelated to power production or the value of electricity sold into the wholesale market.
- The Parties in Interest will not have captive customers, jurisdictional assets, or a rate base subject to regulation.
- Project risks will be borne by the Parties in Interest.
- The Lease agreement will be supplemented by an O&M Agreement addressing the day-to-day management, maintenance, and operations of the Leasehold Interest.
- Revenues obtained from the wholesale sale of power in excess of the Leasehold Interest will be credited toward a portion of the O&M Charge.
- Backup and stand-by power, if needed, will be provided by an electric public utility.

35.

Diamond respectfully suggests that when each of the aforementioned Jurisdictional Determination Characteristics are present in the proposed transaction, a finding of non-jurisdictional status is appropriate.

ST. CHARLES OPERATIONS

36.

As stated above, the Plaquemine and St. Charles Facilities have historically and primarily been used to support on-site chemical manufacturing by UCC and TDCC and on-site tenants.

37.

Diamond seeks a declaration that its continued provision of electric power to [BEGIN
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via a Leasehold Interest in the St. Charles Facilities will not render the [BEGIN
CONFIDENTIAL **END CONFIDENTIAL]** (collectively, “Parties in Interest”) either individually or collectively, a *public utility* or an *electric public utility* as those terms are used or defined in Section 21 of Article IV of the Louisiana Constitution of 1974, La. R.S. 452121, La. R.S. 45:1161, or La. R.S. 45:1164, or otherwise subject the Facilities or the Parties in Interest to regulation as a *public utility* or *electric public utility* by the Commission pursuant to the Louisiana Constitution, or any relevant statute, Commission rule, order, regulation or practice.⁴¹

⁴¹ LPSC Docket No. S-33436, Petition for Jurisdictional Determination, page 1 and 4.

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PLAQUEMINE OPERATIONS

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45.

Diamond suggests that these lease agreements possess all of the aforementioned Jurisdictional Determination Characteristics.

46.

Therefore, Diamond respectfully requests that the Commission issue a determination that the continued provision of electric power to the above identified St. Charles and Plaquemine tenants via Leasehold Interests will not render Diamond, UCC, TDCC, the respective lessees, lenders, successors, or the St. Charles and Plaquemine Facilities, either individually or collectively, a *public utility* or an *electric public utility* or otherwise subject to regulation by the Commission as a *public utility* or an *electric public utility*.

FUTURE CO-LOCATOR LEASES

47.

The electric and steam generation capacity of the St. Charles and Plaquemine Facilities exceeds the generation needs of Diamond, UCC, TDCC, and other on-site tenants.⁴²

48.

By way of example, one future economic development opportunity being evaluated by Diamond involves co-location of a demonstration-scale Light Gas to Fuels (LG2F™) conversion

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plant at a Diamond site. **[BEGIN CONFIDENTIAL**

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49.

In the interest of economic development, Diamond seeks to use a portion of the electric and steam power produced by the Plaquemine and St. Charles Facilities not required for internal consumption by Diamond or existing on-site tenants to provide additional on-site tenants with generation in an amount less than or equal to 5 MW pursuant to Co-Locator Leases.

50.

As illustrated below, the present proposal is virtually identical to the Industrial Park Concept presented to the LPSC in 2011.

51.

Pursuant to the Co-Locator Lease, the Tenant will receive a Leasehold Interest in the output of the Facilities of the pertinent site equivalent to generation capacity necessary to conduct its operations as well as an undivided interest in Diamond's on-site distribution and interconnection facilities sufficient to deliver the Leasehold Interest and any excess power subject to the following conditions: (1) Diamond will continue to own and receive power from the St. Charles and Plaquemine Facilities.; (2) All power in excess of Diamond's unleased

⁴² The Commission has not historically regulated the production and/or sale of steam. *See* LPSC Order U-36793, dated January 17, 2024.

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interest (“Diamond Excess Power”) and the Tenant’s Leasehold Interest (“Tenant Excess Power”) shall be sold by Diamond or an Affiliate thereof to an electric public utility or into the wholesale market. In no event will Diamond or Tenant Excess Power be sold at the retail level.;

(3) Any adjustments to the Tenant’s Leasehold Interest will be commensurate with the Tenant’s generation needs, but in no event shall the Tenant’s Leasehold Interest exceed 5 MW, without prior Commission approval.;

(4) At all times, Diamond’s and Tenant’s entitlements shall remain equal to their leased and unleased interests.;

(5) The St. Charles and Plaquemine Facilities will retain their status as Qualifying Facilities and satisfy the requirements set forth in PURPA, 16 U.S.C. § 796, et seq., and FERC regulations, 18 C.F.R. § 292.201, et seq., for qualifying facility status.;

(6) The lease payments will be fixed and unrelated to power production or the value of electricity sold in the wholesale market.;

(7) Diamond, Tenant, and the St. Charles and Plaquemine Facilities will not have captive customers, jurisdictional assets, or a rate base subject to regulation.;

(8) Project risks will be borne by Diamond, Tenant, and other on-site tenants, not by any utilities or their ratepayers.;

(9) Diamond and Tenant will enter into an O&M Agreement addressing the day-to-day management, maintenance, and operations of the Leasehold Interest.;

(10) Pursuant to the O&M Agreement, Tenant will be required to pay a monthly charge proportionate to its share of production costs.;

(11) Backup and stand-by power, if needed, will be provided by Entergy.;

(12) Revenues obtained from the wholesale sale of excess Tenant Power will be credited toward a portion of the O&M Charge; and

(13) Diamond will timely notify the Commission of any material change to the facts and circumstances of the Co-Locator Lease(s).

52.

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53.

Diamond suggests that seeking a jurisdictional determination for tenants with generation needs of less than or equal to 5MW is cost prohibitive and the inherent delay involved in reaching resolution of jurisdictional determination matters can, in some cases, effectively kill an investment. Therefore, Diamond respectfully requests that this Commission establish an expedited procedure for approval of future St. Charles and Plaquemine Co-Locator Leases.

54.

Specifically, Diamond proposes the following procedure:

Prior to entering into a lease or O&M agreement (“Co-Locator Agreements”) with an entity seeking to locate to the St. Charles or Plaquemine Sites and acquire a Leasehold Interest in the respective generation, distribution, and interconnection facilities, Diamond shall submit a Notice Filing to LPSC Staff. Such filing shall contain a copy of the proposed Co-Locator Agreements addressing each Jurisdictional Determination Characteristic as well as a brief description of the proposed entity, which may be submitted as confidential pursuant to LPSC Rule

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12.1. Upon receipt of such filing, LPSC Staff shall have thirty (30) days to review the proposed agreement for compliance with applicable Commission rules and orders. During such period, Diamond shall comply with all reasonable requests for information. If no written objection is received by Diamond within the thirty (30) day period, Diamond may enter into the agreement and will not be subject to regulation by the Commission as a *public utility* or *electric public utility* by reason thereof. Upon Staff's timely objection to the proposed Co-Locator Agreement, the matter shall be filed with the Commission and docketed for consideration. Diamond shall also promptly notify the Commission of any material change in the facts and circumstances, including changes to the Parties, the percentages of Leasehold and Unleased Interest, and the financial structure of the project.

WHEREFORE, Diamond respectfully requests that:

- 1) Notice of filing of this Petition for Jurisdictional Determination be published in the April 24, 2026 Bulletin of the Commission with a fifteen (15) day intervention period
- 2) The Commission issue an order declaring that ownership, lease, management, operation and maintenance, power transfers and steam transfers, and any and all interests, whether arising from lease, mortgage, encumbrance, sublease or assignment, relating to the

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END CONFIDENTIAL],

in and related to the Facilities will not render Diamond, UCC, TDCC, lenders, successors, the on-site tenants, or the St. Charles or Plaquemine Facilities either individually or collectively, a *public utility* or an *electric public utility*, as those terms are used or defined in Section 21 of Article IV of the Louisiana Constitution of 1974, La. R.S. 45:121, La. R.S. 45:1161, or La. R.S. 45:1164, or otherwise subject the Facilities or any of the Parties in Interest to regulation as a *public utility* or *electric public utility* by the Commission pursuant to the Louisiana Constitution, or any relevant Louisiana statute, Commission rule, order, regulation or practice;

- 3) The Commission establish an expedited procedure by which Diamond may obtain approval of future Co-Locator Lease Agreements; and
- 4) Diamond be granted all general and equitable relief, as appropriate.

[Signature on following page.]

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Respectfully submitted:

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By:  _____

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KayLyn Treadway (Bar Roll # 41971)

Counsel for Diamond Infrastructure Solutions

CERTIFICATE OF SERVICE

I hereby certify that on this day a copy of the foregoing version of Petition for Jurisdictional Determination has been sent to the official service list via email at the following addresses:

All LPSC Commissioners	

Baton Rouge, Louisiana, this 21st day of April, 2026.



Luke F. Piontek