

# LOUISIANA PUBLIC SERVICE COMMISSION

ORDER NUMBER S-36156

THE DOW CHEMICAL COMPANY,  
EX PARTE

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*Docket No. S-36156, In re: Notice Filing Requesting that the Commission Approve its Request to Decrease Olin's Leasehold Interest to an Amount Equivalent to Approximately 285 MWs due to Olin Shutting Down a Portion of its Chlor Alkali Capacity at its Plaquemine Facility.*

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(Decided at the December 14, 2021 Business and Executive Session.)  
(Modifies and Re-Affirms Order Nos. S-33436 and S-34196.)

## ORDER

### **I. SUMMARY OF PRIOR COMMISSION ACTION IN ORDER NO. S-33436:**

On October 21, 2014, The Dow Chemical Company (“TDCC” or “Petitioner”) filed a Petition for Jurisdictional Determination (“Petition”) requesting that the Commission declare that the ownership, lease, management, operation and maintenance, power and steam transfers, and any and all interests, whether arising from lease, mortgage, encumbrance, security interest, sublease or assignment, as described in the Petition, in and/or related to three existing electric generation facilities and related infrastructure with a capacity of 1382.1 MW (“Facilities”) owned and operated by TDCC and located within TDCC’s Plaquemine, Louisiana, manufacturing complex (the “Plaquemine Site”) will not render the Facilities, TDCC or a to-be-formed entity unaffiliated with TDCC that will purchase, own and operate certain chlorine and chlorine-derivative manufacturing facilities at the Plaquemine Site (“NewCo”) (TDCC and NewCo and their respective successors and assigns are collectively referred to as “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 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.

After consideration of the issues presented in the Petition, the Commission found that following the proposed acquisition by NewCo of certain chlorine and chlorine-derivative facilities (the “Chlorine Divestiture”), the Parties in Interest and the Facilities will not, either individually or collectively, be classified as a “public utility” or an “electric public utility,” as those terms are used or defined in Article IV, §21 of the Louisiana Constitution of 1974, La. R.S. 45:121, La. R.S.

45:1161, or La. R.S. 45:1164, or otherwise be subject 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, subject to the terms of Order No. S-33436, which memorialized the Commission’s decision.

## **II. SUMMARY OF PRIOR COMMISSION ACTION IN ORDER NO. S-34196**

Subsequent to the issuance of Order No. S-33436, TDCC provided notice to the Commission that NewCo would be a wholly-owned subsidiary of Olin Corporation (“Olin”). That wholly-owned subsidiary is named Blue Cube Operations, LLC.<sup>1</sup> Order No. S-33436 was based, in part, upon Olin’s lease of approximately 288 MW of capacity in TDCC’s Facility (Olin’s “Leasehold Interest”). Order No. S-33436 also states that TDCC “shall provide the Commission with notice of any material change in the facts and circumstances set forth herein, which shall be subject to Commission review and approval, with notice and opportunity to comment to be given to the parties in this proceeding.”<sup>2</sup> After the transfer of the chlorine assets to Olin, Olin began operating the assets at a higher production rate than TDCC had operated them prior to the transfer. This higher level of production required more power than the approximately 288 MW of capacity that Olin had leased regarding TDCC’s Facility (generating units).

Concerned that the increase in Olin’s Leasehold Interest might constitute a material change to the facts, TDCC submitted a Notice Filing in Docket No. S-33436 on July 26, 2016, seeking a minor amendment to LPSC Order No. S-33436, increasing Olin’s Leasehold Interest from approximately 288 MW to approximately 335 MW.<sup>3</sup> The Notice Filing also advised the Commission that TDCC will retire one of the three generating units (a 90 MW unit) that comprise the Facility, resulting in a total capacity of 1292.1 MW.<sup>4</sup> The Notice Filing was given Docket No. S-34196, and was published in the Commission’s Official Bulletin dated July 29, 2016. The Notice Filing was unopposed.

Accordingly, TDCC requested the Commission issue an order in Docket No. S-34196, amending Order No. S-33436 to indicate that Olin’s Leasehold Interest to capacity in TDCC’s Facility will increase to approximately 335 MW; that TDCC is retiring a 90 MW unit that is currently part of the Facility; and that neither of these changes in circumstances alters the

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<sup>1</sup> Blue Cube Operations, LLC is referred to hereafter as Olin for ease of reference.

<sup>2</sup> Order No. S-33436, ordering paragraph no. 5.

<sup>3</sup> See Notice Filing at p. 3

<sup>4</sup> See Notice Filing at p. 3.

Commission's finding in Order No. S-33436 that the 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, as described in the Petition, in and related to the Facilities will not render The Dow Chemical Company, Olin Corporation, or Blue Cube Operations LLC, 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.<sup>5</sup> The Facilities will continue to operate as Qualifying Facilities under PURPA, and Entergy Louisiana, LLC ("ELL") will continue to supply stand-by and back-up power to individual entities, such as TDCC, that have a contract with ELL for such services. The Commission granted TDCC's request and issued Order No. S-34196 on September 28, 2016, and the order was effective immediately.

### **III. DOW'S CURRENT NOTICE FILING IN DOCKET NO. S-36156**

Olin has notified TDCC that it is shutting down a portion of its chlor alkali capacity at the Plaquemine Facility. Consequently, and in compliance with Ordering Paragraph 5 of Order No. S-33436, TDCC submitted a Notice Filing to inform the Commission of the desire to decrease Olin's Leasehold Interest to an amount that is equivalent to approximately 285 MWs due to Olin shutting down a portion of its chlor alkali capacity at its Plaquemine Facility.<sup>6</sup>

The Notice Filing was given Docket No. S-36156, and was published in the Commission's Official Bulletin dated October 1, 2021. In the Notice Filing, TDCC requested the Commission to vote on the requested amendment of Order Nos. S-33436 and S-34196 at its October 20, 2021 Business and Executive Session. The intervention deadline expired on October 18, 2021, and no interventions were filed. As the Notice Filing indicates, ELL<sup>7</sup> was contacted about the Notice Filing and did not oppose the requested amendment sought through the Notice Filing. Thus, the Notice Filing was unopposed.

TDCC requested the Commission issue an order in Docket No. S-36156, amending Order Nos. S-33436 and S-34196 to indicate that Olin's Leasehold Interest in electric power generated

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<sup>5</sup> See Order No. S-33436, at p. 6

<sup>6</sup> See Notice Filing at p. 3

<sup>7</sup> EGSL was merged into an entity that is now known as ELL.

from TDCC's Facility will decrease from approximately 335 MW to approximately 285 MW and that neither of these changes in circumstances alters the Commission's findings in Order Nos. S-33436 and S-34196 that the 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, as described in the Petition, in and related to the Facilities will not render The Dow Chemical Company, Olin Corporation, or Blue Cube Operations LLC, 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.<sup>8</sup> The Facilities will continue to operate as Qualifying Facilities under PURPA, and ELL will continue to supply stand-by and back-up power to individual entities, such as TDCC, that have a contract with ELL for such services. TDCC also requests that the order be made effective "immediately."

#### **IV. JURISDICTION**

The Commission exercises jurisdiction over the subject matter of this action pursuant to Article IV, §21 of the Louisiana Constitution.

Louisiana Constitution, Article IV, Section 21 provides in pertinent part:

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. 45:1161(1) defines "public utility" as:

... any person, public or private, subject to the general jurisdiction of the commission but not including carriers by rail, water, electric or motor vehicles or pipelines, or public utilities municipally owned, or operated, or regulated, unless the electors of such municipality, and electors residing outside the municipality, who are customers of the municipally owned utility, have manifested their approval of such jurisdiction as is required by Article IV, Section 21(C) of the Constitution of Louisiana in the manner provided by R.S. 45:1164.1 through 45:1164.13. 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

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<sup>8</sup> See Order No. S-33436, at p. 6

such person (a) consumes all of the electric power and energy generated by such facility for its own use at the site of generation or at some other location of mutually acceptable agreements to transport such electric power and energy can be reached with each electric public utility whose transmission facilities would be electrically utilized therefor; provided, however, notwithstanding any provision contained herein, there shall be no obligation or duty, expressed or implied, to purchase, to sell, to transport, or to engage in any other type of transaction with respect to the electric power and energy that may be generated by such person, imposed upon any public utility by this Section except as shall be provided in the cogeneration rules and regulations adopted by the Louisiana Public Service Commission pursuant to the Public Utility Regulatory Policies Act of 1978; or (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.

Order No. S-33436, in pertinent part, ordered the following:

1. The ownership, lease, management, operation and maintenance, power transfers, fuel transfers, and any and all interests, whether arising from lease, mortgage, encumbrance, sublease or assignment, as described in the Petition, in and related to the Facilities will not render TDCC, NewCo or the Facilities, either individually or collectively, a “public utility” or an “electric public utility,” as those terms are used or defined in Article IV, §21 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.

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5. Petitioner shall provide the Commission with notice of any material change in the facts and circumstances set forth herein, which shall be subject to Commission review and approval, with notice and opportunity to comment to be given to the parties in this proceeding. The identity of NewCo will be provided to the Commission within 30 days of such determination. Moreover, the “material changes” referenced above in this paragraph include, but are not limited to, any change in the Parties and/or the percentage of Leasehold or Unleased Interest in the Facilities and/or the financial structure of the project.

Order No. S-34196, in pertinent part, ordered the following:

6. The Commission affirms that no changes are being made to Ordering clauses 1-14 of Order [No.] S-33436, other than to reflect the changes referenced in the Notice Filing; all obligations and conditions listed therein remain in effect.

#### **V. STAFF’S RECOMMENDATION AND COMMISSION CONSIDERATION:**

Staff reviewed TDCC’s Notice Filing, as well as Order Nos. S-33436 and S-34196, and recommended that the Commission find that the changes referenced in the Notice Filing do not impact the Commission’s prior determinations. Thus, Staff recommended the Commission re-

affirm its findings in Order Nos. S-33436 and S-34196, subject to the terms and conditions contained in those Orders. Additionally, Staff noted that TDCC's filing in the current docket is evidence of its compliance with the terms of Order No. S-33436, as the Company specifically provided the Commission notice of a potential material change and provided the opportunity for intervention and review. Staff further recommended that in reviewing this Notice Filing, the Commission affirm that no changes are being made to Ordering clauses 1-14 of Order No. S-33436, other than to reflect the changes referenced in the Notice Filing; all obligations and conditions listed therein shall remain in effect. Finally, Staff recommended the Commission's Order issued in this docket be effective immediately.

Staff's Recommendation, was considered by the Commission at its December 14, 2021 Business and Executive Session. On motion of Vice Chairman Skrmetta, seconded by Commissioner Francis, and unanimously adopted, the Commission voted to accept Dow Chemical Company's request to decrease Olin's leasehold interest to an amount equivalent to approximately 285 MWs due to Olin shutting down a portion of its Chlor Alkali capacity at its Plaquemine facility.

**IT IS THEREFORE ORDERED:**

1. That the changes referenced in the Notice Filing do not impact the Commission's prior determinations in Order Nos. S-33436 and S-34196, and thus the Commission re-affirms its findings in Order Nos. S-33436 and S-34196, subject to the terms and conditions contained in those Orders.
2. That The Dow Chemical Company's filing in the current docket is evidence of its compliance with the terms of Order No. S-33436, as the Company specifically provided the Commission notice of a potential material change and provided the opportunity for intervention and review.
3. That Order Nos. S-33436 and S-34196 are amended to decrease Olin Corporation and Blue Cube Operations, LLC's Leasehold Interest of capacity in The Dow Chemical Company's Facility from approximately 336 MW to approximately 285 MW.
4. That nothing in the change in circumstances mentioned in Ordering clause 3, above, alters the Commission's finding in Order Nos. S-33436 and S-34196 that the 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, as described in the Petition, in and related to the Facilities will not render The Dow Chemical Company, Olin Corporation, or Blue Cube Operations LLC, 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.
5. The Commission affirms that no changes are being made to Ordering clauses 1-14 of Order No. S-33436, other than to reflect the changes referenced in the Notice Filing; all obligations and conditions listed therein remain in effect.

6. This Order will be effective immediately.

**BY ORDER OF THE COMMISSION**  
**BATON ROUGE, LOUISIANA**  
January 12, 2022



A handwritten signature in blue ink, appearing to read "Brandon M. Frey".

**BRANDON M. FREY**  
**SECRETARY**

/S/ CRAIG GREENE  
**DISTRICT II**  
**CHAIRMAN CRAIG GREENE**

/S/ ERIC F. SKRMETTA  
**DISTRICT I**  
**VICE CHAIRMAN ERIC F. SKRMETTA**

/S/ FOSTER L. CAMPBELL  
**DISTRICT V**  
**COMMISSIONER FOSTER L. CAMPBELL**

/S/ LAMBERT C. BOISSIERE, III  
**DISTRICT III**  
**COMMISSIONER LAMBERT C. BOISSIERE, III**

/S/ MIKE FRANCIS  
**DISTRICT IV**  
**COMMISSIONER MIKE FRANCIS**