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BEFORE THE
LOUISIANA PUBLIC SERVICE COMMISSION

DIAMOND INFRASTRUCTURE SOLUTIONS **DOCKET NO. _____**
EX PARTE

PETITION FOR JURISDICTIONAL DETERMINATION

NOW BEFORE THE COMMISSION comes Dow InfraCo, LLC (together with its wholly-owned subsidiaries, known as Diamond Infrastructure Solutions, "Diamond" or "Petitioner"), who is authorized to transact business in the State of Louisiana, through undersigned counsel, who submits this Petition for Jurisdictional Determination ("Petition") and respectfully states:

I. BACKGROUND

1.

The Dow Chemical Company ("TDCC") and its subsidiaries deliver a broad 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 the largest petrochemical company in Louisiana, adding $1 billion annually to the State's economy.

2.

In 2023, TDCC underwent a corporate restructuring and planned to transfer its generating and related assets in the Gulf Coast region, including those located at its manufacturing complex located near Plaquemine, Louisiana, in both Iberville and West Baton Rouge Parishes (the "Plaquemine Site") to a to-be-created Affiliate (the "2023 Transaction"). TDCC filed a Petition for Jurisdictional Determination with the LPSC in Docket No. U-36793 on May 9, 2023 (the "2023 Petition") seeking a finding that the transaction at issue, the proposed facilities leases, any other

General Business

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related agreements, the ownership, management, operation and maintenance, power transfers, and any and all interests whether arising from lease, mortgage, encumbrance, sublease or assignment, as described herein, in and/or related to the facilities, will not cause the Parties in Interest in the 2023 Petition – TDCC, UCC, the Affiliate, any shareholders of the Affiliate, lenders, other affiliates, their respective successors or assigns – either individually or collectively, to be considered an "electric utility" or "electric public utility" as defined in La. Const. art. IV, Section 21, 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.

3.

LPSC Staff recommended that the Commission make the jurisdictional findings requested by TDCC based upon the facts and circumstances set forth in the 2023 Petition. The LPSC issued Order No. U-36793, dated January 17, 2024, adopting Staff's recommendation and making the findings discussed above as requested by TDCC.

4.

The Affiliate contemplated in the 2023 Petition was created and eventually named Diamond.

5.

Diamond owns the Plaquemine Site. The 1,500-acre Plaquemine Site, which was first established in 1956, employs more than 4,500 people and includes 21 production units producing more than 50 intermediate and specialty chemical products. The Plaquemine Site also includes a 908 MW generation complex, consisting of multiple generating facilities (the "Plaquemine Facilities"), which were primarily used to support chemical manufacturing at the site by TDCC

and its tenants on the site. The Plaquemine Facilities are self-certified with the Federal Energy Regulatory Commission ("FERC") as Qualifying Facilities ("QFs") pursuant to the Public Utility Regulatory Policies Act of 1978 ("PURPA") and FERC's implementing regulations.[1] Excess electric power from the Plaquemine Facilities is sold into the wholesale market administered by the Midcontinent Independent System Operator, Inc. ("MISO").[2] The Plaquemine Site receives stand-by and backup power from Entergy Louisiana, LLC ("Entergy").

6.

Following the 2023 Transaction, full ownership of the Plaquemine Facilities and related infrastructure at the Plaquemine Site was transferred to Diamond. TDCC continues to own a controlling interest in Diamond. TDCC also maintains operational control of the Plaquemine Site.

7.

Diamond wishes to enter into an agreement (the "2025 Transaction") with a third party – a crypto currency mining company ("Proposed Lessee") – which intends to locate its operations within the physical boundaries of the Plaquemine Site ("Proposed Lessee Site"). The identity of the Proposed Lessee will be provided to the LPSC once ongoing confidential negotiations are finalized.

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[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.

8.

Diamond will provide Proposed Lessee with power necessary for its operations through an undivided leasehold interest ("Proposed Lessee Leasehold Interest") in electric power generated from the Plaquemine Facilities (a "Facilities Lease"). As part of the 2025 Transaction, Diamond will also lease the Proposed Lessee Site to Proposed Lessee and provide Proposed Lessee with other necessary services, including but not limited to, water, sewer, site security, electrical interconnection, and internet fiber activity.

9.

In particular, the Proposed Lessee would lease between **[BEGIN CONFIDENTIAL – – END CONFIDENTIAL]** of electric generation in the Plaquemine Facilities from Diamond through its Facilities Lease. Diamond would utilize remaining unused electric generation in the Plaquemine Facilities ("Diamond Unleased Interest").

10.

The Proposed Lessee would not receive any electric power from the Plaquemine Facilities in excess of the Proposed Lessee Leasehold Interest. Any electric generation leased by Proposed Lessee in excess of the generation needed for Proposed Lessee's operations at any given time would be sold by Diamond on Proposed Lessee's behalf into the wholesale power market or to an electric public utility. Finally, Proposed Lessee would have an option to increase or decrease the Proposed Lessee Leasehold Interest subject to certain conditions should its power requirements at the Proposed Lessee Site increase or decrease.

11.

Proposed Lessee will make periodic, fixed lease payments under the Facilities Lease to Diamond that are not tied to power production. Further, Proposed Lessee will make the lease

payments regardless of whether power is produced by the Plaquemine Facilities and without regard to any amount or value of power produced by the Plaquemine Facilities.

12.

Neither Proposed Lessee, Diamond, nor the Plaquemine Facilities will have captive customers, jurisdictional assets, or a rate base subject to regulation. Project risks, including those associated with the financing, ownership, operation and maintenance of the Plaquemine Facilities, and the Facilities Lease, including the generation of electricity, will be borne exclusively by Proposed Lessee and Diamond and not by any utilities or their ratepayers.

13.

At no time shall Proposed Lessee, Diamond, TDCC, any shareholders of or investors in Proposed Lessee, Diamond, or TDCC, or lenders, other affiliates, or their respective successors or assignees (collectively referred to as "Parties in Interest") be primarily engaged in the generation, transmission, distribution, or sale of electricity. Further, none of the Parties in Interest shall offer electricity for sale to the public at large.

II. COMMISSION JURISDICTION

14.

The LPSC has jurisdiction over the subject matter of this Petition for the following reasons:

(i) The LPSC is charged by Article IV, Section 21 of the Louisiana Constitution with the duty of regulating public utilities and has the power to perform those actions necessary to discharge its duties;

(ii) Under statutory law, the power, authority and duty of the Commission affect and include all matters and things connected with, concerning and growing out of the service to be rendered by a public utility; and

(iii) In fulfilling its constitutional and statutory duty to regulate public utilities, the LPSC has the power and authority to determine whether an entity constitutes a public utility or an electric public utility so as to be subject to the Commission's regulatory jurisdiction.

III. NATURE OF THE REQUEST

15.

As the Commission noted in Ordering Paragraph 5 of its 2015 jurisdictional determination order concerning the Plaquemine Facilities, Order No. S-33436,

> Petitioner shall provide the Commission with notice of any material change in the facts and circumstances set forth [in the Order], which shall be subject to Commission review and approval, with notice and opportunity to comment to be given to parties in this proceeding. . . . [T]he 'material changes' referenced above in this paragraph include, but are not limited to, any change in the Parties and/or . . . the financial structure of the project. [3]

16.

Diamond submits this Petition to the Commission in compliance with Ordering Paragraph 5 of Order No. S-33436 and to request a declaration that the Facilities Lease, any other related agreement, the ownership, management, operation and maintenance, power transfers, and any and all interests whether arising from lease, mortgage, encumbrance, sublease or assignment, as described herein, in and/or related to the Plaquemine Facilities, will not cause the Parties in Interest – Proposed Lessee, Diamond, TDCC, any shareholders of or investors in Proposed Lessee, Diamond, or TDCC, or lenders, other affiliates, or their respective successors or assigns either individually or collectively, to be considered an "electric utility" or "electric public utility" as defined in La. Const. art. IV, Section 21, La. R.S. 45:121, La. R.S. 45:1161 and La. R.S. 45:1164,

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[3] Order No. S-33436, at p. 8, Ordering ¶ 5.

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.

17.

Diamond further submits that neither the 2025 Transaction, the Facilities Lease, nor the declaration requested herein will change the Commission's conclusions in LPSC Order Nos. S-33436, S-34196, and S-36156 pertaining to the Plaquemine Facilities.

18.

Finally, Entergy[4] is being provided a copy of this Petition. As a result, Diamond respectfully requests that the Commission issue a shortened notice period on this Petition of fifteen (15) days and issue an order approving the changes described herein as soon as practicable, but no later than at its October 2025 Open Session Meeting.

IV. THE 2025 TRANSACTION WILL NOT IMPLICATE THE COMMISSION'S JURISDICTION

19.

The 2025 Transaction, including the Facilities Lease, will not subject the Parties in Interest to the Commission's subject matter jurisdiction. The Commission's jurisdiction is discussed below.

[4] At the time of the approval of Order No. S-33436, the incumbent electric public utility providing service to the Plaquemine Site was Entergy Gulf States Louisiana, L.L.C. ("EGSL"). Since the issuance of Order No. S-33436, EGSL has merged with Entergy Louisiana, LLC to form Entergy Louisiana Power, LLC, which then changed its name to Entergy Louisiana, LLC, following the approval and consummation of the Entergy Business Combination in Docket U-33244.

20.

The Commission's subject matter jurisdiction is established in Article IV, § 21 of the Louisiana Constitution and La. R.S. 45:121, *et seq*. In particular, La. Const. art. IV, § 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.[5]

Similarly, La. R.S. 45:1163 states, in pertinent part, "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."[6]

21.

There are, however, limitations on the type of entity classified as a public utility so as to be subject to the Commission's jurisdiction. For example, La. R.S. 45:1161 provides, in pertinent part,

> "Public utility" means any 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 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… ; 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

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[5] La. Const. art. IV, § 21(B).

[6] La. R.S. 45:1163(A)(1).

> 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.[7]

Similarly, La. R.S. 45:121 explains,

> 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: (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 if 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… ; 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 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.[8]

22.

In summary, if the owner, operator, lessor, or lessee of electric generating facilities does not "furnish electric service within this state," is not "primarily engaged in the generation, transmission, distribution, and/or sale of electricity," and either consumes all of the electric power and energy so generated for its own use at the site of generation or other site (if transmission can be arranged), only consumes a portion thereof at the site and sells the entire remaining portion of the electric power and energy to an electric public utility, or sells the entire output of the generating facilities to an electric public utility, such owner, operator, lessor or lessee will not meet the definition of a "public utility", under La. R.S. 45:1161 or an "electric public utility", pursuant to

[7] La. R.S. 45:1161(1) (emphasis added).

[8] La. R.S. 45:121 (emphasis added).

La. R.S. 45:121. Consequently, such persons would not be subject to the Commission's jurisdiction.

23.

As previously mentioned, neither Proposed Lessee, Diamond, nor any of the other Parties in Interest will be primarily engaged in the generation, transmission, distribution or sale of electricity. Nor will such Parties in Interest offer electric service to the general public. The electric power and energy provided through the Facilities Lease will be consumed by Proposed Lessee at the Plaquemine Site and any excess will be sold into the wholesale power market (MISO) or to an electric public utility, as it is currently.

24.

The following facts further support the assertion that none of the Parties in Interest should be considered a "public utility" or an "electric public utility" under applicable Louisiana law:

- Proposed Lessee will obtain its full electric power needs for the Proposed Lessee Site through the Proposed Lessee Leasehold Interest in the electric power generated by the Plaquemine Facilities.
- As part of the Facilities Lease, Proposed Lessee will lease an undivided interest in Diamond's on-site distribution and interconnection facilities sufficient to deliver the Proposed Lessee Leasehold Interest to its Proposed Lessee Site, and to deliver any excess electric power to the Entergy-owned substation.
- Proposed Lessee will have an option to increase or decrease the Proposed Lessee Leasehold Interest, subject to certain conditions should its power requirements increase or decrease (subject to the notification requirements in Ordering Paragraph 5, Order No. S-33436).

- Proposed Lessee will make periodic, fixed lease payments to Diamond that are not tied to power production. Further, Proposed Lessee will make the lease payments regardless of whether power is produced by the Plaquemine Facilities and without regard to any amount or value of power produced by the Plaquemine Facilities.
- Any of the Proposed Lessee Leasehold Interest not required for internal consumption at Proposed Lessee's Site ("Proposed Lessee Excess Power") will be sold by Diamond, for Proposed Lessee's benefit, to an electric public utility as defined in La R.S. 45:121, or in the wholesale power market. In no event will Proposed Lessee Excess Power be sold to a retail customer.
- Proposed Lessee will retain Diamond under separate agreements (the "O&M Agreements") to perform the day-to-day management, maintenance and operations for the Proposed Lessee Leasehold Interest. Under the O&M Agreements, Proposed Lessee will pay Diamond a monthly charge (the "O&M Charge") based on Proposed Lessee's share of the production-related costs of the Plaquemine Facilities. The revenues received by Diamond for the sale at wholesale of the Proposed Lessee Excess Power will cover a portion of the O&M Charge otherwise payable by Proposed Lessee to Diamond, as appropriate, under the O&M Agreement.
- Diamond's electric power needs at the Plaquemine Site will be supplied by the Plaquemine Facilities. In no event will Diamond receive electric power from the Plaquemine Facilities in excess of its Unleased Interest.
- Any of the Diamond's Unleased Interest not required for internal consumption at the Plaquemine Site ("Diamond Excess Power") will be sold by Diamond to an electric

public utility as defined in La R.S. 45:121, or in the wholesale power market. In no event will any Diamond Affiliate Excess Power be sold to a retail customer.

- The Plaquemine Facilities will continue to operate as Qualifying Facilities under PURPA, and Entergy will continue to supply stand-by and back-up power to the Plaquemine Site.
- In the event Proposed Lessee elects to purchase stand-by/backup power, it shall secure its own contract with Entergy for such power and in no event will Proposed Lessee purchase, share, or otherwise receive the stand-by/backup power purchased by Diamond under its contract with Entergy.
- Neither Proposed Lessee, Diamond, nor the Plaquemine Facilities will have captive customers, jurisdictional assets, or a rate base subject to regulation. Project risks, including those associated with the financing, ownership, operation and maintenance of the manufacturing facilities at the Plaquemine Site, and the lease and ongoing operation and maintenance expenses of the Plaquemine Facilities, including the generation of electricity, will be borne exclusively by Proposed Lessee, Diamond, and other tenants at the Plaquemine Site, and not by any utilities or their ratepayers.

WHEREFORE, Diamond respectfully requests that:

(i) notice of filing of this Petition for Jurisdictional Determination be published in the August 15, 2025 Bulletin of the Commission with a 15-day intervention period;

(ii) the Commission issue an order at its October 2025 Business and Executive Session Meeting finding this Petition for Jurisdictional Determination good and sufficient and ordering that the Facilities Lease, any other related agreement, the ownership, management, operation and

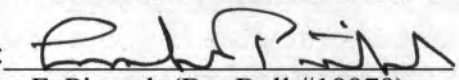
maintenance, power transfers, and any and all interests whether arising from lease, mortgage, encumbrance, sublease or assignment, as described in the Petition for Jurisdictional Determination, in and/or related to the Plaquemine Facilities, will not cause the Parties in Interest – Proposed Lessee, Diamond, TDCC, or any shareholders of or investors in Proposed Lessee, Diamond, or TDCC, or lenders, other affiliates, or their respective successors or assigns – either individually or collectively, to be considered an "electric utility" or "electric public utility" as defined in La. Const. art. IV, Section 21, La. R.S. 45:121, La. R.S. 45:1161 and La. R.S. 45:1164, or otherwise subject the Plaquemine Facilities or any of the Parties in Interest to regulation as an electric public utility by the Commission pursuant to any other relevant state statute, LPSC rule, regulation, order, or practice; and

(iii) Diamond be granted all general and equitable relief, as appropriate.

Respectfully submitted:

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CERTIFICATE

I hereby certify that on this day a copy of the foregoing Petition for Jurisdictional Determination by Diamond Infrastructure Solutions has been sent to the official service list by email, and served by United States mail, postage prepaid, through their representatives, at the following addresses:

All Commissioners

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Baton Rouge, Louisiana, this 12th day of August, 2025.

Luke F. Piontek