

**STATE OF VERMONT
PUBLIC UTILITY COMMISSION**

Case No. 21-1107-PET

Petition of GlobalFoundries U.S. 2 LLC requesting
a certificate of public good, pursuant to 30 V.S.A. § 231,
to operate a Self-Managed Utility

Case No. 21-1109-PET

Petition of Green Mountain Power Corporation for
approval to modify service territory pursuant to
30 V.S.A. § 249

MOTION TO AMEND SCHEDULE

AllEarth Renewables, Inc. (“AER”) moves that the Vermont Public Utility Commission (“Commission”) amend the schedule in the above matters to set a schedule for the filing and resolution of potential dispositive motions prior to the time that evidentiary hearings are held and stay such hearings until dispositive legal issues are resolved. In support of this motion, it is stated:

1. Hearings in these matters are presently scheduled for October 14-15, 2021 pursuant to the schedule agreed to by the parties and accepted by the Commission in its Scheduling Order of May 24, 2021.
2. Significant discovery has been undertaken on Petitioners Global Foundries U.S.2 LLC (“GF”) and Green Mountain Power Corporation (“GMP”) since the time the existing schedule was created, including through service of Information Requests on GF and GMP by the Commission itself. These efforts have helped illuminate the scope and specifics of GF’s request to form a Self-Managed Utility (“SMU”), although some discovery issues remain outstanding between Petitioners and intervenor Conservation Law Foundation (“CLF”) as evidenced by CLF’s September 17, 2021 Motion to Compel, and it appears between CLF and the Agency of Commerce and Community Development.
3. The Commission is a creature of statute, having “only such powers as are expressly conferred on it by the Legislature, together with such incidental powers expressly granted or necessarily implied as are necessary to the full exercise of those granted.” *Trybulski v. Bellows Falls Hydro-Electric Corporation*, 112 Vt. 1, 7, 20 A.2d 117 (1941). Whatever the merits of GF’s request to become an SMU, there are significant questions as to whether the Commission can assent to creation of an SMU under a statutory scheme that appears to make no mention of the concept, and under which Vermont electric utilities operate under a vertically integrated system entailing full regulation of rates or carefully proscribed exceptions to that system. See, e.g., 30 V.S.A. §§218d, 225-226.

4. Pre-hearing resolution of the question of whether the Commission has the authority to approve what GF seeks will avoid the costs and inefficiencies associated with evidentiary hearings if in fact Commission authority is lacking. Secondly, creation of a set window of time for dispositive motions will also allow time for resolution of any remaining discovery disputes, which will facilitate the hearing process should the Commission conclude it does have authority to allow the creation of an SMU. Other parties and the Commission will also benefit from a clear expression by the Department of Public Service of its position on the authority question, given the Department's statutory advocacy role.
5. AER suggests and requests that the Commission set a deadline of October 15, 2021 for the filing of potentially dispositive motions by any party. Recognizing and sharing in the desire of GF and GMP to move this matter forward expeditiously, AER is amenable to any response time those entities may propose, and to a schedule that allows a 10 calendar day to reply to any responses filed by GF and GMP. Hearings should be rescheduled to occur after dispositive legal issues have been resolved.
6. This motion is consistent with the May 24th Scheduling Order, in which the Commission specifically recognized that its accepting deadlines for initial motions "is not foreclosing the opportunity for parties to file motions when appropriate, pursuant to Commission Rules or the Vermont Rules of Civil Procedure." AER has filed this motion within a very short time of receipt of GF and GMP's responses to rebuttal discovery requests under the existing schedule, and well in advance of the contemplated hearing dates.
7. AER sought, and could not obtain, assent from the other parties to the relief requested in this motion.

For these reasons, AER respectfully requests that the Commission amend the schedule as requested herein.

Dated this 20th day of September, 2021.

AllEarth Renewables, Inc.

By: /s/ **David Mullett**

David Mullett, General Counsel
AllEarth Renewables, Inc.
94 Harvest Lane
Williston, VT 05495
802-872-9600
dmullett@allearthrenewables.com

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