

**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

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**REPLY TO RESPONSES RE: MOTION TO AMEND SCHEDULE**

On September 20, 2021, AllEarth Renewables, Inc. (“AER”) moved 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. Petitioners GlobalFoundries U.S. 2 LLC (“GF”) and Green Mountain Power Corporation (“GMP”) filed oppositions to AER’s Motion the following day, with the Department of Public Service (“Department”) following suit on September 22<sup>nd</sup>.

Literally the day before the Department filed the above-referenced response asserting that briefing on jurisdictional issues “is likely to benefit from the development of a more robust evidentiary record,” it signed onto a Letter of Intent (“the LOI”) with GF and the Vermont Agency of Natural Resources (“ANR”) under which it appears that:

1. GF, the Department and ANR will try to negotiate a Memorandum of Understanding (“MOU”) around a Greenhouse Gas Reduction Plan for GF;
2. These negotiations will be secret;
3. If the secret discussions result in an MOU, that MOU will be filed up to two weeks *after* the evidentiary hearings in these cases have concluded; and
4. Any MOU is conditioned on Commission approval of GF becoming a Self-Managed Utility.<sup>1</sup>

AER’s Motion to Amend addressed the considerations of efficiency that in and of themselves warrant adjustment of the schedule, and it will not reiterate those arguments here. The

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<sup>1</sup> The LOI was filed as Exhibit DPS-EM-1 to the Surrebuttal Testimony of Edward McNamara on September 23, 2021. It was initially filed as a document responsive to Q.CLF.GF.13.

subsequent developments noted above, however, now compel even broader adjustments, for it is difficult to imagine a more substantively and procedurally defective process than one in which:

- a. The Commission holds evidentiary hearings on a unique proposal of significant social, environmental and economic impact;
- b. After those hearings are over, major new evidence is produced, but not subject to discovery or cross-examination, and likely within a few days of when initial briefs must be filed by parties<sup>2</sup>;
- c. Reply briefs are filed; and
- d. Only then does the Commission decide whether it has jurisdiction in the first place. If it concludes that jurisdiction does exist, it must then wrestle with questions of what if any evidentiary weight it can give to an MOU that is not in evidence (or to the failure to reach one).

In fairness to the signatories to the LOI, they may have had something different in mind. AER was not privy to their discussions and has no information beyond what is said in the one-page LOI. Overlaying what is said in the LOI with the existing schedule, however, the irrationality set out above seems an inevitable result; a promise that key evidence may show up after the hearings means either that the promise is too late or the hearings too soon. A rearrangement of the hearings in the manner proposed by Conservation Law Foundation in its reply to AER's motion would appear to fairly balance all goals in that jurisdictional issues can be resolved first, the parties to the LOI can have a chance to bring their efforts to fruition, other parties and the Commission can explore those efforts through discovery, and if there is jurisdiction these cases can be resolved through the creation of the "robust evidentiary record" that is essential to resolving questions of fact and to the sound exercise of discretion by the Commission in evaluating what GF and GMP propose to do.

Dated this 28th day of September, 2021.

AllEarth Renewables, Inc.

By: /s/ **David Mullett**

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*This document has been filed via ePUC*

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<sup>2</sup> The initial brief deadline is Monday November 1, 2021 under the existing schedule. In the Letter of Intent, GF, ANR, and DPS have indicated that the MOU may not be disclosed until Friday October 29, 2021.