

## STATE OF VERMONT PUBLIC UTILITY COMMISSION

Petition of GlobalFoundries U.S. 2 LLC requesting )  
a certificate of public good, pursuant to 30 V.S.A. § 231, ) Case No. 21-1107-PET  
to operate a Self-Managed Utility )

Petition of Green Mountain Power Corporation for )  
approval to modify service territory pursuant to ) Case No. 21-1109-PET  
30 V.S.A. § 249 )

### **REVISED CERTIFICATE OF CHASE S. WHITING, ESQ.**

Chase S. Whiting, Esq. certifies pursuant to Vermont Rule of Civil Procedure 26(h) as follows:

1. My name is Chase Whiting. I am the attorney representing Conservation Law Foundation (“CLF”) in Case Numbers 21-1107-PET and 21-1109-PET. I am over the age of eighteen and am competent to certify facts pertaining to CLF’s Motion to Compel GlobalFoundries U.S. 2 LLC (“GF”) to Respond to Initial Discovery Requests (the “Motion”). The statements contained in this Certificate are made on my own personal knowledge and are true and accurate to the best of my knowledge, information, and belief.

2. CLF served its first set of discovery requests on GF on May 28, 2021. On June 11, GF provided its initial responses. I have conferred with GF’s Counsel about outstanding discovery matters and have made good faith efforts to resolve those matters by agreement and without intervention of the Public Utility Commission (the “Commission”).

- a. On June 25, 2021, I emailed Mr. Shapleigh Smith, Jr., Esq. and Mr. Justin Barnard, Esq. to set up a time to discuss CLF’s concerns about GF’s outstanding discovery. By email dated June 28, they requested me to provide a letter summarizing CLF’s discovery concerns prior to conferring by phone.
- b. By letter dated June 29, 2021, I informed Mr. Smith and Mr. Barnard of CLF’s concerns about outstanding discovery. I also requested that GF agree to a V.R.C.P. 26(c) Protective Agreement to allow disclosure of allegedly confidential information that is otherwise discoverable.

- c. I spoke by telephone with Mr. Smith and Mr. Barnard on June 30. During that conversation we resolved several outstanding matters but not others. They informed me that they would confer with GF and would then respond to CLF's discovery concerns, which included CLF's request for a Protective Agreement.
- d. On July 6, I followed-up with Mr. Smith and Mr. Barnard via email to check on the status of GF's outstanding discovery.
- e. By letter dated July 14, 2021, Mr. Barnard responded to some of CLF's discovery concerns. In that letter, GF agreed to make limited supplemental responses and productions. However, the supplemental discovery was not made at that time.
- f. On July 20, GF filed some of its supplemental discovery responses and production via ePUC.<sup>1</sup>
- g. Via email dated August 2, Mr. Dan Burke, Esq. shared a Protective Agreement Template with me, Mr. Smith, Mr. Geoff Hand, Esq., Mr. David Mullett, Esq., and Mr. John Kessler, Esq.
- h. On August 6, GF filed some additional supplemental discovery responses and production via ePUC.
- i. On August 18, I called Mr. Barnard to discuss outstanding discovery pertaining to the unexecuted Protective Agreement and other matters. He was unavailable. Mr. Smith and I then exchanged emails and scheduled a call for August 24, during which we discussed, among other things, outstanding discovery pertaining to the unexecuted Protective Agreement.
- j. By letter dated August 26, 2021, I summarized CLF's remaining discovery concerns for GF. On that day, I also reshared the Protective Agreement Template.
- k. Mr. Mullett shared another copy of the Protective Agreement Template with Mr. Smith, Mr. Barnard, and the other parties on September 2.
- l. I emailed Mr. Smith and Mr. Barnard on September 7 because I had not received a response about CLF's remaining discovery concerns. We spoke on the phone on September 8. They informed me that GF would not produce any additional materials or supplement its interrogatories further. In reference to Interrogatory 2.d, I understood Mr. Barnard to say that electricity is one of several costs, including mortgage costs and others, that GF rolls-up into the overall rent charges it issues to IBM, Marvell, New England Federal Credit Union, and Garnet EMS. I asked GF's

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<sup>1</sup> I was on vacation at that time and then attended a family funeral. I had limited access to email.

- counsel to please supplement Interrogatory 2.d to say that. During the September 8 call, Mr. Barnard and Mr. Smith also told me that they would again ask their client about the Protective Agreement. By email dated September 9, I asked them to please inform me soon whether GF would agree to the Protective Agreement. On September 10, Mr. Barnard and I emailed about, and discussed on the phone, the Protective Agreement.
- m. On September 14, Mr. Barnard email an executed copy of the Protective Agreement to me and the other Parties. Mr. Barnard wrote in that email that GF's joinder in the Protective Agreement is contingent on all Parties signing the Protective Agreement.
  - n. The final Party to execute the Protective Agreement did so on September 16, 2021. As of that date, GF, CLF, AllEarth Renewables, Inc., the Department of Public Services, the Agency of Commerce and Community Development, Vermont Electric Power Company, Inc., Vermont Transco LLC, Green Mountain Power Corporation, Vermont Public Power Supply Authority, City of Burlington Electric Department, Renewable Energy Vermont, and Stowe Electric Department had executed the Protective Agreement.
  - o. On September 20, 2021, Mr. Barnard sent me and others an email in which he wrote, among other things, that he did not previously tell me on September 8, 2021 call that GF rolls up electricity costs and other overhead costs – such as mortgage costs – into the rent it charges IBM, Marvell, Garnet EMS, and New England Federal Credit Union. In that email, Mr. Barnard instead said “electricity is one of many general, facility-wide costs that are defrayed by rental income.” I responded by email on that same day, saying in part: “I have reviewed my notes from the September 8 call and have taken all steps available to me with the resources available to me to corroborate what I understood you to say during that meeting. During the September 8 call, I understood you to say that GF includes electricity costs and other overhead costs – such as mortgage payments – in the rent it charges IBM, Marvell, New England Federal Credit Union, and Garnett EMS.” Noting Mr. Barnard's new assertion that electricity costs are defrayed by rent payments, I then said that “it seems to me that GF and CLF may not actually be that far apart on the ultimate issue here. In your email this morning you said that electricity is one of many general, facility-wide costs that are defrayed by rental income. I am having a hard time understanding a meaningful difference between this morning's statement and the one I understood you to say on September 8. It seems like GF's concern is about specific language: whether electricity costs are *defrayed* by rent payments or are *rolled into* rent payments. As I recall saying during our call on September 8, CLF would appreciate it if GF would please revise its response to Interrogatory 2.d to identify and describe the manner in which IBM, Marvell, New England Federal Credit Union, and Garnet EMS consume electricity annually. If the description you provided this morning contains the specific language that GF would like to submit in response to Interrogatory 2.d, please feel free to do so. CLF will review any supplemental response GF makes to Interrogatory 2.d and will evaluate whether GF's response is

sufficient for CLF to withdraw the portion of CLF's Motion to Compel addressing Interrogatory 2.d. As noted above, CLF remains willing to amicably resolve outstanding discovery."

- p. On September 21, 2021, I conferred by phone and email with Mr. Barnard and Mr. Smith about Interrogatory 2.d. During the call, I asked GF's counsel whether they have any specific information they can point to that shows the things I wrote in the contemporaneous notes I took during the September 8 call are inaccurate. They both informed me that they have no such information. I informed them then, and later by email on that same day, that I continue to understand my contemporaneous notes to accurately describe the relevant portion of the September 8 call. I also informed them that I continue to understand the description of energy consumption Mr. Barnard provided in his September 20 email to be meaningfully similar to the description I understood him to make on the September 8 call. I again invited GF to revise its response to Interrogatory 2.d, and said that if GF were to do so CLF would consider withdrawing the relevant portion of its Motion to Compel.

3. The Parties have now executed the Protective Agreement, which was filed with the Commission for consideration. The Commission issued an Order Approving the Protective Agreement on September 24, 2021. As discussed in CLF's Motion to Compel, GF continues to withhold allegedly confidential information that CLF contends is otherwise discoverable. I understand that GF disagrees the allegedly confidential information is discoverable. I have been unable to reach agreement with Mr. Smith and Mr. Barnard on that issue and the other outstanding discovery matters addressed in the Motion.

Dated at Burlington, Vermont, this 29th day of September 2021.

By:   
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