

**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

MEMORANDUM IN SUPPORT OF MOTION TO AMEND COMMISSION ORDER

AllEarth Renewables, Inc. (“AER”) offers this Memorandum in support of its V.R.C.P. 59(e) request that the Commission amend its February 17, 2022 *Order Determining GlobalFoundries’ Request to be Exempt from the Renewable Energy Standard is Outside the Commission’s Statutory Authority* (“the February 17th Order”) to reflect complete dismissal of the Petition in this matter. The basis for AER’s motion is straightforward: the jurisdictional analysis in the February 17th Order is fundamentally sound, but the Order fails to follow its own reasoning to the clear conclusion that the entire case must be dismissed.

In its September 30, 2021 *Order Granting the Agency of Natural Resources Intervention and Amending the Schedule*, the Commission asked the parties to brief “whether we have jurisdiction to grant GlobalFoundries’ request to operate as a self-managed utility under *de minimis* regulation.”¹ AER’s November 8, 2021 Motion to Dismiss raised this same overarching question, as did the summary judgment motion filed by Conservation Law Foundation (“CLF”) on that same date. The Commission, however, elected to answer a substantially narrower question in the February 17th Order, addressing only the issue of compliance with the Renewable Energy Standard (“RES”), even while explicitly continuing to recognize that “[t]he larger question before us is whether the Commission has the statutory authority to grant GlobalFoundries’ request to be removed from GMP’s service territory so that Global Foundries can purchase power wholesale as a self-managed utility (“SMU”) subject to *de minimis* regulation.”²

While it is understandable that Commission decisions may be made on narrow grounds rather than broader ones, AER respectfully submits that the Commission’s analysis has effectively and correctly decided the entire case, and that providing an opportunity for GlobalFoundries to make a subsequent filing addressing the RES component of an SMU request serves no purpose in terms of either substance or efficiency. The February 17th Order correctly recognizes that:

- The Commission has statutory authority to authorize public service companies, but not to create a Self-Managed Utility as defined and described by Global Foundries.³

¹ September 30, 2021 Order at 5. The second question posed by the Commission, regarding the impact of Global Foundries’ tenants, need not be resolved in the context of this Rule 59(e) motion.

² February 17th Order at 2.

³ *Id.* at 3 (headnote 1).

- GlobalFoundries' leaving GMP's service territory would either make it "a public service company - fully subject to *all* required statutes, such as the Renewable Energy Standard - or an entity that is not currently authorized under Vermont law."⁴
- While the Legislature has in the past provided specific energy-related regulation measures for industrial customers, it has not done so around the SMU concept.⁵
- The provisions of 30 V.S.A. § 218e relating to manufacturing provide no statutory basis for authorizing an SMU.⁶
- GlobalFoundries both created and defined the term 'Self-Managed Utility' "because there is no such term or concept in Vermont statute."⁷

Rule 59(e) allows for reconsideration of matters encompassed within a decision on the merits, and allows the Commission to generally reexamine the correctness of the judgment itself. See *In re Robinson/Keir Partnership*, 154 Vt. 50, 54, 573 A.2d 1188 (1990), and cases cited therein. The Rule is fully applicable to the Commission and proceedings before it. *In re Joint Petition of Green Mt. Power Corp.*, 2012 VT 89, 192 Vt. 429, 446, 60 A.3d 654. The RES is but one of a large number of statutes applicable to public service companies, and just one of the significant number of those statutes from which GlobalFoundries has claimed exemption in its "pick and choose" approach to Title 30.⁸ To litigate this case in piecemeal fashion surrounding each claimed exemption, or even groups of exemptions, would impose a substantial burden on the parties and the Commission to no good purpose, since the same analysis that disposed of GlobalFoundries' RES exemption claims in the February 17th Order will almost certainly dispose of the rest.

Nor should it be lost that inviting GlobalFoundries to make another filing that follows the RES is to give something that GlobalFoundries has already expressly rejected, as the February 17th Order notes:

*GlobalFoundries has foreclosed the option of procuring its own power while remaining subject to regulation that more closely approximates what is required of a public service company, such as compliance with the RES, due to cost ineffectiveness.*⁹

GlobalFoundries' position on this point alone would warrant outright dismissal even apart from the broader jurisdictional analysis discussed above and comprehensively briefed by AER

⁴ *Id.* at 4 (emphasis added).

⁵ *Id.* at 6 and fn.23

⁶ *Id.* at 4.

⁷ *Id.* at 6.

⁸ See, e.g., Global Foundries' May 17, 2021 Responses to Commission Information Request 2.a., listing the statutes it thinks should be applied, and the qualifications even within those.

⁹ February 17th Order at 4, fn. 14, citing Global Foundries Brief at 1 (emphasis added).

and CLF over the last several months. The posture of this case goes well beyond waiver, where a party fails to raise an issue in timely fashion. Here, GlobalFoundries has unequivocally said that it cannot work with the very thing upon which the Commission has premised the option for GlobalFoundries to continue along the SMU path, and dismissal of the case flows simply from taking this sophisticated and capable petitioner at its word. There is no basis on which to offer GlobalFoundries another bite at an SMU apple that does not exist, in a flavor that GlobalFoundries has already indicated would not be palatable if it did.

For these reasons, AER respectfully requests that the Commission Amend its February 17th Order to reflect full dismissal of this case.

Dated this 10th day of March, 2022.

AllEarth Renewables, Inc.

By: /s/ **David Mullett**

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