

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	
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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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Order entered: 05/19/2021

**ORDER GRANTING MOTIONS TO INTERVENE,
ADDRESSING ATTORNEY HALL’S *PRO HAC VICE* MOTION, AND
DENYING VPPSA AND BURLINGTON ELECTRIC’S MOTION TO ALTER OR AMEND**

These cases concern GlobalFoundries U.S. 2 LLC’s (“GlobalFoundries”) petition for a certificate of public good, pursuant to 30 V.S.A. § 231, to operate an independent, self-managed utility beginning October 1, 2022, under *de minimis* regulation appropriate to its function and Green Mountain Power Corporation’s (“GMP”) petition for approval to modify its service territory, pursuant to 30 V.S.A. § 249.

In this Order, the Commission grants four pending motions to intervene, addresses Attorney Hall’s motion to appear *pro hac vice* on behalf of the Stowe Electric Department (“Stowe Electric”), and denies the City of Burlington Electric Department (“BED”) and Vermont Public Power Supply Authority’s (“VPPSA”) motion to alter or amend but clarifies that the Commission’s April 26 Order did not limit BED’s or VPPSA’s participation in this proceeding.

I. MOTIONS TO INTERVENE

On April 21, 2021, Stowe Electric filed in both cases an identical motion to intervene as of right, pursuant to Commission Rule 2.209(A), or in the alternative, by permission, pursuant to Commission Rule 2.209(B). On April 27, 2021, AllEarth Renewables (“AllEarth”) filed in both cases an identical motion to intervene as of right, pursuant to Commission Rule 2.209(A), or in the alternative, by permission, pursuant to Commission Rule 2.209(B). On April 29, 2021,

Renewable Energy Vermont (“REV”) filed in both cases an identical motion to intervene as of right, pursuant to Commission Rule 2.209(A), or in the alternative, by permission, pursuant to Commission Rule 2.209(B). On May 3, 2021, Conservation Law Foundation (“CLF”) filed in both cases an identical motion to intervene as of right, pursuant to Commission Rule 2.209(A), or in the alternative, by permission, pursuant to Commission Rule 2.209(B). All four motions to intervene were timely filed.

Stowe Electric argues that it “has a substantial interest in the cost implications of the transfer of transmission assets from GMP to VELCO [the Vermont Electric Power Company], as there are certain transmission cost recovery impacts to Stowe as a [Vermont electric distribution utility] that are implicated by the proposed transaction.”¹ Stowe Electric also maintains that “its cost responsibility under the governing transmission tariff . . . may be adversely impacted” should the Commission approve GlobalFoundries’ proposal and GMP’s request to amend its service territory.² Stowe Electric also argues that these proceedings provide it with the exclusive means by which to protect its substantial interests and that its interests will not be represented by existing parties in the cases.³

AllEarth argues that there is a “clear, direct and ongoing relationship between the composition of the state’s electric utilities and the development of renewable energy in Vermont,” citing potential impacts on various Vermont programs and the grid.⁴ AllEarth contends that its interests will not be represented by existing parties in the cases and that no party will be prejudiced by, and this matter will not be delayed by, its intervention.⁵

REV argues that it has a substantial interest in these proceedings: “[a] direct and ongoing relationship between the composition of the state’s electric utilities and the renewable energy services provided in Vermont and by REV members exists.”⁶ REV additionally asserts a substantial interest in ensuring progress toward Vermont’s renewable energy and greenhouse gas reduction commitments.⁷ REV maintains that its interests will not be represented by existing

¹ Stowe Electric, *Motion to Intervene* (4/21/21) at 3.

² Stowe Electric, *Motion to Intervene* (4/21/21) at 3.

³ Stowe Electric, *Motion to Intervene* (4/21/21) at 4.

⁴ AllEarth, *Motion to Intervene* (4/27/21) at 1-2.

⁵ AllEarth, *Motion to Intervene* (4/27/21) at 2.

⁶ REV, *Motion to Intervene* (4/29/21) at 2.

⁷ REV, *Motion to Intervene* (4/29/21) at 2.

parties in the cases and that no party will be prejudiced by, and this matter will not be delayed by, its intervention.

CLF argues that it has a substantial interest in these proceedings “to protect its members’ substantial interests in clean and cost-effective electricity, improved energy efficiency, a reduction of pollution and greenhouse gas emissions, and protection of Vermont’s natural resources.”⁸ CLF also asserts its right to intervene as a GMP ratepayer.⁹ CLF maintains that its interest is not adequately represented by existing parties, that there is not an alternative means by which CLF’s interest can be protected, and that CLF’s intervention will not unduly delay the proceeding or prejudice the interests of existing parties or of the public.

In a filing made on April 23, 2021, GMP advised the Commission that it has no objection to Stowe Electric’s intervention. Further, GMP submitted a Memorandum of Understanding (“MOU”) that includes Stowe Electric as a party.¹⁰ In a filing made on May 5, 2021, GMP stated that it has no objection to the Commission granting permissive intervention to AllEarth, REV, and CLF.¹¹

On May 5, 2021, GlobalFoundries filed a response explaining that it has no objection to Stowe Electric’s, AllEarth’s, REV’s, or CLF’s motions to intervene.

On May 5, 2021, the Vermont Department of Public Service (“Department”) filed a response stating that it has no objection to Stowe Electric’s, AllEarth’s, REV’s, or CLF’s motions to intervene.

Rule 2.209 governs intervention in proceedings before the Commission. Rule 2.209(A) provides that upon timely application a person shall be entitled to intervene in a proceeding in three circumstances:

⁸ CLF, *Motion to Intervene* (5/3/21) at 3.

⁹ CLF, *Motion to Intervene* (5/3/21) at 3-4.

¹⁰ Memorandum of Understanding, filed April 23, 2021.

¹¹ Letter from Geoffrey H. Hand, Esq., GMP, to Holly Anderson, Clerk of the Commission, dated May 5, 2021.

- (1) when a statute confers an unconditional right to intervene;
- (2) when a statute confers a conditional right to intervene and the condition or conditions are satisfied; or
- (3) when the applicant demonstrates a substantial interest which may be adversely affected by the outcome of the proceeding, where the proceeding affords the exclusive means by which the applicant can protect that interest, and where the applicant's interest is not adequately represented by existing parties.

In addition, Rule 2.209(B) reserves to the Commission the power to grant intervenor status on a permissive basis when an applicant “demonstrates a substantial interest which may be affected by the outcome of the proceeding.” In exercising its discretionary authority under this provision, the Commission considers three factors:

- (1) whether the applicant's interest will be adequately protected by other parties;
- (2) whether alternative means exist by which the applicant's interest can be protected; and
- (3) whether intervention will unduly delay the proceeding or prejudice the interests of existing parties or of the public.

For the reasons articulated in Stowe Electric's motion, the Commission finds that Stowe Electric has a substantial interest that may be adversely affected by the outcome of this proceeding, this proceeding affords the exclusive means by which Stowe Electric can protect that interest, and Stowe Electric's interest is not adequately represented by existing parties. Stowe Electric is granted intervention as of right pursuant to Commission Rule 2.209(A).

For the remaining motions to intervene, filed by non-utility entities, it is not as clear whether these proceedings provide the “exclusive means” for protecting their stated interests. Commission Rule 2.209(B) reserves to the Commission the power to grant intervenor status on a permissive basis when an applicant “demonstrates a substantial interest which may be affected by the outcome of the proceeding.” As acknowledged in the motions to intervene, that power is at the Commission's discretion and, as further detailed below, we decide to grant permissive intervention to the remaining movants.

For the reasons articulated in AllEarth's motion, the Commission finds that AllEarth has a substantial interest that may be adversely affected by the outcome of this proceeding,

AllEarth's interest is not adequately represented by existing parties, there is not an alternative means by which AllEarth's interest can be protected, and AllEarth's intervention will not unduly delay the proceeding or prejudice the interests of existing parties or of the public. Thus, AllEarth is granted permissive intervention pursuant to Commission Rule 2.209(B).

For the reasons articulated in REV's motion, the Commission finds that REV has a substantial interest that may be adversely affected by the outcome of this proceeding, REV's interest is not adequately represented by existing parties, there is not an alternative means by which REV's interest can be protected, and REV's intervention will not unduly delay the proceeding or prejudice the interests of existing parties or of the public. Thus, REV is granted permissive intervention pursuant to Commission Rule 2.209(B).

For the reasons articulated in CLF's motion, the Commission finds that CLF has a substantial interest that may be adversely affected by the outcome of this proceeding, CLF's interest is not adequately represented by existing parties, there is not an alternative means by which CLF's interest can be protected, and CLF's intervention will not unduly delay the proceeding or prejudice the interests of existing parties or of the public. Thus, CLF is granted permissive intervention pursuant to Commission Rule 2.209(B).

Further, AllEarth, REV, and CLF raise similar issues in their motions to intervene. Although we are not consolidating these intervenors, pursuant to Rule 2.209(C), we encourage them to coordinate filing discovery, responding to pleadings from other parties, and making presentations at any hearing. Additionally, we encourage these intervenors to carefully review the discovery questions and information requests that have already been served in this proceeding to avoid duplicative filings to the extent practicable.

II. PRO HAC VICE MOTION

Accompanying Stowe Electric's motion to intervene was a motion to approve the *pro hac vice* admission of Michael J. Hall, Esq., of Stackpole & French Law Offices, to appear before the Commission on behalf of Stowe Electric in these cases. In the motion, Mr. Hall represents that he is a member in good standing of the bar of the State of New Hampshire and the Commonwealth of Massachusetts, and that he has "not been the subject of any prior or pending

disciplinary proceedings.”¹² However, Attorney Hall’s motion does not identify co-counsel for these proceedings, and Stowe Electric’s motion to intervene is only signed by Attorney Hall.

Commission Rule 2.201(C) provides, “An attorney admitted to practice and in good standing in any other state or American or common law jurisdiction may appear in particular matters with the permission of the Commission, provided that such attorney must have co-counsel of record who is admitted to practice in Vermont.”

No party filed responses or objections to Attorney Hall’s motion. Attorney Hall is requested to identify co-counsel, pursuant to Commission Rule 2.201(C), before the Commission will rule on his motion to be admitted *pro hac vice*.

III. MOTION TO ALTER OR AMEND

BED and VPPSA filed a joint motion, pursuant to Vermont Rule of Civil Procedure 59(e), to alter or amend the Commission’s April 26 Order granting both parties intervention. BED and VPPSA request that the Commission delete footnotes 7 and 8 from its April 26 Order. The footnotes were identical, except that one referred to BED and the other to VPPSA. They read: “The Commission does not find that BED [or VPPSA] has a substantial interest ‘in the precedent that may be created by allowing large customers to become Self-Managed Utilities’ and is not granting intervention on that basis.” BED and VPPSA request the deletion of footnotes 7 and 8 to “remove any limitation on the scope of their interventions.”¹³

On May 3, 2021, GMP filed a response to BED and VPPSA’s motion stating that it has no objection to BED and VPPSA participating without limitation in these cases.¹⁴ GMP acknowledges in its letter, however, that it did not interpret the footnotes as placing a limitation on BED’s and VPPSA’s participation in these cases.¹⁵ On May 5, 2021, the Department filed a response asking the Commission to grant BED and VPPSA’s motion and delete the footnotes.¹⁶

Pursuant to Commission Rule 2.209, the standard for intervention requires a substantial *and* particularized interest in the case before the Commission in which intervention is sought.¹⁷

¹² *Motion for Admission Pro Hac Vice* (4/12/21) at 1.

¹³ BED and VPPSA, *Motion to Alter or Amend* (4/29/21) at 2.

¹⁴ Letter from Geoffrey H. Hand, Esq., GMP, to Holly Anderson, Clerk of the Commission, dated May 3, 2021.

¹⁵ *Id.*

¹⁶ Department, *Department of Public Service’s Response to Motion to Alter or Amend* (5/3/21) at 1.

¹⁷ See *In re Green Mountain Power Corporation*, 2018 VT 97, ¶ 18, 208 Vt. 349, 198 A.3d 36 (“A ‘substantial’ interest [must be] a sufficiently ‘particularized’ one.”); see also *In re Chelsea Solar LLC*, 2021 VT 27, ¶ 43, ___ Vt.

BED and VPPSA were granted intervention based on the substance of the arguments advanced in their motion: that the proposed transaction could have consequences affecting both parties.

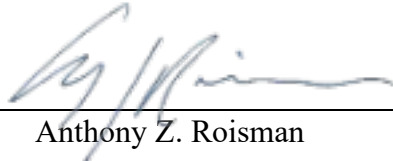
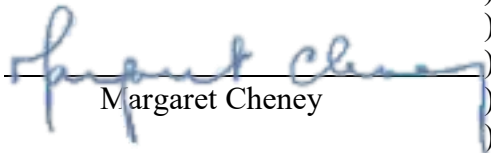
Footnotes 7 and 8 do not limit the scope of BED's and VPPSA's intervention. However, every case has the potential for creating precedent that would affect future cases. A claim for intervention cannot be substantiated on this basis alone.

To further clarify, BED and VPPSA may raise concerns in these proceedings based on the implications of GlobalFoundries' and GMP's proposals. These footnotes are not intended as a limitation on the presentation of evidence relevant to the cases before the Commission.

SO ORDERED.

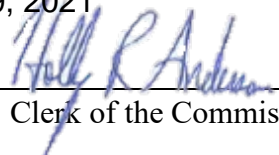
__, __ A.3d __ (deferring to Commission's interpretation of intervention standard as requiring "a substantial *and* particularized interest" (emphasis added)).

Dated at Montpelier, Vermont, this 19th day of May, 2021.

)	
_____ Anthony Z. Roisman)	PUBLIC UTILITY
)	COMMISSION
)	OF VERMONT
)	
_____ Margaret Cheney)	

OFFICE OF THE CLERK

Filed: May 19, 2021

Attest:  _____
Clerk of the Commission

Notice to Readers: This decision is subject to revision of technical errors. Readers are requested to notify the Clerk of the Commission (by e-mail, telephone, or in writing) of any apparent errors, in order that any necessary corrections may be made. (E-mail address: puc.clerk@vermont.gov)

PUC Case Nos. 21-1107-PET & 21-1109-PET – JOINT SERVICE LIST

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