

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: 09/30/2021

**ORDER GRANTING THE AGENCY OF NATURAL RESOURCES INTERVENTION AND AMENDING THE SCHEDULE**

These cases concern GlobalFoundries U.S. 2 LLC’s (“GlobalFoundries”) petition for a certificate of public good (“CPG”), 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.

Before the issuance of this order, the remainder of the schedule in this proceeding was as follows.

October 6, 2021	Department and Intervenor responses to surrebuttal discovery requests and Commission information requests
October 14-15, 2021	Evidentiary Hearings
November 1, 2021	Deadline for initial briefs
November 15, 2021	Deadline for reply briefs

On September 21, 2021, AllEarth Renewables, Inc. (“AllEarth”) filed a motion to amend the schedule in this case, arguing that it needs time to file a motion to dismiss based on the Commission’s lack of jurisdiction to assent to GlobalFoundries’ request in this case. On the

same date, GlobalFoundries and GMP filed oppositions to AllEarth's request and indicated that the current schedule provides an opportunity for AllEarth to litigate its potential motion to dismiss. On September 22, 2021, the Vermont Department of Public Service ("Department") filed an opposition to AllEarth's request arguing that, although jurisdictional issues can be raised at any time, this matter can be addressed in the parties' post-hearing briefs.

On September 22, 2021, the Department, the Vermont Agency of Natural Resources ("ANR"), and GlobalFoundries filed a Letter of Intent. This letter is also an exhibit to the Department's surrebuttal testimony filed on September 23, 2021. The letter indicates that the Department, ANR, and GlobalFoundries intend to file a memorandum of understanding ("MOU") regarding GlobalFoundries' ongoing greenhouse gas emission reduction goals.

On September 24, 2021, CLF filed a response in support of AllEarth's request arguing that the Letter of Intent presents new factual and legal issues regarding jurisdiction that should be adjudicated because they are determinative. On September 28, 2021, AllEarth filed what it characterized as a new motion to amend the schedule in this case.<sup>1</sup>

On September 29, 2021, the Department filed a sur-reply to AllEarth's motion in which it reiterated its opposition to AllEarth's request and proposed an alternative schedule in which GlobalFoundries, the Department, and ANR would file an MOU and supporting testimony by October 15; parties would have opportunities to serve discovery on those filings and file prefiled testimony in response; and hearings would be held the week of November 15, 2021. The Department's proposed schedule delays legal briefing on jurisdiction until after the hearings. Also, on September 29, 2021, GlobalFoundries and GMP filed letters supporting the Department's proposed alternative schedule.

On September 23, 2021, ANR filed a motion to intervene by permission in Case No. 21-1107-PET only, pursuant to Commission Rule 2.209(B). ANR also requests that the Commission enlarge the time to file a motion to intervene because the deadline for such motions was May 3, 2021. In a filing made on September 24, 2021, GlobalFoundries advised the Commission that it has no objection to ANR's intervention. On September 27, 2021, GMP notified the Commission that it does not object to ANR's participation. On September 28, 2021, both CLF and AllEarth filed responses to ANR's motion in which they waive their objections to

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<sup>1</sup> The Commission treats AllEarth's filing as a reply to the responses to its original motion.

ANR's intervention so long as the Commission makes changes to the schedule to provide for ANR to file testimony and evidence, for the parties to serve discovery on ANR, and for the parties to file prefiled testimony in response to ANR's testimony. On September 29, 2021, the Department filed a response stating that it supports ANR's intervention.

On September 28, 2021, CLF filed a motion requesting that the Commission extend the deadlines for surrebuttal discovery such that the requests would be served by October 1, 2021, rather than the currently established deadline of September 28, 2021, and responses would be due by October 11, 2021, rather than the currently established deadline of October 6, 2021. CLF contends the additional time is needed because GlobalFoundries filed significant supplemental discovery on September 27, 2021, some of which pertains to work done by the Department in relation to the Letter of Intent, which may affect CLF's surrebuttal discovery. CLF stated that it had conferred with the Department and that the Department has no objections to this request.

#### ANR's Motion to Intervene

In its motion to intervene, ANR argues that it has a substantial interest, "[a]s the state's lead environmental agency, tasked with implementing many of the requirements of the Global Warming Solutions Act and having jurisdiction over the emissions of air contaminants, generally, ANR will be able to offer its perspective on the potential impacts of Global Foundries' becoming a Self-Managed Utility and its greenhouse gas emissions and potential opportunities for emissions reductions."<sup>2</sup> ANR also argues that these proceedings provide it with the exclusive means by which to protect its substantial interests, that it will not unduly delay or prejudice the interests of existing parties, and that its interests will not be represented by existing parties in the cases.<sup>3</sup>

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:

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<sup>2</sup> ANR, *Motions to Intervene* (9/23/21) at 2.

<sup>3</sup> ANR, *Motions to Intervene* (9/23/21) at 2-3.

- (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.

As an initial matter, and as acknowledged by ANR, its motion is not timely because the deadline for motions to intervene was May 3, 2021. ANR requests that the Commission enlarge the time for filing and consider ANR's motion. The Commission grants ANR's request and considers its motion to intervene.<sup>4</sup>

For the reasons articulated in ANR's motion, the Commission finds that ANR has a substantial interest that may be adversely affected by the outcome of this proceeding, this proceeding affords the exclusive means by which ANR can protect that interest, and ANR's interest is not adequately represented by existing parties. Although these criteria would permit ANR intervention as of right pursuant to Commission Rule 2.209(A), ANR has not requested intervention under Rule 2.209(A). Instead, the Commission finds that the criteria of Rule 2.209(B) have been satisfied and ANR is granted permissive intervention.

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<sup>4</sup> The Commission does not address AllEarth's general objections or CLF's objections to ANR's intervention under Vermont Rule of Civil Procedure 16.2 and Commission Rule 2.209(B)(3) because the Commission is making amendments to the schedule in this proceeding consistent with AllEarth's and CLF's suggested changes to the schedule. AllEarth and CLF indicated that they waive these objections should the Commission amend the schedule as requested.

### Scheduling Issues Resulting from Recent Filings

As has been highlighted throughout this proceeding, GlobalFoundries' proposal is novel and there is no model for issuing a final order or a CPG in a case such as this. It involves many complex factual and legal determinations on disputed issues, including one of the central remaining issues: whether, to what extent, and how GlobalFoundries would be subject to renewable energy, energy efficiency, and greenhouse gas emission reduction standards if allowed to operate as a self-managed utility.

Although the proposal outlined in the Department, ANR, and GlobalFoundries' Letter of Intent to establish alternative mechanisms for meeting Vermont's climate policy goals may be desirable and appropriate, the Commission requires that the parties, and certainly the Petitioner, provide a detailed proposal for the Commission's consideration and examination before an evidentiary hearing. Because the Commission and the other parties will not have the proposed MOU until October 15, 2021, and the parties should be afforded an opportunity to conduct discovery and provide additional testimony about that proposal or MOU, the Commission is postponing the previously scheduled hearings. The hearings will no longer be conducted on October 14 and 15, 2021, and the prehearing logistics deadlines that were included in the memorandum that issued on September 17, 2021, no longer apply.

Because the Commission is no longer holding the evidentiary hearings in this case on October 14 and 15, we will seek briefing from the parties in advance of a hearing on two separate legal issues.<sup>5</sup> First, the Commission requests briefing on whether we have jurisdiction to grant GlobalFoundries' request to operate as a self-managed utility under *de minimis* regulation.<sup>6</sup> Second, the Commission requests briefing on whether GlobalFoundries' tenants are customers such that GlobalFoundries' operations, if it continued to provide power to those tenants, would constitute a public service business. The parties will also be provided an

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<sup>5</sup> AllEarth is being granted the relief that it sought in its initial motion to amend the schedule; however, the Commission is providing that relief on other grounds, some of which appear in AllEarth's reply.

<sup>6</sup> We acknowledge CLF's argument that briefing of the jurisdictional issue should occur after any MOU or other proposal is filed with the Commission. However, we view the jurisdictional question posed by GlobalFoundries' proposal to operate as a self-managed utility under *de minimis* regulation as distinct from the issue of whether the specific substantive provisions that are proposed in the MOU can be ordered by the Commission. The latter issue would benefit from the factual inquiry of a hearing and would best be briefed after a hearing.

opportunity for reply briefs. The schedule for this briefing is incorporated in the schedule at the end of this Order.

Given that the evidentiary hearings in this case will be delayed by the additional process provided to litigate the MOU, we do not agree with the Department that we should nonetheless defer briefing on potentially determinative legal issues in this case. Because the outstanding legal issues identified above could materially alter whether or in what posture this matter proceeds to a hearing, it is both less economical for ratepayers and less efficient to proceed to hearing before these matters are resolved.<sup>7</sup>

The Commission sets the following schedule.

October 1, 2021	Deadline for objections to Commissioner Hofmann sitting on this case; Surrebuttal discovery requests served on the Department and Intervenors; <sup>8</sup> Commission issues surrebuttal information requests
October 11, 2021	Department and Intervenor responses to surrebuttal discovery requests
October 15, 2021	Deadline for filing MOUs/other proposals and supporting testimony and evidence; Responses to Commission information requests
October 18, 2021	Deadline for initial briefs by all parties on pre-hearing legal issues: (1) Commission jurisdiction and (2) treatment of GlobalFoundries' tenants
October 29, 2021	Discovery requests served on the parties filing an MOU/proposal; Commission information requests on the parties filing an MOU/proposal
November 1, 2021	Deadline for reply briefs on pre-hearing legal issues
November 12, 2021	Parties' responses to discovery requests and Commission information requests
December 1, 2021	Deadline for rebuttal testimony from non-filing parties
TBD	Commission decision on pre-hearing legal issues


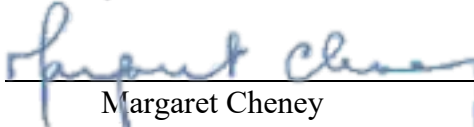
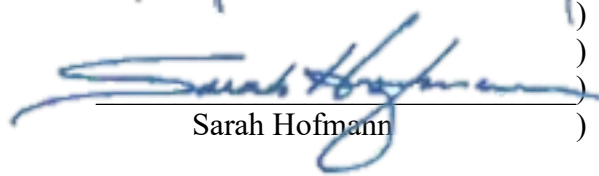
<sup>7</sup> If, for example, the Commission determines that it does not have jurisdiction to grant GlobalFoundries' request, then a hearing may no longer be necessary. Alternatively, if the Commission determines that it would treat GlobalFoundries' tenants as customers, then a hearing may no longer be desirable or appropriate.

<sup>8</sup> As evidenced by this entry in the schedule, we grant CLF's request to align the surrebuttal discovery with the Commission's information requests.

Once the Commission issues a decision on the pre-hearing legal issues, the Commission will provide an opportunity for the parties to file proposed schedules, if necessary, and will arrange to hold a scheduling conference, as needed. The parties should be aware that based on the current status of the schedule in this proceeding, if hearings are needed, they will occur no earlier than January 2022.

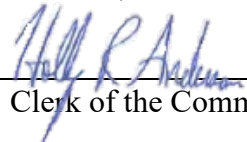
**SO ORDERED.**

Dated at Montpelier, Vermont, this 30th day of September, 2021.

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

OFFICE OF THE CLERK

Filed: September 30, 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](mailto:puc.clerk@vermont.gov))*



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

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