

**STATE OF VERMONT  
PUBLIC UTILITY COMMISSION**

Petition of GLOBALFOUNDRIES U.S. 2 LLC )  
for a Certificate of Public Good pursuant to 30 )  
V.S.A. § 231 to operate a Self-Managed Utility ) Case No. 21-1107-PET  
)

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

**GLOBALFOUNDRIES U.S. 2 LLC’S RESPONSE TO:  
(1) ALLEARTH RENEWABLES, INC.’S MOTION TO AMEND COMMISSION ORDER  
AND  
(2) CONSERVATION LAW FOUNDATION, INC.’S MOTION TO CLARIFY THE  
SCOPE OF THE PUBLIC UTILITY COMMISSION’S ORDER**

Petitioner GLOBALFOUNDRIES U.S. 2 LLC (“GlobalFoundries”), by and through counsel, submits this memorandum in response to AllEarth Renewables, Inc.’s (“AER”) Motion to Amend Commission Order and Conservation Law Foundation, Inc.’s (“CLF”) Motion to Clarify the Scope of the Public Utility Commission’s Order. Because the Motions raise overlapping issues, GlobalFoundries consolidates its response to both in the following memorandum.

**Memorandum**

In its February 17, 2022 Order, the Commission ruled: “While the Commission has authority to approve the creation of a public service company, and to exempt such a company from certain provisions of Title 30, we cannot provide the core relief that GlobalFoundries requests: to exempt the SMU from the RES requirements.” Order at 3. In light of its ruling, the Commission invited GlobalFoundries to confirm whether it wished to proceed with its petition “without the proposed RES exemption.” *Id.* at 9. GlobalFoundries has now affirmed that it

intends to proceed with its petition to operate a public service company supplying electricity to its Essex Facility, subject to RES and the other applicable requirements of Chapter 89.

This notwithstanding, AER and CLF have made a renewed request for the Commission to dismiss the Petition for lack of subject matter jurisdiction.<sup>1</sup> As GlobalFoundries has confirmed that it intends to proceed with its Petition in a manner consistent with the Order, their continued assertion that the Commission lacks jurisdiction is without merit. However, because AER and CLF have raised the issue, GlobalFoundries agrees that the question of jurisdiction should be conclusively resolved. In deciding AER's and CLF's motions, GlobalFoundries thus asks that the Commission affirm that it has jurisdiction to entertain and rule on GlobalFoundries' Petition.

**A. The Commission Has Jurisdiction over GlobalFoundries' Petition.**

The Commission, through its February 17, 2022 Order, has already substantially resolved the issue before it. The Order affirmed that the Commission "undeniably" had jurisdiction to "regulate aspects of GlobalFoundries' proposal based on the provisions of Title 30 that confer jurisdiction to the Commission over public service companies generally." Order at 3. The only aspect of GlobalFoundries' proposal over which the Commission specifically ruled that it lacked jurisdiction was the request "to exempt the SMU from the RES requirements." *Id.* While the Order acknowledged that the Commission had statutory authority to tailor its jurisdiction and exempt public service companies from other provisions of Title 30, it did not address the application of any other regulatory requirements to GlobalFoundries' proposal at this stage.

---

<sup>1</sup> While framing their motions alternately as requests for reconsideration, amendment, or clarification of the Commission's Order, the relief requested by the two motions is substantively the same: dismissal of the Petition on the ground that Commission lacks jurisdiction.

AER and CLF acknowledge that the Commission has jurisdiction over public service companies but argue that the Petition must be dismissed because it seeks approval of a “Self-Managed Utility.” Their arguments presume that the term “self-managed utility” represents an entity that is not a “public service company”—which, as clarified in GlobalFoundries’ response to the Commission’s March 17, 2022 Request for Information, is not the case. “Self-managed utility” is simply a shorthand term that GlobalFoundries has used to describe what it seeks the authority to do: directly procure power for its Essex Facility from the wholesale markets, subject to the oversight of the Public Utility Commission. The Commission has made clear in its Order that, in doing so, GlobalFoundries would act as a public service company. GlobalFoundries intends to proceed consistent with the Commission’s Order. The proposed “self-managed utility,” if approved, would be a public service company, and consideration and approval of such a proposal lies within the Commission’s jurisdiction.

AER also appears to suggest that the designation as a public service company should “dispose” of GlobalFoundries’ request for regulation tailored to the scope of its activities under 30 V.S.A. § 203, and hence dismissal of the Petition is appropriate. For two reasons, this is simply not so. First, the Order squarely recognized that the Commission has authority to exempt public service companies from certain provisions of Title 30—and thus, to the extent that AER suggests that the request for tailored jurisdiction is inconsistent with approval as a public service company, it is incorrect. *See* Order at 3. Second, the request for a tailored regulatory regime is simply a request for relief<sup>2</sup> and is not dispositive of jurisdiction. From the outset of this proceeding, GlobalFoundries has submitted to the Commission’s regulatory jurisdiction under

---

<sup>2</sup> As has been discussed, tailored regulation is a form of relief that the Commission undeniably has statutory jurisdiction to grant and has in fact granted in other cases.

Title 30, but has asked that the Commission use its discretion under § 203 to exercise such jurisdiction only “so far as may be necessary to enable [it] to perform the duties and exercise the powers conferred upon [it] by law.” The extent of regulation is a matter to be resolved by the Commission in its discretion after hearing; it is not a ground for dismissal for lack of subject matter jurisdiction.

**B. GlobalFoundries Has Not “Waived” Its Right to Continue with the Petition Subject to RES.**

Likewise meritless is AER’s argument that GlobalFoundries’ Petition should be dismissed based on the notion that it has “unequivocally said that it cannot” proceed with its proposal subject to RES. AER Motion at 2-3.

First, AER’s position is factually inaccurate. While the cost savings GlobalFoundries hoped to attain by procuring a carbon neutral electricity supply portfolio outside of the RES framework represented a significant draw of the proposal, GlobalFoundries did not assert that RES alone would make or break the proposal. Rather, it said that “if the Commission were to . . . subject[] the Company to full regulation as public utility, including compliance with the requirements of Title 30, Chapter 89, the proposal would no longer be financially viable.” *See* GlobalFoundries’ Initial Brief on Jurisdiction and Provision of Electricity to Tenants at 1, 9-10. In short, GlobalFoundries said its proposal would no longer be financially viable if the Company were subject to “full regulation” as a public utility. Moreover, GlobalFoundries has also always made clear that expected cost-savings, while important, were not the only objective of GlobalFoundries’ request for authority to procure its own electricity. *See* Prefiled Rebuttal Testimony of Gregory Rieder at 11:6-15 (noting that “the cost of electricity is a significant competitive concern . . . but it is not the only factor driving GLOBALFOUNDRIES’ decision to

form a Self-Managed Utility” and that “[e]qually important is the ability to manage its own power procurement strategy over time, rather than bear the ongoing uncertainty generated by negotiation and approval of serial term contracts every few years”). Given the importance of managing its own power procurement, together with the efficiencies GlobalFoundries expects from a regulatory regime appropriate to its limited operations, GlobalFoundries has decided that the proposal remains not only viable but strategically critical to its future investments in and operation of the Essex Facility.

More to the point, AER offers no authority—nor is the undersigned counsel aware of any—for its assertion that the foreclosure of one element of relief requested by GlobalFoundries should “warrant outright dismissal,” or that GlobalFoundries’ prior indications that exemption from RES was an important aspect of its proposal means that it has now “waive[d]” its right to continue subject to RES. As AER’s position lacks support in fact and law, the Commission should reject its arguments for dismissal.

**C. GlobalFoundries’ Tenants Should Not Be Deemed Its “Customers.”**

CLF’s Motion also asks the Commission to rule on the second question briefed by the parties in November and December 2021: whether GlobalFoundries’ tenants are customers such that GlobalFoundries’ operations constitute a public service business. In its February 17, 2022 Order, the Commission ruled, without reaching this question, that the entity GlobalFoundries seeks to operate would take the form of a public service company. *See* Order at 1 n.2. To a certain extent, this ruling rendered the second question moot at this stage in the proceeding. However, if the Commission does address the issue, GlobalFoundries requests that the Commission join the “overwhelming majority” of decisions from other jurisdictions holding that the provision of utility service in a commercial landlord-tenant relationship does not transform

the tenant into a “customer” of the landlord. *See Phillip Hassman, Landlord Supplying Electricity, Gas, Water, or Similar Facility to Tenant as Subject to Utility Regulation*, 75 A.L.R.3d 1204.

A determination on the nature of the relationship between GlobalFoundries and the five tenants sharing space in its Essex Facility, while no longer necessary to help resolve the jurisdictional issue before the Commission, will remain relevant to the scope of regulation that would apply to GlobalFoundries' procurement of electricity if approved. In prior cases where the Commission has been asked to tailor its exercise of jurisdiction to the limited operations of the petitioner before it, the Commission has looked to the presence or absence of retail customers as a significant factor. *See, e.g., Petition of Vesivec LLC*, No. 18-3088-PET, Order of Feb. 6, 2019 at 19-20. It will be particularly pertinent here. If the Commission deems GlobalFoundries' tenants—four of whom pay no usage-based charge for electricity, with the fifth paying (at most) its proportional share of the actual cost of procuring electricity—to be its “customers,” that would arguably militate in favor of requiring GlobalFoundries to engage in ratemaking for these five “customers,” among other regulatory burdens. Such an outcome would make no sense practically—and, as briefed at considerable length in GlobalFoundries' prior submissions, it would run counter to persuasive authority from almost every other jurisdiction to consider similar questions. *See GlobalFoundries' Initial Brief on Jurisdiction and Provision of Electricity to Tenants* at 9-17; *GlobalFoundries' Reply Brief* at 8-10.

Accordingly, if the Commission rules on the nature of GlobalFoundries' relationship with its tenants, GlobalFoundries respectfully requests that the Commission find that, on the facts

here, the provision of electricity pursuant to a lease does not render tenants the “customers” of GlobalFoundries.<sup>3</sup>

### **Conclusion**

For the foregoing reasons, as well as those set forth in GlobalFoundries' prior briefing, GlobalFoundries respectfully requests that the Commission deny AER's and CLF's Motions and issue an order affirming its jurisdiction over GlobalFoundries' Amended Petition.

Dated at Burlington, Vermont this 24th day of March, 2022.

By /s/ Shapleigh Smith

Shapleigh Smith, Jr., Esq.

Justin B. Barnard, Esq.

DINSE

209 Battery Street

Burlington, VT 05401

(802) 864-5751

ssmith@dinse.com

jbarnard@dinse.com

*Counsel for GLOBALFOUNDRIES U.S. 2  
LLC*

---

<sup>3</sup> There would be no inconsistency between a finding that the tenants of the Essex Facility are not “customers” to whom GlobalFoundries sells electricity and the Commission's prior holding that RES would apply to procurement of electricity for the Essex Facility. Application of RES turns on whether an entity is a “retail electricity provider,” defined to include companies “engaged in the distribution *or* sale of electricity directly to the public.” 30 V.S.A. § 8002(23) (emphasis added). While GlobalFoundries may engage in the *distribution* of electricity by taking electricity from transmission lines and distributing it through its internal distribution system to itself and its tenants, it does not engage in the retail *sale* of electricity in the manner of a distribution utility. For that reason, GlobalFoundries should not be subject to regulatory requirements (e.g., ratemaking) that uniquely apply to utilities with paying retail customers and an obligation to serve the general public.