

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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Order entered: 04/14/2022

**ORDER DENYING ALLEARTH RENEWABLES' AND CONSERVATION LAW FOUNDATION'S
RULE 59(E) MOTIONS TO AMEND AND CLARIFY THE COMMISSION'S FEBRUARY 17 ORDER**

I. INTRODUCTION

This case concerns a petition by GlobalFoundries U.S. 2 LLC (“GlobalFoundries”) for a certificate of public good (“CPG”), pursuant to 30 V.S.A. § 231, to operate as an independent, self-managed utility (“SMU”) beginning October 1, 2022, under limited regulation appropriate to its function.¹

On September 30, 2021, the Vermont Public Utility Commission (“Commission”) ordered the parties to brief two preliminary legal questions: (1) whether the Commission has statutory authority to grant GlobalFoundries’ request to operate as an SMU under *de minimis* regulation; and (2) whether GlobalFoundries’ tenants are customers such that GlobalFoundries’ operations, if it continued to provide power to those tenants, would constitute a public service business.

On February 17, 2022, we issued an order determining that the Commission does not have the statutory authority to grant a fundamental component of GlobalFoundries’ request to operate as an SMU—that is, that the SMU would be exempt from the Renewable Energy Standard (“RES”).² That Order also included a discussion of the Commission’s statutory authority as it relates to our determination regarding GlobalFoundries’ specific request in this case. The Order concluded by requesting that GlobalFoundries inform the Commission whether

¹ A related case is also being considered by the Commission: a petition by Green Mountain Power Corporation (“GMP”) for approval to modify its service territory, pursuant to 30 V.S.A. § 249 (Case No. 21-1109-PET). This order is germane only to the GlobalFoundries petition.

² 30 V.S.A. § 8005. Because we determined that we are without statutory authority to allow GlobalFoundries to operate as an SMU under *de minimis* regulation not subject to the RES, we did not address the second legal question of whether its tenants would constitute customers.

any issues remain for an evidentiary hearing in this case given our decision that we do not have the statutory authority to exempt GlobalFoundries from the statutory requirements imposed on all utilities by Vermont's RES.

On March 11, 2022, GlobalFoundries filed a cover letter and an amended proposed CPG requesting that the Commission continue to hear GlobalFoundries' request to operate as an SMU, subject to the RES, the Self-Managed Energy Efficiency Program, the Standard Offer Program, the Low-Income Weatherization Assistance Program, and Gross Revenue Tax based on the volume of electricity purchased annually. GlobalFoundries has requested that we withhold exercising our jurisdiction regarding a list of statutory provisions in Title 30 and Commission Rule 5.200.

Two motions are pending before the Commission. Conservation Law Foundation ("CLF") filed a motion to clarify the scope of the Commission's February 17 Order and prevent GlobalFoundries from continuing to pursue its petition, pursuant to Vermont Rule of Civil Procedure 59(e). Similarly, AllEarth Renewables, Inc. ("AllEarth") filed a motion pursuant to Rule 59(e) to amend the Commission's February 17 Order to reflect complete dismissal of GlobalFoundries' petition.

On March 24, 2022, GlobalFoundries, Green Mountain Power Corporation, and the Vermont Department of Public Service ("Department") submitted separate responses to AllEarth's and CLF's motions.

On March 31, 2022, AllEarth and CLF filed replies.

In today's Order, we deny AllEarth's and CLF's motions for relief under Rule 59(e).

II. DISCUSSION

The Commission reviews requests for reconsideration pursuant to Rule 59(e) of the Vermont Rules of Civil Procedure, which is applicable to Commission proceedings pursuant to Commission Rules 2.103 and 2.105. Reconsideration is appropriate only to avoid an unjust result "due to mistake or inadvertence of the Commission, as opposed to that of a party."³

³ *Rubin v. Sterling Enterprises, Inc.*, 164 Vt. 582, 588, 674 A.2d 782 (1996) (citing *Osborn v. Osborn*, 147 Vt. 432, 433 (1986) and *In re Kostenblatt*, 161 Vt. 292, 302 (1994)).

The disposition of a reconsideration motion rests with the discretion of the Commission.⁴ Relief pursuant to Rule 59 is an extraordinary remedy that is to be used with great caution.⁵ Rule 59(e) recognizes the Commission’s broad power to alter or amend a judgment. In addressing a Rule 59(e) motion, the Commission “may reconsider issues previously before it, and generally may examine the correctness of the judgment.”⁶ However, Rule 59 does not permit parties to relitigate issues or correct previous tactical decisions.⁷ A party’s disagreement with the Commission’s decision is not grounds for reconsideration.⁸

Here, AllEarth and CLF argue that their motions to dismiss and for summary judgment, respectively, should be granted in full and the Commission should dismiss GlobalFoundries’ petition. As we stated in our February 17 Order, the Commission “has broad authority to regulate the purchase and delivery of electricity in Vermont.”⁹ The Commission, undeniably, has the authority to create and regulate public service companies and to exercise such jurisdiction “so far as may be necessary to enable [the Commission and the Department] to perform the duties and exercise the powers conferred upon them by law.”¹⁰ Our February 17 Order also explained that our authority to withhold jurisdiction is not limitless; we are constrained by the statutory framework that establishes requirements for the regulation of public service companies.

As both CLF and AllEarth acknowledge, GlobalFoundries has clarified that it seeks approval from the Commission “to operate as a ‘public service company’ subject to tailored regulation.”¹¹ That request is squarely within the Commission’s statutory authority. To the extent that CLF and AllEarth seek relief as to GlobalFoundries’s original petition, we find the relief requested moot. Even if we were to grant the relief AllEarth and CLF propose,

⁴ *Petition of Vermont Transco LLC, et al.*, Case No. 17-3808-PET, Order of 5/9/18 at 3 (citing *Alden v. Alden*, 187 Vt. 591, 592 (2010)).

⁵ *Petition of Vermont Gas Systems, Inc. for authority to condemn easement rights in property interests of the Town of Hinesburg, Vermont, at Shelburne Falls Road, Hinesburg, Vermont, for the purpose of constructing the pipeline authorized in Docket 7970, Docket 8643*, Order of 11/3/16 at 1.

⁶ *Id.* (citing *Drumheller v. Drumheller*, 185 Vt. 417, 432 (2009)).

⁷ *Id.* (citing *In re Cent. Vt. Pub. Serv. Corp.*, Docket Nos. 6946/6988, Order of 5/25/05 at 3).

⁸ *Investigation to consider revising maximum and minimum water levels at Great Averill Pond, Little Averill Pond, and Norton Lake in the towns of Averill, Norton, and Warren's Gore, Vermont*, Docket No. 8429, Order of 12/21/17 at 6.

⁹ Case Nos. 21-1107-PET & 21-1109-PET, Order of 2/17/22 at 3 (citing as an example 30 V.S.A. § 209).

¹⁰ 30 V.S.A. § 203; *see also* 30 V.S.A. §§ 203, 209, 219, and 231.

¹¹ GlobalFoundries U.S. 2 LLC’s Response to Public Utility Commission’s March 17, 2022 Request for Information (3/24/22) at 1.

GlobalFoundries has amended its request, and its former proposal—which included exemption from the Renewable Energy Standard—has been abandoned.

If instead, CLF and AllEarth seek to have the Commission apply their arguments supporting dismissal against the as-yet unfiled amended petition, these arguments are not ripe. The Commission has requested that GlobalFoundries file responses to information requests, an amended petition, supporting testimony, and supporting exhibits on April 22, 2022.¹² These documents will detail GlobalFoundries' revised proposal. The parties will have an opportunity to file motions to dismiss or for summary judgment after GlobalFoundries has filed its amended petition and supporting documents.


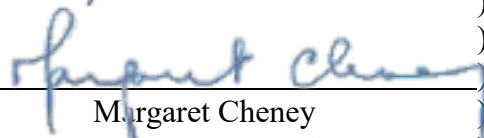
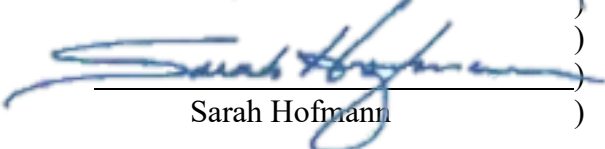
III. CONCLUSION

After a review of the briefing and based on the analysis above, we deny AllEarth's and CLF's request for relief under Rule 59(e). This denial is without prejudice for AllEarth and CLF to file similar motions at the appropriate time during the further proceedings in this case.

SO ORDERED.

¹² Order of 4/1/22 at 1 and 4.

Dated at Montpelier, Vermont, this 14th day of April, 2022.

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

OFFICE OF THE CLERK

Filed: April 14, 2022

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 No. 21-1107-PET & 21-1109-PET – JOINT SERVICE LIST

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