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, for a newly created, wholly owned subsidiary of GlobalFoundries, GF Power, to operate as a public service company, under regulation appropriate to its function	Remote Hearings Held Via GoToMeeting August 17, 2022

Case No. 21-1109-PET

Petition of Green Mountain Power Corporation for approval to modify service territory pursuant to 30 V.S.A. § 249	

Order entered: 10/21/2022

PRESENT: Anthony Roisman, Chair
Margaret Cheney, Commissioner
Sarah Hofmann, Commissioner

APPEARANCES: Shapleigh Smith, Jr., Esq.
Justin B. Barnard, Esq.
Dinse P.C.
for GlobalFoundries U.S. 2 LLC

Geoffrey Hand, Esq.
Victoria Westgate, Esq.
Dunkiel Saunders Elliot Raubvogel & Hand PLLC
for Green Mountain Power Corporation

Eric Guzman, Esq.
Vermont Department of Public Service

Rachel Stevens, Esq.
Vermont Agency of Natural Resources

John W. Kessler, Esq.
Vermont Agency of Commerce and Community Development

David Mullett, Esq.
for AllEarth Renewables, Inc.

Chase Whiting, Esq.
for Conservation Law Foundation, Inc.

William Ellis, Esq.
McNeil, Leddy & Sheahan
for the City of Burlington Electric Department, Stowe Electric Department, and Vermont Public Power Supply Authority

S. Mark Sciarrotta, Esq.
for VELCO and Vermont Transco

FINAL ORDER GRANTING GLOBALFOUNDRIES' REQUEST TO FORM AND OPERATE A PUBLIC SERVICE COMPANY AND GMP'S COMPANION REQUEST TO MODIFY ITS SERVICE TERRITORY

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I. INTRODUCTION

These cases present the Vermont Public Utility Commission ("Commission") with a significant question: whether to allow Vermont's largest industrial electricity customer, GlobalFoundries U.S. 2, LLC ("GlobalFoundries"), to transition from receiving its power as a Green Mountain Power Corporation ("GMP") customer to receiving its power from a newly formed public service company, GF Power LLC ("GF Power")—a wholly owned subsidiary of GlobalFoundries.

As authorized by Title 30 of the Vermont Statutes Annotated, the Commission's core function is to regulate public service companies. In the 90 years since the passage of laws authorizing the creation of public service companies, the Commission's regulatory efforts have been concentrated on the regulation of already existing public service companies that procure and provide electricity to Vermont customers.[1] A case that asks us to establish a new public service company that would provide electricity is extremely rare. It is in this exceptional context that we must situate this case.

We recognize that the importance of the request that GlobalFoundries has put to us in this case necessitates careful and exacting scrutiny. Certainly, and as evidenced by our February 17, 2022, Order in this matter, GlobalFoundries' original request pushed our statutory framework beyond its limits. However, the case has evolved considerably from that initial request. GlobalFoundries significantly amended its original petition and now seeks to form and operate a public service company, subject to substantially all the regulation applicable to any other electric

[1] *See* 1931 Vt. Acts & Resolves 139 (Public Act No. 101 § 1). The Commission also supervises reconfigurations and acquisitions of already existing public service companies.

utility in Vermont, including all aspects of the Renewable Energy Standard and energy efficiency requirements.[2] Vermont's renewable energy requirements and goals will apply equally to GF Power as they do to all of Vermont's electric distribution utilities. Thus, GlobalFoundries' proposal, while unique in several respects that we will discuss in detail, now fits within the existing framework applicable to regulated electric utilities in Vermont.

These are several of the factors that uniquely situate GlobalFoundries to present this petition to the Commission:

- GlobalFoundries is Vermont's largest single electricity user and uses more electricity on an annual basis than the entire City of Burlington.
- GlobalFoundries is the only retail electricity customer in Vermont that takes retail service at the transmission level.
- GlobalFoundries is the only retail electricity customer in Vermont that owns and maintains its own distribution system as well as the equipment to connect its distribution system to the transmission grid.
- GlobalFoundries has the technical and managerial skills and experience to procure and manage its own power supply.
- GlobalFoundries can use the existing electrical infrastructure that it owns and maintains to create its own separate service territory without causing any disruption to or system impact on other customers.
- GlobalFoundries is Vermont's largest for-profit employer and provides high-quality jobs in the semiconductor manufacturing industry.[3]
- Electricity is a significant cost for GlobalFoundries' Vermont operation, especially compared with its other out-of-state facilities.

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[2] GlobalFoundries has agreed for GF Power to be subject to almost all regulatory obligations of a traditional utility, with only a few, common-sense adjustments to the form of regulation because GF Power will have a single, industrial customer. For a full discussion of the applicable regulatory framework as applied to GlobalFoundries' proposal, see Section III.E of this Order.

[3] Under 30 V.S.A. 218e, the Commission must consider these factors when implementing the State's energy policy.

- Although we do not evaluate the likelihood of GlobalFoundries leaving Vermont, if it were to leave, its departure would have a significant negative impact on the economy in Chittenden County, the State of Vermont, and GMP ratepayers.

In 2018, GlobalFoundries and GMP negotiated a term contract that set GlobalFoundries' electric rates at an agreed-upon level through September 30, 2022, exempted GlobalFoundries from certain rate adjustors typically applicable to GMP customers, and provided an incentive to GlobalFoundries to develop new and curtailable loads. The contract was approved by the Commission and was later extended through September 30, 2023.[4] The 2018 term contract also committed GlobalFoundries and GMP to engage in a

> collaborative process to investigate and develop alternative rate structures or programs that would provide tools to retain or grow commercial and industrial load, bolstering both contributions to GMP's overall cost of service and the Vermont economy, including commercial and industrial dispatchable (also known as interruptible or curtailable) load which would help lower overall energy costs for Vermont residents and businesses.[5]

On December 31, 2019, GlobalFoundries and GMP filed with the Commission a joint report detailing the results of that collaborative process.[6] The report included the parties' evaluation of alternative models for GlobalFoundries to procure power for its facility in the Town of Essex and City of Essex Junction, Vermont ("Essex Facility").[7] As a result, on March 17, 2021, GlobalFoundries filed with the Commission a petition seeking a certificate of public good ("CPG") to operate a "self-managed utility."[8]

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[4] *See* Case No. 18-3160-PET, Order of 12/31/18; Case No. 21-4829-SC, Order of 12/23/21.

[5] Term Contract (9/11/18) filed in Case No. 18-3160-PET, ¶ 3(e).

[6] *See* Report Regarding Collaboration Process, Case No. 18-3160-PET (12/30/2019).

[7] During this proceeding, the Village of Essex Junction became the City of Essex Junction; references to the Village of Essex Junction in the record refer to what is now the City of Essex Junction.

[8] At various times in this case, including in its Amended Petition, GlobalFoundries and the other parties refer to GlobalFoundries' proposed electric-utility entity as a "self-managed utility," or SMU. GlobalFoundries created and defined the term "self-managed utility" in its original petition in this case; there is no such term or concept in Vermont statute. Because this term has had very different meanings during the two distinct phases of this proceeding—the phase of litigation before the Amended Petition and the phase after the petition was amended—and therefore has the potential to result in confusion, the Commission does not use that term in this Order or in the accompanying CPG. When used by the parties, the Commission understands that term to now mean "a newly created wholly owned subsidiary of GlobalFoundries U.S. 2 LLC, GF Power LLC, that will operate as a public service company, under limited regulation appropriate to its function," as further described in this Order. Our decision to omit the term "self-managed utility," or SMU, is not an endorsement of the Conservation Law Foundation's additional arguments supporting its request to remove the term from our order. *See Conservation Law Foundation's Initial Brief* at 8-9.

On February 17, 2022, the Commission issued an order determining that one of the principal components of GlobalFoundries' original petition—exemption from the Renewable Energy Standard—was something outside the Commission's statutory authority to grant. In response to that order, GlobalFoundries substantially amended its request and refiled its request as an amended petition ("Amended Petition"). Case No. 21-1107-PET now involves the Amended Petition by GlobalFoundries for a CPG, pursuant to 30 V.S.A. § 231, for a newly created, wholly owned subsidiary of GlobalFoundries, GF Power, to operate as a public service company, under regulation appropriate to its function. Case No. 21-1109-PET involves a petition by GMP for approval to modify its service territory, pursuant to 30 V.S.A. § 249, to exclude GlobalFoundries' Essex Facility, which would be served instead by GF Power.

In today's Order, we grant GlobalFoundries' request to create GF Power and operate this wholly owned subsidiary as a public service company, pursuant to 30 V.S.A. § 231. We also grant GMP's request to modify its service territory by carving out GlobalFoundries' Essex Campus and reassigning it to GF Power as the GF Power Territory.

The Vermont Department of Public Service ("Department"), GMP, the Vermont Agency of Commerce and Community Development ("ACCD"), and the Conservation Law Foundation ("CLF") all agree that the creation of GF Power, when taken together with the conditions in the CPG and the parties' memoranda of understanding, will promote the general good of the State of Vermont.[9] We agree. In support of their position, the parties provided persuasive prefiled testimony, live testimony during the hearing, and exhibits. We highlight the following categories of benefits to and protections for Vermonters that have been incorporated into GlobalFoundries' Amended Petition:

- Rate Impacts: Because of GlobalFoundries' financial commitments to GMP and the other Vermont electric distribution utilities, the rate impact of the proposal to GMP's ratepayers and to the other utilities' ratepayers is minimal.[10]
- Transmission Costs: GlobalFoundries' commitment to provide "Make Whole" payments, together with GF Power's obligation to pay the transmission charges

[9] One party to the proceeding, AllEarth Renewables, Inc. ("AllEarth"), maintains that GlobalFoundries' proposal is not in the general good and requests that the Commission deny the petitions. AllEarth's arguments are addressed in the discussion section below.

[10] The rate impact in any given year is projected to never exceed 0.39%. *See* finding 38.

allocated to its load, keep all the other electric distribution utilities as financially whole as reasonably possible with respect to transmission costs.

- Environmental and Efficiency Concerns: Vermont's renewable energy requirements and goals, including all aspects of the Renewable Energy Standard and energy efficiency requirements, will apply equally to GF Power as they do to all Vermont's electric distribution utilities.

Permitting GlobalFoundries to own and operate its own public service company, GF Power, ends the uncertainty associated with serially negotiated term contracts, offers a more predictable and sustainable long-term-planning solution, and encourages GlobalFoundries' investment in its operations as Vermont's largest for-profit employer. For decades, GlobalFoundries and its predecessor IBM have maintained an internal distribution system at the Essex Facility and step-down transformers connecting the facility to transmission-level service, employing facilities staff and outside contractors with deep experience in operating and maintaining electric power systems. Among electricity consumers in Vermont, GlobalFoundries is uniquely situated to manage its own power procurement, given its large and stable load, direct connection to the transmission grid, internal distribution infrastructure, and the fact that its owners are experienced in power markets worldwide. As discussed fully below, we determine that GlobalFoundries' proposal is in the general good of the State of Vermont.

This Order begins with our factual findings and is followed by a discussion that proceeds in six parts. First, we determine that GlobalFoundries' request is in the general good of the State of Vermont based on both the applicable criteria and case-specific factors. Second, we address AllEarth's contention that the Commission does not have the authority to grant GlobalFoundries' request. Third, we analyze the statutory language permitting the Commission to grant a CPG to a limited liability company that will operate as a public service company. Fourth, we explain the unique characteristics of GlobalFoundries and how it is uniquely positioned to make a request to create a public service company. Fifth, we describe the regulatory framework under which GF Power will operate. Sixth, and finally, we decide that GMP's request to carve the Essex Campus out of its service territory and reassign it to GF Power as a public utility follows logically both from our decision to grant GF Power a CPG to operate as a public service company and from the relevant criteria under 30 V.S.A. § 249. After the discussion, we provide a brief procedural

history and a summary of the public comments received after the filing of the Amended Petition in these cases. We conclude by summarizing our decision to grant GF Power a CPG to operate as a public service company to serve the Essex Campus as a separate service territory. A CPG to operate as a public service company with specific conditions is being issued separately in Case No. 21-1107-PET.

II. FINDINGS OF FACT

Based upon the record evidence presented to us in this proceeding, we make the following findings of fact and conclusions of law.

A. GlobalFoundries' Essex Facility

1. GlobalFoundries Inc. is a semiconductor company with approximately 15,000 employees worldwide.[11] GlobalFoundries researches, designs, and manufactures integrated circuits in high volume at fabrication plants around the world. It owns semiconductor manufacturing facilities in the City of Essex Junction and the Town of Essex, Vermont; Williston, Vermont; two sites in New York (Malta and East Fishkill); Dresden, Germany; and Singapore. Prefiled Direct Testimony of Gregory Rieder, GlobalFoundries ("Rieder pf.") at 3.

2. GlobalFoundries has two campuses in Vermont. The campus in the City of Essex Junction and the Town of Essex, Vermont (the "Essex Campus") has 30 buildings on approximately 280 acres, including approximately 500,000 square feet of high-tech clean room space. Also located on the Essex Campus are two 115 kV substations that step down power to the Essex Facility. The Essex Facility develops and manufactures semiconductor products including logic, microprocessor, and custom microchips. These devices are used in products such as cell phones, routers, and other electronics produced by technology companies worldwide. Rieder pf. at 6-7; Prefiled Direct Testimony of Joshua Castonguay, GMP ("Castonguay pf.") at 28.

3. The GlobalFoundries campus located in Williston, Vermont (the "Williston Campus"), comprises approximately 440 acres zoned for industrial, agricultural, and low-density

[11] GlobalFoundries Inc. is the parent company of GlobalFoundries U.S. 2 LLC. Where it is necessary to distinguish between these entities, we will refer to them by their full corporate name. References to "GlobalFoundries" refer only to GlobalFoundries U.S. 2 LLC.

residential use, and has three buildings with a total of 423,000 square feet. An onsite 115 kV substation with two 20/37 MVA transformers steps down power to the Williston Campus. As the proposed utility would not provide electrical service to the Williston Campus, the Williston Campus is not directly at issue in this proceeding. Rieder pf. at 7.

4. Semiconductor production at the Essex Facility occurs 24 hours per day, 365 days per year, which results in a relatively high energy demand that is very stable. In addition to the energy needs of the semiconductor production equipment, the Essex Facility uses electricity for numerous direct support processes and equipment, including HVAC systems, environmental control equipment, deionized water systems, high purity gas and chemical systems, lighting, central utility plant equipment, chillers, compressors, pumps, and data processing equipment. Rieder pf. at 9.

5. The Essex Facility currently takes service from GMP at 115 kV, directly from the transmission grid, and is GMP's only transmission-class customer. Unlike other electricity customers, GlobalFoundries owns and pays to maintain the step-down transformers that connect to the 115 kV transmission-level service, as well as GlobalFoundries' internal onsite distribution system.[12] GlobalFoundries pays for all operating and maintenance costs for the 115 kV equipment (i.e., breakers, circuit switchers, etc.) within the two substation yards at the Essex Facility and the substation on the Williston Campus. Rieder pf. 10; Castonguay pf. at 7.

6. GlobalFoundries has a very large, stable load, representing about 10% of GMP's entire average load. The load for the Essex Facility totaled approximately 382 million kilowatt-hours (kWh) in 2021, 398 million kWh in 2020, 397 million kWh in 2019, 405 million kWh in 2018, 404 million kWh in 2017, 403 million kWh in 2016, 409 million kWh in 2015, and 407 million kWh in 2014. The Essex Facility uses more electricity on an annual basis than the entire City of Burlington and would have the third largest utility load among the Vermont distribution utilities as a public service company. Rieder pf. at 9-10; Castonguay pf. at 7; Supplemental Prefiled Testimony of Jeffrey A. Cram, GlobalFoundries ("Cram supp. pf.") at 16.

7. The semiconductor industry is very capital intensive and cost sensitive.

[12] The transmission grid consists of large lines that move energy over long distances at higher voltages (generally 115 kV and above). The distribution grid consists of smaller lines that move energy locally at lower voltages (generally below 115 kV).

GlobalFoundries Inc. closely tracks its per-unit costs and aims to lower those costs year-over-year to remain competitive and to make necessary capital investments in production. Electricity is a key operational need for semiconductor manufacturing, and therefore the Essex Facility's energy costs are a primary factor in the competitiveness of its operations. The cost of electricity now represents nearly 50% of the operational costs of the Essex Facility, which has a significant impact on GlobalFoundries' per-unit costs and competitiveness. Rieder pf. at 4, 11.

8. In 2021, GlobalFoundries paid approximately $35 million for 381,743,685 kWh of electricity purchased from GMP, at an effective blended rate (under its term contract with GMP) of $0.091 per kilowatt-hour (kWh).[13] Rieder pf. at 11; Cram supp. pf. at 16.

9. By comparison, the unit cost for electricity supplied to GlobalFoundries Inc.'s Malta and East Fishkill facilities in 2021 was $0.0502 and $0.063, respectively. The same volume of electricity used by the Essex Facility in 2021 would have cost approximately $19 million in Malta and approximately $24 million in East Fishkill. Cram supp. pf. at 16.

10. Over the past 20 years, GlobalFoundries and its predecessor IBM have pursued more than 2,000 investments in energy efficiency and conservation measures to attempt to control and reduce the Essex Facility's electricity costs and meet its own corporate eco-efficiency goals, facilitated in part by Vermont's Self-Managed Energy Efficiency Program ("SMEEP"). Those efforts have not prevented an increase in GlobalFoundries' overall energy costs. Rieder pf. at 5-6, 12.

11. In 2018, GlobalFoundries and GMP negotiated a term contract for the supply of electricity to the Essex Facility. That contract, which has been extended to run through September 30, 2023, was a temporary measure to mitigate the impact of power costs and provide a bridge to a longer-term, more comprehensive solution to the Essex Facility's electricity needs. Rieder pf. at 16-17.

12. The serial negotiation of special contracts with GMP is not a reliable, predictable, or sustainable solution to managing the procurement of electricity for the Essex Facility. Among other things, the lack of certainty and control over the Essex Facility's power supply inhibits

[13] This rate does not account for the approximately $3 million in costs incurred by GlobalFoundries for onsite grid maintenance and capital improvements at the Essex Facility annually. Factoring in these costs, together with the cost of investments through the Self-Managed Energy Efficiency Program, the Essex Facility's total effective rate for electricity is approximately $0.10 per kWh. Rieder pf. at 10.

GlobalFoundries from engaging in longer-term investments at the Essex Facility. Rieder pf. at 17; Cram supp. pf. at 13.

13. The serial negotiations between GlobalFoundries and GMP around electricity supply for the Essex Facility also create a great deal of uncertainty and challenges for GMP in its cost and supply planning. Castonguay pf. at 13-14.

B. GlobalFoundries' Unique Position

14. GlobalFoundries is GMP's and Vermont's largest user of electricity and GMP's only transmission-class customer. GlobalFoundries is fundamentally different in both the scope and form of its power-supply needs compared to every other GMP customer and all other retail electricity customers in Vermont. Castonguay pf. at 4, 7.

15. GlobalFoundries has averaged approximately 400 million kWh of electricity use per year for the last several years. This represents about 10% of GMP's average annual load, which is more than twice the size of GMP's next largest customer and many multiples larger than GMP's typical commercial and industrial user. GlobalFoundries' load would place it third among all Vermont utilities, and its annual electric usage is larger than, for example, the entire load of the City of Burlington by a meaningful margin. Castonguay pf. at 7.

16. As GMP's sole retail transmission-class customer, GlobalFoundries takes service at 115 kV directly from the state's high-voltage transmission system under GMP Rate Class 70. GlobalFoundries is also the only retail customer that owns and maintains its own substation, transformers, and distribution system. Castonguay pf. at 4-5, 7; Rieder pf. at 10.

17. GlobalFoundries currently manages electricity procurement for its facilities in Malta and East Fishkill, New York. While GlobalFoundries has not previously procured its power supply on the wholesale market for its Essex Facility in Vermont, it has negotiated term contracts with GMP that lower or hold rates steady, like the one now in place, and has advocated for the ability to directly control the costs and risks of its power purchases. Cram supp. pf. at 12; Castonguay pf. at 8.

18. Among electricity consumers in Vermont, GlobalFoundries is uniquely situated to manage its own power procurement, given its large, stable load, direct connection to the transmission grid, internal distribution infrastructure, and the fact that its owners are invested in

energy markets worldwide and understand power markets. GlobalFoundries has emphasized that it is cognizant of and able to take on both upside and downside risk from market exposure. Rieder pf. at 23; Castonguay pf. at 4-5.

C. GlobalFoundries' Proposal to Procure Electricity Through GF Power LLC

19. To facilitate control over the supply of electricity to the Essex Facility, GlobalFoundries seeks a CPG to form and operate a public service company, GF Power, that will be a wholly owned subsidiary of GlobalFoundries. Cram supp. pf. at 3.

20. GF Power will procure electricity for sale to GlobalFoundries as its sole customer, pursuant to a tariff filed with the Commission and the Department.[14] Cram supp. pf. at 3.

21. GF Power will be the CPG Holder and will register with ISO New England as a market participant. Cram supp. pf. at 3.

22. The Essex Facility will occupy the entire service territory of GF Power. Cram supp. pf. at 3; *see also* Aug. 15, 2022, Amended Proposed CPG, Exh. A (depicting proposed service territory).

23. GF Power will enter into a general services agreement with GlobalFoundries to administer its operations. The agreement will include the services of three program managers: (1) a Facilities Program Manager, who will be physically located at the Essex Facility and will be responsible for overseeing engineering, operations, and maintenance of the transmission facilities including capital infrastructure upgrades and end-of-life replacement; (2) a Procurement Program Manager, who will be an employee in GlobalFoundries' Global Supply Management group, overseeing market participation, power procurement, power market forecasting, and payment of transmission fees; and (3) a Legal Program Manager, who will be an attorney with GlobalFoundries' in-house counsel charged with ensuring regulatory compliance and reporting to the Federal Energy Regulatory Commission ("FERC"), ISO New England, and the State of

[14] GlobalFoundries has referred to this as a "transmission tariff." Typically, we would use the term "transmission tariff" to refer to a Federal Energy Regulatory Commission ("FERC") Order 888 open access transmission tariff ("OATT"). FERC rules require utilities that own or control transmission facilities subject to its jurisdiction, and that wheel or transmit electric power, to file OATTs. OATTs establish rates, terms, and conditions to allow the entry of generating facilities into the electric grid. This is not the meaning of the term "transmission tariff" as used in this proceeding. Instead, we will simply use "tariff" rather than "transmission tariff" to refer to the rate schedule—outlining the formula that GF Power uses to calculate the charge paid by GlobalFoundries—that GF Power will file for review by the Commission.

Vermont. Cram supp. pf. at 3-4.

24. From the beginning of GF Power's operations through September 30, 2026, GMP will supply wholesale energy, capacity, renewable energy credits, and ancillary services to GF Power pursuant to a power purchase agreement ("Transitional PPA"). GMP will be responsible for reporting on compliance with 30 V.S.A. chapter 89 for the energy supplied to GF Power for the period running through September 30, 2026. Rieder pf. at 24; Cram supp. pf. at 4; exh. GF-GR-2 ¶ 3(c), MOU-1 (Letter of Intent dated March 11, 2021).

25. During the term of the Transitional PPA between GF Power and GMP, GMP (and not GF Power) will be responsible for remitting the gross revenue tax pursuant to 30 V.S.A. § 22 for revenue related to the sale of power to GF Power. Cram supp. pf. at 11.

26. For the period beginning October 1, 2026, GF Power will procure electricity at market prices established through solicitations of services, by developing its own power supply projects, or by participating in jointly owned supply projects. Cram supp. pf. at 4-5.

27. For the period beginning October 1, 2026, GF Power will pay the gross revenue tax on all revenue from its operation. Cram supp. pf. at 11.

28. Vermont Transco LLC ("VTransco") will be the serving entity for transmission of electricity to GF Power. GF Power will receive Local Network Service as a customer of VTransco under its existing Schedule 21–VTransco of the ISO-New England Open Access Transmission Tariff. GF Power will be responsible for paying its share of all ISO New England tariff costs allocated to the regional network load, known as the Regional Network Service costs, to ISO New England. Rieder pf. at 28-29; Cram supp. pf. at 6; exh. GF-GR-2 ¶ 5.

29. After commencement of GF Power's operations, GlobalFoundries, as the sole customer of GF Power, will continue to participate in the SMEEP, as it has in each year since it acquired the Essex Facility. Cram supp. pf. at 11.

D. Negotiated Terms and Memoranda of Understanding

30. GlobalFoundries, GMP, and VELCO/VTransco entered a memorandum of understanding dated March 12, 2021, that describes the agreed-upon terms to make GF Power a transmission customer. Exh. GF-GR-2 (the "Transmission MOU").

31. GlobalFoundries, GMP, and VELCO have negotiated transition payments from

GlobalFoundries to help mitigate any impact to GMP customers and the Vermont distribution utilities due to the Essex Facility leaving GMP's service territory. Rieder pf. at 29, 31.

32. GF Power will pay GMP a four-year transition fee, totaling roughly $15.6 million, to cover a portion of the amount that GlobalFoundries would have paid GMP if GlobalFoundries remained a customer of GMP.[15] The transition fee will benefit GMP's remaining retail customers during the transition period by mitigating the risk of rate impacts due to GMP's loss of revenue from the Essex Facility. The transition fee of roughly $15.6 million will be paid in monthly installments on the schedule set forth in the Transmission MOU. Rieder pf. at 31; Cram supp. pf. at 6; Castonguay pf. at 16-17; exh. GF-GR-2 ¶ 3(c), MOU-1 (Letter of Intent dated March 11, 2021).

33. The transition fee will be paid in monthly installments at a decreasing annual rate. The Transmission MOU contemplated a start date of October 1, 2022, for payments from GF Power to GMP. GF-GR-2 ¶ 3(c), MOU-1 (Letter of Intent dated March 11, 2021).

34. Due to the timeline of this case, the transition period will begin when GF Power begins operations, at some point after October 1, 2022. The transition fee will be prorated to account for this later start date. Tr. 8/17/22 at 67 (Castonguay); GF-GR-2 ¶ 3(c), MOU-1 (Letter of Intent dated March 11, 2021).

35. Although the overall amount of the transition payment will be reduced because it is prorated, the transition payments are roughly equal to revenue under the current term contract. During the prorated period, GMP will continue to receive revenues from GlobalFoundries under the term contract, which remains in effect until transition payments begin. The amount of revenue GMP will receive under the term contract approximates what it would have received under the transition fee. Tr. 8/17/22 at 67 (Castonguay).

36. The negotiated structure of the transition fee limits rate impacts to GMP customers during the four-year transition period. By having 70% of the transition fee paid after two years, it increases the net present value of the transition fee compared to a straight-line approach, and it lowers the transaction risk from a credit ratings standpoint. Scott R. Anderson, GMP ("Anderson") pf. at 8; Castonguay pf. at 18; exh. GMP-SRA-2.

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[15] The payments will be prorated to the extent GF Power begins operation after the originally expected start date of October 1, 2022. *See* exh. GF-GR-2 ¶ 3(c); findings 33-35.

37. The transition fee limits the annual and cumulative rate pressure on GMP customers to a degree that is reasonable and acceptable compared to the risk and associated consequences of GlobalFoundries otherwise leaving Vermont. Castonguay pf. at 18-19.

38. During the transition period, the transition fee revenue limits the annual rate impact when compared to a "business as usual" scenario. Rate impacts to GMP's remaining customers are projected to range from 0.04% in FY23 to 0.37% in FY2026. After the transition period ends, GMP's power supply costs will decline because it will not be serving GlobalFoundries' load.[16] The rate impact after the transition period is projected to range from 0.39% in FY2027 to negative 0.25% in FY2033. Given the transition payments, the Transitional PPA, and the decline in GMP's costs related to serving GlobalFoundries' load, the rate impact of the Amended Petition is minimal both during the transition period and afterward. Anderson pf. at 8; exh. GMP-SRA-2.

39. GMP and GlobalFoundries have also agreed to terms for the Transitional PPA reflected in the Term Sheet incorporated into the Letter of Intent between GlobalFoundries and GMP (included in the Transmission MOU), which will represent GlobalFoundries' contribution to GMP's revenue requirement over the course of four fiscal years to reduce the impact of GlobalFoundries' transition on GMP's customers. Castonguay pf. at 17.

40. The effective date of the Transitional PPA will be the earliest point after Commission approval upon which GF Power can take transmission service under Schedule 21–VTransco. The existing Term Contract between GMP and GlobalFoundries, as extended in Case No. 21-4829-SC, will terminate at the time the Transitional PPA takes effect. Exh. GF-GR-2, MOU-1 (Letter of Intent dated March 11, 2021).

41. Under the Transitional PPA, GMP will continue to provide GlobalFoundries with energy and capacity to meet its needs through GMP's own portfolio mix at the price indicated on the Transitional PPA Term Sheet. Castonguay pf. at 17; exh. GF-GR-2, MOU-1 (Letter of Intent dated March 11, 2021).

42. During the Transitional PPA term, GMP will count the energy and capacity

[16] After GlobalFoundries exits GMP's service territory, GMP will not be required to purchase energy, capacity, ancillary services, and renewable energy credits on GlobalFoundries' behalf. GMP's costs will be reduced roughly in proportion to the reduction in revenue, so the rate impact to other customers will be minimal.

delivered to GlobalFoundries as a part of its overall annual load deliveries to customers and will cover that load as a part of GMP's Renewable Energy Standard obligations, Standard Offer obligations, and Ryegate power purchases. Under the terms of the agreement, GMP will continue to provide GlobalFoundries with a supply that reflects the same environmental attributes as GMP's continuing supply portfolio. GMP will provide documentation of the allocations and retirements of renewable energy credits associated with the GlobalFoundries portion of GMP's attribute portfolio on an annual basis using the Renewable Energy Standard reporting framework. Castonguay pf. at 17, 21.

43. The energy and capacity costs paid by GlobalFoundries under the Transitional PPA will be in addition to the transition fee. Castonguay pf. at 17.

44. Together, the transition fee and the Transitional PPA will smooth the rate impact of GlobalFoundries shifting from being a GMP customer to a GF Power customer and will ensure cost stability and predictability for GMP's other customers. Castonguay pf. at 17.

45. Because GlobalFoundries will become an ISO New England market participant before the start of the Transitional PPA, GMP's obligations under the Transitional PPA will be recorded in the ISO New England market system in GMP's settlement accounts in a manner similar to what occurs today. This process is well-supported by the functionality in the ISO New England market system, and the parties do not expect the implementation of the Transitional PPA to cause any unusual settlement practices or administrative burdens. Castonguay pf. at 20-21.

46. GMP will not provide any transmission services (i.e., Regional Network Service or Local Network Service) to GlobalFoundries; these costs will be billed directly to GlobalFoundries by the transmission providers. Castonguay pf. at 20-21.

47. In addition to the transition fee, the Transmission MOU requires GlobalFoundries to provide "Make Whole" payments that will be held by VELCO to cover potential shortfalls for the other Vermont electric distribution utilities ("Other VDUs") with respect to VELCO payments under the 1991 Vermont Transmission Agreement ("VTA") that may result from GlobalFoundries' departure from GMP's service territory. Castonguay pf. at 22; exh. GF-GR-2, MOU-1 (Letter of Intent dated March 11, 2021).

48. GF Power will make four annual "Make Whole" payments between 2022 and

2026 totaling $700,000, paid to and held by VELCO, to help compensate for any shortfall to the Other VDUs that is the difference between (i) the Other VDUs' pro-rata share of the VTA costs if the Essex Facility's load had been retained by GMP and (ii) the Other VDUs' pro-rata share of the actual VTA costs with GF Power as a Schedule 21-VTransco customer. Rieder pf. at 29; Cram supp. pf. at 6; Castonguay pf. at 22; exh. GF-GR-2 ¶ 6.

49. The "Make Whole" payments will include the following amounts paid to a Make Whole Fund held in escrow by VELCO for distribution annually, if required, among the Other VDUs on a pro-rata share basis:

a. $250,000 due January 31, 2023;
b. $200,000 due January 31, 2024;
c. $150,000 due January 31, 2025; and
d. $100,000 due January 31, 2026.

Castonguay pf. at 22; exh. GF-GR-2 ¶ 6.

50. These "Make Whole" payments, together with GF Power's obligation to pay to VTransco the Local Network Service and Regional Network Services charges allocated to its load, are intended to keep all the Other VDUs as financially whole as reasonably possible compared to the status quo with respect to transmission costs. GF Power will pay transmission costs that would otherwise shift to the Other VDUs due to the Essex Facility transitioning from GMP's load. To the extent these payments remain the same as GlobalFoundries' current contribution toward transmission costs as a GMP customer (which GlobalFoundries estimates to be $2.6 million), the Essex Facility's shift to service from GF Power will not have an impact on the transmission costs of the Other VDUs. Rieder pf. at 29-30; Cram supp. pf. at 6.

51. If the Make Whole Fund is insufficient to cover any portion of an annual make-whole amount during the 20-year period, and so long as GlobalFoundries continues to operate in Vermont, GMP has committed to provide up to $700,000 in additional funding, as needed, to cover any shortfall, unless GMP and the Other VDUs mutually agree to a different approach to address such a shortfall.[17] In addition, if other transaction-related costs to the Other VDUs arise

[17] The "Make Whole" payments were calculated based on the projected difference over 20 years of (i) the Other VDUs' pro-rata share of the Vermont Transmission Agreement costs, assuming GlobalFoundries' load was retained by GMP, and (ii) the Other VDUs' pro-rata share of the actual Vermont Transmission Agreement costs with GlobalFoundries as a Schedule 21-VTransco customer. Castonguay pf. at 22.

after GlobalFoundries' transition to being a customer of GF Power, GMP has further committed to working in good faith to reach agreement with those utilities and to seek any necessary regulatory approvals to mitigate or cover those costs. Castonguay pf. at 23.

52. The Transmission MOU contemplates the transfer of several transmission facilities among GlobalFoundries, GF Power, GMP, and VTransco. These include:

a. the transfer to GMP of certain GlobalFoundries-owned facilities that connect to GMP at the Williston Substation, including two 115/13.8 kV 37 MVA Power Transformers, a lineup of 13.8 kV switchgear with two transformer breakers and six feeder breakers, miscellaneous 115 kV and 13.8 kV equipment including the substation switchgear building, and all associated equipment within the substation fenced area including insulators, instrument transformers and lightning arrestors, station AC service and DC battery supplies, and miscellaneous relaying, control, monitoring, and metering equipment;

b. the transfer to GF Power of certain GMP-owned facilities at Substations 86 and 87 that connect to GlobalFoundries, including 115 kV circuit switchers and lightning arrestors; and

c. the transfer to VTransco of GMP-owned facilities at Substations 86 and 87 that will be necessary to connect GF Power directly to VTransco's system, including two 115 kV oil breakers, eleven 115 kV switches, miscellaneous 115 kV equipment including the control and metering building, insulators, instrument transformers and lightning arrestors, miscellaneous relaying, control, monitoring and metering cabinets, and 115 kV transmission lines (lines 1591, 1592, 1593, and 1594).

Rieder pf. at 25-26; exh. GF-GR-2 ¶ 4, MOU-3 – MOU-5.

53. In addition, GlobalFoundries intends to transfer to GF Power the transmission facilities it owns at Substations 86 and 87. Cram supp. pf. at 5.

54. GlobalFoundries will continue to own all the distribution infrastructure used to distribute power throughout the Essex Facility, and will remain wholly responsible for owning, maintaining, and operating that infrastructure. Cram supp. pf. at 5-6.

55. Consistent with the Transmission MOU, GMP and GlobalFoundries have

requested that the Commission approve a reversion condition in the CPG issued in this matter such that the GF Power territory will revert to GMP, under GMP's then-applicable tariffs, if any successor or assign of GF Power or GlobalFoundries fails to assume all CPG obligations, subject to prior Commission review and approval. Castonguay pf. at 24; exh. GF-GR-2 ¶ 7.

56. GMP also has an agreement with the Other VDUs concerning the GlobalFoundries transition (the "Utility MOU"). Castonguay supp. pf. at 2-3; exh. GMP-JC-2.

57. The Utility MOU is intended to recognize the importance of retaining GlobalFoundries' substantial usage of the transmission system (and thereby payments for transmission services that help lower costs for all utilities) and its economic benefits in Vermont; to affirm GlobalFoundries' unique status as Vermont's only retail transmission-class customer with a very large annual load, substantial infrastructure and distribution system, and existing 115 kV transmission service; and to address GMP's and the Other VDUs' respective commitments related to the transaction. Castonguay supp. pf. at 3; exh. GMP-JC-2.

58. GMP and the Other VDUs have requested that the Commission approve the Utility MOU and incorporate the conditions of the Utility MOU into its approval of GlobalFoundries' Section 231 Petition and GMP's Section 249 Petition. Castonguay supp. pf. at 3.

59. GMP's support for GlobalFoundries' Amended Petition is contingent upon the adoption of the terms of the Transmission MOU and the terms of the Letter of Intent between GlobalFoundries and GMP that is incorporated in the Transmission MOU. Castonguay pf. at 4.

E. Promotion of the General Good of the State of Vermont

60. Approval of the operation of GF Power to procure power for the Essex Facility will promote the general good of the State, consistent with 30 V.S.A. § 231. This finding is supported by the additional findings below.

61. The Essex Facility has a significant positive impact on the economy in Chittenden County and the State of Vermont as a whole. GlobalFoundries is the largest for-profit employer in both Chittenden County, where it accounted for 2.2% of employment in 2019, and in the entire State of Vermont. Rieder pf. at 7; Prefiled Direct Testimony of Arthur Woolf, GlobalFoundries ("Woolf pf.") at 2; Prefiled Direct Testimony of Jeffrey B. Carr ("Carr pf.") at

4-5.

62. In 2021, GlobalFoundries' Vermont operations provided $196 million in total annual compensation and benefits to employees, and the average total compensation package was more than $90,000 per year. The average wages for GlobalFoundries' employees are significantly above the county and statewide average wages. Cram supp. pf. at 15; Woolf pf. at 3.

63. GlobalFoundries had 2,160 Vermont employees as of December 31, 2021, and continues to hire. GlobalFoundries also brings on dozens of interns and apprentices each year. Shortly before this proceeding began, GlobalFoundries launched an apprentice program designed to bring 60 additional students to the facility over the next four years. Rieder pf. at 8; Cram supp. pf. at 15.

64. Since launching its Vermont operation, GlobalFoundries has invested $470 million in capital improvements at the facility. In addition, GlobalFoundries procures approximately $70 million per year of goods and services from dozens of Vermont providers. This includes, for example, production-related equipment and parts, construction contractors (plumbers, electricians, etc.), facilities and construction management services, environmental services, and HVAC services. Rieder pf. at 8; Cram supp. pf. at 15-16; Woolf pf. at 5-6.

65. GlobalFoundries' employees reside in 13 of the 14 counties in Vermont, and indirect economic activity supports more than 5,000 other jobs in the state. Rieder pf. at 8; Woolf pf. at 5-6; Carr pf. at 4-5.

66. GlobalFoundries is a significant contributor to Vermont's exports. In 2019, Vermont firms exported $3.02 billion worth of goods to firms and individuals in other countries, giving Vermont one of the highest ratios of exports to state GDP in the nation. Of that, $1.311 billion (43%) were exported from GlobalFoundries' Vermont facility. Woolf pf. at 6.

67. Managing energy costs is "mission critical" to GlobalFoundries and its long-term ability to remain in Vermont. Obtaining direct access to wholesale markets would enable GlobalFoundries to respond to market price signals about the value of electricity in line with its own business goals, using timelines and strategies appropriate for its own unique system and global operations, and allow the company to manage risk in a consistent manner across its plants. Rieder pf. at 22-23, 34-35.

68. Electricity costs in Vermont are a significant factor for GlobalFoundries in determining whether to continue operations in Vermont. The loss of GlobalFoundries' operations in Vermont would have a significant negative impact on the local and state economy, including reduced employment, lower revenues for local businesses, increased electricity costs for consumers, and a decrease in tax revenues. Rieder pf. at 34-35; Woolf pf. at 7-9; Carr pf. at 7-8.

69. Approval of the Amended Petition will help make the Essex Facility more competitive and facilitate further investment in the Essex Facility. GlobalFoundries is presently making investments to expand its manufacturing capacity, and its decisions on where and how to invest are informed by the competitive position of the company's facilities within the semiconductor supply chain. The uncertainty generated by the serial negotiation and approval of term contracts with GMP is a significant disincentive to investment in the Essex Facility. The ability to directly manage power procurement will make the Essex Facility more attractive for GlobalFoundries' continued investment, and ongoing investment is critical to positioning the facility to meet future market requirements. Approval of the Amended Petition will have a direct and material impact on the prospects for GlobalFoundries to maintain and grow its Vermont operations. Rieder pf. at 16-17; Rieder reb. pf. at 11-12; Cram supp. pf. at 13-14.

70. GlobalFoundries' proposed transition to service via GF Power will produce benefits to utility customers statewide and to GMP customers by preserving GlobalFoundries' contribution to transmission costs and, for a period of four years, providing payments towards GMP's costs. GMP's remaining customers will also benefit from an increased share of the earnings resulting from GMP's equity interest in VTransco because GF Power will continue to pay VTransco for transmission costs but will no longer benefit from the equity in affiliates earnings that flow through to GMP customers.[18] Rieder pf. at 29-32; Cram supp. pf. at 6; exh. GF-GR-2 ¶ 3(c), ¶ 6, MOU-1 (Letter of Intent dated March 11, 2021).

71. Approval of the Amended Petition will reduce the portfolio risk and uncertainty for GMP associated with purchasing future power supply. The Essex Facility presently makes up a substantial piece of GMP's load; if GlobalFoundries were to close its operations in

[18] GMP contributes capital investments to VTransco. A portion of the earnings from GMP's capital investments in VTransco flow back to customers and reduce rates.

Vermont, GMP and its customers could bear the cost of excess supply purchased with the expectation of serving GlobalFoundries into the future. Rieder pf. at 31-32; Castonguay pf. at 13-14.

72. The transition of the Essex Facility to service from GF Power would provide added stability for GMP going forward. Prefiled Direct Testimony of Edward McNamara, Department ("McNamara pf.") at 4.

73. GlobalFoundries, which will handle maintenance and operation of GF Power's substation and distribution facilities pursuant to a general services agreement, has extensive experience operating and maintaining its own electrical infrastructure. For decades, GlobalFoundries and its predecessor IBM have maintained an internal distribution system at the Essex Facility and step-down transformers connecting the facility to transmission service, employing facilities staff and outside contractors with deep experience in operating and maintaining electric power systems. GlobalFoundries' electrical system is critical to its manufacturing activities, and maintaining the electrical system to ensure present and future reliability is a high priority. Rieder pf. at 26; Cram supp. pf. at 3.

74. GlobalFoundries' existing direct connection to 115 kV transmission facilities and current ownership and operation of its own step-down transformers and distribution system will allow GF Power to take service directly from VELCO's 115 kV transmission system with minimal system changes and minimal costs to other electric customers. Castonguay pf. at 4-5.

75. GlobalFoundries will have the necessary personnel with appropriate experience in place to manage the obligations of acquiring wholesale electricity, maintaining and operating its infrastructure safely, and complying with applicable federal and state regulatory obligations. McNamara pf. at 7.

76. GlobalFoundries has a demonstrated ability to finance substantial electricity costs (with a load ranging between 382 and 409 million kWh over the past seven years) and has done so consistently over many years. Rieder pf. at 9-10; Cram supp. pf. at 16.

77. GlobalFoundries will guarantee GF Power's financial obligations, including without limitation its obligations under any power purchase agreement, charges for Local Network Service and Regional Network Service, obligations to pay transition fees under the Transmission MOU, and gross revenue tax and fuel tax obligations. Exh. PUC-4 at 2 (response

to Q.3).

78. GlobalFoundries and its predecessor IBM have a long history of productive regulatory engagement in matters before the Commission. GlobalFoundries has regularly participated in proceedings before the Commission. Rieder pf. at 14-16.

79. In the proceedings to which it has been a party, GlobalFoundries has worked with GMP and other stakeholders to resolve differences, negotiate mechanisms to provide rate relief, and provide incentives for the Essex Facility to remain in operation and grow. This is reflected most recently in GlobalFoundries' negotiation of the Memorandum of Understanding between GlobalFoundries and CLF dated August 2, 2022 (the "Renewables MOU") in this proceeding, which resulted in CLF's support for a mutually agreed-upon proposed CPG, and in GlobalFoundries' negotiation of a 2018 term contract with GMP. Following the 2018 term contract, GlobalFoundries and GMP worked together to identify and develop alternative rate structures and programs to help retain and grow commercial and industrial load in Vermont, the results of which were reported to the Commission on December 31, 2019, in Case No. 18-3160-PET. Rieder pf. at 16-22; Renewables MOU.

80. GlobalFoundries and IBM also have an established history of supporting renewable energy at the Essex Facility. The Essex Facility partnered with Sandia National Labs to support photovoltaic development research, establishing a photovoltaic regional test center from 2013 to 2019. In 2016, GlobalFoundries made unused land available to GMP to develop a 4.7 MW solar generation facility (the state's largest at the time). Rieder pf. at 33.

F. GMP Analysis of Alternative Scenarios

81. To evaluate the best path forward for GMP's other customers and the impact that losing GlobalFoundries as a customer would have on other GMP customers, GMP analyzed several potential future scenarios and considered the range of potential rate impacts that those scenarios might have on GMP's customers. Castonguay pf. at 12; Anderson pf. at 3-4; Anderson reb. pf. at 3-4; exh. GMP-SRA-2.

82. Under each of the scenarios modeled, GMP considered the potential impact over a ten-year period on retail revenues, changes in power supply costs (including energy, capacity, and transmission), and retail rates for other GMP customers. Anderson pf. at 3-4; Castonguay

pf. at 12; exh. GMP-SRA-2.

83. The scenarios GMP modeled take into account the history of GlobalFoundries' and IBM's rate accommodations and special contracts, GlobalFoundries' multistate and international business, and GlobalFoundries' statements regarding its likelihood of leaving Vermont if its proposal is not approved. The scenarios provide a reasonable illustration of the range of potential impacts. Castonguay pf. at 11-13; Anderson reb. pf at 3-5.

84. GMP's analysis shows that the departure of GlobalFoundries from Vermont in an unplanned manner would be a worst-case scenario for GMP customers and the state as a whole, resulting in an immediate rate increase of more than 1.3% for GMP customers in the first year after the departure and increased transmission costs for all Vermont utility customers.[19] The annual rate impact decreases to less than 1% in the last eight of the eleven years modeled by GMP and are less than one-eighth of one percent by the final year. Anderson pf. at 6-7; Castonguay pf. at 12; exh. GMP-SRA-2.

85. GMP's modeled scenarios focused on outer-bound extremes, so the GlobalFoundries-departure scenario assumes no future use of the Essex or Williston Campuses. GMP's modeled rate impacts would be less if GlobalFoundries were replaced by one or more electricity-consuming entities on GlobalFoundries' Vermont campuses. Tr. 8/17/22 at 76-78 (Anderson).

86. There are other potential variations to the scenarios that GMP did not model, such as the timing and magnitude of GlobalFoundries' departure, retail revenue from GlobalFoundries, and avoidable costs. Anderson pf. at 3.

87. GlobalFoundries' proposal to create a utility to solely serve its own electric needs will significantly reduce future risk for GMP customers and smooth the transition through the inclusion of a four-year transition period, the transition fee paid by GlobalFoundries during that term, and the Transitional PPA through which GMP will continue to provide GlobalFoundries' energy and capacity needs for up to four years. Castonguay pf. at 14, 16-17.

88. Allowing GlobalFoundries to create a utility to serve solely its own electric needs will mitigate risks to GMP and GMP customers, provided that implementation is consistent with

[19] The scenario accounted for the avoided costs of power and transmission if GMP did not need to serve GlobalFoundries.

the Transmission MOU and the incorporated Letter of Intent. Castonguay pf. at 14; Anderson pf. at 8-9.

G. Service Territory

89. Removing the Essex Facility from GMP's service territory and establishing it as GF Power's service territory, pursuant to 30 V.S.A. § 249, is consistent with the general good of the State of Vermont. This finding is supported by the additional findings below.

90. GMP is an electric utility and subject to the Commission's jurisdiction under 30 V.S.A. § 203. At the time the CPG is issued in Case No. 21-1107-PET, subject to conditions, GF Power will also be an electric utility subject to the Commission's jurisdiction under 30 V.S.A. § 203. GMP Petition ¶ 1; GlobalFoundries' Amended Petition ¶¶ 5, 60.

91. GMP currently serves GlobalFoundries' Essex Campus. Castonguay pf. at 7.

92. The land proposed to be removed from GMP's territory and established as GF Power's service territory consists of the Essex Campus, as depicted in Exh. MOU-2 to the Transmission MOU. Castonguay pf. at 25-26; Cram supp. pf. at 3; exh. GF-GR-2, MOU-2.

93. GMP's proposed service territory modification is narrowly tailored to the Essex Campus and is defined by both property lines and geographic boundaries. The territory follows the geographic boundary of the Winooski River on the east and south sides and the property boundary of the Essex Campus on the north and west sides, with a small intervening portion of railroad property bisecting the territory. Castonguay pf. at 26, 30; McNamara pf. at 8.

94. Currently, GlobalFoundries is the only retail GMP customer within the boundaries of the proposed service territory. No other retail GMP customers are located within the proposed territory. Castonguay pf. at 26, 30.

95. GlobalFoundries takes retail service for the Essex Campus at the 115 kV transmission level directly from the transmission grid; owns and pays to maintain the 115 kV step-down transformers to which the transmission service is connected and the internal onsite distribution system at the Essex Campus; and pays all operating and maintenance costs for the 115 kV equipment within its substation yards. These factors will allow GlobalFoundries' Essex Campus to separate from GMP's service territory without any disruption or system impact to other customers. Castonguay pf. at 25-26, 31; Rieder pf. at 10.

96. Once it is excluded from GMP's service territory, the Essex Campus will be assigned to GF Power ("GF Power Territory"). After a transition period, GF Power will manage its own electric supply obligations through wholesale transactions and will take Regional Network Service from ISO New England and Local Network Service directly from VTransco under Schedule 21-VTransco of the ISO-New England Open Access Transmission Tariff. Castonguay pf. at 25-26.

97. GlobalFoundries' Williston Campus will remain within GMP's service territory once the associated proposed facility transfers are implemented. Castonguay pf. at 26.

98. To facilitate this modification of service territory, GlobalFoundries, GMP, and VELCO/VTransco will transfer certain facilities that currently serve GlobalFoundries' campuses so that GF Power can take service at the transmission level for the Essex Campus directly from VTransco. Changes to the existing facilities will largely involve ownership changes as assets are transferred between the parties to align ownership with the new proposed structure. GlobalFoundries, GF Power, GMP, and VELCO/VTransco will seek Commission approval for any transfers of CPGs for these facilities. Castonguay pf. at 25, 32-34; Rieder pf. at 25-26; exh. GF-GR-2 ¶ 4, MOU-3 – MOU-5.

99. GMP currently serves two sets of traffic signals on roads within the excluded territory, one on Robinson Parkway off Park Street, and one located on the other end of Robinson Parkway off Maple Street. These traffic signals are served at the distribution level from other GMP-owned facilities and are separately metered and paid for by GlobalFoundries. GMP and GlobalFoundries have agreed that these facilities will remain on GMP's distribution system, separately metered, and that GlobalFoundries will continue to pay for service as a distribution customer. GMP and GlobalFoundries will execute an agreement for electric service for these traffic lights within 90 days of the issuance of a CPG in this proceeding. Castonguay pf. at 26 n.10.

100. GF Power will not provide retail electric service to any customers in the proposed service territory other than GlobalFoundries. Castonguay pf. at 26; Cram supp. pf. at 3, 10.

101. While the Essex Campus is part of GMP's existing service area, it is uniquely situated compared to GMP's other customers given that GlobalFoundries is GMP's sole transmission customer, takes service from two substations physically located on the campus, and

maintains its own distribution system and step-down transformers. Castonguay pf. at 28; Rieder pf. at 10.

102. GMP, VELCO, and GlobalFoundries have entered the Transmission MOU, which addresses in detail how the transition of service to GF Power will take place and sets forth the proposed service territory transfer. Castonguay pf. at 28-29; Rieder pf. at 28-31; exh. GF-GR-2.

103. The Transmission MOU (and included Letter of Intent) are agreements between the parties that set forth the proposed service territory exclusion, the facility transfer terms and obligations of each party, and the process by which the transition will occur. The requested service territory modification is necessary to facilitate GlobalFoundries in establishing its own subsidiary utility to serve its electricity needs. Castonguay pf. at 28-29; exh. GF-GR-2.

104. GMP's support for the service territory modification is conditioned on approval and implementation of GlobalFoundries' proposal consistent with the terms of the Transmission MOU (including the transition fee that GlobalFoundries will pay to GMP, and the Letter of Intent between GMP and GlobalFoundries), as well as the Utility MOU. Castonguay pf. at 4; exh. GMP-JC-2.

105. As part of the Letter of Intent, GMP and GlobalFoundries have agreed to enter a Transitional PPA. Castonguay pf. at 19-21.

106. The transfer of the Essex Campus to GF Power's service territory will have no material impact on the orderly development of the region because development of the campus has already occurred, and it will continue to exist in its current form once it is out of GMP's service territory. Castonguay pf. at 29; McNamara pf. at 8.

107. Granting the Amended Petition and thereby creating incentives for GlobalFoundries to maintain its operations in Vermont and continue to invest in the Essex Facility will support the orderly development of the region. Castonguay pf. at 29; Rieder pf. at 16-17, 34-35; Rieder reb. pf. at 11-12; Cram supp. pf. at 13-14.

108. GMP and GlobalFoundries have agreed, and have asked the Commission to include as a condition in any CPG that issues in this proceeding, that in the event that GlobalFoundries transfers the Essex Facility to another entity, any successor or assign must assume all obligations under the CPG (and agreements incorporated therein) or the proposed service territory will revert back to GMP (subject to prior Commission approval) to be treated

within GMP's applicable tariffs as they exist at that point. Castonguay pf. at 29; Rieder pf. at 32; exh. GF-GR-2 ¶ 7.

109. Transfer of the proposed service territory to GF Power and approval of the Amended Petition is in the best interests of GMP's customers and GlobalFoundries, because it provides an orderly and planned transition over a number of years, mitigates the risk of GlobalFoundries leaving Vermont and GMP's service territory (and, relatedly, reduces the portfolio risk for GMP associated with purchasing future power supply), and provides benefits to GMP's customers. Those benefits include preserving GlobalFoundries' contribution to transmission costs, providing payments towards GMP's costs for a period of four years, and increasing the share of earnings from GMP's stake in VTransco among GMP's remaining customers. Castonguay pf. at 30-31; Rieder pf. at 29-32; Cram supp. pf. at 6; McNamara pf. at 8; exh. GF-GR-2 ¶ 3(c), ¶ 6, MOU-1 (Letter of Intent dated March 11, 2021).

110. The only affected customer—GlobalFoundries—has not only been notified of and consented to the transfer of service territory but is the petitioner making the request of the Commission. Castonguay pf. at 10.

III. DISCUSSION

This discussion proceeds in six parts. First, we determine that GlobalFoundries' request is in the general good of the State of Vermont based on the applicable criteria and case-specific factors. Second, we explain the Commission's statutory authority to grant GlobalFoundries' request. Third, we analyze the statutory language permitting the Commission to grant a CPG to a limited liability company that will operate as a public service company. Fourth, we explain the unique characteristics of GlobalFoundries and how it is uniquely positioned to make a request to create a public service company. Fifth, we describe the regulatory framework under which GF Power will operate. Sixth, and finally, we decide that GMP's request to carve the Essex Campus out of its service territory and reassign it to GF Power, as a public utility, follows logically from our decision to grant GF Power a CPG to operate as a public service company and from the relevant criteria under Section 249.

A. GF Power's Operation as a Public Service Company, Subject to the Commission's Well-Tailored Regulatory Authority and Consistent with the Memoranda of Understanding Submitted in This Case, Is in the General Good of the State of Vermont.

The Commission may approve ownership and operation of a business over which the Commission has jurisdiction upon finding that "the operation of such business will promote the general good of the State."[20] To make the required general-good determination, the Commission weighs relevant factors that vary based on the specific circumstances of the case.[21] At a high level, we look to various criteria to ensure quality and continuity of service, typically for retail electricity customers. In this case, these factors should serve two overarching purposes: (a) to gauge the effects of the proposal on Vermont ratepayers, taxpayers, State agencies, and the public; and (b) to predict the technical, managerial, financial, and reputational attributes of the proposed public utility company operator. Typically, the Commission reviews the following factors to determine whether an entity should be granted a CPG under Section 231: (1) technical expertise, (2) adequate service, (3) facility maintenance, (4) balance between customers and shareholders, (5) financial stability, (6) the company's ability to obtain financing, (7) business reputation, and (8) relationship with customers.[22] The Commission has also considered additional criteria—for example, the effect of terms within an MOU.[23]

We turn first to the relevant standard criteria under which we analyze a Section 231 petition.[24] With respect to criteria (1), (2), and (3) (technical expertise, adequate service, and facility maintenance), the evidence reflects that GlobalFoundries (and IBM before it) has maintained and operated an internal distribution system and step-down transformers for many

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[20] 30 V.S.A. § 231(a).

[21] *Petition of Salisbury AD 1 LLC*, Case No. 18-3449-PET, Order of 12/5/18 at 4-5. The Commission "has applied a variety of criteria, as appropriate to the circumstances" such as "assessments of technical and managerial competence, of financial strength and soundness, and of matters related to reputation and conduct (often stated as whether the owner, manager or operator will be a fair partner for Vermont." *Amended Joint Petition of Central Vermont Pub. Serv. Corp. et al.*, Docket No. 7770, Order of 6/15/12 at 23; *see also Joint Petition of Verizon New England Inc et al.*, Docket No. 7270, Order of 12/21/07 at 23 ("These criteria are guidelines only, and the [Commission] may deviate from them as the circumstances require. Indeed, the [Commission's] authority under section 231 is broad.").

[22] *Petition of Salisbury AD 1 LLC*, Case No. 18-3449-PET, Order of 12/5/18 at 4-5.

[23] *Amended Petition of Entergy Nuclear Vermont Yankee, LLC, et al.*, Case No. 7862, Order of 3/28/14 at 16-17.

[24] Criteria (4) and (8) (balance between customers and shareholders and relationship with customers) have no direct application in this case, as GF Power will have a single customer and will be a wholly owned subsidiary of that customer.

decades, under the supervision of facilities staff with deep experience in electric systems. GlobalFoundries will continue to maintain and operate all transmission infrastructure pursuant to a general services agreement with GF Power. Given GlobalFoundries' need for high-quality, uninterrupted electricity to power manufacturing 24 hours per day, maintaining and investing in electrical infrastructure is an imperative for the company.

Additionally, GlobalFoundries is responsible for its own power acquisition at both of its New York facilities, and thus has experience navigating wholesale electricity markets.[25] GF Power will be administered through a general services agreement with GlobalFoundries that will include a facilities program manager responsible for overseeing engineering, operations, and maintenance of the transmission facilities; a procurement manager overseeing market participation, power procurement, power market forecasting, and payment of transmission fees; and a legal program manager to ensure regulatory compliance and reporting to FERC, ISO New England, and the State of Vermont.[26]

Under criteria (5) and (6) (financial stability and the company's ability to obtain financing), the traditional regulatory concern with the financial stability of a utility engaged in the provision of service to the public is not directly implicated, as GF Power will not serve any customer other than its parent corporation. GlobalFoundries' long track record and demonstrated ability to finance substantial electricity costs—costs that well exceeded $35 million in 2021—evidence its financial stability. In addition, GlobalFoundries will be directly guaranteeing all of GF Power's financial obligations, including its obligations under any power purchase agreement, charges for Local Network Service and Regional Network Service, obligations to pay transition fees under the Transmission MOU, make-whole payments under the Distribution MOU, gross revenue tax and fuel tax obligations, and any other payment or financial obligations.[27] Under the Transmission MOU, the Essex Campus reverts back to GMP, subject to prior Commission approval, if GF Power fails to meet necessary obligations, and as such, any inability of GF Power to meet its technical or financial obligations results in harm to GF Power rather than to

[25] Findings 17 and 18.
[26] Cram supp. pf. at 3-4.
[27] Finding 77.

Vermont electric customers.[28] Therefore, we conclude that GF Power will be both financially sound and technically competent to operate a public service company as proposed.

Finally, criterion (7) (business reputation) addresses whether a petitioner would serve as a "fair partner" with the State in operating a public service business. In evaluating the "fair partner" criterion, the Commission has examined two distinct sets of considerations. The first relates generally to "fairness to customers."[29] This includes factors such as "(1) just and reasonable terms and conditions, (2) adequate retail service quality, (3) adequate customer service, (4) availability of emergency services, (5) adequate rate of investment, and (6) compatibility with other systems."[30] The second focuses more broadly on the petitioner's "past business activity, regulatory performance, [and] business reputation."[31]

Again, because GF Power would have a single customer—of which it would be a wholly owned subsidiary—the Amended Petition raises no concern with fairness to customers. With respect to "business reputation," GlobalFoundries has a history of constructive engagement in proceedings before the Commission and has been an active and compliant participant in the SMEEP in the time since it acquired the Essex Facility. GlobalFoundries has also engaged in significant capital investment in Vermont, with more planned.

While GF Power will be a new entity that will have no history of business activity or regulatory performance, the State's familiarity and experience with GlobalFoundries and its predecessor IBM is relevant to the fair partner analysis, even if the power procurement and transmission operations will be carried out by GF Power. The Commission has looked to the parent corporation in applying the fair partner criterion in analogous circumstances.[32] GlobalFoundries will enter a services contract with GF Power to provide operational support,

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[28] The reversion provision is intended to cover the unlikely situation where GlobalFoundries' or GF Power's interests are transferred to a third-party successor or assign that refuses to assume the obligations agreed to by GlobalFoundries, GMP, and VELCO in the Transmission MOU. The Commission would have the opportunity for review via a Section 107 transfer of a controlling interest proceeding or a Section 231 petition to transfer the CPG.

[29] *Entergy Nuclear*, Docket No. 7862, Order of 3/28/14 at 38.

[30] *Joint Petition of Consolidated Communications Holding, Inc.*, Docket No. 8881, Order of 6/26/17 at 23.

[31] *Entergy Nuclear*, Docket No. 7862, Order of 3/28/14 at 38.

[32] *See, e.g.*, *Amended Joint Petition of Cent. Vermont Pub. Serv. Corp. et al.*, Docket No. 7770, Order of 6/15/12 at 5, 23 (noting that the fair partner analysis applies to "a prospective direct or indirect owner, manager or operator of a business subject to the [Commission's] jurisdiction," and citing the "the State's familiarity with Gaz Métro as a result of its long tenure as a fair partner and an owner of one or more Vermont utilities" in approving acquisition and merger transaction).

oversee facilities, and handle regulatory compliance, and thus its experience is directly pertinent to GF Power's commitment to act as a fair partner to the State, and weighs in favor of approval.

The Department raised some initial concerns regarding GF Power as a "fair partner" based on requests contained in the Amended Petition. However, at the conclusion of the litigation, and as memorialized in commitments that GlobalFoundries and GF Power have proposed to be included in conditions of the CPG, those concerns have been addressed. The CPG requires that GF Power comply with the requirements of 30 V.S.A. chapter 89 and Commission Rule 4.400, including Vermont's Renewable Energy Standard and the Standard Offer Program, and that GlobalFoundries continue to participate in the SMEEP, pursuant to 30 V.S.A. § 209(j). GF Power's and GlobalFoundries' compliance with these provisions of Title 30 ensures that the State's renewable electricity procurement will advance at the pace set by the Vermont Legislature and that GF Power will continue to invest in energy efficiency through the SMEEP.

The Department noted the importance of ensuring that the Department and Commission maintain authority to review the "books, accounts, and papers" of GlobalFoundries and GF Power as well as the Department's authority to compel information from GlobalFoundries and GF Power regarding "the condition, operation, management, expense of maintenance and operation, cost of production, rates charged for service or for product, contracts, obligations, and the financial standing" of the company.[33] As GF Power would be a wholly owned subsidiary of GlobalFoundries and dependent on the financial standing of GlobalFoundries, transparency of documents and accounts from GlobalFoundries are necessary to ensure the State's interests, particularly with respect to public safety and ensuring compliance with the Renewable Energy Standard and State energy policy. The Department recommended that 30 V.S.A. § 29 should also remain applicable to GlobalFoundries and GF Power to inspect, as needed, the 115 kV facilities on the Essex Campus to verify performance under the SMEEP. Additionally, the Department recommended that 30 V.S.A. § 30 should apply to both GF Power and GlobalFoundries so that the Commission and the Department maintain their enforcement authority to ensure compliance with the applicable sections of Title 30.

[33] 30 V.S.A. §§ 18, 206.

The CPG specifies that any acquisition of a direct controlling interest in GF Power will be subject to the procedures outlined in Section 107. The CPG limits the application of Section 107 to an entity's acquisition of a controlling interest in any parent corporation of GF Power to only those acquisitions that confer a right to control GF Power, such as (i) an acquisition of a majority of outstanding voting securities or membership interests in a parent company or (ii) an express assignment of the right to control GF Power.[34] This clarification is consistent with the caselaw determining how to apply the controlling-interest test to limited liability companies.

The CPG further requires GF Power's and GlobalFoundries' compliance with 30 V.S.A. §§ 18, 29, 30, and 206, with specified limitations. The application of these provisions ensures that the State can exercise its regulatory oversight to confirm GlobalFoundries' compliance with the applicable provisions of Title 30 and addresses the Department's concerns.

The above CPG conditions, which GlobalFoundries proposed be included in any CPG that issues, support the conclusion that GlobalFoundries will be a fair partner to Vermont.

AllEarth argues that GlobalFoundries would not be a fair partner for two reasons that arose during these proceedings. First, AllEarth contends that GlobalFoundries has been reluctant to provide certain information in discovery. Second, AllEarth contends that GlobalFoundries failed to transfer CPGs that should have been transferred at the time that GlobalFoundries purchased IBM.[35] GlobalFoundries responded:

> The failure to transfer the CPGs was an innocent oversight by all parties to the 2015 acquisition which GlobalFoundries has committed to remedy, and the fact that GlobalFoundries pushed back on a small number of requests (not uncommon in litigation) amidst the volumes of discovery it provided in this case hardly predicts that it will fail to meet its regulatory obligations. To the contrary, as noted in GlobalFoundries' initial brief, the record shows that it has been an engaged and compliant participant in this and past matters before the Commission.

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[34] CPG Condition 26.

[35] The CPGs are those issued in Case Nos. 4403 and 4764. The CPG issued in Case No. 4764 is held currently by GMP and IBM. GlobalFoundries proposes petitioning the Commission to remove IBM from this CPG, leaving GMP as the sole CPG holder, and effectively "transferring" the underlying facilities—Williston Substation and 115 kV lines—from GlobalFoundries to GMP. The CPG issued in Case No. 4403 is held currently by GMP and IBM. GlobalFoundries proposes petitioning the Commission to remove IBM from this CPG and add VELCO, VTransco, GF Power, and GlobalFoundries, transferring Substation 86. Additionally, the CPG issued in Case No. 5549 is held currently by GMP. GlobalFoundries proposes petitioning the Commission to transfer this CPG for Substation 87 to VELCO, VTransco, GF Power, and GlobalFoundries. The CPG in this case includes a condition regarding these CPG transfers.

GlobalFoundries' conduct in this proceeding overall demonstrates a forthrightness and willingness to engage meaningfully and transparently with the Department and the Commission. The failure to transfer the CPGs was undoubtedly an oversight, but it occurred during a complex transaction, and it was GlobalFoundries that flagged this issue to the Commission and the parties. We concur with GlobalFoundries' characterization that these points do not affect our analysis of GF Power and GlobalFoundries as fair partners.

Other factors relevant to the public-good assessment in this case include consideration of Section 218e. That provision, enacted by the Legislature in 2014, states as follows:

> To give effect to the policies of section 202a of this title to provide reliable and affordable energy and assure the State's economic vitality, it is critical to retain and recruit manufacturing and other businesses and to consider the impact on manufacturing and other businesses when issuing orders, adopting rules, and making other decisions affecting the cost and reliability of electricity and other fuels. Implementation of the State's energy policy should:
>
> (1) encourage recruitment and retention of employers providing high-quality jobs and related economic investment and support the State's economic welfare; and
>
> (2) appropriately balance the objectives of this section with the other policy goals and criteria established in this title.

Accordingly, when making our decision in this Order, the Commission must balance State economic and employment objectives with other policy goals and criteria established in Title 30, such as renewable energy,[36] energy efficiency,[37] tax,[38] and greenhouse gas emission reduction requirements.[39]

GlobalFoundries is Vermont's biggest manufacturer, providing high-quality jobs in semiconductor manufacturing to a large number of employees. Its presence results in significant contributions to the State's economic welfare, including tens of millions of dollars in purchases of services and goods from local vendors annually. GlobalFoundries' contributions to Vermont's economy strongly support implementation of the State's energy policies in a manner

[36] 30 V.S.A. ch. 89.
[37] 30 V.S.A. §§ 209(d), 209(j).
[38] 30 V.S.A. § 22; *see also* 33 V.S.A. § 2503.
[39] *See, e.g.*, 30 V.S.A. § 202a(3).

that encourages retention of GlobalFoundries as an employer under the balancing required by Section 218e.[40]

Additionally, approval of the Amended Petition will promote and contribute to the financial stability of Vermont's retail electricity sector and the affordability of electricity, consistent with Vermont's state energy policy.[41] If GlobalFoundries were to leave the state abruptly, other customers could face a material rate increase.[42] The transition payments along with the Transmission MOU significantly mitigate the economic impact of GlobalFoundries forming its own public service company.

The Transmission MOU preserves GlobalFoundries' contribution to transmission costs, ensuring that GF Power will continue to contribute to GlobalFoundries' share of Local Network Service and Regional Network Service costs allocated to its load. These costs would otherwise shift to Vermont's distribution utilities and be borne by their ratepayers. AllEarth argues that the transition fee will be reduced because it will be prorated; however, the current term contract that will remain in effect until the Transitional PPA goes into effect will provide approximately the same revenue to GMP as the transition payments would have. Because revenue under the term contract roughly equals the transition payments in the early phase of the transition, the pro-rated transition fee will not cause any meaningful reduction in GlobalFoundries' overall contribution to costs. Thus, the current proposal balances the State's regulatory objectives with GlobalFoundries' interest in reducing electricity costs to serve its Essex Facility while also ensuring that impacts to ratepayers are mitigated.

B. <u>The Commission Has the Authority to Approve the Formation and Operation of a Public Service Company.</u>

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[40] *Cf. Village of Enosburg Falls Water & Light Dep't*, Case No. 18-3575-SC, Order of 3/20/15 at 4 (finding that Section 218e favored approval of special contract where party at issue was "a primary employer in Enosburg Falls' service territory, . . . Enosburg Falls' largest customer," and "an important manufacturer in the local economy").

[41] *See* 30 V.S.A. § 202a(1).

[42] *See* findings 81-88. AllEarth argues that the modeling conducted by GMP overestimates the potential rate impact of GlobalFoundries leaving the state because, in all likelihood, some other customer would make use of the Essex Facility and be a customer of GMP, thereby contributing to GMP's fixed costs. The "worst-case" scenario modeled by GMP quantifies the maximum potential rate impact, but even if the rate impact were less than 1.3%, we have found that granting GlobalFoundries' Amended Petition, on balance, promotes the good of the State. There is nothing dispositive or particularly persuasive about the 1.3%. A lesser rate impact would lead us to the same conclusion.

As a preliminary matter, AllEarth has argued that the Commission does not have the authority to grant GlobalFoundries' request to establish and operate GF Power as a public service company and provide power to GlobalFoundries as its sole customer. This is a purely legal question. To answer this question, the Commission must interpret the statutes within our area of expertise.[43] To determine whether we have jurisdiction over GlobalFoundries' proposal, we must perform a statutory analysis of the laws governing our regulatory authority because "[a]n agency must operate for the purposes and within the bounds authorized by its enabling legislation."[44]

The overarching objective of any "statutory interpretation is to construe and effectuate the legislative intent behind a statute."[45] The first step in any statutory analysis is to look to the plain meaning of the law.[46] Only if the statute's language is ambiguous do we go beyond the statutory language to "consider the statute's subject matter, effects and consequences, as well as the reason for and spirit of the law" and, ultimately, to determine the legislative intent.[47]

The Commission has broad authority to regulate the purchase and delivery of electricity in Vermont.[48] However, the Commission's authority is not without limitation. We retain "only such powers as are expressly conferred upon [us] by the Legislature, together with such incidental powers expressly granted or necessarily implied as are necessary to the full exercise of those granted."[49]

Undeniably, the Commission has authority to approve the creation of a public service company.[50] Our statutory authority in this area is plain on its face and does not require us to

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[43] *See In re Petition of Portland Street Solar LLC*, 2021 VT 67, ¶ 12 (noting that Commission is accorded deference in interpreting statutes within Commission's area of expertise).

[44] *In re Agency of Admin., State Bldgs. Div.*, 141 Vt. 68, 75, 444 A.2d 1349, 1352 (1982).

[45] *State v. Hurley*, 2015 VT 46, ¶ 9, 198 Vt. 552, 117 A. 3d 433; *see also In re Programmatic Changes to Standard-Offer Program*, 2014 VT 29, ¶ 9, 196 Vt. 175, 95 A.3d 999 ("Our paramount goal in construing a statute is to give effect to the intent of the Legislature." (quotation marks and citations omitted)).

[46] *See Cornelius v. The Chronicle, Inc.*, 2019 VT 4, ¶ 18, 209 Vt. 405, 206 A.3d 710.

[47] *Northfield Sch. Bd. v. Washington S. Educ. Ass'n*, 2019 VT 26, ¶ 13, 210 Vt. 15, 210 A.3d 460.

[48] *See, e.g.*, 30 V.S.A. §§ 203, 209.

[49] *Trybulski v. Bellows Falls Hydro-Elec. Corp.*, 112 Vt. 1, 7, 20 A.2d 117, 120 (1941).

[50] *See, e.g.*, 30 V.S.A. §§ 203, 209, 219, and 231. Section 203 grants the Commission and Department jurisdiction over public service companies and the parts of their business, including manufacture, transmission, distribution, storage, or sale of gas or electricity directly to the public or to be used ultimately by the public. Section 231 authorizes the Commission to issue a CPG to a business over which the Commission has jurisdiction; jurisdiction must be demonstrated as a prerequisite.

look beyond the statutory text, including 30 V.S.A. § 231 at issue here, to conclude that our decision in this case—as now presented—falls squarely within our authority.

Much of AllEarth's contention that we are without authority relies on an inaccurate characterization of GlobalFoundries' proposal to operate a "self-managed utility" exempt from much of the regulation that applies to public service companies, including important statutory requirements, such as the Renewable Energy Standard.[51] GlobalFoundries' request has evolved significantly during the litigation of these cases. GlobalFoundries' significantly altered Amended Petition seeks to form and operate a public service company, subject to substantially all the regulation applicable to any other electric utility in Vermont, including the Renewable Energy Standard.[52] GlobalFoundries' proposal—while unique in several respects—now fits comfortably within the existing model of regulated electric utilities in Vermont.

The creation of a separate limited liability company—GF Power LLC—is not a relevant factor in our analysis of whether formation of a public service company is permitted by law.[53] There is no statutory bar to the creation of a wholly owned subsidiary company to operate as a public service company.[54] In fact, keeping the business subject to our regulation separate from GlobalFoundries makes GF Power easier and more efficient to regulate than it would otherwise be if entangled in GlobalFoundries' semiconductor manufacturing functions. Counter to AllEarth's contention, GlobalFoundries' current proposal brings GF Power in line with the form and regulation of traditional retail electric utilities.

The Commission has the authority to approve the creation of new public service companies and carve out or reassign their designated service territories. While a public service

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[51] As we note above, references to the "self-managed utility" are incorrect and risk confusion. *See* footnote 8.

[52] GlobalFoundries has agreed to be subject to almost all regulatory obligations of a traditional utility, with only a few, common-sense adjustments to the form of regulation because GlobalFoundries will have a single, industrial customer. For a full discussion of the applicable regulatory framework as applied to GlobalFoundries' proposal, see Section III.E.

[53] However, the nature of GF Power as a company is relevant to our general-good analysis, as discussed below in Section III.A.

[54] AllEarth cites the Vermont Supreme Court's recent decision in *Portland Street* for the proposition that we look beyond the establishment of corporate entities and deem GF Power LLC and GlobalFoundries one and the same. *See Portland Street*, 2021 VT 67, ¶¶ 41-44, 264 A.3d 872. The circumstances in that case are not instructive here. In *Portland Street*, the Commission was interpreting a statutory amendment that would have been rendered superfluous—contrary to the canons of statutory interpretation—if interpreted to allow the establishment of independent limited liability companies to be determinative of the "common ownership" factor in the Commission's single-plant analysis. Instead, the Commission held—and the Court affirmed—that "ownership," in that context, meant more than distinct business entities.

company generally serves the public, this does not mean that a public service company must serve more than one member of the public. The very concept of monopoly utility service in a designated service territory means that the statutory obligation to serve the public is one that is limited to a finite set of customers within a specific geographic area. And nothing in the statutory language prohibits a service territory that includes just one customer.

Thus, we conclude that the Commission has the statutory authority to grant GlobalFoundries' request to establish, own, and operate GF Power as a public service company.

C. A Limited Liability Company Can Be a CPG Holder Within the Plain Language of 30 V.S.A. § 231.

Pursuant to the plain language of Section 231, a limited liability company, such as GF Power, may hold a CPG and operate as a public service company. Section 231(a) states that "[a] person, partnership, unincorporated association, or previously incorporated association that desires to own or operate a business over which the Public Utility Commission has jurisdiction under the provisions of this chapter shall first petition the Commission to determine whether the operation of such business will promote the general good of the State." AllEarth contends that 30 V.S.A. § 231 precludes a limited liability company from holding a CPG because the statute does not list explicitly a "limited liability company" as one of the itemized entities. AllEarth's argument is without merit.

First, Section 231(a) governs any "*person* . . . that desires to own or operate a business over which the Public Utility Commission has jurisdiction."[55] Because "person" is not given any specific definition under 30 V.S.A. chapter 5 (the chapter that includes Section 231), the general definition of "person" in Vermont statute applies. The term "person" includes "any natural person, corporation, municipality, the State of Vermont or any department, agency, or subdivision of the State, and any partnership, unincorporated association, or *other legal entity*."[56] A limited liability company is unquestionably a legal entity. In Vermont, limited liability companies are governed by 11 V.S.A. chapter 25. Therefore, under the plain language of Section 231(a), limited liability companies can be CPG holders.

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[55] (Emphasis added).

[56] 1 V.S.A. § 128 (emphasis added); *see also* 1 V.S.A. § 101 (the general definitions of the chapter, which include the definition of "person," apply in construing the Vermont statutes "unless such construction is inconsistent with the manifest intent of the General Assembly or repugnant to the context of the same statute").

The above conclusion is supported not only by the plain language of the statute, but also by past Commission precedent. The Commission has repeatedly issued CPGs under Section 231 to limited liability companies in a wide array of cases, including many contentious and high-profile cases.[57] AllEarth also argues that a reading Section 231 as excluding limited liability companies makes sense because of "the less stringent requirements that generally attend to LLCs as opposed to corporations under Vermont law."[58] AllEarth's policy argument, however, would also apply to partnerships, unincorporated associations, or previously incorporated associations, although they are expressly named in the statute. These other entities listed in the statute are not corporations, yet their inclusion evidences a broader interpretation of the Legislature's intent. In fact, when compared with the corporate entities in existence at the time Section 231 was enacted, this list strengthens the argument that limited liability companies were left out, not due to affirmative policy decisions, but because they did not exist under Vermont law at the time.[59]

Thus, the logical conclusion is that limited liability companies were left off this list not because there was a conscious legislative intent to do so but rather because, as GlobalFoundries argues, they did not exist at the time the statute was drafted and have not been added in the interim.[60] This understanding of the legislative intent is further confirmed by the Vermont General Assembly's inaction in the face of numerous Section 231 CPGs being issued to limited

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[57] *See e.g., Joint petition of Vermont Electric Power Company, Inc. (VELCO)*, Case No. 7174, Order of 6/20/06 (granting CPG under Section 231 to Vermont Transco, LLC, to own and operate the Vermont bulk electric transmission system); *Joint Petition of NorthStar Decommissioning Holdings, LLC, et al.*, Case No. 8880, Order of 12/6/18 (amending Section 231 CPG to make NorthStar Nuclear Decommissioning Company, LLC, the CPG holder for the Vermont Yankee Nuclear Power Station); *Joint petition of Champlain Broadband, LLC, et al.*, Case No. 18-0491-PET, Order of 2/19/19 (granting CPG under Section 231 to Champlain Broadband, LLC to own and operate Burlington Telecom, a company offering telecommunications services in Burlington, Vermont); *Petition of ER Nava Storage, LLC*, Case No. 21-2114-PET, Order of 1/7/22 (granting CPG under Section 231 to ER Nava Storage, LLC to own and operate a 5 MW battery electric storage facility).

[58] *Initial Post-Hearing Brief of AllEarth Renewables, Inc.* (9/6/22) at 21.

[59] The precursor statute to Section 231 was first enacted in 1931. *See* 1931 Vt. Acts & Resolves 139 (Public Act No. 101 § 1) (including a person, partnership, or unincorporated association). Before the enactment of a statute conveying jurisdiction to the, then, public service commission to issue a certificate of public good, the General Laws of Vermont 1917 § 5055 defined "company," as used in Chapter 216—Powers and Duties as to Other Public Service Companies—to "mean and include individuals, partnerships, associations, corporations, and municipalities, owning or conducting any public service business or property used in connection therewith." At that time, partnerships, associations, and corporations made up the categories of corporate entities regulated by law. For example, Title 32 regulated partnerships, co-partnerships, or associations of individuals and Title 25, as it does today, regulated corporations. *See* GEN. LAWS OF VT., 1917, §§ 4893-5025, 5739-5751.

[60] The Vermont Legislature did not enact a statute recognizing and authorizing the formation of domestic limited liability companies until 1996. *See* 1995 Vt. Acts & Resolves 645 (Public Act No. 179 § 4). Section 231 was enacted more than half a century earlier. *See* 1931 Vt. Acts & Resolves 139 (Public Act No. 101 § 1).

liability companies over the years. If the General Assembly concluded that the Commission was acting inconsistent with statute, they could have amended Section 231 to explicitly exclude such entities.

D. <u>This Decision Is Limited to the Factual Circumstances Unique to GlobalFoundries.</u>

In this section we highlight the unique circumstances that distinguish GlobalFoundries from other retail electricity customers.[61] GlobalFoundries is situated differently from all other retail electricity customers in several respects.

First, GlobalFoundries is the largest electricity user in Vermont by a considerable margin. The Essex Facility uses more electricity on an annual basis than the entire City of Burlington, and GF Power will be the third largest electric distribution utility in the state.[62]

Next, GlobalFoundries takes retail service at the 115 kV transmission level directly from the transmission grid; owns and pays to maintain the 115 kV step-down transformers to which the transmission service is connected and its internal onsite distribution system; and pays for all the operations and maintenance costs for the 115 kV equipment within all three substation yards.[63] These are unique characteristics that distinguish GlobalFoundries from all other retail electricity customers in the state. GlobalFoundries is the *only* retail customer in the state that takes service at the 115 kV transmission level and the *only* retail customer that owns and maintains its own distribution system.[64] These factors will allow GlobalFoundries' Essex Campus to separate from GMP's service territory without any disruption to or system impact on other customers.[65] Every other retail electric customer in the state uses the distribution or sub-transmission infrastructure owned by their utility.

GlobalFoundries has experience managing its own power supply. GlobalFoundries currently manages electricity procurement for its facilities in Malta and East Fishkill, New York, and while it has not previously procured its power supply on the wholesale market for its Essex

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[61] We also acknowledge that the parties to the Utility MOU agree that GlobalFoundries' status "does not create precedent because it is based upon [GlobalFoundries'] unique capability to self-manage its power supply; to access the wholesale market without disruption to other customers; to utilize its existing electric infrastructure footprint that allows separation of service territory on a contiguous basis; and to connect directly to the transmission system at 115 kV." Exh. GMP-JC-2 ¶ 2.

[62] Findings 6 and 15.

[63] Findings 5, 14-18.

[64] Finding 16.

[65] Finding 95.

Facility in Vermont, it has negotiated term contracts with GMP and has advocated for the ability to directly control the costs and risks of its power purchases.[66] These experiences demonstrate that GlobalFoundries is well aware of both the upside and downside risks from market exposure and is equipped to take on those risks.

GlobalFoundries' very large, consistent load, its ownership and maintenance of electric distribution and transmission infrastructure, its experience procuring power, and its tolerance for risk make it uniquely positioned to make this request of the Commission. Given the transaction costs and attendant risks of forming a regulated public service company and procuring power on the wholesale market, forming a utility is not currently a viable option for any other electric customer in Vermont.

E. GF Power Will Be a Public Service Company, Subject to the Provisions Applicable to a Public Service Company with the Unique Characteristics and Operational Structure Presented by GlobalFoundries' Request.

This subsection lays out the CPG conditions that will apply to GF Power and GlobalFoundries and explains, when necessary, the basis for specially tailored CPG conditions.

As discussed above in subsection D, our application of Title 30 to GF Power and GlobalFoundries is based on the specific facts of this case, including GlobalFoundries' unique circumstance of owning and operating its own distribution network capable of directly receiving 115 kV transmission service and its agreement that GF Power would serve only GlobalFoundries and no other members of the public. GlobalFoundries' unique operations necessitate a careful approach to the areas of regulation appropriate to GF Power's operation.

Initially, GlobalFoundries requested limited, or *de minimis*, regulation of its wholly owned subsidiary, GF Power. When GlobalFoundries filed its Amended Petition, it requested that the Commission modify the following statutes, or exempt GF Power or GlobalFoundries entirely from their application: 30 V.S.A. §§ 18, 22, 29, 30, 104, 105, 107, 108, 109, 204, 205, 206, 209(a)(4), 209(a)(5), 209(d), 209(h), 209(j), 218, 218c, 219, and 225; and Commission Rules 3.200, 3.300, 3.400, 4.200, and 5.600. During litigation of the Amended Petition, the

[66] Finding 17.

parties and the Commission probed these requests.[67] At the conclusion of litigation, many of these statutes and rules will apply in full. Only some are slightly modified or do not apply.

In conducting our analysis, we assessed whether the statutory provisions and Commission Rules applied to GF Power or GlobalFoundries.[68] We then determined whether an equivalent or modified provision was more appropriate given the language of the statute and legislative intent.[69] In most instances, statutes and rules will apply to GF Power exactly as they apply to other public service companies. In a few narrow areas, we have tailored the regulations applicable to GF Power to acknowledge the circumstances within which GF Power will operate; all regulatory accommodations are to be construed narrowly. Statutes and Commission Rules that pertain to public service companies apply to GF Power unless there is an express or an unequivocal modification of a provision to tailor our regulation to GF Power's unique operations in serving a single, sophisticated, industrial customer.

1. Applicable, Unmodified Regulations

This first subsection describes the statutory provisions under which GlobalFoundries and GF Power will be regulated without modification. Many statutory provisions apply in a straightforward way to GF Power and GlobalFoundries. GF Power and GlobalFoundries must comply, without reservation or exception, with the following Sections of Title 30 of the Vermont Statutes Annotated: 18 (production and examination of books), 22 (tax to finance the Department and Commission), and 30 (violations and penalties). GF Power alone must comply, without reservation or exception, with the following Sections of Title 30 of the Vermont Statutes Annotated: 29 (regulators' right of inspection), 32 (injunctive proceedings), 108 (issuance of bonds, debts, or other securities), 206 (information to be furnished to the Department), 207 (reporting safety incidents regarding transmission facilities), 209(h)(4) through (6) (electricity

[67] GlobalFoundries and GF Power, as relevant, will fully comply with the required statutes. Sections 18, 22, 29, 30, and 206 shall apply to GF Power and GlobalFoundries; Sections 104, 108, 109(a) (with respect to merger and consolidation), 204, and 205 apply to GF Power. Section 107 applies, as it has been interpreted in the case law, to GF Power as a limited liability company. For a full discussion of the provisions that fall into this category, see subsection III.E.1 of this Discussion.

[68] For example, Section 105 does not apply to either entity because neither is a corporation that can issue stock. For a full discussion of the provisions that fall into this category, see subsection III.E.2 of this Discussion, which principally addresses rate regulation.

[69] For a full discussion of the provisions that fall into this category, see subsection III.E.3 of this Discussion.

labeling),[70] 218c (least-cost integrated planning), 248 (emergency repairs to, upgrades to, or replacement of transmission facilities), 8002(23) (definition of a "retail electricity provider"), and Chapter 89 (Vermont's Renewable Energy Programs). GF Power must also comply, without reservation or exception, with 33 V.S.A. § 2503 (fuel tax). These statutory provisions have been identified explicitly in the CPG.

There are some additional statutory provisions that apply to GF Power and GlobalFoundries, but their application requires additional explanation. Those provisions are identified in the headers and detailed in the paragraphs that follow in this subsection.

30 V.S.A. § 107

GlobalFoundries had requested accommodations under 30 V.S.A. § 107. The relevant portion of Section 107(a) reads, "[n]o company shall directly or indirectly acquire a controlling interest in any company subject to the jurisdiction of the Public Utility Commission, or in any company that directly or indirectly has a controlling interest in such a company, without the approval of the Public Utility Commission." Section 107(e)(1) defines "controlling interest," in relevant part, as "10 percent or more of the outstanding voting securities of a company; or such other interest as the Public Utility Commission determines . . . to constitute the means to direct or cause the direction of the management or policies of a company." Section 107(b) outlines the process for petitioning the Commission to seek a controlling interest and mandates notice and an opportunity for a hearing. In certain circumstances, Section 107(c) allows review after a controlling interest takes place without prior Commission approval.

If the company to be acquired is a limited liability company, the outstanding voting securities portion of the definition of a "controlling interest" does not apply because a limited liability company does not issue stock or securities.[71] Thus, the Commission must ask whether

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[70] Section 209(h) is a permissive statutory provision—using the word "may" in referencing Commission action—that allows the Commission to exercise discretion in determining whether and how to impose electricity labeling. CLF and GlobalFoundries negotiated the application of Section 209(h)(4) through (6) even though GlobalFoundries initially requested exemption from the entire statutory provision. While the first three sub-provisions of Section 209(h) are customer- and public-facing provisions, Sections 209(h)(4) through (6) require reporting data on the actual power sources and Renewable Energy Credit sources, which is important for state data collection and transparency. Thus, we agree that the application of sub-provisions (4) through (6) achieves relevant policy goals and should be included in the CPG.

[71] A limited liability company ("LLC") is a business entity structured to have either a single owner or multiple owners, who are referred to as members. *See* 11 V.S.A. Ch. 25. An LLC cannot issue stock. Under Vermont tax

the interest being acquired "constitute[s] the means to direct or cause the direction of the management or policies of a company."[72] If the interest is "passive" and does not "confer rights to control" the company, then Section 107 may not apply.[73]

Viewing Section 107 through the lens of its application to a limited liability company, we will require approval of the direct acquisition of a "controlling interest" in GF Power within the meaning of 30 V.S.A. § 107. Acquisitions of a controlling interest in GF Power must follow the procedures outlined in Section 107. Following Commission precedent, we will also require approval of a controlling interest in any parent corporation of GF Power, should that acquisition confer rights to control GF Power.[74] Such an acquisition must require the new entity to file a petition with the Commission, pursuant to Section 107. If, instead, the new parent entity will not acquire the right to control GF Power, the transaction can go forward without prior Commission approval, pursuant to Section 107(c), and the new entity along with the parent company in control of GF Power must jointly petition the Commission for a determination that approval of the acquisition under Section 107(c) is not required.

GlobalFoundries requested that the Commission exclude internal changes in corporate structure below GlobalFoundries Inc. from Section 107 review. Specifically, GlobalFoundries requested the addition of the following: "An internal change in corporate structure below GlobalFoundries Inc. that does not involve acquisition of an interest in a GlobalFoundries entity by a third party shall not be subject to 30 V.S.A. § 107." GlobalFoundries argues that the regulatory interest in reviewing such changes in corporate structure is minimal because GF Power will only serve GlobalFoundries, a wholly owned subsidiary. We agree that such internal corporate restructuring in these circumstances does not trigger Section 107 review.

The above Section 107 approval process is memorialized in a CPG condition.

30 V.S.A. § 109

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law, a controlling interest is defined as more than 50 percent. The tax definition, importantly, refers to the "total combined voting power of all classes of stock" for a corporation, but to "the capital, profits, or beneficial interest" for an LLC. 32 V.S.A. § 9601(12).

[72] 30 V.S.A. § 107(e)(1).

[73] *See Petition of Great River Hydro NE, LLC*, Case No. 8872, Order of 4/6/17 at 11-12.

[74] *See, e.g.*, *Petition of GEPIF III Vanguard Renewables NewCo, L.P.*, Case No. 22-2992-PET, Order of 9/8/22 at 4; *In re Helicon Group, L.P.*, Case No. 6898, Order of 12/19/03 at 3.

Section 109(a) of Title 30 of the Vermont Statutes Annotated regulates the sale, lease, consolidation, or merger of a public service company. This section applies, without limitation, to GF Power. With respect to GlobalFoundries, Section 109(a) applies to sales and leases but not mergers or consolidations. In reviewing mergers or consolidations, the Commission must make a specific finding that "consolidation or merger will not result in obstructing or preventing competition in the purchase or sale of any product, service, or commodity, in the sale, purchase, or manufacture of which such corporations are engaged."[75] A merger or consolidation of a GlobalFoundries entity—as distinct from GF Power—would not present utility industry competition concerns. GF Power, as the CPG Holder, with or without GlobalFoundries would need to petition the Commission for such a change. Additionally, the CPG cannot be transferred to another legal entity without prior approval of the Commission.

30 V.S.A. §§ 109(c) and 209(a)(5)

GlobalFoundries requests that the Commission limit its jurisdiction over systems, plants, conduits, appliances, wires, and exchanges under 30 V.S.A. § 209(a)(5) to the 115 kV facilities serving the Essex Facility, which will be transferred to and owned by GF Power, and decline to regulate the Essex Facility's internal distribution network, which will be owned, operated, and maintained by GlobalFoundries U.S. 2 LLC, as it presently is.[76] This request is in line with the status quo. Distribution lines are generally regulated by Act 250, not the Commission.[77] The Commission only exercises jurisdiction over distribution lines during Section 248 reviews when the distribution facilities are reasonably related to a generation or transmission facility.[78] Nothing about GlobalFoundries' proposal disturbs the ownership, operation, or maintenance of GlobalFoundries' internal distribution network. Thus, we conclude that GlobalFoundries' proposal regarding our 209(a)(5) authority is appropriate and will be memorialized in a condition in the CPG.

Relatedly, 30 V.S.A. § 109(c) pertains to companies owning or operating an electric transmission facility in Vermont. GlobalFoundries is currently subject to this provision and

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[75] 30 V.S.A. § 311.

[76] Section 209(a)(5) confers jurisdiction on the Commission in all matters respecting "the sufficiency and maintenance of proper systems, plants, conduits, appliances, wires, and exchanges, and when the public safety and welfare require the location of such wires or any portion thereof underground."

[77] *See* 10 V.S.A. § 6081(q) and (r); PUC General Order No. 51 (Interpretation of V.S.A. § 248) at 1.

[78] *Petition of Vermont Elec. Coop., Inc., for a Declaratory Ruling*, Case No. 7201, Order of 8/24/06.

would continue to be subject to this provision after the creation of GF Power. We likewise do not alter the status quo arrangement.

30 V.S.A. § 209(d)

Similarly, GlobalFoundries requests that GF Power not be required to comply with 30 V.S.A. § 209(d) so long as GlobalFoundries U.S. 2 LLC (or any successor or assign) participates in the Self-Managed Energy Efficiency Program ("SMEEP"). The SMEEP was created in an Order dated December 28, 2009, and IBM was authorized to participate as a member of the transmission rate class.[79] The Commission later approved GlobalFoundries' application to begin participation in the SMEEP as of January 1, 2016.[80] By granting GF Power a CPG to operate as a public service company, nothing about GlobalFoundries' status as a participant in the SMEEP would change. GlobalFoundries will still be a member of the transmission rate class and eligible for the SMEEP. Pursuant to Section 209(j)(3), GlobalFoundries is exempt from the energy efficiency charge under Section 209(d)(3), provided that GlobalFoundries complies with other requirements of Section 209(j). GF Power will have no other customers and, therefore, will not collect an energy efficiency charge for as long as GlobalFoundries remains a participant in the SMEEP. All load in GF Power's service territory will be subject to the alternative energy efficiency compliance program, SMEEP. Thus, at this time there is no need for a separate energy efficiency utility or GF Power to take on additional energy efficiency work for GF Power's service territory.

30 V.S.A. Chapter 89

As we detailed at length in our February 17, 2022, order, a public service company must be subject to the Renewable Energy Standard, which requires utilities to obtain 75% of their energy from renewable sources by 2032, 10% of which must come from Tier II resources (in-state facilities of less than 5 MW).[81] Additionally, under Tier III, utilities must either procure Tier II renewable energy credits or undertake energy transformation projects to achieve fossil-

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[79] Docket EEU-SMEEP, Order of 12/28/09 at 8.

[80] *Application of GlobalFoundries to participate in the Self-Managed Energy Efficiency Program ("SMEEP")*, Case No. EEU-2016-02, Order of 5/19/16.

[81] 30 V.S.A. § 8005(a)(1) and (2). The RES is divided into three categories or tiers. "Tier II" resources are renewable distributed generation resources with a nameplate capacity of 5 MW or less that are connected to the Vermont distribution or transmission system, and have been commissioned after June 30, 2015, or been approved under 30 V.S.A. § 219a. 30 V.S.A. § 8005(a)(2)(B).

fuel savings equivalent to 2% of their annual retail sales starting in 2017, increasing by 2/3% each year until reaching 12% in 2032.[82]

GlobalFoundries has pledged to comply fully with the Renewable Energy Standard. During the transition period, GMP will comply with the Renewable Energy Standard on behalf of GF Power. When the transition period is over, GF Power will comply directly with the requirements of the Renewable Energy Standard. The CPG is conditioned on GF Power's full compliance with the Renewable Energy Standard and Standard Offer Program. Additionally, the CPG includes a condition requiring GF Power to submit its 2027 Renewable Energy Standard compliance plan by September 1, 2026, earlier than the typical November 1, 2026, deadline, so there is adequate time to review GF Power's first annual compliance plan.

2. Inapplicable Regulations and Regulations Modified for Applicability

This second subsection describes the statutory provisions that are inapplicable to GlobalFoundries or GF Power or for which applicability is specific to the circumstances of this Amended Petition.

30 V.S.A. § 29

Section 29 of Title 30 of the Vermont Statutes Annotated, which establishes the Commission's and Department's right to inspect physical premises, applies to GF Power and GlobalFoundries with one modification. As modified, the right of inspection under 30 V.S.A. § 29 will be limited to the access necessary to inspect transmission facilities owned or operated by GF Power or GlobalFoundries at the Essex Facility. The goal of this limitation is to align the right to inspect with the statutorily authorized target of that inspection—within the Commission's and the Department's authority—rather than the extra-regulatory business practices of GlobalFoundries as a semiconductor manufacturer.

30 V.S.A. § 105

Section 105 of Title 30 of the Vermont Statutes Annotated does not apply to either entity because neither is a corporation that can issue stock. However, we have reserved the right to apply Section 105 to GF Power, or its successor or assign, should that entity be capable of issuing stock in the future.

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[82] 30 V.S.A. § 8005(a)(3).

30 V.S.A. §§ 110-124

GF Power and GlobalFoundries will not have authority under 30 V.S.A. §§ 110 through 124 to exercise eminent domain.

30 V.S.A. § 204

The language of 30 V.S.A. § 204 requires a corporation to provide the Department with copies of various documents describing the corporation and its operations. We have included as a CPG condition a modified version of Section 204 to apply the requirement to limited liability companies consistent with the regulatory intent behind the statute that requires GF Power to register as a limited liability company, file a copy of its CPG with the Vermont Secretary of State, and notify the Commission of GF Power's official representative.[83] The CPG condition is the equivalent of Section 204 for a limited liability company.

30 V.S.A. § 104

Similarly, 30 V.S.A. § 104 prevents the amendment of articles of incorporation without Commission certification. Because the statutory language applies to corporations, we have included a CPG condition applicable to GF Power that captures the regulatory intent of Section 104 by requiring Commission approval for amendment of GF Power's articles of organization.[84]

30 V.S.A. § 205

The language of 30 V.S.A. § 205 also applies to corporations, so a modified version that applies the statutory language to limited liability companies was necessary to include as a CPG condition to capture the regulatory intent behind this statutory provision.

30 V.S.A. § 206

Section 206 of Title 30 of the Vermont Statutes Annotated applies to GF Power and GlobalFoundries. With respect to 30 V.S.A. § 206, the Department's right to information on "the salaries of, the pensions, option, or benefit programs affecting, and the expenses reimbursed to, [the company's] officers or directors, or both" will be limited to information regarding officers or directors of GF Power for work performed in their role as officers or directors of GF Power. The remaining portion of Section 206 will apply to both GF Power and

[83] CPG Condition 2.
[84] CPG Condition 4.

GlobalFoundries.[85] Again, the Department's authority extends only to the subject matter over which it has regulatory authority.

30 V.S.A. § 218

The provisions of 30 V.S.A. § 218(b)-(g) are not applicable or are permissive. As discussed more fully below, the Commission will exercise its regulatory authority, pursuant to Section 218(a), to review and approve the tariff that GF Power will file. Section 218(b) does not apply to GF Power at this time because GF Power's single, industrial customer is currently a participant in the SMEEP under 209(j). Section 218(c) pertains to telecommunications companies, so it does not apply. Section 218(d) is permissive and allows a utility to collect expenses for aesthetic improvements of utility substations. GF Power will not seek such recovery from its sole customer, GlobalFoundries U.S. 2 LLC, or will incorporate that recovery into the tariff formula that it submits to the Commission for review and approval. Section 218(e) pertains to low-income customers, so it does not apply. Section 218(f) is only implicated if GF Power seeks rate recovery for renewable energy generation projects, and GF Power will not seek such recovery or will incorporate that recovery into the tariff formula that it submits to the Commission for review and approval. Section 218(g) requires a utility to have a rate schedule for street lighting. The requirements of 218(g) are accounted for in the ratemaking process approved in this order.

30 V.S.A. § 219

Section 219 of Title 30 of the Vermont Statutes Annotated has been limited to GF Power's obligation to provide power to its sole customer, GlobalFoundries.[86] Should GF Power ever wish to supply electricity to other retail customers, it would have to seek approval from the Commission, pursuant to 30 V.S.A. §§ 201 and 231.

Commission Rules

In this category are the Commission Rules that GlobalFoundries has requested be waived, which are Commission Rules 3.200 (ratepayer deposits), 3.300 (disconnection of residential service), 3.400 (disconnection of non-residential services), 4.200 (electric bill information), and 5.600 (electric line extension). These Commission Rules were promulgated pursuant to 30

[85] CPG Condition 31.
[86] CPG Condition 9.

V.S.A. § 209(b) and (c). The purpose of these Rules is to protect "the health and safety of utility customers so that uninterrupted utility service may be continued on reasonable terms for the utility and its customers" and to ensure "a reasonable rate of interest" on deposits.

Based on GF Power's operations or commitments that have been made in this case, Rules 3.200, 3.300, and 5.600 do not apply to GF Power.

Rule 3.200 applies to residential customers and only applies if the utility elects to charge a deposit to the customer when creditworthiness is an issue. If GF Power does not charge its sole customer a deposit, then Rule 3.200 is not implicated.

Rule 3.300 applies to residential disconnections, which does not apply to GF Power because it will only have a single industrial customer.

Rule 5.600 applies to all Vermont electric utilities' single-phase and multi-phase distribution service extensions. The Rule outlines the process for customer requests for line extensions, whether to serve new customers or provide existing customers with secondary service. GF Power will not serve any customers besides GlobalFoundries U.S. 2 LLC. By the terms of the CPG, no additional customers can request service line extensions. Additionally, GlobalFoundries U.S. 2 LLC owns, and will continue to own, the internal distribution network for the Essex Facility. Line extensions falling within the language of Rule 5.600 would be within GlobalFoundries' internal distribution network, and any line extensions to the internal distribution will not implicate Rule 5.600.

For these reasons, we determine that Rules 3.200, 3.300, and 5.600 do not apply to GF Power.

Commission Rules 3.300 and 4.200 potentially apply to GF Power's operations, but that application is unnecessary because the goals of those Rules are not triggered by GF Power's operations. The Commission has authority to waive its own Rules. Commission Rule 2.107 allows the Commission to waive its rules to avoid delay, hardship, injustice, and for other good cause. GlobalFoundries contends that there is good cause to waive the requirements of Rules 3.200, 3.300, 3.400, 4.200, and 5.600. Having found Rules 3.200, 3.300, and 5.600 inapplicable

to GF Power, we need only consider whether the provisions of Rules 3.400 and 4.200 should be waived.[87]

Rule 3.400 governs non-residential electric service disconnections, which could apply to GF Power. The consumer protections included in Rule 3.400 are unnecessary for sophisticated parties such as GF Power and GlobalFoundries, which could contract for the terms, if any, authorizing the disconnection of utility service to the Essex Facility.[88] As a wholly owned subsidiary, GF Power also has a shared incentive to keep GlobalFoundries receiving electricity in order to operate. We therefore waive Rule 3.400 for GF Power.

Rule 4.200 requires a utility to provide each retail customer with a bill, prescribes the content of those utility bills, and dictates the billing frequency. The tariff that GF Power will file (detailed below in subsection 3) would include the formula used to calculate the amount charged to GlobalFoundries U.S. 2 LLC for power. This calculation will be a negotiated element of the relationship between GlobalFoundries and GF Power. Additional billing requirements are unnecessary to accomplish the goal of Rule 4.200, which is to provide the necessary information to calculate an actual bill. Further, the terms of the billing arrangement between GF Power and GlobalFoundries U.S. 2 LLC will be negotiated between sophisticated parties. We therefore waive Rule 4.200 for GF Power.

Based on these determinations regarding GlobalFoundries' request to limit application of the above Commission Rules, a CPG condition will be included in the CPG that issues in this case.[89]

3. Regulations Modified for Business Operations

This subsection describes the one area of statutory provisions—rate regulation—that we modified to accommodate the context in which GF Power and GlobalFoundries will do business.

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[87] Nothing in 30 V.S.A. § 209(b) and (c) or the Rules themselves prevents the Commission from waiving these Rules. *See* Commission Rule 2.107 ("In order to prevent unnecessary hardship or delay, in order to prevent injustice, or for other good cause, the Commission may waive the application of rule upon such conditions as it may require, unless precluded by the rule, itself, or by statute.").

[88] *Cf. Constr. Drilling, Inc. v. Eng'rs Constr., Inc.*, 2020 VT 38, ¶ 32, 212 Vt. 323 (Carroll, J., dissenting) (quoting *Purcell Tire & Rubber Co. v. Exec. Beechcraft, Inc.*, 59 S.W.3d 505, 508 (Mo. 2001) ("Sophisticated parties have freedom of contract—even to make a bad bargain, or relinquish fundamental rights.")).

[89] CPG Condition 29. As discussed above, a line extension is not contemplated under GF Power's operations as proposed; however, GF Power has committed to abide by Commission Rule 5.600 in the event that somehow a line extension implicating Rule 5.600 should arise.

GlobalFoundries requested accommodations regarding the Commission's regulation of the rate that GF Power will charge GlobalFoundries. The relevant statutes governing the Commission's ratemaking supervision as related to GF Power's operation are 30 V.S.A. §§ 209(a)(4), 218, 225, 226, and 227. As part of its Amended Petition, GlobalFoundries proposes to submit a tariff that outlines the formula that will be used to calculate the payment that GlobalFoundries U.S. 2 LLC will make to GF Power for electricity. GlobalFoundries' Amended Petition raised the question of what review process would apply to the tariff.

Section 209(a)(4) of Title 30 of the Vermont Statutes Annotated reads, in relevant part, "[T]he Commission . . . shall have jurisdiction [to hear, determine, render judgment, and make orders and decrees] in all matters respecting . . . the price, toll, rate, or rental charged by any company subject to supervision under this chapter when unreasonable or in violation of law." Under 30 V.S.A. § 209(a)(4), the Commission has supervisory authority over rates when they are unreasonable or in violation of law.

More generally, 30 V.S.A. § 218 establishes the Commission's authority to set rates.[90] In the context of utility rate-setting proceedings, the Commission's "regulatory authority is extremely broad and unconfining with respect to the means and methods available to [the Commission] to achieve the stated goal of adequate service at just and reasonable rates."[91] This far-reaching authority is confirmed by the statutory language that permits the Commission to substitute rates, tolls, charges, or schedules when we find the proposed rates, tolls, charges, or schedules unjust, unreasonable, insufficient, or unjustly discriminatory.[92]

Sections 225 through 227 of Title 30 of the Vermont Statutes Annotated prescribe the typical process for submission, review, and determination of rates and rate schedules by the Commission.

GlobalFoundries' Amended Petition requested modified rate regulation and put all parties on notice that GF Power's method of billing its sole customer, GlobalFoundries U.S. 2 LLC, was one subject of this proceeding.[93] Thus, in crafting the regulatory framework that applies to GF

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[90] The Commission's authority under 30 V.S.A. § 218 is checked by the requirement that an affected company have an opportunity for a hearing.

[91] *In re Consol. Rate Appeals of Green Mountain Power Corp.*, 142 Vt. 373, 380, 455 A.2d 823, 825 (1983).

[92] 30 V.S.A. § 218(a).

[93] *See, e.g.*, Amended Petition ¶¶ 28, 62(b) (requesting Commission refrain from exercising jurisdiction under Section 209(a)(4)), 62(h) (requesting Commission limit Section 225 obligations).

Power's operations, we have imposed a review process for the proposed tariff modeled substantially on 30 V.S.A. §§ 225 through 227. The process—included as conditions in the CPG—is as follows:

> The CPG Holder shall follow this procedure for submitting its tariff detailing the formula it uses to charge its sole customer.

a. At least 45 days before commencing operations, the CPG Holder shall file a tariff with the Commission and the Department, with notice to the parties to Commission Case Nos. 21-1107-PET and 21-1109-PET, detailing the formula used to calculate the cost billed to GlobalFoundries by the CPG Holder for the procurement of electricity.

b. The CPG Holder's tariff shall not be confidential. However, GF Power LLC shall not be required to publish the tariff in newspapers, pursuant to Section 225(a).

c. Within 30 days of receipt of the tariff, the Department shall investigate the justness and reasonableness of the tariff, and either report to the Commission the results of its investigation together with its recommendation for acceptance of the tariff or notify the Commission and other parties that it opposes the tariff. Automatic parties to this tariff process are the Department, the CPG Holder, and GlobalFoundries (or its successor or assign). Other entities or individuals may file a motion to intervene to seek admission as a party.

d. If the Department reports its acceptance of the tariff, the Commission may accept the tariff, or it may on its own motion investigate the justness and reasonableness of the tariff, or it may order the Department to appear before it to justify its recommendation to accept the tariff. In no event shall a tariff go into effect without the approval of the Commission, except when a tariff is suspended and temporary or permanent rates are allowed to go into effect pursuant to subsection 226(a) or 227(a) of Title 30. If the Department opposes the change, the Commission will hear evidence on the matter and make such orders as justice and law require. The Commission, on its own motion, may order an investigation and hearing on the justness and reasonableness of the CPG Holder's tariff. If the Commission orders that a change shall not go into effect until final determination of the proceedings, it will proceed to hear the matter as promptly as possible and will make its determination within seven months from the date that it orders the investigation. If the Commission fails to make its determination within seven months, the changed tariff filed by the CPG Holder shall become effective and final.

e. If there are any changes to the formula employed by the CPG Holder, the CPG Holder shall file an updated tariff with the Commission and Department. All

changes shall be plainly indicated on the existing tariff and filed with a clean copy of the new proposed tariff.

f. Updated tariff sheets shall be filed 45 days before the time the new tariff is to take effect. The Commission will consider the Department's recommendation and act pursuant to the above-described process for the changed tariff just as it would for the original tariff filing before the date on which the changed tariff is to become effective. However, upon application of the CPG Holder, and with the consent of the Department, the Commission may for good cause shown prescribe a shorter time within which such change may be made.

The tariff formula shall ensure that all costs incurred by the CPG Holder are included in the tariff rate and avoid the CPG Holder operating at a loss.

This set of conditions maintains the statutory framework for tariff review, except that we exempt GF Power from publishing its tariff in two newspapers of general circulation. Because GlobalFoundries U.S. 2 LLC is the only customer of GF Power, general notice to the public is not necessary to effectuate the statutory purpose behind that publication requirement. The modified review process ensures that GF Power is billing GlobalFoundries U.S. 2 LLC for the full costs of procuring power, provides the Department and Commission an opportunity to verify the billing methodology, secures greater transparency, and confirms that taxes are properly assessed.

In its response to the Commission's information request regarding the above-enumerated conditions, the Department argued that this modified review process "entail[s] significant deviations and certain waivers of the traditional statutory rate-making procedures specified under 30 V.S.A. §§ 225-227."[94] Accordingly, the Department made two recommendations. First, the Department contended that the Commission should only adopt the above revised procedures after opening a separate proceeding, pursuant to Section 218d.[95] Second, although the Department initially supported GlobalFoundries' position that the tariff could be implemented without review,[96] the Department also requested that the Commission permit greater participation in the

[94] *Department of Public Service's Response to Requests for Information* (7/25/22) ("Department July 25 Response") at 1. The Department has not explained what the significant deviations and waivers are. The procedure we have prescribed here is substantively the same as what is required by statute.

[95] Department July 25, 2022, Response at 1-2.

[96] Poor surreb. pf. at 6, 8 ("Several otherwise applicable utility regulations are directed towards consumer-based protections and tariffing requirements and are, in the Department's view, unnecessary if a utility has no retail customers.").

review process beyond the Department, GF Power, and GlobalFoundries U.S. 2 LLC.[97] The Department did not mention the first concern in its legal briefing after the hearing, and voiced support for Commission approval of the Amended Petition as modified under the Revised CPG and Renewables MOU. This tariff review process is part of the Revised CPG, which the Department now supports. Nonetheless, we address the concern.

The parties to this proceeding were on notice that rate-setting for GF Power's operations as a public service company would be determined by the Commission. GlobalFoundries proposed an almost total waiver of rate review in its Amended Petition and has since modified its proposal by including the above process in its most recent proposal to the Commission before the hearing. No party offered testimony, evidence, or objection specific to this tariff-review process.[98]

In granting GF Power a CPG to operate as a public service company, we must establish, as an initial matter, all the ways in which that company will be regulated. This includes establishing a framework for rate setting. While our authority in this area is broad, we acknowledge that it is not limitless. Unlike the situation presented in *New England Telephone and Telegraph*, we are not using a tariff as the vehicle to alter the statutory rate-regulation procedures that apply to GF Power.[99] We have set those procedures substantially in line with Sections 225 through 227.

Here, we are faced with a situation where the initial form of rate regulation must be established at the same time that a decision is rendered establishing the public service company. The form that rate regulation takes for GF Power will be tailored to its unique operations. Unlike

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[97] Department July 25, 2022, Response at 2-3. As to this concern, the Commission included, and GlobalFoundries consented to, the language in condition (c) above: "Other entities or individuals may file a motion to intervene to seek admission as a party." This addition resolves the Department's second concern.

[98] We, of course, acknowledge that AllEarth is opposed to GlobalFoundries' proposal and does not assent to any aspect of it.

[99] Much like GlobalFoundries' initial proposal regarding the tariff, in *New England Telephone and Telegraph* the utility "filed a series of proposed tariff changes that would provide the [utility] substantial flexibility in offering services *without prior review and approval*." Docket No. 6115, Order of 11/18/98 at 1 (emphasis added). We have rejected this approach and, instead, imposed tariff review conditions that mimic the procedures outlined in statute. As we said in *New England Telephone and Telegraph*, "In interpreting the scope of our authority to approve tariff changes, we must examine consistency both with the specific statutory language and with the structure of the statute." *Id.* at 8. That is precisely what the Commission engaged in when it proposed the tariff review process for GF Power's tariff. This case is not a "tariff change," nor has GF Power submitted the tariff for our review and, in doing so, requested a modification to the statutory requirements for review of that tariff.

traditional public utilities whose customers need regulatory protection from the monopoly utility, GF Power's customer has the sophistication and power to negotiate fair terms of service and reasonable rates. Thus, we conclude that the rate-setting procedures set forth in the CPG are sufficient to ensure adequate service and just and reasonable rates for GF Power's sole, industrial customer and comply with the letter and intent of the rate-setting statutory provisions as they pertain to GF Power.

GF Power will not have any additional obligations under Sections 209(a)(4), 218, and 225 through 227 beyond those outlined in the CPG and explained above in this subsection.

4. Other Regulatory Conditions

This final subsection notes that there are a number of additional CPG conditions that we have included as part of our regulation of GF Power's operations. These are either standard conditions in CPGs of this type or are necessary to facilitate our regulatory procedures—such as the use of ePUC, the Commission's electronic filing system. For example, as a condition of the CPG, the Commission has required that GF Power be added to and execute all agreements submitted in this proceeding and file those agreements with the Commission.[100] The Commission also retains the authority to amend or revoke the CPG, pursuant to 30 V.S.A. § 102(c).[101]

Further, we have required as part of this Order that GF Power report to the Commission within five days of "beginning operation as a public service company."[102] GF Power will begin operating as a public service company the moment GlobalFoundries transitions from taking power as a GMP customer to taking power as a customer of GF Power, being served by GMP via the Transitional PPA. To operate as a public service company, GF Power must satisfy the following prerequisite conditions of the CPG: Condition 2 (registered business), Condition 3 (execute agreements), Condition 5 (business information), Condition 6 (FERC and ISO New England approvals), Condition 7 (CPG transfers and modifications), Condition 8 (streetlights), and Condition 20 (tariff filing). Thus, when GF Power reports to the Commission, it should

[100] The various MOUs submitted in this case were signed by GlobalFoundries. GF Power will be added to these agreements. Therefore, new copies of these documents, with GF Power as a signatory, must be filed.

[101] Additionally, the Commission has required GlobalFoundries to bring all its tenants' lease agreements into alignment, specifically the lease with ASK-IntTag, LLC. CPG Condition 27.

[102] Order ¶ 12.

affirm that those conditions have been satisfied and that it is operating under the Transitional PPA.

F. Based on Our Determination that Granting GF Power a CPG to Operate as a Public Service Company Is in the General Good of the State of Vermont, We Also Grant the Requested Change in Service Territories.

In addition to seeking a CPG under 30 V.S.A. § 231 for operation of GF Power, GlobalFoundries requests that the Commission alter GMP's service territory to establish the Essex Campus as GF Power's exclusive service territory pursuant to Section 249. This request is complementary to GMP's petition in Docket No. 21-1109-PET, which asks the Commission to exclude the Essex Campus from GMP's service territory. For substantially the same reasons discussed above, the record establishes that alteration of GMP's service territory and creation of a new, narrowly defined service territory for GF Power is consistent with the general good of the State of Vermont.[103]

Beyond requiring a finding that a service territory transfer is consistent with the general good, Section 249 provides six criteria that the Commission must consider when exercising its jurisdiction to alter service territories. Those criteria are:

(1) Existing service areas;

(2) Voluntary agreements defining service territories;

(3) Consistency with the orderly development of the region;

(4) Natural geographical boundaries;

(5) Compatibility with the interests of all consumers; and

(6) Other relevant factors.[104]

Here, consistent with our approval of GlobalFoundries' request to grant GF Power a CPG to operate as a public service company, we also find that the Section 249 factors support alteration of GMP's current service territory. The Essex Campus is part of GMP's existing service area, but, as GMP's witness Joshua Castonguay emphasized, GlobalFoundries has always been a unique customer for GMP given its status as GMP's sole transmission customer and its maintenance of its own distribution system and step-down transformers. The proposed service

[103] *See* 30 V.S.A. § 249(b).
[104] 30 V.S.A. § 249(a).

territory is defined by natural boundaries (the Winooski River) and the boundaries of the Essex Campus property, and GlobalFoundries is presently the only GMP customer within the territory. GlobalFoundries, GMP, and VELCO have entered into an agreement, the Transmission MOU, that both defines the proposed service territory of GF Power and addresses many other details necessary to effectuate the transfer of service to GF Power.

To the extent the proposed alteration of service territory would have any impact on the orderly development of the region, the impact would be a positive one, creating incentives for a significant business to maintain its operations in Vermont. Finally, the proposed alteration benefits the interests of all Vermont electric customers by preserving GlobalFoundries' contribution to transmission costs (which would otherwise shift to Vermont's distribution utilities and their customers), providing payments towards GMP's costs over a four-year period, and mitigating the risk of GlobalFoundries leaving Vermont and GMP's service territory. For these reasons and to effectuate GlobalFoundries' receipt of a CPG to operate as a public service company, we grant the requested relief under Section 249, exclude the Essex Campus from GMP's service territory, and establish the Essex Campus as the exclusive service territory of GF Power.

IV. RELEVANT PROCEDURAL HISTORY

On April 17, 2021, GlobalFoundries filed its original petition, and GMP filed its related petition. Given the substantial overlap of the petitions, we consolidated these cases for scheduling purposes.

A number of parties filed motions to intervene in one or both proceedings. The following entities are parties to both cases: GlobalFoundries, GMP, the Department, VELCO and VTransco, the City of Burlington Electric Department ("BED"), Vermont Public Power Supply Authority ("VPPSA"), the Town of Stowe Electric Department ("Stowe"), AllEarth, Renewable Energy Vermont ("REV"), CLF, ACCD, and the Vermont Agency of Natural Resources ("ANR").

On April 26, 2021, a remote public hearing for this proceeding was held, with access provided via videoconferencing (GoToMeeting) and telephone.

The parties conducted discovery and filed testimony.

On September 21, 2021, AllEarth filed a motion to amend the schedule in this case, arguing that it needed time to file a motion to dismiss based on the Commission's lack of jurisdiction to approve GlobalFoundries' request in this case.

On September 30, 2021, the Commission issued an amended schedule for the case that included a pre-hearing briefing schedule on two separate, potentially determinative legal issues that arose during the discovery phase of this proceeding.

After briefing by the parties, on February 17, 2022, the Commission issued an order determining that the Commission did not have statutory authority to grant GlobalFoundries' request that the proposed "self-managed utility" be exempt from compliance with Vermont's Renewable Energy Standard. The Commission directed GlobalFoundries to indicate by March 11, 2022, whether GlobalFoundries wished to proceed with its petition.

On March 10, 2022, CLF filed a motion to clarify, and AllEarth filed a motion to amend, the Commission's February 17, 2022, Order. The Commission denied these motions on April 14, 2022.

On March 11, 2022, GlobalFoundries submitted a letter confirming its intention to proceed with its petition.

On March 17, 2022, and April 1, 2022, the Commission issued information requests to GlobalFoundries and required GlobalFoundries to file an Amended Petition and supporting testimony.

On April 22, 2022, GlobalFoundries filed an Amended Petition, supporting testimony, an exhibit, and responses to the Commission's information requests.

On May 13, 2022, the Commission issued a schedule for the remainder of these proceedings.

The parties engaged in discovery and filed testimony. The Commission also issued several sets of information requests.

On July 25, 2022, in response to a Commission Order, the parties filed revised versions of witness testimony to reflect the portions still being offered as evidence in this case.

On August 3, 2022, GlobalFoundries and CLF filed the Renewables MOU, together with a revised proposed CPG.

On August 10, 2022, the Commission issued an order setting forth certain prehearing questions, including a request for parties to comment on certain modifications to the proposed CPG.

On August 14, 2022, GlobalFoundries filed a proposed CPG with revisions agreed to by GlobalFoundries and CLF, responding to the Commission's request.

On August 17, 2022, the Commission held a remote evidentiary hearing.

On August 18, 2022, the Commission issued an order inviting the parties to address certain issues in their post-hearing briefing.

On September 6, 2022, GlobalFoundries, GMP, the Department, CLF, and AllEarth filed initial briefs.

On September 19, 2022, GlobalFoundries, GMP, and AllEarth filed reply briefs.

V. PUBLIC COMMENTS ON THE AMENDED PETITION

On February 18, 2022, Kurt Stanley filed a public comment asking the Commission to deny GlobalFoundries' request.

On August 3, 2022, Andrew McLaughlin and Jenevra Wetmore filed separate public comments opposing GlobalFoundries' request.

On August 4, 2022, Lina Hristova filed a public comment opposing GlobalFoundries' request.

Before issuing this Order, the Commission reviewed these public comments and has considered them in rendering its decision in this case.[105]

VI. CONCLUSION

After a review of the briefing and based on the analysis above, we conclude that we have the statutory authority to grant GlobalFoundries' request and grant GF Power a CPG to operate as a public service company, subject to conditions. In so doing, we determine that permitting GF Power to operate a public service company is in the general good of the State of Vermont, and accordingly, GF Power will serve the Essex Campus.

[105] Additional public comments were filed on GlobalFoundries' original petition. Those comments are summarized in the order issued in Case No. 21-1107-PET on February 17, 2022.

Based upon the findings and discussion above, we also approve GMP's petition to transfer the Essex Facility from its service territory to GF Power's service territory.

VII. ORDER

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED by the Public Utility Commission ("Commission") of the State of Vermont that:

1. Based on the above findings and discussion, the operation of a public service company by GF Power LLC ("GF Power") will promote the general good of the State of Vermont, pursuant to the provisions of 30 V.S.A. § 231. A certificate of public good ("CPG") shall be issued to that effect, subject to the conditions contained in the CPG. All other findings proposed by the parties, to the extent that they are inconsistent with this Order, were considered and not adopted.

2. As a condition of this Order, GF Power and GlobalFoundries U.S. 2 LLC ("GlobalFoundries"), as relevant, shall comply with all terms and conditions set out in the CPG issued in Case No. 21-1107-PET.

3. GlobalFoundries shall require any successor or assign of it or GF Power to assume all of GlobalFoundries' and the CPG Holder's respective obligations under the Transmission MOU, the Distribution Utility MOU, the Renewables MOU, any conditions imposed by the Commission, and any other applicable regulatory requirements of GF Power. In the event that any successor or assign fails to assume all such obligations, GF Power's service territory will revert to GMP's service territory, subject to the Commission's prior approval, to be treated within GMP's then-applicable tariffs.

4. The CPG shall not be transferred without prior approval of the Commission. Sales, leases, mergers, and consolidations of GF Power shall be governed by 30 V.S.A. § 109(a). The details of any intended transfer of the CPG by GlobalFoundries or GF Power shall be filed with the Commission, the Department, and the parties to this case not less than 120 days before the date of the transfer, and the Commission may require additional security or other reasonable measures should it determine after notice and hearing that the transfer poses a material increase in compliance risk relative to the requirements of the CPG.

5. For purposes of how GlobalFoundries charges ASK-IntTag, LLC for electricity,

GlobalFoundries shall use good-faith, commercially reasonable efforts to amend its lease with ASK-IntTag, LLC to conform to the same lease structure used for GlobalFoundries' other four tenants. If GlobalFoundries is unable to secure ASK-IntTag, LLC's agreement to an amendment, it shall conform any future lease with ASK-IntTag, LLC to the same lease structure used for GlobalFoundries' other four tenants. GlobalFoundries shall use the same lease structure for any lease with future tenants in GF Power's service territory.

6. The CPG Holder and GlobalFoundries shall not exercise the power of eminent domain and shall not have the powers enumerated in 30 V.S.A. §§ 110 through 124.

7. The requirements of 30 V.S.A. §§ 18, 22, 29, 30, and 206 shall apply to the CPG Holder and GlobalFoundries. The right of inspection under 30 V.S.A. § 29 shall be limited to access necessary to inspect transmission facilities owned or operated by the CPG Holder or GlobalFoundries at the Essex Facility. With respect to 30 V.S.A. § 206, the Department's right to information on "the salaries of, the pensions, option, or benefit programs affecting, and the expenses reimbursed to, [the company's] officers or directors, or both" shall be limited to information regarding officers or directors of GF Power for work performed in their role as officers or directors of GF Power; the remaining portion of § 206 shall apply to both GF Power and GlobalFoundries.

8. The service territory set forth in Exhibit A to the Memorandum of Understanding ("Transmission MOU") among GlobalFoundries, Green Mountain Power ("GMP"), and Vermont Electric Power Company/Vermont Transco LLC ("VELCO") in Exhibit GF-GR-2 (the "GF Power Territory") shall be removed from GMP's service territory and assigned to GF Power.

9. The GF Power Territory shall only be used to serve GlobalFoundries or its successor or assign, consistent with all terms and conditions imposed by the Commission in the CPG issued to GF Power in Case No. 21-1107-PET.

10. The transfer of the GF Power Territory from GMP's existing service territory to the service territory of GF Power shall take place upon the beginning of VELCO Schedule 21 billing for GF Power.

11. The memorandum of understanding dated August 15, 2022, among GlobalFoundries, GMP, and VELCO (exh. GF-GR-2, the "Transmission MOU"), the amended

memorandum of understanding dated October 13, 2022, among GMP, the City of Burlington Electric Department, the Vermont Public Power Supply Authority, the Town of Stowe Electric Department, the Village of Hyde Park Electric Department, Washington Electric Cooperative, Inc., and Vermont Electric Cooperative, Inc. (exh. GMP-JC-2), and the memorandum of understanding dated August 2, 2022, between GlobalFoundries and the Conservation Law Foundation, Inc., are hereby approved and incorporated in this Order, and the parties to each agreement shall comply with the terms of those agreements.

12. Within five days of GF Power's beginning operation as a public service company, GF Power shall make a filing informing the Commission of its beginning operations and documenting its satisfaction of all conditions necessary to begin operating as a public service company.

13. GlobalFoundries shall pay all invoices (if any) from any State agency that (a) are related to this proceeding and (b) are not still under review by the Commission.

Dated at Montpelier, Vermont, this 21st day of October, 2022.

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

OFFICE OF THE CLERK

Filed: October 21, 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

Parties:

Justin B Barnard (for GLOBALFOUNDRIES U.S. 2 LLC)
Dinse P.C.
209 Battery Street
Burlington, VT 05401
jbarnard@dinse.com

John Beling, Esq. (for Vermont Agency of Natural Resources)
Vermont Agency of Natural Resources
1 National Life Drive
Davis 2
Montpelier, VT 05602
John.Beling@vermont.gov

Debra L. Bouffard, Esq. (for Vermont Electric Power Company, Inc.)
Sheehey Furlong & Behm
30 Main Street, 6th Floor
P.O. Box 66
Burlington, VT 05402-0066
dbouffard@sheeheyvt.com

Debra L. Bouffard, Esq. (for Vermont Transco LLC)
Sheehey Furlong & Behm
30 Main Street, 6th Floor
P.O. Box 66
Burlington, VT 05402-0066
dbouffard@sheeheyvt.com

William F. Ellis (for Vermont Public Power Supply Authority)
McNeil, Leddy & Sheahan
271 South Union Street
Burlington, VT 05401
wellis@mcneilvt.com

William F. Ellis (for City of Burlington Electric Department)
McNeil, Leddy & Sheahan
271 South Union Street
Burlington, VT 05401
wellis@mcneilvt.com

Edward B. French, Jr., Esq.
Stackpole & French
PO Box 819
Stowe, VT 05672-0819
efrench@stackpolefrench.com

(for Town of Stowe Electric Department)

James Gibbons
City of Burlington Electric Department
585 Pine Street
Burlington, VT 05401
jgibbons@burlingtonelectric.com

(for City of Burlington Electric Department)

**Michael J. Hall
Stackpole & French Law Offices
PO Box 819
Stowe, VT 05672
mhall@stackpolefrench.com

(for Town of Stowe Electric Department)

Geoffrey Hand, Esq.
Dunkiel Saunders Elliot Raubvogel & Hand, PLLC
91 College Street
PO Box 545
Burlington, VT 05402
ghand@dunkielsaunders.com

(for Green Mountain Power Corporation)

John W Kessler
National Life Bldg, 6th Floor
Montpelier, VT 05620
john.kessler@vermont.gov

(for Agency of Commerce and Community Development)

David Mullett
AllEarth Renewables.com
94 Harvest Lane
Williston, VT 05495
dmullett@allearthrenewables.com

(for ALLEARTH RENEWABLES, INC.)

Ken Nolan
Vermont Public Power Supply Authority
P.O. Box 126
Waterbury Center, VT 05677
knolan@vppsa.com

(for Vermont Public Power Supply Authority)

James Porter, Esq.
Vermont Department of Public Service
112 State Street
Montpelier, VT 05620
james.porter@vermont.gov

(for Vermont Department of Public Service)

S Mark Sciarrotta
Vermont Electric Power Company, Inc.
366 Pinnacle Ridge Road
Rutland, VT 05701
msciarrotta@velco.com

(for Vermont Electric Power Company, Inc.)

S Mark Sciarrotta
Vermont Electric Power Company, Inc.
366 Pinnacle Ridge Road
Rutland, VT 05701
msciarrotta@velco.com

(for Vermont Transco LLC)

Shapleigh Smith, Jr.
Dinse P.C.
PO Box 988
Burlington, VT 05402
ssmith@dinse.com

(for GLOBALFOUNDRIES U.S. 2 LLC)

Victoria M. Westgate, Esq.
Dunkiel Saunders Elliott Raubvogel & Hand, PLLC
91 College Street
P.O. Box 545
Burlington, VT 05402-0545
vwestgate@dunkielsaunders.com

(for Green Mountain Power Corporation)

Chase Whiting, Esq.
Conservation Law Foundation
CLF 15 East State Street, Suite 4
Montpelier, VT 05602
cwhiting@clf.org

(for Conservation Law Foundation)

Jonathan Dowds
Renewable Energy Vermont
33 Court St.
Montpelier, VT 05602
jonathan@revermont.org

(for Renewable Energy Vermont)

Eric Guzman, Esq. (for Vermont Department of Public Service)
Vermont Department of Public Service
112 State Street
Montpelier, VT 05620
eric.guzman@vermont.gov

Rachel Stevens, Esq. (for Vermont Agency of Natural Resources)
Vermont Agency of Natural Resources
1 National Life Drive
Davis 2
Montpelier, VT 05602
rachel.stevens@vermont.gov