

STATE OF VERMONT
PUBLIC UTILITY COMMISSION

Case No. 21-1107-PET

Petition of GlobalFoundries U.S. 2 LLC requesting a certificate of public good, pursuant to 30 V.S.A. § 231, to operate a Self- Managed Utility	
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Order entered: 02/17/2022

**ORDER DETERMINING GLOBALFOUNDRIES' REQUEST TO BE
EXEMPT FROM THE RENEWABLE ENERGY STANDARD IS
OUTSIDE THE COMMISSION'S STATUTORY AUTHORITY**

I. INTRODUCTION

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

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

In this Order, we decide that the Commission does not have the statutory authority to grant a fundamental component of GlobalFoundries’ request to operate as an SMU—that is, that the SMU would be exempt from the Renewable Energy Standard (“RES”).²

This Order begins with a discussion of the Commission’s statutory authority as it relates to our determination regarding GlobalFoundries’ specific request in this case. After the discussion, we provide a brief procedural history and a summary of the public comments

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

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

received in this case. We conclude by requesting that GlobalFoundries inform the Commission whether any issues remain for an evidentiary hearing in this case given our decision that we do not have the statutory authority to exempt GlobalFoundries from the statutory requirements imposed on all utilities by Vermont's Renewable Energy Standard.

II. DISCUSSION

The larger question before us is whether the Commission has the statutory authority to grant GlobalFoundries' request to be removed from GMP's service territory so that GlobalFoundries can purchase power wholesale as a self-managed utility ("SMU") subject to *de minimis* regulation. More narrowly, and of particular significance in this Order, GlobalFoundries has indicated that the limited regulation it seeks would exempt it from any obligations under the RES.³ This is a purely legal question, which would not benefit from further development of the factual record or evidentiary hearings to resolve factual issues. To answer this question, the Commission must interpret the statutes within our area of expertise.⁴

To determine whether we have statutory authority over GlobalFoundries' proposal, we must perform an analysis of the laws governing the Commission's regulatory authority because "[a]n agency must operate for the purposes and within the bounds authorized by its enabling legislation."⁵ The overarching objective of any "statutory interpretation is to construe and effectuate the legislative intent behind a statute."⁶ The first step in any statutory analysis is to look to the plain meaning of the law.⁷ 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.⁸

³ GlobalFoundries Brief at 1.

⁴ 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).

⁵ *In re Agency of Admin., State Bldgs. Div.*, 141 Vt. 68, 75, 444 A.2d 1349, 1352 (1982).

⁶ *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.").

⁷ See *Cornelius v. The Chronicle, Inc.*, 2019 VT 4, ¶ 18, 209 Vt. 405, 206 A.3d 710.

⁸ *Northfield Sch. Bd. v. Washington S. Educ. Ass'n*, 2019 VT 26, ¶ 13, 210 Vt. 15, 210 A.3d 460.

This discussion proceeds in two parts. To begin, we conduct a statutory analysis to establish the scope of the Commission’s regulatory power. Next, we discuss GlobalFoundries’ specific request that its electric load be exempt from the RES.

A. The Commission Lacks Statutory Authority to Entertain GlobalFoundries’ Request as It Pertains to the RES.

The Commission has broad authority to regulate the purchase and delivery of electricity in Vermont.⁹ 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.”¹⁰

The Commission undeniably has authority to regulate aspects of GlobalFoundries’ proposal based on the provisions of Title 30 that confer jurisdiction to the Commission over public service companies generally. While the Commission has authority to approve the creation of a public service company,¹¹ and to exempt such a company from certain provisions of Title 30,¹² we cannot provide the core relief that GlobalFoundries requests: to exempt the SMU from the RES requirements.

1. The Commission Has Statutory Authority to Authorize a Public Service Company, But Not to Create a Self-Managed Utility as Defined and Described in This Case.

The Commission’s authority to regulate certain aspects of GlobalFoundries’ proposal does not confer on us the authority to release GlobalFoundries entirely from Vermont’s retail distribution utility model and allow its operation as a self-managed utility not subject to the RES.

⁹ See, e.g., 30 V.S.A. § 209.

¹⁰ *Trybulski v. Bellows Falls Hydro-Elec. Corp.*, 112 Vt. 1, 7, 20 A.2d 117, 120 (1941).

¹¹ 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.

¹² See, e.g., *Petition of Springfield BESS, LLC*, Case No. 21-1254-PET, Order of 6/25/2021; *Petition of VESIVEC LLC*, Case No. 18-3088-PET, Order of 2/6/2019; *Petition of E. BarreCo Corp LLC*, Case No. 18-1658-PET, Order of 10/4/2018; *Petition of New England Power Company AND petition of USGen*, Docket No. 6039, Order of 6/29/1998; *Petition of USGen New England, Inc. AND petition of TransCanada Hydro Northeast, Inc.*, Docket No. 7038, Order of 3/25/2005. The Commission granted the petitioners’ requests for *de minimis* regulation in these cases under 30 V.S.A. §§ 107, 108, and 109. In these cases, the entities requesting relief were not load-serving entities and had no RES obligations.

GlobalFoundries seeks to demonstrate the Commission’s authority based on provisions of Title 30 that confer jurisdiction to the Commission over public service companies generally, but GlobalFoundries is not seeking to operate as a public service company.¹³ Put differently, GlobalFoundries’ exit from GMP’s service territory would either make GlobalFoundries a public service company—fully subject to all required statutes, such as the Renewable Energy Standard—or an entity that is not currently authorized under Vermont law. There is no statutorily authorized third option for what GlobalFoundries seeks: to operate with some of the functions of a public service company but without the statutory obligations of a public service company.¹⁴ The fact that as an SMU, GlobalFoundries would undertake some activities that are lawfully regulated by the Commission does not confer on the Commission the authority to release that SMU from statutorily imposed obligations that by definition are outside the Commission’s discretion to waive.¹⁵

Further, Section 218 does not provide statutory authority to the Commission to grant Global Foundries’ request as it pertains to the RES. Section 218 provides for the Commission’s ratemaking powers. The concept in utility *ratemaking*—where “regulatory authority is extremely broad and unconfining”—does not apply to all areas of the Commission’s work.¹⁶ GlobalFoundries’ petition does not invoke the Commission’s ratemaking authority. Similarly, we do not read Section 218e, which pertains to Vermont’s energy policy goals for retaining and recruiting manufacturing and other businesses, to provide general statutory authority encompassing GlobalFoundries’ request to be exempted from the RES.

¹³ GlobalFoundries has remained steadfast in its filings that it is not seeking to operate as a “public service company.” Petition ¶ 60.

¹⁴ GlobalFoundries has foreclosed the option of procuring its own power while remaining subject to regulation that more closely approximates what is required of a public service company, such as compliance with the RES, due to cost ineffectiveness. *See* GlobalFoundries Brief at 1.

¹⁵ *See, e.g.*, 30 V.S.A. § 203(2) (manufacture, transmission, distribution, or sale of electricity to public); 30 V.S.A. § 209(a)(5) (sufficiency and maintenance of proper systems, plants, conduits, appliances, wires, and exchanges).

¹⁶ *Cf. In re Green Mountain Power Corp.*, 142 Vt. 373, 380, 455 A.2d 823, 825 (1983).

2. Under Vermont Law, All Electricity Must Be Subject to the Renewable Energy Standard; the Commission Does Not Possess the Statutory Authority to Waive This Requirement.

In 2015, the Vermont Legislature passed Public Act 56, establishing a Renewable Energy Standard (“RES”), which requires Vermont retail electric providers to acquire specified amounts of renewable energy, in the form of renewable attributes or Renewable Energy Credits, and to achieve fossil-fuel savings from energy transformation projects.¹⁷ The RES establishes aggressive targets requiring utilities to procure renewable energy for a gradually rising portion of their generation portfolios. The RES requirements work to further reduce Vermonters’ reliance on fossil fuels across a range of sectors. When the Legislature enacted the RES, all electric load in Vermont fell under this paradigm. The Legislature wrote that “a retail electricity provider shall not sell or otherwise provide or offer to sell or provide electricity in the State of Vermont without ownership of sufficient energy produced by renewable energy plants or sufficient tradeable renewable energy credits.”¹⁸ The Legislature specifically included electricity that is “otherwise provided” in the RES requirement.¹⁹ The legislative intent was to impose this requirement on all electricity, whether sold, provided, or offered in the State. Noncompliance is policed with alternative compliance payments.²⁰

Further, the Legislature has passed laws granting GlobalFoundries special treatment within the Commission’s regulatory authority where the Legislature has intended to do so. One such example is the Self-Managed Energy Efficiency Program (“SMEEP”) that, under 30 V.S.A. § 209(j), requires the Commission to establish an exemption from the energy efficiency charge for certain eligible industrial electric customers who take transmission-level service so long as the customer commits to spending a certain amount on energy efficiency.²¹ The Commission

¹⁷ 30 V.S.A. § 8005.

¹⁸ 30 V.S.A. § 8004(a).

¹⁹ GlobalFoundries argues that, as an SMU, it would not be a retail electricity provider as defined under Title 30; however, the Commission does not have the statutory authority to create a load-serving entity other than a retail electric provider or public service company fully subject to the RES.

²⁰ See 30 V.S.A. § 8004(d).

²¹ 30 V.S.A. § 209(j)(2). Following this legislative directive, the Commission established the SMEEP in 2009 and modified the program in 2010, 2011, and 2018. See *Order Establishing a Self-Managed Energy Efficiency Program*, Order of 12/28/09; *Order Clarifying Self-Managed Energy Efficiency Program*, Order of 4/7/10; *Order Modifying SMEEP*, Order of 8/10/11; and *Order Approving OMYA’s Participation in the Self-Managed Energy Efficiency Program*, Case No. 18-3329-PET, Order of 10/24/18. In the SMEEP program, customers commit to spending \$500,000 annually or \$1.5 million over three years, depending on when the customer became eligible.

approved GlobalFoundries' participation in the SMEEP in 2016 as the transferee of IBM, which had approval to participate in SMEEP since 2009.²² GlobalFoundries (and IBM before it), together with OMYA, have been the only electric customers eligible for the SMEEP program since its creation. The fact that the Legislature has explicitly provided for specific regulation for a limited subset of industrial customers outside of other regulatory provisions in Title 30 demonstrates that such regulatory exceptions are permissible in statutorily defined circumstances.²³

GlobalFoundries requests that the Commission authorize it to exit GMP's service territory and operate as an SMU. GlobalFoundries has created and defined the term "self-managed utility" because there is no such term or concept in Vermont statute. A core, or fundamental, aspect of GlobalFoundries' SMU concept is that GlobalFoundries' electric load would be exempt from the RES.²⁴ The Commission lacks the statutory authority to grant a blanket exemption from the RES.²⁵

GlobalFoundries seeks a determination from the Commission that, as an SMU, it would not be a "retail electricity provider" and, thus, the RES would not apply. However, as in our discussion about "public service companies" above, we lack the statutory authority to approve such an entity. The provision of power to GlobalFoundries by another division of GlobalFoundries does not create a statutory exemption under the RES for GlobalFoundries' load. Vermont law requires all electricity that is sold, otherwise provided, or offered to be subject to

²² *Application of GlobalFoundries to participate in the Self-Managed Energy Efficiency Program ("SMEEP")*, Case No. EEU-2016-02, Order of 5/19/16.

²³ *Cf. Lake Bomoseen Ass'n v. Vt. Water Resources Bd.*, 2005 VT 79, ¶ 18, 178 Vt. 375, 88 A.2d 355 (explaining that legislative silence in an area otherwise regulated is evidence that Legislature did not intend for silence to be authorization); *see also State v. Fuller*, 163 Vt. 523, 528, 660 A.2d 302, 305 (1995) (Court will not "expand a statute by implication, that is, by reading into it something which is not there, unless it is *necessary* in order to make it effective" (quotation omitted)); *Langle v. Kurkul*, 146 Vt. 513, 526, 510 A.2d 1301, 1309 (1986) (Peck, J., concurring) ("I will not quibble with the interpretation . . . that legislative intent cannot be ascribed to a mere act of omission. But in this case we have much more than a mere act of omission; we have a wide-ranging body of statutory law as evidence of legislative preemption.").

²⁴ *See, e.g.*, GlobalFoundries Petition ¶ 30.

²⁵ Much like our analysis immediately above regarding the SMEEP, the Legislature crafted the Commission's statutory authority to implement the RES with limited and carefully defined parameters. The Legislature has not provided for an absolute exemption. *See, e.g.*, 30 V.S.A. §§ 8005(a)(1)(D) (municipal providers), 8005(a)(2)(D) (distributed renewable generation greater than 5MW), 8005(a)(3)(G) (allowing petition for temporary relief from energy transformation requirement), 8005(b) (outlining alternative compliance method).

the RES.²⁶ The separate division of GlobalFoundries (the SMU) would be providing and offering power to GlobalFoundries' core manufacturing operations, and this electricity must meet the requirements of the RES.

Our review of the statutory context, legislative history, and evidence of statutory implementation demonstrates that the Commission does not have statutory authority to consider GlobalFoundries' proposal to operate as an SMU exempt from the RES.

III. RELEVANT PROCEDURAL HISTORY

On April 17, 2021, GlobalFoundries filed its petition, and GMP filed its related petition. The parties conducted discovery and filed testimony.

On September 21, 2021, AllEarth Renewables, Inc. ("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.

On November 8, 2021, GlobalFoundries and GMP filed legal briefs, AllEarth filed a motion to dismiss, and Conservation Law Foundation ("CLF") filed a motion for summary judgment. AllEarth's motion and CLF's motion covered the same subject matter requested by the Commission in the legal briefs contemplated in the schedule. On the same date, the Vermont Department of Public Service ("Department") filed a letter stating that it would file only a reply brief on November 22, 2021.

On November 22, 2021, GlobalFoundries, CLF, and AllEarth filed reply briefs on the pre-hearing legal issues, addressing the briefs filed by the other parties. On the same date, the Department filed a reply brief.²⁷ GlobalFoundries also filed a response to CLF's motion for summary judgment and a response to AllEarth's motion to dismiss.

On December 8, 2021, GlobalFoundries, AllEarth, and CLF filed reply briefs addressing the Department's November 22 brief.

²⁶ 30 V.S.A. § 8004(a).

²⁷ The Department labeled its brief a reply brief although it was the first brief filed by the Department.

IV. PUBLIC COMMENTS

On October 29, 2021, Vermont Representative Michael Yantachka filed a public comment stating that the Commission lacks jurisdiction to grant GlobalFoundries its request, particularly without legislative authorization.

On November 1, 2021, Charles Fenton filed a public comment opposing GlobalFoundries' request.

On November 5, 2021, Vermont Senator Anthony Pollina filed a public comment stating that the Commission lacks jurisdiction to grant GlobalFoundries its request, particularly without legislative authorization.

On November 8, 2021, Ben Walsh, on behalf of the Vermont Public Interest Research Group, filed a public comment along with a petition from more than 760 Vermonters that raised several jurisdictional, policy, and statutory concerns with GlobalFoundries' proposal and asked that the petition be denied.

On November 15, 2021, Gretchen Elias filed a public comment opposing GlobalFoundries' request.

On November 17, 2021, the Vermont Chamber of Commerce, the Lake Champlain Chamber, and the Greater Burlington Industrial Corporation and Cynosure, Inc. filed a joint public comment raising various economic and environmental policy issues in support of the petition.

On December 8, 2021, Vermont Senator Christopher A. Bray filed a public comment stating that the Commission lacks jurisdiction to grant GlobalFoundries its request, particularly without legislative authorization.

On December 10, 2021, Vermont Representative Selene Colburn, on behalf of a number of Vermont representatives and senators, filed a public comment raising several jurisdictional, policy, constitutional, and statutory concerns with GlobalFoundries' proposal and asking that the petition be denied or tabled for legislative review.

On December 29, 2021, Charles Poltenson filed a public comment urging the Commission to reject GlobalFoundries' proposal.

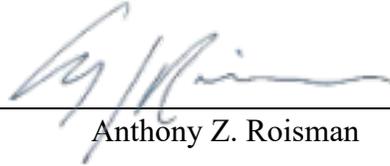
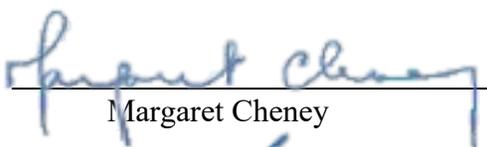
Before issuing this Order, the Commission reviewed these public comments and has considered them in rendering a decision in this case.

V. CONCLUSION

After a review of the briefing and based on the analysis above, we conclude that the Commission lacks statutory authority to grant the relief that GlobalFoundries has requested in its petition: to authorize the creation of an SMU that would be exempt from the Renewable Energy Standard. Accordingly, we ask GlobalFoundries to make a filing with the Commission no later than March 11, 2022, as to whether it wishes to proceed with any part of its petition without the proposed RES exemption.

SO ORDERED.

Dated at Montpelier, Vermont, this 17th day of February, 2022.

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

OFFICE OF THE CLERK

Filed: February 17, 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 - 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

Olivia Campbell Andersen (for Renewable Energy Vermont)
Renewable Energy Vermont
33 Court St.
Montpelier, VT 05602
olivia@revermont.org

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
McNeil, Leddy & Sheahan
271 South Union Street
Burlington, VT 05401
wellis@mcneilvt.com

(for City of Burlington Electric Department)

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)

Megan O'Toole
Vermont Agency of Natural Resources
Dept. of Environmental Conservation
1 National Life Drive, Davis 3
Montpelier, VT 05620-3901
megan.otoole@vermont.gov

(for Vermont Agency of Natural Resources)

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)