STATE OF VERMONT
PUBLIC SERVICE BOARD

Docket No. 7844

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| Petition of Charlotte Solar, LLC for a certificate of | ) |
| public good, pursuant to 30 V.S.A. § 248, | ) |
| authorizing the installation and operation of a | ) |
| 2.2 MW solar electric generation facility located at | ) |
| the north side of Hinesburg/Charlotte Road in | ) |
| Charlotte, Vermont | ) |

Entered: 11/15/2013

**ORDER RE ACQUISITION OF CHARLOTTE SOLAR, LLC AND REVISED LETTER OF CREDIT**

## I. Introduction

On August 14, 2013, Charlotte Solar, LLC ("Charlotte Solar") informed the Vermont Public Service Board ("Board") that AACC Holdings purchased Charlotte Solar from American Capital Energy. In an Order dated August 29, 2013, the Board requested comments from the parties on whether the transaction described in the Petitioner's August 14 filing constituted a sale of a company subject to the jurisdiction of the Board under 30 V.S.A. § 107 and, if so, what procedures the Board should follow to resolve this issue.

On September 6, 2013, Charlotte Solar filed comments stating that, pursuant to Board Rule 4.109, Charlotte Solar was exempt from the requirements of Section 107 because Charlotte Solar is a Qualifying Facility ("QF").

On September 13, 2013, the Department of Public Service filed a letter stating that Charlotte Solar's response "appears to be correct."

In this Order we determine that no further process is required under Section 107. Additionally, for the reasons stated below, we require that Charlotte Solar file a revised letter of credit prior to commencing operation of the Project.

## II. Discussion and Conclusion

Applicability of 30 V.S.A. § 107

Section 107 requires any "company" seeking to acquire a controlling interest in a company subject to the Board's jurisdiction to obtain prior approval of the Board.[1] Accordingly, we requested comments on whether the transaction described above constituted such an acquisition, and if so, what steps should be taken to resolve the issue. In response, Charlotte Solar stated that as a QF, it is exempt from the requirements of Section 107. While not explicitly stated, we interpret Charlotte Solar's response to mean that Charlotte Solar believes that AACC Holdings, the "company" in question under Section 107, is entitled to an exemption from the requirements of the statute under Board Rule 4.109 because the "company subject to the jurisdiction of the Board" that AACC Holdings acquired is a QF.

At first blush, the plain language of Board Rule 4.109 appears to preclude the application of the Rule's exemption from the requirements of Section 107 to a company like AACC Holdings because, prior to the acquisition, AACC Holdings was not a QF and therefore, not eligible for the exemption.[2] However, applying such a plain language interpretation of Board Rule 4.109 would eviscerate the purpose of the Rule, which is to exempt QFs from certain types of utility style regulation — including the regulation of their organizational structure.[3] Accordingly, we interpret the exemption contained in Rule 4.109 to apply to AACC Holdings in this case in order to give meaningful effect to the exemption contained in the Rule.[4] Therefore, we will not require any further process concerning this issue.

Letter of Credit

However, the Board must ensure that QFs meet the standards set forth under 30 V.S.A § 248. In granting Section 248 certificates to QFs such as the project at issue here, the Board has consistently required the owners of QFs to provide a decommissioning fund to ensure that the

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1. 30 V.S.A. § 107(a).
2. Board Rule 4.109 ("Those qualifying facilities within the scope of this general order and which sell electricity only at wholesale shall be exempt [from Section 107] . . .").
3. *See* Board Rule 4.109 (entitling QFs to exemptions from certain sections of Title 30).
4. *In re Jenness and Berrie*, 2008 VT 117, ¶ 24, 185 Vt. 16, 968 A.2d 316 ("When possible we construe statutes to avoid rendering one part mere surplusage, and we strive to read all parts of the statutory scheme in harmony.").

construction of such facilities is in the public good.[5] In this case, we previously approved a letter of credit that bears the names of both Charlotte Solar and AACC Holdings which serves to ensure that funds are available to decommission the Project if Charlotte Solar does not do so itself.[6] In light of our determination regarding the applicability of Rule 4.109 above, we now recognize that another entity might acquire a controlling interest in Charlotte Solar without the Board's knowledge or approval. We are concerned that such an acquisition, and the resulting discrepancy between the new ownership structure of the QF and the entities listed on the letter of credit, might impair the ability of the Board to draw on the letter of credit as currently approved.

Because we have determined that the owner of Charlotte Solar, AACC Holdings, does not need to obtain approval of its acquisition of Charlotte Solar pursuant to Section 107, it is appropriate that the decommissioning obligation secured by the letter of credit rest with the entity that is directly subject to the Board's jurisdiction. Therefore, we require that Charlotte Solar file an amended letter of credit that does not list AACC Holdings as a co-applicant. This revision will ensure that any changes to the ownership structure of Charlotte Solar will not impair the ability of the Board to draw on the letter of credit.

Additionally, we require that Charlotte Solar provide an explanation of how its revised letter of credit filed pursuant to the discussion above ensures that: (1) typographical errors other than amounts contained in a demand for payment will not cause a demand for payment to be denied; (2) the Board may submit a corrected demand for payment in the event that a demand for payment submitted by the Board is denied; (3) the Board will not waive any of its rights under the letter of credit by submitting a non-compliant demand for payment; and (4) the Board is authorized to make partial and multiple drawings on the letter of credit. The example letter of credit attached to this Order as Appendix A appears to address these issues and may serve as a template for a revised letter of Credit; however, use of the template does not relieve Charlotte Solar of its responsibility to ensure that its letter of credit achieves the purposes described in this Order. Charlotte Solar must file its revised letter of credit with the Board, along with an explanation of how the proposed letter of credit will address the issues identified in this Order,

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5. *See e.g.,* Public Service Board Rule 5.402(c) (requiring non-utility applicants to file a proposal for a decommissioning fund with certain Section 248 petitions).

6. Docket 7844, Order of August 29, 2013.

and receive Board approval prior to commencing operation of the Project.[7] In the interim, the letter of credit filed by Charlotte Solar on November 5, 2013, shall remain in effect until the revised letter of credit is filed and approved.

**SO ORDERED.**

Dated at Montpelier, Vermont, this 15th day of November, 2013.

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| s/James Volz | ) | |
| | ) | PUBLIC SERVICE |
| | ) | |
| s/John D. Burke | ) | BOARD |
| | ) | |
| | ) | OF VERMONT |
| s/Margaret R. Cheney | ) | |

OFFICE OF THE CLERK

FILED: November 15, 2013

ATTEST: s/Susan M. Hudson
Clerk of the Board

*NOTICE TO READERS: This decision is subject to revision of technical errors. Readers are requested to notify the Clerk of the Board (by e-mail, telephone, or in writing) of any apparent errors, in order that any necessary corrections may be made. (E-mail address: psb.clerk@state.vt.us)*

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7. We acknowledge that we previously approved a draft letter of credit in this Docket that differs from Appendix A. Subsequent to our previous approval, we have determined that it was unclear whether the previously approved letter of credit is sufficient to protect the Board's ability to draw on the letter of credit if necessary and therefore protect the public good. This Order effectively amends Condition 1.vii of the CPG, which required that Charlotte Solar file a final letter of credit prior to commencing construction of the Project. Because we previously approved Charlotte Solar's letter of credit and we do not wish to cause undue delay, we now require that Charlotte Solar file its revised letter of credit prior to commencing Project operations instead of construction.