



**REGULATORY
AUTHORITY**
OF BERMUDA

**Consultation on the Regulatory
Authority (Transitional Measures for
Bermuda Electric Light Company
Limited Solar Net Metering Scheme)
Emergency General Determination**

Consultation Document

Matter: 17-03-16

Date: 16th March 2017, updated 17th April and 24th April 2017

Responses Due: 12th May 2017

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1 DEFINITIONS

"**Authority**" means the Regulatory Authority of Bermuda;

"**BELCO**" means the Bermuda Electric Light Company Limited, as established pursuant to the Bermuda Electric Light Company Act 1951;

"**Commencement Date**" means 28 October 2016, the date on which the EA came into force;

"**CRSEER**" means the Commercial Renewable System Excess Energy Rate which is the sum of BELCO's highest retail rate plus the Fuel Adjustment Rate;

"**EA**" means the Electricity Act 2016;

"**EC Response**" means the recommendations presented to the Minister by the EC in a paper entitled Net Metering Inquiry Response on 11 October 2016;

"**EC**" means Energy Commission, the body established under the Energy Act 2009 and which (i) advised the Minister in the discharge of his functions under that Act; and (ii) considered BELCO's proposals to vary its prices or charges; and (iii) provide a recommendation to the Minister in relation to such proposed variations of its prices and charges; and which ceased to exist when the Energy Act 2009 was repealed pursuant to section 65(1) of the EA which came into effect on the Commencement Date.

"**Fuel Adjustment Rate**" means a mechanism that is designed to recover the cost of fuel used to produce electricity, calculated based on the cost of fuel per barrel and its projected usage;

"**Minister**" means the Minister responsible for the Electricity sector, which is the Minister of Economic Development for Bermuda;

"**RAA**" means Regulatory Authority Act 2011;

"**Scheme Participants**" means BELCO's residential electricity customers who have

participated in the Scheme;

Solar Net Metering Payment” means a monthly payment by BELCO to Solar PV Participants in respect of Solar PV Participants’ net excess energy in any Month, and which is calculated by multiplying the amount of such excess energy by a set rate;

“Solar Net Metering Scheme” or **“Scheme”** means the scheme introduced by BELCO in or about 2010 aimed at incentivizing residential electricity customers to install Solar PV and under which they would receive a Solar Net Metering Payment in respect of any excess energy generated and not consumed by such customers in any calendar month and which they sold to BELCO;

“Solar PV” means a technology in which sunlight is converted into electrical power;

“Solar PV Participants” means BELCO’s residential and commercial electricity customers who: (i) currently sell excess energy generated by Solar PV to BELCO and (ii) any new customers who wish to sell excess energy generated by Solar PV to BELCO.

“TD&R Licence” means the Transmission, Distribution and Retail Licence referenced in section 20(1)(a) of the EA; and

“Transition Period” means the period from the Commencement Date until the date on which the TD&R Licence and other relevant licences referenced in section 20 of the EA are granted by the Authority to any person that was lawfully generating, transmitting, distributing or retailing electric power immediately prior to the Commencement Date.

2 EXECUTIVE SUMMARY

2.1 This consultation document seeks public comment on the Regulatory Authority (Transitional Measures for Bermuda Electric Light Company Limited Solar Net Metering Scheme) Emergency General Determination (the “Emergency General Determination”) issued by the Authority on 2nd March 2017.

2.2 The Regulatory Authority has issued the Emergency General Determination mandating that BELCO pay a feed in tariff for electricity produced by Solar PV because of the urgent nature of the issue and the potential impact on the economy of Bermuda.

2.3 The Regulatory Authority invites interested parties to comment on the Emergency General Determination, as well as any other matters raised by this consultation document.

3 CONSULTATION PROCEDURE

- 3.1** This consultation is being undertaken in accordance with Sections 69 to 73 of the RAA.
- 3.2** Written comments should be submitted before 5:00 PM (Bermuda time) on 12th May 2017.
- 3.3** The Regulatory Authority invites comments from members of the public, participants in the electricity sector, and other interested parties. The Regulatory Authority requests that commenting parties, in their responses, reference the numbers of the relevant questions, as set forth in this consultation document, to which they are responding. A complete list of questions presented by this consultation document appears in Section 6.
- 3.4** Responses to this consultation document should be filed electronically in MS Word format. Parties filing comments should go to the Regulatory Authority's website, www.rab.bm, follow the link to the Consultations and Response page, and click the "Click here to submit a response" icon which appears at the top of the page. All comments should be clearly marked "Response to Consultation Document 17-0316: Comments on Regulatory Authority Emergency General Determination" and should otherwise comply with Rules 18 and 30 of the Authority's Interim Administrative Rules, which are posted on the Regulatory Authority's website.
- 3.5** The Regulatory Authority intends to make responses to this consultation available on its website. If a commenting party's response contains any information that is confidential in nature, a clearly marked "Non-Confidential Version," redacted to delete the confidential information, should be provided together with a complete version that is clearly marked as the "Confidential Version." Redactions should be strictly limited to "confidential information," meaning a trade secret, information whose commercial value would be diminished or destroyed by public disclosure, information whose disclosure would have an adverse effect on the commercial interests of the commenting party, or information that is legally subject to confidential treatment. The "Confidential Version" should highlight the information that has been redacted. Any person claiming confidentiality in respect of the information submitted must provide a full justification for the claim. Requests for confidentiality will be treated in the manner provided for in Rule 30 of the Regulatory Authority's Interim Administrative Rules.
- 3.6** The Senior Manager Electricity Analysis and Planning is the principal point of contact at the Regulatory Authority for interested persons during this consultation. He may be contacted by email at renewables@rab.bm or by mail at:
- Nigel Burgess
Senior Manager Electricity Analysis and Planning
Regulatory Authority
1st Floor Craig Appin House
8 Wesley Street, Hamilton, HM11
Bermuda
- 3.7** In this document, except insofar as the context otherwise requires, words or expressions shall have the meaning assigned to them by the RAA, EA and the Interpretation Act 1951.

- 3.8** This consultation document is not a binding legal document and does not contain legal, commercial, financial, technical or other advice. The Regulatory Authority is not bound by the consultation document, nor does it necessarily set out the Regulatory Authority's final or definitive position on particular matters. To the extent that there might be any inconsistency between the contents of this document and the due exercise by the Regulatory Authority of its functions and powers, and the carrying out of its duties and the achievement of relevant objectives under law, such contents are without prejudice to the legal position of the Regulatory Authority.

4 LEGISLATIVE CONTEXT

- 4.1** The Regulatory Authority has the powers to supervise, monitor and regulate the electricity sector in accordance with the purposes of the EA. Such purposes, as set forth in Section 6 of the EA, include:
- (a) "to promote the use of cleaner energy sources and technologies, including alternative energy sources and renewable energy sources", Section 6(c); and
 - (b) "to provide sectoral participants and end-users with non-discriminatory interconnection to transmission and distribution systems", Section 6(d).
- 4.2** The principal functions of the Authority set forth in Section 12 of the RAA include:
- (a) "to promote and preserve competition", Section 12(a); and
 - (b) "to promote the development of the Bermudian economy [and] Bermudian employment", Section 12 (c).
- 4.3** Section 66(2) of the RAA authorizes the Authority to make an emergency general determination whenever "the Authority concludes that the urgency of a particular case requires it to do so".
- 4.4** Pursuant to sections 65(2) and 68 of the EA (i) "any matters relating to the electricity sector . . . that are pending before the Minister or the Energy Commission as at the date of commencement of [the EA]" and (ii) "any notice of intention to vary a price or charge given to the Energy Commission and pending before the Minister or the Energy Commission immediately before the commencement date of [the EA] shall be transferred to the Authority for resolution in accordance with the procedures established by the [RAA], subject to any modifications that the Authority may deem appropriate and efficient, depending on the status of each case."

5 BACKGROUND

5.1 Factual Background

- (a) Pursuant to a letter from BELCO to the EC dated 15 August 2016, BELCO informed the EC that (i) it was closing its Solar Net Metering Scheme to new customers who wished to participate in the Scheme; and (ii) proposed a new feed-in tariff based on an avoided costs methodology for new customers who wished to participate in the Scheme; and (iii) confirmed that it would continue to pay the CSEER to Scheme Participants and those persons who had begun physical construction of Solar PV installations as at 15 August 2016.
- (b) On 26 August 2016, pursuant to its powers under the Energy Act 2009, the Minister requested that the EC conduct an inquiry into (i) BELCO's proposal to close its Solar Net Metering Scheme to new customers wishing to participate in the Scheme and (ii) BELCO's proposed new rates for any new residential and commercial Solar PV customers.
- (c) The EC duly proceeded with such inquiry and on 11 October 2016, the EC presented its recommendations to the Minister in a paper entitled Net Metering Inquiry Response and Recommendations.
- (d) On 26 October 2016, the Minister issued a statement in which he re-iterated those recommendations set out by the EC in its EC Response. The Minister further stated that the EC was precluded from dealing with this matter and was therefore unable to implement the recommendations set forth in the EC Response. The Minister noted that the transfer of responsibility for electricity regulation from the EC to the Authority was imminent and stated that he would shortly be issuing a commencement notice for the EA.
- (e) On 28 October 2016, the EA came into force, commencing the Authority's responsibility for regulation of the electricity sector. The EA repealed the Energy Act 2009 and consequently the EC ceased to exist.
- (f) Pursuant to sections 65(2) and 68 of the EA (i) "any matters relating to the electricity sector . . . that are pending before the Minister or the Energy Commission as at the date of commencement of [the EA]" and (ii) "any notice of intention to vary a price or charge given to the Energy Commission and pending before the Minister or the Energy Commission immediately before the commencement date of [the EA] shall be transferred to the Authority for resolution in accordance with the procedures established by the [RAA], subject to any modifications that the Authority may deem appropriate and efficient, depending on the status of each case."

5.2 The Urgency of the Case

- (a) In accordance with RAA Section 66(2), the Authority has concluded that BELCO's unilateral decision in respect of its Solar Net Metering Scheme, as per its letter of 14 February 2017 ceasing all payments in relation to Solar PV energy systems in

Bermuda, will be contrary to Sections 6(c) and (d) of the EA and Sections 12(a) and (c) of the RAA, and necessitates immediate action by the Authority.

- (b) BELCO's decision to close its Solar Net Metering Scheme has resulted in new Solar PV customers not receiving any payment from BELCO for their excess electricity, which in turn effects the rate of adoption of cleaner energy sources. It is the view of Authority that this action by BELCO (a) negatively effects employment in the electricity sector, (b) diminishes competition provided by small scale Solar PV, and (c) decreases non-discriminatory interconnection to transmission and distribution systems. This is contrary to Sections 6(c) and (d) of the EA.
- (c) In addition, it is the view of the Authority that this BELCO action will negatively affect Bermudian employment, ownership and the Bermudian economy. This is contrary to the responsibilities of the Authority under Sections 12(a) and (c) of the RAA. It should further be noted that when the Solar Net Metering Scheme was originally implemented BELCO created a legitimate expectation on the level and frequency of the payments to be received and customers made important financial decisions based on these expectations.
- (d) In light of the EC Response and these detrimental effects, the Authority considers the restoration of a feed-in tariff for Solar PV to be urgent, pending a full public consultation on the issues presented.

6 EMERGENCY GENERAL DETERMINATION

6.1 In furtherance of the concerns set forth above, the Authority adopted the Emergency General Determination which set forth the following processes for BELCO's Solar Net Metering Scheme:

- (a) BELCO shall operate its Solar Net Metering Scheme in accordance with the following recommendations set out in section 2 of the EC Response:
 - (i) The original net metering scheme is to run in parallel with the proposed transitional program as until December 31, 2016 [as set out on page 14 of BELCO's letter to the EC dated 15 August 2016] at which time it will be terminated to minimize the subsidization financial impact to non-solar PV customers. All original PV producers should be migrated over to the transitional avoided cost program effective January 1, 2017.
 - (ii) The transitional solar PV power purchase program should be adopted for both the residential and commercial solar PV producers with the BELCO avoided cost proposed rate of \$0.1736 per KWh for new solar PV systems going forward, with no limit on the number of participants as proposed by BELCO.
 - (iii) The financial cost of power purchase is fully absorbed by BELCO until a new power purchase regime is implemented by the Authority. Costs for

power purchase are to be allocated to a FAR like recovery account as of January 1, 2017 as stated in the [EC's] recent rate case filing directive.

- (b) For the avoidance of doubt, BELCO shall pay to Solar PV Participants in respect of any excess energy generated and not consumed by them in any calendar month and which they sold to BELCO:
 - (i) from 15 August 2016 until 31 December 2016, the CRSEER; and
 - (ii) from 1 January 2017 until the issuance by the Authority of an Administrative Determination on BELCO's proposed changes to the Solar Net Metering Scheme or any General Determination pursuant to section 36 of the EA, a rate of \$0.1736 per KWh.

7 QUESTIONS FOR CONSULTATION

7.1 Please respond to any or all of the following questions, referencing them by number:

1. What is your view of the how Solar PV has evolved in Bermuda? Please provide views on the uptake of this technology.
2. Looking to the future, how important do you believe Solar PV is for Bermuda? If a respondent views Solar PV as important please provide your views on what its costs and benefits are, how these should be quantified, and how these should be reflected in the framework for electricity regulation.
3. Should there be capacity limits on solar systems installed on individual customers' premises in Bermuda? Should this be included within a formal licensing framework?
 - a. If so, who should be responsible for assessing the system sizes and their limits (BELCO, Department of Planning, RAB, etc.)
 - b. Should Solar PV system sizing for a customers' premises be limited to the prior 12-month consumption of a residence/business and/or should it be based on forecasted consumption?
4. The Authority has, via the Emergency General Determination, and on a transitional basis, mandated that BELCO should pay for electricity received from Solar PV systems on the basis of the Energy Commission recommendations of October 2016 (see the Determination for detail). What are your views on this transitional measure?
5. What level and type of cost transparency should be mandated on BELCO to facilitate the determination of an appropriate feed-in tariff for electricity provided by Solar PV? In particular:
 - a. The Authority intends to mandate full accounting separation between BELCO's (i) generating, and (ii) transmission, distribution and retail activities. Please provide your views on specific aspects of BELCO's operational activities that are relevant to the cost transparency and related determination of the feed-in tariff rate?

- b. What levels of cost element transparency would you expect within a BELCO feed in tariff for Solar PV?
- 6. What do you believe should be the economic basis for Solar PV in Bermuda, specifically in the context of feed-in tariffs? Alongside any general comments by respondents please provided responses to the following:
 - a. Should BELCO's Solar PV Metering Scheme reflect a cost-benefit methodology or an avoided cost methodology?
 - b. What cost rate design for Solar PV participants is best suited to incentivizing greater utilization of cleaner energy sources and technologies in Bermuda?
 - c. What other factors should be considered in determining the cost rate design for feed in tariffs?
- 7. Should Solar PV or other renewable energy programs be incentivized within a specific regulatory framework for renewables in Bermuda?
- 8. In your view, are there any barriers to Solar PV or other forms of renewable generation investment?
 - a. If so, what are these barriers?
 - b. How could they be removed to enable further investment?

8 ANNEX 1: EMERGENCY GENERAL DETERMINATION