

22 April 2017

**BY EMAIL: nburgess@rab.bm & renewables@rab.bm**

Mr. Nigel Burgess  
Senior Manager Electricity Analysis and Planning  
Regulatory Authority  
Craig Appin House, 1<sup>st</sup> Floor  
8 Wesley Street  
Hamilton, HM11

Dear Mr. Burgess,

As a solar PV participant and proponent, I am both troubled and disappointed by the recent order (*not readily listed on the News and Notices section of the RAB website*) issued by the Regulatory Authority of Bermuda (the “RAB”) and dated 17 April 2017 (the “Order”) which seems at odds with your own Governance Policies (the “Policies”) requiring the RAB “*acknowledge stakeholder interests in their decisions and consult where appropriate*” together with, at a minimum, Sections 60(1), 60(2), 61(3), 61(5), 62(2)(a), 62(3)(b) 63(3), 66(1) - (6) inclusive, 67, 69(1) - (3) inclusive and, as a result of these shortcomings, Sections 70 - 72 of the *Regulatory Authority Act 2011* (the “Act”).

Concurrent with the above shortcomings and related potential legal deficiencies, I am writing to voice my without prejudice support of the proposed new tariff outlined in section I.C of BELCO’s letter to the RAB, dated 16 September 2016.

This section specifically states:

*“Under the new tariff, all non-utility scale solar PV installations, residential or commercial, will be compensated for their excess generation based on an avoided cost methodology. There will be no limit in the size of the installation for inclusion in the rate for residential customers; any installation above a capacity of 0.5 MW by a commercial customer will be deemed an independent power producer outside this rate and subject to individual negotiation.*

*Residential customers will be paid avoided costs for their power after netting the power used and sold by those customers each month. So, for example, if they used 600 kWh and self-generate 500 kWh in a month, they will pay for the 100 kWh at retail price. Conversely, if they use 500 kWh and self-generate 600 kWh, they will be paid and avoided cost price for the excess power.”*

The new proposed feed in tariff / net billing scheme outlined by the RAB will not only de-incentivize investing in solar, it will also negatively impact the return on investment that solar PV participants were expecting when they invested their own money in this sustainable, non-polluting, low maintenance form of renewable energy.

It was understood that new rates would not impact solar clients that had installed, or were proven to be engaged in a residential solar PV contract prior to 15 August 2016. BELCO had also proposed to grandfather all of these customers in their 16 September 2016 submission to the RAB. In fact, it would be best if this grandfathering provision was removed altogether for the ultimate benefit of a wider cross section of the community, particularly as solar PV production costs keep dropping with the introduction of better technologies compounded by higher efficiencies, which in turn opens opportunity up to more residents across a wider economic spectrum.

I also believe that existing solar net metering customers on the scheme and those with current, approved plans issued by the Department of Planning should be similarly honoured and grandfathered. Hundreds of Bermudian homeowners have made significant investments in solar energy systems based in part on the financial performance provided by the net metering program.

Hundreds more can follow if the RAB places the community's best interests ahead of a monopolistic paradigm that has demonstrably failed to adequately invest in its own future and capital infrastructure or prudently plan forward fuel purchases in the futures markets; preferring instead to pay out dividends rather than create a sinking fund for reasonably predictable future asset needs, or effectively managing its bulk inventory purchases.

Some years ago, BELCO publicly stated a need to increase capacity to meet growing consumer demand. Solar PV has absolutely eased some of that burden and with the forecast increase in bed counts within the hospitality industry as recently advised by the Bermuda Tourism Authority, more will be needed. So why create artificial, policy driven disincentives and barriers for public entry and related investments in technology and sustainability?

Furthermore, a sensible binding term should also be implemented, so as to assure those who invest in renewable energy will not have their initial investment disrupted by changes in the rates or implementation of unanticipated tariffs, as defined by the situation we are currently in and evidenced by the Order. A twenty (20) year plus term agreement, with sensible inflation rates applied, would assist with de-risking the longer term adaptation of solar energy in Bermuda and provide a level playing field. The words of Lord Diplock of the English House of Lords immediately come to mind: "*Unless men know what the rule of conduct is they cannot regulate their actions to conform to it. It fails in its primary function as a rule.*"

It is of paramount importance for RAB to adequately and thoroughly consider all these elements and implement a sensible tariff and term that encourages the installation of more solar PV systems and supports those consumers who have already made investments in renewable technology and preserving our environment, and those who will follow when encouraged by your hopefully rethought and reconsidered position on renewables.

On a related topic, it's worth noting Section 85 the Act requires the *prohibition of abuse of dominant position* which while in practice may intend to refer only to regulated entities, but presumably includes the Commissioners themselves in conjunction with the RAB as the dominant and singular body tasked with protecting public interest and not making decisions in isolation that are contrary to public benefit.

Additionally, Policies 2.3 & 2.5 when read together require the RAB secretary publish signed meeting minutes on the RAB website, however, this appears to have been overlooked for 2017 year to date. Given the actions prompting this submission in the first place, it seems an almost certainty that successive meetings have taken place (with preceding meetings' minutes signed at each new meeting, as required by the Policies) and related Board resolutions ratified in order for the Order to be issued in accordance with prevailing best corporate governance practices, for both public and private sectors.

Finally, it is worrying that a regulatory body tasked with ensuring and protecting the best interests of the public and with oversight of "scarce resources", hasn't published an Annual Report (at least not per the RAB website) for a financial period end since 31 March 2014! That's over three years ago and in direct opposition to the accounting and audit requirements of your very own Policies (s. 5) and the Act (s. 46).

In this day and age, we need more collaboration and less resistance to clean energy adaptation, in order to keep more money in our local economy while reducing our contribution to the drastic and scientifically well documented effects of climate change. Ultimately this matter is about sustainability and the future of our country and our people. The RAB must recognise this and govern itself accordingly.

Thank you for your fullest consideration of the foregoing. I look forward to your detailed reply and revocation of the Order.

Best regards,

Kevin E. Gunther

Cc: Dr the Hon. E. Grant Gibbons, JP, MP  
Minister of Economic Development  
ggibbons@parliament.bm

Kenneth Robinson – Commissioner  
krobinson@rab.bm

Angela Berry – Chair  
aberry@rab.bm

Matthew Copeland – CEO  
mcpeland@rab.bm