



BERMUDA
**REGULATORY
AUTHORITY**

**Emergency General Determination
pursuant to Section 66(2) of the Regulatory
Authority Act 2011 Concerning
Transitional Measures for Bermuda
Electric Light Company Limited Solar Net
Metering Scheme**

Emergency General Determination

Date: 2nd March 2017

BERMUDA

**REGULATORY AUTHORITY (TRANSITIONAL MEASURES FOR BERMUDA
ELECTRIC LIGHT COMPANY LIMITED SOLAR NET METERING SCHEME)
EMERGENCY GENERAL DETERMINATION 2017**

BR / 2017

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The Regulatory Authority, in the exercise of the power conferred by section 66(2) of the Regulatory Authority Act 2011, and sections 6, 14, 65(2) and 68 of the Electricity Act 2016, makes the following Emergency General Determination:

Citation

1 This Emergency General Determination may be cited as the Regulatory Authority (Transitional Measures for Bermuda Electric Light Company Limited Solar Net Metering Scheme) Emergency General Determination 2017.

Interpretation

2 In this Emergency General Determination, unless the context otherwise requires, terms shall have the meaning given in the Regulatory Authority Act 2011 (the “RAA”), the Electricity Act 2016 (the “EA”), and the Schedule to this Emergency General Determination (the “Schedule”).

Urgency and general purpose

3 (1) This Emergency General Determination provides for the adoption of transitional measures (set out in the Schedule) relating to the Solar Net Metering Scheme (the “Scheme”) of the Bermuda Electric Light Company Limited (“BELCO”) following the confirmation by BELCO of its unilateral decision to cease payments in relation to Solar PV energy systems in Bermuda.

(2) The Regulatory Authority (the “Authority”) is concerned about the detrimental effects of such cessation of payments and, in light of the Net Metering Inquiry Response (*Recommendations*) of the Energy Commission presented to the Minister of Economic

**REGULATORY AUTHORITY (TRANSITIONAL MEASURES FOR BERMUDA
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EMERGENCY GENERAL DETERMINATION 2017**

Development on 11 October 2016 (the “EC Response”), considers the restoration of a feed-in tariff for Solar PV to be urgent pending full public consultation on the issues.

Determination

4 (1) This Emergency General Determination is made pursuant to section 66(2) of the RAA and sections 6, 14, 65(2) and 68 of the EA.

(2) In consideration of the information now known to the Authority relating to BELCO’s unilateral decision in respect of the Scheme, the Authority determines that the adoption of the transitional measures contained in the Schedule is in the public interest.

(3) BELCO shall operate the Scheme in accordance with paragraph 6 of the Schedule.

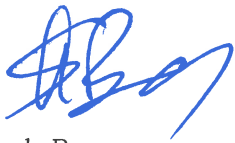
(4) The Authority shall initiate a public consultation on this matter in accordance with section 66(5)(b) of the RAA.

Terms and conditions of Emergency General Determination

5 (1) The Schedule has effect.

(2) This Emergency General Determination, with the Schedule, is published on the Authority’s website (www.rab.bm), and is also available for inspection at the offices of the Authority (1st Floor, Craig Appin House, 8 Wesley Street, Hamilton HM 11) during ordinary business hours.

Signed this *2nd* day of *March* 2017



Angela Berry
Chairman, Regulatory Authority



BERMUDA
**REGULATORY
AUTHORITY**

**Schedule to Regulatory Authority
(Transitional Measures for Bermuda
Electric Light Company Limited Solar
Net Metering Scheme) Emergency
General Determination 2017**

Emergency General Determination

Date: 2nd March 2017

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This Emergency General Determination is made by the Authority pursuant to section 66(2) of the Regulatory Authority Act 2011 ("RAA"). It provides for the adoption of transitional measures relating to BELCO's Solar Net Metering Scheme. The adoption and implementation of these transitional measures are in accordance with sections 6, 14, 65(2) and 68 of the Electricity Act 2016 and the general powers granted to the Authority under section 13 of the RAA and in accordance with the procedures established for this purpose in section 66 of the RAA.

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**" has the meaning set out in paragraph 3(2)(c) of this Schedule;

"**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 Interpretation

- (1) For purposes of interpreting this Emergency General Determination:
 - (a) unless the context otherwise requires, words or expressions shall have the meaning assigned to them by the RAA and the EA;
 - (b) where there is any conflict between the provisions of this Emergency General Determination and the EA or RAA, the provisions of the EA or RAA, as the case may be (and subject to sections 3(2) and 3(3) of the EA), shall prevail;
 - (c) terms defined herein and in the EA and RAA have been capitalised;
 - (d) headings and titles used herein are for reference only and shall not affect the interpretation or construction of this Emergency General Determination;
 - (e) references to any law or statutory instrument include any modification, re-enactment or legislative provisions substituted for the same;
 - (f) a document referred to herein shall be incorporated into and form part of this General Determination and a reference to such document is to the document as modified from time to time;
 - (g) expressions cognate with those used herein shall be construed accordingly;
 - (h) use of the word "include" or "including" is to be construed as being without limitation; and
 - (i) words importing the singular shall include the plural and vice versa, and words importing the whole shall be treated as including a reference to any part unless explicitly limited.

3 Legislative and Procedural Background

- (1) This Emergency General Determination has been undertaken in accordance with section 66(2) of the RAA and the exercise by the Authority of its powers under sections 6, 14, 65(2) and 68 of the EA.
- (2) The procedural and factual background relating to this Emergency General Determination is set forth as follows:
 - (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 his 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 (*Recommendations*) ("**EC Response**")¹.
- (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."

4 The Urgency of This Case

- (1) The Authority concludes that this matter is urgent because of the disruption that BELCO's unilateral decision in respect of its Solar Net Metering Scheme has caused and will cause if the Authority does not take immediate action, particularly in light of the EC Response of 11 October 2016 and the Minister's statement of 26 October 2016. Although the Authority has been in correspondence with BELCO and Solar PV providers regarding this matter since November 2016, including issuing information requests to BELCO, the Authority has received conflicting information from various interested parties about the status of the Scheme.
- (2) On 14 February 2017, BELCO forwarded to the Authority a copy of a letter which BELCO had sent to Solar PV equipment providers on 13 February 2017 (the "BELCO Letter"). The BELCO Letter, which was intended to clarify BELCO's position on the matter of Solar PV in Bermuda, states that BELCO was waiting for the Authority's approval of its new feed in tariff for new Solar PV customers and therefore is unable to proceed with any schemes related to Solar PV. Therefore, it is incumbent upon the Authority to act on this matter, as BELCO does not intend to resume feed-in tariff payments for Solar PV without direction from the Authority.
- (3) BELCO's unilateral decision to close its Solar Net Metering Scheme has had a detrimental effect on the Solar PV industry as a whole, as new Solar PV customers

¹ See Ministry of Economic Development, Net Metering Inquiry Response, Recommendations, 11 October 2016, available at <https://www.gov.bm/sites/default/files/Energy-Commission-Net-Metering-Inquiry-Response111016.pdf>.

are unable to receive any payment from BELCO for their excess electricity, which in turn effects the rate of adoption of cleaner energy sources and has implications for the Bermuda economy as a whole. It should further be noted that when the Scheme was originally implemented BELCO created an expectation on the level and frequency of the payments to be received and customers made important financial decisions based on these expectations. 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.

- (4) In light of the serious economic implications for BELCO, Solar PV Participants and those companies which install Solar PV, and the need to deliver certainty on this matter to sectoral providers, the Authority carefully reviewed the EC Response and, having made its own independent assessment, consider that the EC's recommendations in the EC Response are reasonable transitional measures pending 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. Accordingly, the Authority issues the Transitional Measures (as set forth in paragraph 6 of this Schedule below) pending 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.

5 Final Determination

- (1) Pursuant to section 66(2) of the RAA and in accordance with sections 6, 14, 65(2) and 68 of the EA using the general powers granted to the Authority under section 13 of the RAA and in accordance with the procedures established for this purpose in section 66 of the RAA, the Authority hereby determines that:
- (2) The adoption and implementation of the Transitional Measures for BELCO's Solar Net Metering Scheme as set forth in paragraph 6 of this Schedule below is in the public interest and would (i) provide certainty on this matter to sectoral providers; (ii) promote the use of cleaner energy sources and technologies; (iii) provide sectoral participants and end-users with non-discriminatory interconnection to transmission and distribution systems; (iv) promote the Bermuda economy; and (v) promote and preserve competition.

6 Transitional Measures for BELCO's Solar Net Metering Scheme ("Transitional Measures")

- (1) With immediate effect, BELCO shall operate its Solar Net Metering Scheme in accordance with the following recommendations set out in section 2 of the EC Response, pending 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) 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.
 - (b) 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.

- (c) 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.

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.
- (2) BELCO shall continue to pay Solar Net Metering Payments to Solar PV Participants in accordance with paragraph 6(1) of this Schedule pending 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.
 - (3) BELCO shall forthwith pay to Solar PV Participants any difference between (i) the actual payments made by BELCO to Solar PV Participants under the Scheme and (ii) the amounts payable by BELCO to Solar PV Participants in accordance with paragraph 6(1) of this Schedule (including to compensate Solar PV Participants for solar power provided by them prior to the effective date of the Emergency General Determination), pending 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.
 - (4) If, following the public consultation on this matter pursuant to section 66(5)(b) of the RAA, the Authority makes an Administrative Determination that sets a new rate to be payable by BELCO to Solar PV Participants under the Scheme, then BELCO shall be obliged to pay such new rate to Solar PV Participants from the date of such Administrative Determination.

7 Public Consultation Forthcoming

- (1) The Authority will commence a public consultation on this matter in accordance with section 66(5)(b) of the RAA.