

## New Regulation on Pricing of Electricity Sourced from Mini-Hydro Plants

### 1. Overview

On 2 May 2014, the Ministry of Energy and Mineral Resources issued a new regulation (the “**Regulation**”) governing the prices payable by the state power utility, PT Perusahaan Listrik Negara (Persero) (“**PLN**”), for electricity supplied by mini-hydro plants with a capacity of 10 MW or less. The Regulation, which entered into effect on its date of issuance, also briefly touches on the pricing of hydro power generated by plants with a capacity in excess of 10 MW.

Under the Regulation, power supplied to PLN by the operator of a mini-hydro plant is to be purchased at a flat-rate price. Such operator may take the form of a state enterprise, local government enterprise, private firm incorporated in Indonesia, or a cooperative or community organization specifically established for the purpose of generating hydro power (Article 2). A provider of hydro power to PLN must hold an Electrical Power Supply License (“**IUPTL**”). The price payable by PLN is calculated based on (i) PLN network capacity; and (ii) the area where the power plant is located, and includes all costs related to the connection of the power plant to the PLN network. The price must be stated in the Power Purchase Agreement (PPA) and is not negotiable.

The PPA is valid for 20 years from the date of commencement of commercial operations and is extendable in accordance with the prevailing law (Article 5).

Article 6 provides that PLN may also purchase power from plants with a capacity of more than 10 MW or power generated from a reservoir / dam or multipurpose irrigation network. In such cases, the price payable will be based on an agreement between the power plant operator and PLN.

### 2. Negative List Conundrum

The latest version of the Investment Negative List, which entered into effect on 24 April 2014,<sup>i</sup> clarifies the situation as regards foreign direct investment (“**FDI**”) in the mini-hydro sector. Under the previous incarnation of the list, such investment was stated as being 100% open to FDI subject to a “partnership arrangement” with a local firm. However, as it was unclear what precisely was meant by a “partnership arrangement,” this tended to discourage foreign investors. By contrast, the Regulation unambiguously states that the mini-hydro sector is now open to up to 49% FDI.

Many have been questioning why the government felt it necessary to cap foreign ownership at 49%, given that the threshold for larger hydro schemes (with a capacity of more than 10 MW) is 95% (and 100% for plants developed under public-private partnership schemes). Some say that it is necessary to restrict investment in mini-hydro power plants so as to allow the small and medium enterprises (“**SME**”) sector to get a slice of the cake. However, if we assume that an investment of approximately USD 2 million is required per megawatt, such investment is far beyond the reach of even the most ambitious SME. Accordingly, in our view it would have been preferable, and economically more rational, to have set the FDI threshold at least at the same level as that for larger power plants, i.e., 95%.

### 3. Procedures for Power Purchases from Mini-Hydro Plants

The promoter of a proposed mini-hydro power plant must first secure designation as a Hydro Power Producer<sup>ii</sup> from the Directorate General of New and Renewable Energy, and Energy Conservation (the “**Directorate**”).

#### Specific Requirements for Designation as Hydro Power Producer

- a. Profile of promoter
- b. Central and local government operational licenses
- c. Pre-feasibility study report, verified by PLN
- d. Estimate total investment
- e. Development schedule up to commercial operation date
- f. Statement of land availability
- g. Statement of willingness to post bond of 5% of total investment within 30 days of date of designation as Hydro Power Producer
- h. Statement that the promoter understands and is willing to comply with the standard PPA published by PLN
- i. Statement of willingness to accept sanctions for non-compliance, as set out in the Regulation.

The promoter is required to conduct a pre-feasibility study, the findings of which must be verified by PLN within 30 days from receipt of the complete document.

The Directorate will conduct a study and evaluation on the promoter’s application, and shall either grant or refuse the application within 30 days of the receipt thereof.

A promoter that has been designated a Hydro Power Producer is required to submit semiannual reports on the progress of the project to the Directorate up to the commercial operation date.

The Promoter is also required to post a bond amounting to 5% of its total investment in the project within 30 working days from its designation as a Hydro Power Producer. Should it fail to do so, then its designation as a Hydro Power Producer will be revoked and it will be prohibited from reapplying for such designation for a period of 2 consecutive years.

After posting the bond, the Promoter must then apply for an Interim IUPTL. Within 90 days after obtaining the IUPTL, the Promoter must submit its feasibility study report and other documents required for the signing of the PPA to PLN, which is then required to sign the PPA within 30 working days after the Promoter has submitted all the required documents and forwarded a copy of the draft PPA to the Directorate.

Should the agreement not be signed within 30 working days after all necessary documents and data have been submitted, the Promoter’s designation as a Hydro Power Producer will be revoked, the Promoter will be prohibited from submitting a further application for such designation for 2 consecutive years and 25% of the bond will be forfeit to the state.

Financial close for the project must be achieved within 15 months from the date of signing of the PPA. Should this not occur, the Promoter’s designation as a Hydro Power Producer will be revoked, the Promoter will be prohibited from submitting a further application for such designation for 2 consecutive years and 50% of the bond will be forfeit to the state.

Upon financial close, the Promoter must apply for a definitive IUPTL. The agency responsible for issuing the IUPTL depends on where the project is located. If it is located within one regency or municipality, the IUPTL will be issued by the regent or mayor; if its location straddles two regencies or municipalities, the IUPTL will be issued by the provincial governor, and if the location straddles two provinces or the Promoter is a state-owned company, then the IUPTL will be issued by the Directorate General of Electrical Power on behalf of the Ministry of Energy and Mineral Resources.

The Promoter may draw down the bond funds on a gradual basis so as to facilitate the construction of the power plant after the issuance of the definitive IUPTL. Applications for this should be submitted to the Directorate.

The Promoter must commence physical construction within 3 months of the issuance of the IUPTL. Should it fail to do so, PLN is required to reduce the power purchase price applicable during the first 8 years by 1% for a delay of up to 3 months, 2% for a delay of up to 6 months, and 3% for a delay of more than 6 months.

Should construction work not have started after the passage of 15 months from the date of issuance of the IUPTL, then the Promoter's designation as a Hydro Power Producer will be revoked, the Promoter will be prohibited from submitting a further application for such designation for 2 consecutive years and the bond will be entirely forfeit to the state.

#### 4. Transitory Provisions

The prices agreed on for power supplied by micro-hydro plants prior to the coming into effect of the Regulation will continue to be governed by Ministry of Energy and Mineral Resources Regulation No. 04/2012. However, the price may be adjusted upwards (save in the case of a plant that has reached the commissioning stage) provided the Promoter first secures designation by the Directorate as a Hydro Power Producer. Such adjustment will be based on an agreement between PLN and the Promoter, but may not be higher than the weighted average price set out in Appendix III of the Regulation. The new price is fixed and must be directly set out in a PPA. It remains valid for the duration of the PPA. The price adjustment process must be completed within 90 working days of the designation of the Promoter as a Hydro Power Producer. The adjusted price must also be approved by the Minister.

Following the signing of the adjusted PPA, a Promoter that (i) has not achieved financial close must do so and commence physical construction of the plant within 6 months; (ii) has halted construction of the power plant must resume construction within 3 months. Should a Promoter fail to fulfill the requirements of (i) or (ii) above, as the case may be, then its designation as a Hydro Power Producer will be revoked and it will be prohibited from submitting a further application for such designation for 2 consecutive years.

In the case of hydro plants that are under construction and which will have a capacity of more than 10 MW or which will generate power from reservoirs or multipurpose irrigation networks, or where the PPA is in process or is being extended, the price payable will be based on an agreement between the power plant operator and PLN (Article 19 in conjunction with Article 6).

#### 5. Price Calculation

The price payable by PLN for power sourced from a mini-hydro plant is calculated having regard to the capacity of the PLN power distribution network (high tension / low tension) in the area in which the plant is located, multiplied by factor F, the size of which depends on the location of the power plant. The details of the pricing structure are as shown in the following table:

No.	Network Distribution Capacity (Generating Capacity)	Location / Region	Purchase Price (Rp / Kwh)		Faktor F
			Years 1 - 8	Years 9 - 20	
1	Low Tension (10 MW or less)	Java, Bali & Madura	1,075.0 x F	750.0 x F	1.00
2		Sumatra	1,075.0 x F	750.0 x F	1.10
3		Kalimantan & Sulawesi	1,075.0 x F	750.0 x F	1.20
4		Nusa Tenggara Barat & Nusa Tenggara Timur	1,075.0 x F	750.0 x F	1.25
5		Maluku & Maluku Utara	1,075.0 x F	750.0 x F	1.30
6		Papua & Papua Barat	1,075.0 x F	750.0 x F	1.60
7	Low Tension (250 kW or less)	Java, Bali & Madura	1,270.0 x F	750.0 x F	1.00
8		Sumatra	1,270.0 x F	750.0 x F	1.10
9		Kalimantan & Sulawesi	1,270.0 x F	750.0 x F	1.20
10		Nusa Tenggara Barat & Nusa Tenggara Timur	1,270.0 x F	750.0 x F	1.25
11		Maluku & Maluku Utara	1,270.0 x F	750.0 x F	1.30
12		Papua & Papua Barat	1,270.0 x F	750.0 x F	1.60

<sup>i</sup> Incorporated in Presidential Regulation No. 39 of 2014

<sup>ii</sup> In Indonesian, "Pengelola Tenaga Air untuk Pembangkit Listrik," which translates directly as "Water Power Manager for Electricity Generation."

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