

## Long Awaited Regulation on Geothermal Power Prices a Step in the Right Direction ... Almost

The Minister of Energy and Mineral Resources (the “**Minister**”) has issued a new regulation governing the purchase prices payable by state power utility PT Perusahaan Listrik Negara (Persero) (“**PLN**”) for electricity produced by geothermal power plants and for geothermal steam that is used in generating electricity. The regulation (the “**New Regulation**”),<sup>i</sup> which was issued on 3 June 2014, entered into effect on the same date and specifically revokes Minister of Energy and Mineral Resources Regulation No. 22 of 2012

### Background

Located on the Pacific Ring of Fire, Indonesia boasts enormous geothermal potential. According to the Ministry of Energy and Mineral Resources, the country’s harnessable geothermal resources are sufficient to generate 28,000 Megawatts of electricity. To put this into context, PLN’s Java-Bali operations area currently has a total capacity of some 6,511 Megawatts. Despite the potential, however, the industry has been very slow to develop. This is not just due to the expense and cutting-edge technology required to harness geothermal energy, but also other factors such as frequent changes in the regulatory framework, onerous investment requirements, overlapping legislation, and a lack of qualified human resources.

One issue is that PLN has traditionally been very strict about price escalation, and adopted the stance that it is only permissible counting from the commercial operation date. Although this position has been confirmed by the New Regulation, some solace is provided to would-be geothermal power plant developers by the fact that the farther into the future the planned commercial operation date is, the higher the power purchase price that will be payable. In addition, the New Regulation offers higher purchase prices for projects located on Indonesia’s outer islands and in remote areas, thereby taking cognizance of the country’s geographical realities.

### Nuts and Bolts

The New Regulation requires PLN to purchase electricity generated from geothermal power plants operated by independent power producers (“**IPP**”) holding electricity supply business licenses (“**IUPTL**”),<sup>ii</sup> and steam for the purpose of generating electricity from the holders of geothermal exploitation licenses (“**IUP**”).<sup>iii</sup> The purchase price for electricity is negotiable but must not be higher than the relevant ceiling price set out in the New Regulation. The purchase price is dependent on the area where the power plant is located and the commercial operation date (“**COD**”), subject to approval from the Minister. The mechanism for determining the COD is governed by the Power Purchase Agreement (“**PPA**”).

Regulation 17/2014 distinguishes between three different regions for the purpose of pricing calculations, namely:

- Region I : Sumatra, Java and Bali;
- Region II : Sulawesi, West Nusa Tenggara, East Nusa Tenggara, Halmahera, Molucca, Papua and Kalimantan; and
- Region III : Areas in Regions I and II that are isolated and where most electricity is generated from fossil-fuel power plants.

The ceiling price is based on the COD, and is exclusive of escalation and transmission line construction costs. Escalation is permitted only after the COD and will be calculated based on the formula agreed in the PPA. This is an important clarification as in the past local governments often issued IUPs on the basis that escalation was permitted from the time of the bid, only for the IPP to find when they got to Jakarta that it was only permissible after the COD. However, with escalation now expressly confined to the post-COD stage, this means that IPPs will have to bear the risk of cost increases prior to the COD should there be any delay in the commencement of commercial operations. As regards the construction of transmission lines, while it is clear that PLN is responsible for performing the construction work, it is not clear who is responsible for paying for it and whether the cost will be included in the price-calculation formula.

### Ceiling Prices

The Ceiling Prices prescribed by the New Regulation are as follows:

Year of Commercial Operation Date (COD)	Ceiling Price(US\$/KwH)		
	Region I	Region II	Region III
2015	11.8	17.0	25.4
2016	12.2	17.6	25.8
2017	12.6	18.2	26.2
2018	13.0	18.8	26.6
2019	13.4	19.4	27.0
2020	13.8	20.0	27.4
2021	14.2	20.6	27.8
2022	14.6	21.3	28.3
2023	15.0	21.9	28.7
2024	15.5	22.6	29.2
2025	15.9	23.3	29.6

For an IPP participating in a tender for a geothermal concession, the power purchase price will be the price stated in the IPP’s bid. It will be fixed and non-negotiable, and must be incorporated in the PPA. Should the Minister view the bid favorably, he or she will then issue a Purchase Instruction to PLN. No later than six months after the date of the Purchase Instruction, PLN and the IPP must sign the PPA. Should a PPA not be signed within this period on grounds attributable to the IPP, then the IPP will be subject to administrative sanctions under the prevailing regulations (it is not clear from the New Regulation what

precisely these sanctions might be). If within one year after the issuance of the Purchase Instruction the PPA remains unsigned due to reasons attributable to the IPP, the Purchase Instruction will be automatically revoked by operation of law.

### PPA Renewal and Additional Capacity

PLN is also required to purchase power generated as a result of the addition of capacity or in the event of an extension of the PPA, based on the agreement of the parties. In such circumstances, the purchase price will be the price agreed by PLN and the IPP, subject to the relevant ceiling price and the approval of the Minister. An amendment to the PPA to accommodate additional capacity or an extension of the PPA must be signed no later than 12 months after the proposal to add capacity or extend the PPA is received by PLN. Should there be a delay that is due to matters other than the purchase price, then PLN may terminate the process. However, if the delay is the result of a failure to agree on the purchase price, then PLN and the IPP should appoint an independent appraiser/expert to determine the purchase price. The same mechanism applies in the case of price adjustments or price renegotiations involving holders of geothermal exploitation rights, geothermal concessions or geothermal contracts that were signed or acquired prior to the entry into effect of the Geothermal Energy Act.<sup>iv</sup>

### Transitional Provisions

The transitional rules under the New Regulation are as follows:

- For an IPP that won a tender for a geothermal concession prior to the issuance of the New Regulation, the power purchase price will continue to be the price stated in the bid and the PPA must be signed by no later than 31 December 2014. The IPP may subsequently submit an application to adjust the purchase price after the exploration and feasibility studies have been completed. This means that the IPP will have to shoulder the expense of exploration work without actually knowing how much it will ultimately get paid for its power.
- For an IPP that has obtained an IUP but in respect of which a Purchase Instruction has not yet been issued to PLN by the Minister, the Purchase Instruction must be issued promptly. The IPP is then required to obtain an IUPTL and sign the PPA by no later than 31 October 2014, or otherwise surrender its IUP by not later than the same date. If the PPA has not been signed by 31 October 2014, the IPP will be barred from proposing a purchase price adjustment.
- For an IPP that has secured an IUP and in respect of which a Purchase Instruction has been issued to PLN by the Minister, it must obtain an IUPTL and sign the PPA by no later than 31 August 2014, or otherwise surrender its IUP by not later than the same date. If the PPA has not been signed by 31 August 2014, the IPP will be barred from proposing a purchase price adjustment.
- For an IPP that has secured an IUP and is in the process of negotiating the purchase price with PLN, it must obtain an IUPTL and sign the PPA by no later than 30 September 2014, or otherwise surrender its IUP by not later than the same date. If the PPA has not been signed by 30 September 2014, the IPP will be barred from proposing a purchase price adjustment.
- In the case of a concession for which a tender is in progress, the process may continue but the ceiling price and the power purchase mechanism will be governed by the New Regulation

An IPP that surrenders its IUP within the prescribed period may participate in a future tender for the same concession. However, if the IPP fails to surrender its IUP within the prescribed period, it will be subject to administrative sanctions and both it and its shareholders will be prohibited from participating in any future tender for the same concession.

### Conclusion

While the New Regulation marks a step forward by clarifying the rules governing escalation and recognizing the problems caused by Indonesia's physical geography, it is nevertheless rather vague as regards some other essential matters, such as who is responsible for paying for the construction of transmission lines. It has been suggested that such vagueness may in fact be deliberate in order to preserve the ministry's discretion.

On the legislative front, there continue to be problems resulting from conflicting provisions as between the Geothermal Energy Act and other legislation, particularly the Forestry Act<sup>v</sup> and Environmental Conservation Act.<sup>vi</sup> In addition, amendments to the Geothermal Act are currently being considered by a House of Representatives special committee, and these could have implications for the way in which the New Regulation is applied, or even whether it can be applied at all.

---

<sup>i</sup> Ministry of Energy and Mineral Resources Regulation Number 17 of 2014 on the Purchase by PT Perusahaan Listrik Negara (Persero) of Electricity Produced by Geothermal Power Plants and Geothermal Steam Used in Geothermal Power Plants.

<sup>ii</sup> Issued by the Minister of Energy and Mineral Resources.

<sup>iii</sup> Under the Geothermal Energy Act (No. 27 of 2003), an IUP is issued by the minister, governor or regent/mayor, as the case may be, in accordance with the following divisions of authority:

- The minister has the authority to issue an IUP for a project that straddles two provinces;
- The relevant governor has the authority to issue an IUP for a project that straddles two regencies/municipalities in the same province; and
- The regent/mayor has the authority to issue an IUP for a project located solely within the relevant regency/municipality;

<sup>iv</sup> Act No. 27 of 2003

<sup>v</sup> Act No. 41 of 1999

<sup>vi</sup> Act No. 32 of 2009

*AHP Client Alert is a publication of Assegaf Hamzah & Partners. It brings an overview of selected Indonesian laws and regulations to the attention of clients but is not intended to be viewed or relied upon as legal advice. Clients should seek advice of qualified Indonesian legal practitioners with respect to the precise effect of the laws and regulations referred to in AHP Client Alert. Whilst care has been taken in the preparation of AHP Client Alert, no warranty is given as to the accuracy of the information it contains and no liability is accepted for any statement, opinion, error or omission.*

If you have trouble reading this email, [click here](#) | If you wish to cancel your subscription to this AHP Client Alert [click here](#)

