

Indonesia Energy, Utilities & Resources NewsFlash

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Regulation on Electricity Selling Price, Electricity Lease Network Price, and Electricity Tariff

On 27 April 2022, the Ministry of Energy & Mineral Resources (“MEMR”) issued MEMR Regulation No. 10 of 2022 on Procedures for Application for Approval of Electricity Selling Price and Electricity Network Lease and Procedures for Application for the Electricity Tariff Stipulation (“MEMR Reg 10/2022”) which provides the procedures for obtaining approval for selling price of electricity and leasing of electricity networks as well as electricity tariffs.

1. To obtain approval for the electricity selling price and electricity network lease price holders of business licences for electricity supply in the public interest the *Izin Usaha Penyediaan Tenaga Listrik untuk Kepentingan Umum* or “IUPTLU” must meet the electricity demand within their area.¹ They are permitted to purchase electricity and/or lease electricity network from business entities, as follows:
 - a) holders of IUPTLU for the generation of electric power;
 - b) holders of IUPTLU and owners of the business areas;
 - c) holders of a business licence for electricity supply for private interest (*Izin Usaha Penyediaan Tenaga Listrik untuk Kepentingan Sendiri*);
 - d) holders of a business licence for electricity business supporting services (*Izin Usaha Jasa Penunjang Tenaga Listrik*); and/or
 - e) electric power supply companies from other countries.

The sales price of electricity and/or the lease price of electricity networks must be approved by the MEMR or governors in accordance with their respective authorities. An IUPTLU holder who owns a business area shall apply for such approval in writing to the MEMR or governors by enclosing administrative and technical requirements.² An evaluation of

¹ Article 2 (1) of MEMR Reg 10/2022.

² Article 4 of MEMR Reg 10/2022.

The administrative requirements include:

- a. Profile and business registration number of the business entity selling electricity;
- b. Developer appointment letter or letter of intent; and
- c. Data and information on share ownership and company management up to the ultimate beneficial owner.

The technical requirements include:

- a. Information related to the technical feasibility of sales price of electricity;
- b. Information related to the financial feasibility of sales price of electricity;
- c. Official report of self-estimated prices; and
- d. Official report of price agreement.

the application for approval of the sales price of electricity or the leasing of electricity networks must occur within a period of no more than seven business days after the receipt of the complete and correct application.³ Such an approval will be in the form of a benchmark price consisting of (a) the highest benchmark price or (b) other benchmark prices stipulated based on provisions of laws and regulations.⁴ The business area owner and the business entity selling the electricity or a business entity that leases electricity networks will sign a Power Purchase Agreement (“PPA”) or leasing of electricity networks agreement no later than 30 business days after receiving approval from the MEMR.⁵

Moreover, Article 9 stipulates that the heads of ministries/agencies, governors, or regents/mayors may propose the assignment to IUPTLU holders who own business areas to purchase electricity in accordance with provisions of laws and regulations. This application shall be submitted in writing by enclosing administrative and technical requirements.⁶ The evaluation of the application shall be done within a maximum period of ten business days as of the receipt of the complete and correct application.⁷ This assignment will also apply as an approval of the sales price of electrical power and a PPA shall be signed with a business entity that sells electrical power no later than 30 business days after receiving the approval letter for the assignment.⁸

2. Stipulation of the electricity tariff and other costs related to electrical power distribution

Article 13 of MEMR Reg 10/2022 stipulates that IUPTLU holders who own business areas shall apply electricity tariffs for consumers within their business area. The tariff shall be stipulated by the MEMR after obtaining approval from the House of Representatives (“DPR”). Article 22 further stipulates that the IUPTLU holders who own business areas must conduct public consultations before applying for the stipulation of the electricity tariffs to the MEMR. This application will be evaluated by the MEMR through the Director General for a maximum of 30 business days as of the receipt of the complete and correct application.

Aside from the above, MEMR Reg 10/2022 also includes provisions relating to the request for a change in the electricity tariffs, where such a request must be set by the MEMR after obtaining approval from the DPR.⁹ The regulation also stipulates that all tariffs that have been set before the enactment of this regulation will remain valid until the establishment of the electrical power tariffs for the new distribution of electricity. A holder of an IUPTLU that owns business areas that has secured the stipulation of electricity tariffs and/or other costs related to the distribution of electrical power shall report the tariff to the MEMR no later than 30 business days from the promulgation of this regulation.¹⁰

³ Article 5 of MEMR Reg 10/2022.

⁴ Article 6 of MEMR Reg 10/2022.

⁵ Article 7 of MEMR Reg 10/2022.

⁶ Article 9 (2) of MEMR Reg 10/2022.

⁷ Article 10 of MEMR Reg 10/2022.

⁸ Articles 11 and 12 of MEMR Reg 10/2022.

⁹ Article 26 of MEMR Reg 10/2022.

¹⁰ Article 32 of MEMR Reg 10/2022.

An Update on Carbon Trading and Carbon Tax Mechanism for Independent Power Producers (“IPPs”)

Readers may recall that the government introduced the carbon tax via the “Harmonisation of Tax Regulations” (*Harmonisasi Peraturan Perpajakan/HPP*) Law issued in October 2021. A summary of the changes relevant to stakeholders in the resources and energy sectors is outlined in our [Energy, Utilities & Resources NewsFlash No. 71/2021](#) which can be found on our Indonesian website.

Over the past year and up until the time of writing, the Government has issued subsequent regulations, most of which are related to the Indonesian carbon pricing and trading system as follows:

1. Presidential Regulation No. 98/2021 on Implementation of Carbon Economic Value for the Achievement of Indonesia's Nationally Determined Contribution Target and the Control of Greenhouse Gas Emissions in National Development (“PR-98”);
2. Ministry of Environment and Forestry Regulation No. 21/2022 on the Guidelines for the Implementation of Carbon Pricing (“MOEF-21”). This was issued as an implementing regulation of PR-98;
3. Government Regulation No. 50/2022 on the Procedures for the Implementation of Taxation Rights and Fulfilment of Tax Obligations (“GR-50”), which includes the implementing regulation for the Carbon Tax provisions introduced under the HPP Law; and
4. Ministry of Energy and Mineral Resources Regulation No. 16/2022 on the Procedures for the Implementation of Carbon Economic Value in the Power Plant Sub-Sector (“MOEMR-16”).

Each of the regulations mentioned above is extensive on its own. For the purpose of this NewsFlash, we will highlight only the items relevant to IPPs in the carbon trading and carbon tax mechanism.

PR-98 provides two types of carbon trading activity i.e. (i) emission trading and (ii) emission offset. It appears that the emission trading will be applied to entities with a greenhouse gas (“GHG”) emissions cap, including coal-fired IPPs, which can be conducted through a carbon exchange or directly. While entities without a GHG emissions cap will fall under the emission offset mechanism. PR-98 also provides that certain businesses or activities may be subject to carbon levies in the form of tax, duty, customs, or other levies.

MOEF-21 provides the details that PR-98 lacked and regulates, among others, the determination of the GHG emissions cap, which will be applied across key sectors (including energy) and the intended domestic and international carbon trading mechanism.

Both domestic and international carbon trading must (i) be carried out in accordance with the relevant carbon trading roadmap and (ii) apply carbon reserves for emissions reduction or buffers. In the case of cross-sectoral trading, the trading instrument must be in the form of an emission reduction certificate (carbon credit).

International carbon trading can be performed provided that the following three cumulative conditions have been met:

1. the relevant sectoral ministries have determined and submitted a plan and strategy for the achievement of the NDC target to the MOEF;
2. the relevant subsectors or sub-subsectors have achieved the NDC target; and
3. the trading must be approved and authorised by the MOEF.

GR-50 defines a Carbon Tax (“CT”) taxpayer as an individual or company purchasing goods containing carbon or carrying-out activities which result in a certain level of carbon emissions within a certain period, and are the parties subject to the CT. GR-50 also defines the CT collector.

The CT is paid by self-payment or by collection by a CT collector and reported either at the latest 4 months after the end of the calendar year for a CT taxpayer or at the latest on the 20th of the following month for a CT collector. Certain taxpayers may be exempted from the CT reporting.

A CT taxpayer and collector must record the activities emitting carbon or the sale of goods containing carbon, so that the CT due can be properly calculated. Please refer to the detailed analysis separately set out in our [Indonesia Tax Flash No. 23/2022](#) which can be found on our Indonesian website.

MOEMR-16 in principle provides a “cap and trade” mechanism for coal-fired IPPs and emission offsets for renewables-based IPPs. The regulation stipulates that the MOEMR will be responsible for determining the technical approval on the GHG emission cap (“PTBAE”) applicable within a certain period with the following categories for power plants that are connected to PLN’s grid:

1. non-mine mouth and mine mouth coal-fired power plants with capacity of ≥ 25 MW up to below 100 MW;
2. non-mine mouth coal-fired power plants with capacity of ≥ 100 MW up to ≤ 400 MW;
3. non-mine mouth coal-fired power plants with capacity of > 400 MW; and
4. mine mouth coal-fired power plants with capacity of ≥ 100 MW.

The first phase of PTBAE determination applicable for power plants that are connected to PLN’s grid in years 2023 up to 2024 shall be set out within 20 working days after MOEMR-16 was promulgated on 27 December 2022. Whilst the PTBAE determination for power plants which are not connected to PLN’s grid and/or captive power plants shall be by 31 December 2024.

To participate in carbon trading, businesses must prepare an annual monitoring report on the GHG emission of each power plant unit and submit the report to MOEMR through the Directorate General of Electricity by 31 December of the ongoing year for next year’s plan. Failure to do this would result in the business being unable to participate in carbon trading.

MOEMR-16 stipulates that the carbon trading period is conducted from 1 January to 31 December.

Further detail is required to fill the gaps in the regulatory landscape and ensure the success of the carbon trading and tax mechanism. We anticipate the devil to be in the details of the implementing regulations. Therefore, developments in this area should be continuously monitored.

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