

NEW PURCHASE OF ELECTRIC POWER PROCEDURES

On 13 January 2015, the Minister of Energy and Mineral Resources (“MEMR”) issued MEMR Regulation No. 3 of 2015 on The Procedure for the Purchase of Electric Power and the Benchmark Price for the Purchase of Electric Power from Mine-Mouth Coal Fired Power Plants, Coal Fired Power Plants, Gas Turbine Power Plants/Gas Fired Power Plants, and Hydro Powered Power Plants by PT Perusahaan Listrik Negara (Persero) Through Direct Tenders and Direct Appointments (“MEMR Regulation 3/2015”).

Two significant issues are raised in MEMR Regulation 3/2015, namely (i) the procedures for direct tenders and direct appointments and (ii) the benchmark price of electric power by direct tenders and direct appointments.

The Procedures for Direct Tenders and Direct Appointments

Under MEMR Regulation 3/2015, PLN may purchase electric power from mine-mouth coal fired power plants, coal fired power plants, gas turbine power plants/gas fired power plants, and hydro powered power plants by direct tenders and direct appointments provided that they meet the criteria below. A “direct tender” means the selection of an electric power provider by comparing at least 2 (two) bids, while a “direct appointment” is the selection of an electric power provider by directly appointing 1 (one) electric power provider.

PLN may use a direct tender if the power purchase arrangement is for the purpose of:

1. diversifying energy sources for power plants to non-fuel oil; and/or
2. increasing the capacity of a power plant center that operates in a different location as part of a local system by a business entity holder of electric power supply business licenses or a business entity newly established by interested developers.

For a direct appointment, the criteria are the following:

1. electric power is purchased from a Mine-Mouth Coal Fired Power Plant, marginal Gas Fired Power Plant or Hydro Powered Power Plant;
2. excess power is purchased from a Mine-Mouth Coal Fired Power Plant, Coal Fired Power Plant, Gas Turbine Power Plant/Gas Fired Power Plant or Hydro Powered Power Plant;
3. electric power is purchased from a Mine-Mouth Coal Fired Power Plant, Coal Fired

- Power Plant, Gas Turbine Power Plant/Gas Fired Power Plant or Hydro Powered Power Plant; if the local electric power system is in a critical or emergency situation; and/or
4. electric power is purchased from a Mine-Mouth Coal Fired Power Plant, Coal Fired Power Plant, Gas Turbine Power Plant/Gas Fired Power Plant or Hydro Powered Power Plant which increases the capacity of the central power plant operating in the same location.

For PLN to make a direct tender or direct appointment under MEMR Regulation 3/2015, the Directors of PLN must issue a procurement procedure required under Article 3(i) of MEMR Regulation No. 3/2015 in conjunction with Article 4.a, which waives the procedure under MEMR Regulation No. 1 of 2006 on the Procedure for Purchasing Electric Power and/or Renting Networks for the Provision of Electric Power for the Public Interest as amended by MEMR Regulation No. 4 of 2007 (“MEMR Regulation 1/2006”). Therefore, some requirements under MEMR Regulation 1/2006 may no longer apply under the procurement procedure to be issued by the Directors of PLN, including the requirement to obtain approval for a direct appointment (under Article 16 (1) of MEMR Regulation No.1 of 2006).

In addition, under Article 3.3 of MEMR Regulation 3/2015, a direct tender or direct appointment must be preceded by a due diligence on the technical and financial aspects, which, up to the execution of the Power Purchase Agreement (PPA), must be completed within 45 days or 30 days, respectively.

Benchmark Price of Electric Power by Direct Tenders and Direct Appointments

MEMR Regulation 3/2015 also provides the benchmark price of electric power generated from mine-mouth power plants, coal fired power plants, gas fired power plants, and hydro power plants by PLN through a direct tender or direct appointment. Under MEMR Regulation 3/2015, MEMR approval is no longer required for the sales price of electric power if it does not exceed the benchmark price stated in the regulation. The highest benchmark price is set according to the type of the energy and the capacity of the power plant.

For a particular region, however, PLN may purchase electric power from a power plant at a purchase price exceeding the benchmark price according to PLN’s own estimate but will require power purchase price approval from the MEMR.

The details of the benchmark price structure are shown in a table contained in MEMR Regulation 3/2015.

Transitional Provisions

Upon MEMR Regulation 3/2015 coming into effect, any ongoing sale and purchase of electric

power for which a potential developer or existing developer has not yet been appointed through a direct tender or direct appointment, from a Mine-Mouth Coal Fired Power Plant, marginal Gas Fired Power Plant or Hydro Powered Power Plant exceeding 10 MW is to be conducted in accordance with MEMR Regulation 3/2015.

MEMR Regulation 3/2015 came into effect on its date of issuance (13 January 2015) and revokes the following provisions:

1. Article 16(1), (6) and (7) of MEMR Regulation No. 001 of 2006, as amended by MEMR Regulation No. 004/2007;
2. Article 19A(3) and (4) of MEMR Regulation No. 001 of 2006, as amended by MEMR Regulation No. 004/2007; and
3. Article 2 of MEMR Regulation No. 04 of 2012.