

ENERGY AND MINERAL RESOURCES MINISTER REGULATION NO. 10/2017

ABOUT PRINCIPLES OF ELECTRICITY PURCHASE AGREEMENT

BY THE GRACE OF THE GOD

Considering:

- a. In order to provide electricity fairly and transparently that also gives legal assurance in its execution to make power plants in electricity system can meet the required reliability system, regulations for electricity purchase agreement between State-Owned Electricity Company (PLN) and electricity producer company is needed;
- b. According to consideration in letter a, the Energy and Mineral Resources Minister Regulation on Principles of Electricity Purchase Agreement is need to be implemented.

Reckoning:

1. Law No. 30/2007 on Energy (Republic of Indonesia Official Gazette No. 96/2007, Republic of Indonesia Additional Gazette No. 4746);
2. Law No. 30/2009 on Electricity (Republic of Indonesia Official Gazette No. 133/2009, Republic of Indonesia Additional Gazette No. 5052);
3. Law No. 21/2014 on Geothermal (Republic of Indonesia Official Gazette No. 217/2014, Republic of Indonesia Additional Gazette No. 5585);
4. Government Regulation No. 23/1994 on Alteration of Public Electric Company into a Limited Company (Republic of Indonesia Official Gazette No. 34/1994);
5. Government Regulation No. 14/2012 on Electricity Providing Activity (Republic of Indonesia Official Gazette No. 28/2012, Republic of Indonesia Additional Gazette No. 5281) which was revised with Amendment of Government Regulation No. 14/2012 on Electricity Providing Activity (Republic of Indonesia Official Gazette No. 75/2014, Republic of Indonesia Additional Gazette No. 5530);
6. President Regulation No. 68/2015 on Ministry of Energy and Mineral Resources (Republic of Indonesia Official Gazette No. 132/2015) which was revised with President Regulation No. 105/2016 about Amendment of President Regulation No. 68/2015 about Ministry of Energy and Mineral Resources (Republic of Indonesia Official Gazette No. 289/2016);
7. Energy and Mineral Resources Minister Regulation No. 03/2007 on Rules of Power Network System in Java-Madura-Bali;
8. Energy and Mineral Resources Minister Regulation No. 37/2008 on Rules of Power Network System Sumatera;
9. Energy and Mineral Resources Minister Regulation No. 05/2014 on Procedures of Electrification Accreditation and Certification (Republic of Indonesia Official Gazette No. 166/2014) which was revised with Energy and Mineral Minister Regulation No. 10/2016 on

Amendment of Energy and Mineral Resources Minister Regulation No. 05/2014 on Procedures of Electrification Accreditation and Certification (Republic of Indonesia Official Gazette No. 560/2016);

10. Energy and Mineral Resources Minister Regulation No. 02/2015 on Rules of Power Network System in Sulawesi (Republic of Indonesia Official Gazette No. 29/2015);
11. Energy and Mineral Resources Minister Regulation No. 13/2016 on Organization and Working Procedures of Energy and Mineral Resources Ministry (Republic of Indonesia Official Gazette No. 782/2016).
12. Energy and Mineral Resources Minister Regulation No. 18/2016 on Rules of Power Network System in Kalimantan (Republic of Indonesia Official Gazette No. 982/2016);

DECIDES:

Stipulating: ENERGY AND MINERAL RESOURCES MINISTER REGULATION ON PRINCIPLES IN ELECTRICITY PURCHASING AGREEMENT.

CHAPTER 1 GENERAL PROVISION

Article 1

In this Minister Regulation, the definition of:

- (1). Electricity Purchase Agreement, which will be named as PJBL later, is a purchasing agreement between PLN as the buyer and a business entity.
- (2). Business Entity is a state-owned company, region-owned company, private company incorporated in Indonesia, cooperation, and non-governmental which run business in electrification.
- (3). Electric Power System is a electricity providing system which consisted of several power plants and substations that connected to each other with network transmission with load center or network distribution.
- (4). State-Owned Electric Company, which will be named as PLN, is a state-owned company which was established based on Government Regulation No. 23/1994 about the Alteration of Public Company of Electricity into a Limited Company.
- (5). Regulation of Electric Power Network System (Grid Code) is a set of rules, terms, and standards to assure safety, reliability, operation, and efficient system development in order to fulfill electricity needs in Electric Power System.

- (6). Commercial Operation Date, which will be shortened as COD is the operation date of power plants to distribute electricity to PLN's electric power network.
- (7). Availability factor, which will be shortened as AF, is an availability factor; a comparison between electricity production in kilowatt hour (kWh) which generated and taken by PLN and the total amount of installed electricity in total maximum electricity production which may be generated according to net dependable capacity, depending on the contract , in kilowatt hour (kWh) in certain period.
- (8). Capacity Factor, which will be shortened as CF, is a capacity factor; a comparison of average production capacity in megawatt (MW) within certain period and installed capacity.
- (9). Operation System Controller or Dispatcher is a unit of PLN which controls system operation based on local Grid Code.
- (10). Minister is a minister which runs and handles affairs in electricity sector.
- (11). Director General is a director general which tasked to formulate and execute policies in guiding, undertaking, technical, work safety, and environmental aspects in electricity sector.

Article 2

- (1). This minister regulation regulates principles about PJBL between PLN, as the buyer, and Business Entity as a seller in Electric Power System.
- (2). The principles, which regulated in PJBL, as mentioned in point (1), covers commercial aspect for all types of power plant, including geothermal, water, and biomass.
- (3). Principles which being regulated in PJBL for new and renewable energy power plant are intermittent, power plant which have capacity below 10 MW (ten megawatt), biogas power plant, city –waste power plant is regulated in their own Minister Regulation.

CHAPTER II PROVISIONS OF PJBL

Part One General

Article 3

PJBL between PLN and Business Entity must fulfill terms at least:

- a. PJBL time period;
- b. Rights and obligations of buyer and seller;
- c. Risks allocation;
- d. Project execution guarantee;
- e. Commissioning and COD;

- f. Fuel providing;
- g. Transaction;
- h. Control of system operation;
- i. Penalty of power generator's performance;
- j. PJBL termination;
- k. Rights redirection;
- l. Terms of price adjustment;
- m. Dispute resolving and
- n. Force majeure.

Part two

PJBL Time Period

Article 4

- (1) PJBL is conducted for 30 (thirty) years for the longest since the start of COD.
- (2) Time period, which mentioned in point (1), is conducted by considering the type of power plant.
- (3) PJBL, which mentioned in point (1), is using cooperation pattern of Build, Own, Operate, and Transfer (BOOT).
- (4) PJBL, as mentioned in point (3), for the capacity cost (Component A) of electric power is calculated according to investment value which depreciated for 20 (twenty) years at the least.
- (5) For the specific terms about cooperation pattern, as mentioned in point (3), is written in PJBL.

Part Three

Rights and Obligation of Electric Power Buyer and Seller

Paragraph 1

Rights and Obligation of Electric Power Seller

Article 5

- (1) As a seller, a business entity has the right to:
 - a. Receive payment of electric power according to PJBL;
 - b. Receive incentives of COD acceleration if the acceleration is asked by PLN; and
 - c. Receive deemed dispatch if PLN's network is disturbed not by force majeure.
- (2) As a seller, a business entity is obligated to:
 - a. Design, finances, builds, owns, operates, and transfer power plants, and may including transmission of electric power if needed;

- b. Give guarantee in project execution guarantee, and performance guarantee in penalty;
 - c. Pay penalty because of failure to achieve performance guarantee as mentioned in letter b, including penalty of the delayed COD;
 - d. Report the monthly electric power supply plan (projected AF);
 - e. Deliver and sells electric power to PLN according to the projected AF;
 - f. Handle the necessary permits;
 - g. Fulfill the local content rate;
 - h. Maintain the continuity of power supply during PJBL; and
 - i. Pay penalty according to the rules.
- (3) For more specific information about rights and obligations of Business Entity as a seller, is written on PJBL.

Paragraph 2

Rights and Obligations of Electric Power Buyer

Article 6

- (1) PLN, as the buyer has the right to:
- a. Receives the reliable and sustainable power supply from power plants; and
 - b. Receives every agreement needed for the PJBL
- (2) PLN as the buyer must:
- a. Give incentives for COD acceleration to the business entity if the acceleration asked by PLN.
 - b. Buy and utilize power produced by Business Entity according to the agreed PJBL within certain period of time.
 - c. Paying deemed dispatch if PLN's electric power network is disturbed not because of force majeure; and
 - d. Maintaining and preserving reliability of network facility in order to receive electric power from business entity.
- (3) Certain time of period, as mentioned in point (2) letter b, is a period of time which agreed by PLN and Business Entity by considering repayment period to the lender.
- (4) Specific terms about rights and obligations of PLN as buyer are written on PJBL.

Chapter 7

Business Entity which has more than one project is prohibited to compensate one loss in one project in order to reduce revenue in other project.

Part Four

Risks Allocation

Article 8

- (1) Risks which bore by PLN are including:
 - a. Change of regulation or policy (government force majeure);
 - b. Electric power needs;
 - c. Limited transmission ability; and
 - d. Force majeure.
- (2) Risks which bore by Business Entity are including:
 - a. Change of regulation or policy (government force majeure);
 - b. Land acquisition problem;
 - c. Permits, including environmental permit;
 - d. Fuel availability;
 - e. The building schedule precision;
 - f. Power plants performance; and
 - g. Force majeure
- (3) Risks of PLN as mentioned in point (1) letter a and Business Entity as mentioned in point (2) letter a, is regulated further in PJBL.

Part Five

Project Execution Guarantee

Article 9

- (1) Project execution guarantee must be given by business entity to PLN in form of performance security which consisted of:
 - a. Phase 1 (one);
 - b. Phase 2 (two); and
 - c. Phase 3 (three).
- (2) Phase 1 (one) of performance security, as mentioned in point (1) letter a, is a guarantee which given to ensure the achievement of financing date which in effect since the signing of PJBL until financing date.
- (3) Phase 2 (two) of performance security, as mentioned in point (1) letter b is a guarantee which given to ensure commissioned date which is in effect since the signing of PJBL until the commissioning date.
- (4) Phase 3 (three) of performance security, as mentioned in point (1) letter c, is a guarantee which given to ensure the execution of COD which in effect since the signing of PJBL until the execution of COD.

Part Six

Commissioning and COD

Article 10

Procedures about commissioning and COD of a power plant refer to the rule of law about accreditation and certification of electrification.

Article 11

- (1) Power plants operation must refer to rule of law about Regulation of Electricity Network System (Grid Code) of local system.
- (2) If there's a electricity system which doesn't have the regulation network as mentioned in point (1), the regulation is stipulated by Director General.
- (3) If there's no regulation network as mentioned in point (1) and (2), the operation of power plant can follow the existing rules.

Article 12

- (1) A business entity can accelerate its COD from the initial COD plan.
- (2) If COD is accelerated by PLN's request, Business Entity has the right to receive incentives.
- (3) The incentives as mentioned in point (2) are being decided business to business which will be written in PJBL.

Article 13

- (1) If COD started late because of Business Entity's fault, it will receive liquidated damage as penalty.
- (2) Details of liquidated damage penalty as mentioned in point (1) is worth the cost of electrification by PLN to replace the power which generated because of the delayed COD.

Part Seven

Fuel Providing

Article 14

- (1) Fuel providing can be done by PLN or Business Entity
- (2) Fuel providing, as mentioned in point (1), which done by PLN must fulfill terms and condition as follow:
 - a. Business entity guarantees Specific Fuel Consumption (SFC) or Specific Heat Rate (SHR) according to PJBL;
 - b. Business entity must monitor coal procurement cost according to contract which shows cost effectiveness and efficiency of procurement; and

- c. Gas fuel supplier must guarantee the continuity of gas supply and it must pay penalty if it can't fulfill the deal (deliver or pay).

Part Eight

Transaction

Article 15

- (1) PLN must buy electric power according to AF or CF, based on technical specification of power plant with the price that matches with the power price which approved by Minister.
- (2) PLN can buy electric power above AF or CF limit which written on PJBL with price which agreed by both parties.

Article 16

- (1) Business Entity must provide electric power as agreed on PJBL.
- (2) If the Business Entity can't deliver electric power according to PJBL, as mentioned in point (1) because of the failure and/or negligence of the Business Entity itself, Business Entity must pay penalty to PLN.
- (3) If PLN can't utilize electric power according to PJBL which caused by PLN's fault, PLN must pay penalty to business entity to certain period of time.
- (4) Penalty, as mentioned in point (2) and (3) is being set proportionally based on investment component.

Article 17

- (1) Payment of electric power trade is using rupiah, except if Bank of Indonesia gives exception.
- (2) If the transaction, as mentioned in point (1), is using US dollar, the currency which used for payment in rupiah is using Jakarta Interbank Spot Dollar Rate (JISDOR).

Part Nine

System Operation Control

Article 18

Operation System Controller (dispatcher) has a role to manage operation system (dispatch) of a power plant in order to maintain the reliability of Electric Power System according to the rule of law about Regulation of Electric Power Network System (Grid Code) of local system.

Article 19

- (1) Operation System Controller (dispatcher) must plan and conduct system operation (dispatch) in order to get reliability of electric power providing.
- (2) In planning and implementing system operation (dispatch), as mentioned in point (1), is implemented by considering condition of power generation with the least cost and technical operation by paying attention to network problem and standard quality of service.
- (3) In managing system operation (dispatch) of a power plant, as mentioned in point (2), Operation System Controller (dispatcher) must pay attention to every PJBL between PLN and Business Entity.

Article 20

- (1) Monthly system operation (dispatch) for every power plant must be declared and reported to Minister c.q. Director General
- (2) Report of system operation (dispatch) as mentioned in point (1) is including violation of Grid Lock of local system, which done by both PLN or Business Entity.

Part Ten

Penalty toward Power Plant Performance

Article 21

- (1) Performance criteria of power plant can be graded with actual value of AF or CF, heat rate, or other technical terms which agreed on PJBL.
- (2) If the actual value, as mentioned in point (1), isn't in line with the agreed value between PLN and Business Entity, because of the business entity's fault, the business entity can be imposed by penalty.
- (3) Penalty, as mentioned in point (2) is including as follow:
 - a. Liquidated damaged (LD);
 - b. AF or CF penalty;
 - c. Outage factor (OF) penalty;
 - d. Heat rate penalty;
 - e. Penalty of failure to bear mega volt ampere reactive (MVAR)
 - f. Penalty of failure to maintain frequency; and
 - g. Penalty of ramp rate speed

Article 22

- (1) Liquidated damaged (LD), as mentioned in article 21 point (3) letter, is a penalty which occurred by the delay of COD implementation according to PJBL, which value is proportional to cost spent by PLN, because the promised power is unavailable.

- (2) AF or CF penalty and outage factor (OF) penalty, as mentioned in article 21 point (3) letter b and c, is stipulated as much as the cost which spent by PLN, because the promised power is unavailable.
- (3) Heat rate penalty, as mentioned in article 21 point (3) letter d is enacted special for gas fueled power plant which gas is prepared by PLN and coal fueled power plant.
- (4) Value of gas fueled power plant's heat rate, as mentioned in point (3), is worth gas price multiplied by heat rate which agreed upon the actual heat rate.
- (5) Value of coal fueled power plant, as mentioned in point (3), is realized with payment of fuel component (C component) from the buyer, based on the agreed heat rate.
- (6) Penalty of failure to bear mega volt ampere reactive (MVAR), as mentioned in article 21 point (3) letter e, is a penalty which occurred because the power plant owned by Business Entity failed to bear mega volt ampere reactive (MVAR) in PLN's interconnection system.
- (7) Penalty of failure to bear mega volt ampere reactive (MVAR), as mentioned in point (6), is not in effect if it caused by the request of System Operation Controller (Dispatcher).
- (8) Penalty of failure to maintain frequency, as mentioned in article 21 point (3) letter f, is a penalty which occurred when power plant owned by Business Entity is failed to fulfil terms in Regulation of Electric Power Network System (Grid Code) of local system.
- (9) Penalty of ramp rate speed, as mentioned in article 21 point (3) letter g, is imposed to power plant owned by Business Entity if it can't fulfill certain number and time of loading change has fulfill system operation (dispatch).

Part Eleven

PJBL Termination

Article 23

- (1) PJBL termination can occur if:
 - a. PJBL period has ended;
 - b. Termination by one party;
 - c. No financing deal;
 - d. Business Entity is bankrupt or liquidated; or
 - e. Force majeure.
- (2) PJBL termination by one party, as mentioned in point (1) letter b, can be done before PJBL period is end, and it can be done because:
 - a. Permit is not issued;
 - b. Can't receive financing; or
 - c. Unexpected costs is too large
- (3) Details about mechanism and consequence of PJBL termination, as mentioned in point (1) is written in PJBL.
- (4) PJBL termination must be reported to Minister through Director General.

Part Twelve
Rights Redirection

Article 24

- (1) Rights redirection from Business Entity can't be done until the power plant enter COD phase.
- (2) Rights redirection, as mentioned in point (1) is excluded for rights redirect to affiliation in which the share is owned more than 90% (ninety percent) by sponsor which meant to be redirect the share.
- (3) Ownership redirection, when COD is implemented, can be done when there's a written agreement from the buyer.
- (4) Rights redirection, as mentioned in point (3), is reported to Minister through Director General.

Article 25

Rights redirection of geothermal power plant is conducted based on rule of law in geothermal sector.

Part Thirteen
Terms of Price Adjustment

Article 26

- (1) Electric power price adjustment can be done if there's a change in cost and technical aspect.
- (2) Price adjustment, as mentioned in point (1) can be done if there's a change in:
 - a. Regulation about electric power price;
 - b. Tax regulation;
 - c. Environmental regulation; and/or
 - d. Regulation related to energy cost.
- (3) Change in technical aspect, as mentioned in point (1), is stipulated according to the deal in PJBL between PLN and Business Entity.

Part Fourteen
Dispute Resolve

Article 27

- (1) Every dispute which happen between PLN and Business Entity is resolved by amicable discussion.

- (2) If the dispute can't be resolved with amicable discussion, as mentioned in point (1), it will be handled by the agreed expert.
- (3) If the decision given by expert, as mentioned in point (2) can't be accepted, dispute resolve will be decided by Indonesian National Arbitration Agency, The United Nations Commission on International Trade Law (UNCITRAL) or other arbitration agency.
- (4) Decision which given by arbitration agency, as mentioned in point (3), is the last decision which bind.

Part Fifteen

Force Majeure

Article 28

- (1) All parties if freed from all obligation if force majeure occurred.
- (2) Force majeure, as mentioned in point (1) are as following:
 - a. natural disaster (natural force majeure);
 - b. Changing Rule of law; or
 - c. Changing government policy (government force majeure).
- (3) If force majeure caused by natural force majeure, as mentioned in point (2) letter a, causes delay of COD, the COD schedule can be delayed according to the length of time of the natural force majeure, including time which needed to fix the project.
- (4) If natural force majeure, as mentioned in point (2) letter a, makes the generated energy unable to be distributed, PJBL can be prolonged according to the duration of natural force majeure, including the time which needed to fix the project.
- (5) If force majeure caused by the changing rule of law, as mentioned in point (2) letter b, induces new investment or additional cost, Business Entity has the right to receive adjustment of electric power selling price.
- (6) If force majeure caused by the changing rule of law, as mentioned in point (2) letter b, reduced costs, PLN has the right to adjust electric power selling price.
- (7) If government force majeure, as mentioned in point (2) letter c, makes the project stopped or the power plant can't be operated, PLN or Business Entity are freed from its obligations.

CHAPTER III

OTHER PROVISIONS

Article 29'

Other conditions which hasn't regulated in this Minister Regulation will be regulated in PJBL by business to business between PLN and Business Entity.

CHAPTER IV TRANSITIONAL PROVISIONS

Article 30

When this Minister Regulation is in effect, if there are project which has conduct bid closing, letter of intent signing, or PJBL signing including price adjustment and/or other PJBL amendment process before this Minister Regulation issued, is still declared as valid.

Article 31

When this Minister Regulation is in effect, the geothermal power plants which:

- a. Has conducted auctioning and price offering;
- b. Has decided its winner; or
- c. Its trading agreement has been signed,
Before this Minister Regulation is issued, is still declared as valid.

Article 32

When this Minister Regulation is in effect, all new project power trade project of Independent Power Producer (IPP), which hasn't entered the date of bid closing, must adjust to the new Minister Regulation.

CHAPTER V CLOSING PROVISION

Article 33

This Minister Regulation is in effect since the issuing date.

In order to make this regulation knowledgeable to public, this Minister regulation must be placed in Republic of Indonesia Official Gazette.

Stipulated in Jakarta on 19 January 2017.