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Indonesia: Law and Practice
Emir Nurmansyah and Fina Hayu
ABNR Counsellors at Law



INDONESIA



Law and Practice

Contributed by:

Emir Nurmansyah and Fina Hayu
ABNR Counsellors at Law

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ABNR Counsellors at Law is Indonesia's longest-established law firm. Founded in 1967, it pioneered the development of international commercial law in the country following the reopening of its economy to foreign investment after a period of isolationism in the early 1960s. With over 100 partners and lawyers (including two foreign counsel), ABNR is the largest independent, full-service law firm in Indonesia and one of the country's top three law firms by num-

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Authors



Emir Nurmansyah is a senior partner at ABNR and a member of the firm's management board. Emir is one of the most respected and versatile lawyers in Indonesia today. After some

30 years in legal practice, he is a market-leading lawyer for project finance and development, banking and finance, corporate/mergers and acquisitions (M&A), and foreign direct investment (FDI). He also offers extensive experience and expertise in restructuring and insolvency, shipping, aviation, and technology, media and telecommunications (TMT).



Fina Hayu joined ABNR in 2007 and was made partner in January 2019. She focuses her practice on project finance and development, M&A and foreign direct investment (FDI). Fina is

recognised in the projects and energy space and is highly regarded for her work in project finance. Fina has been lauded as a leading woman lawyer in Indonesia and is one of six ABNR lawyers on the 2022 list of "Indonesia's top 50 up-and-coming future legal leaders.

ABNR Counsellors at Law

Graha CIMB Niaga
24th Floor
Jl. Jenderal Sudirman Kav. 58
Jakarta 12190
Indonesia

Tel: +62 21 2505125
Email: Info@abnrlaw.com
Web: www.abnrlaw.com



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1. Structure and Ownership of the Power Industry

1.1 Law Governing the Structure and Ownership of the Power Industry

The power industry consists of: (i) generation, (ii) transmission, (iii) distribution, (iv) sale and (v) integrated activities, covering more than one of the foregoing activities.

The electricity regulations generally allow for bundled or unbundled activities. However, it is to be noted that Constitutional Court Decision No 111/PUU-XIII/2015, dated 14 December 2016 (“Constitutional Court Decision”), ruled that the concept of “unbundling” under the Electricity Law is conditionally unconstitutional if:

- it results in the loss of the government’s control over electricity supply and therefore contradicts the principle that electricity should be under the government’s control; or
- it is interpreted as the government relinquishing control over the power sector in violation of the principle under the constitution where the government must control electricity or power supply in Indonesia.

In practice, the Constitutional Court Decision has not affected the power industry since the government, through MEMR, still controls the industry by way of issuing approvals, permits or licenses to conduct the power business activities, including control over the electricity purchase price and tariff to end consumers. In current practice, the power industry in Indonesia consists of the following:

- unbundled activities for each of generation, transmission, distribution and sale, with mostly private investor-owned companies engaging in the power generation activities with PLN (a state-owned enterprise) as the off-taker; or
- bundled activities that carry out all of the above electricity supply operations (power generation, transmission, distribution and sale) by a single company. Although the regulations allow for bundled activities covering only two activities, such as distribution and sale only, one has never been seen one in Indonesia.

The market players in the power industry are a combination of state-owned enterprise (includ-

ing its subsidiaries) and private, investor-owned companies.

The power industry is mainly governed by Law No 30 of 2009 on electricity, as lastly amended by Government Regulation in Lieu of Law No 2 of 2022 on Job Creation (which has become law pursuant to Law No 6 of 2023) (the “Electricity Law”).

1.2 Principal State-Owned or Investor-Owned Entities

The principal state-owned enterprise in the power industry is PT Perusahaan Listrik Negara (Persero) (PLN), which owns and operates generation, transmission and distribution facilities in Indonesia. PLN acts as main offtaker of power or electricity generated by investor-owned companies that own and operate generation facilities. PLN also has the mandate from the government to purchase electricity/power generated from geothermal and waste-to-energy power plants. There are also other state-owned enterprises that participate in the power industry, such as Pertamina. However, their role or position in the market is the same as investor-owned companies. Major investor-owned companies in power industry are, among others, the following.

- For local or domestic companies that own and operate power generation facilities, there are Adaro, Indika, Medco. Well-known foreign investors that own and operate power generation facilities in Indonesia are Sumitomo, J-Power and KOMIPO, to name a few.
- Major local investor-owned companies that sell electricity to end-user consumers are PT Cikarang Listrindo and PT Bekasi Power, which supply electricity to industrial estates.

1.3 Foreign Investment Review Process

Save for power generation of less than 1 MW (which is closed for foreign investment), there is no foreign investment restriction applicable to the power industry, which is open for 100% foreign investment. Foreign investment in the power industry is generally subject to protection set out in Law No 25 of 2007 on Investment as amended by Law No 6 of 2023 on Stipulation of Government Regulation in Lieu of Law No 2 of 2022 on Job Creation to become Law (the “Investment Law”). The Investment Law provides right to the investor to repatriate (in foreign currencies) among others, capital, profits, dividends, other income, royalties and proceeds of the sale or liquidation of the investment. With respect to seizure, confiscation and expropriation, the Investment Law does not specifically use the foregoing terms and instead it refers to nationalisation or taking over the ownership right of the investor. The Investment Law provides that the government shall not conduct nationalisation or taking over of investors’ rights unless it is conducted based on law, and the government must provide compensation, which amount shall be based on market value. The market price should be determined by an independent valuer appointed by the parties and based on a method that is used internationally.

The Investment Law also provides that in the case of an investment dispute between the government and a foreign investor, the parties can refer and settle the dispute through international arbitration, if both parties agree to it.

The Investment Law and the implementing regulations also provide investment facilities, such as exemption of import duties for capital goods. Specifically for renewable energy, the government also provides the following fiscal facilities to encourage investment:

- income tax facilities in the form of a 30% reduction of net income for six years, escalated depreciation and amortisation, and compensation for any loss that occurred for more than five years, but not more than ten years' tax holiday;
- tax holiday in the form of exemption from tax for between five and ten years as of the commercial operation of the power plant and 50% reduction of tax from outstanding income tax for two years; and
- VAT exemption and exemption of import duty for capital goods.

1.4 Law Governing the Sale of Power Industry Assets

The restrictions regarding the sale of power industry assets or business or other transactions such as amalgamations and mergers are applicable to power projects developed under the Build, Operate, Owned, Transfer (BOOT) scheme with PLN as the offtaker, pursuant to a power purchase agreement (PPA). Pursuant to MEMR Regulation No 48 of 2017 concerning the Supervision of Business Activities in Energy and Mineral Resources Sector (MEMR 48/2017), any transfer of shares in power generation companies which sell electricity to PLN under a PPA are subject to the following restrictions.

- For a non-geothermal power plant, any transfer of shares in the power generation companies before a commercial operation date must be initially approved by PLN and in any case, the shares can only be transferred to the subsidiary of the transferring shareholder, which is more than 90% owned by the transferring shareholder. Subsequently, the power generation companies must notify the MEMR no later than five business days from the date the Ministry of Law and Human

Rights (MOLHR) provides approval/receipt of notification for the change of shareholding.

- For a geothermal power plant, power generation companies may transfer their shares in Indonesia's stock exchange once the exploration phase is complete, and must obtain approval from MEMR prior to the initial public offering (IPO) or the transfer of share ownership is recorded in the stock exchange. The MEMR approval is also required before any secondary rights issue. It is unclear whether the restriction on the transfer of shares during the exploration phase applies to private sales. However, in practice and in the view of the Directorate General of New, Renewable Energy and Energy Conservation of the MEMR, geothermal power generation companies can privately transfer their shares during the exploration and exploitation phases. The requirement to notify the MEMR no later than five business days from the date the Ministry of Law and Human Rights (MOLHR) provides approval/receipt of notification for the change of shareholding is also applicable in this case.

Other than the above restrictions, amalgamations and mergers or the transfer of shares that constitute an acquisition are also subject to the requirements under Law No 40 of 2007 concerning Limited Liability Company as amended by Law No 6 of 2023 on Stipulation of Government Regulation in Lieu of Law No 2 of 2022 on Job Creation to become Law (the "Company Law") as follows.

- It must be announced in at least one daily Indonesian newspaper with national circulation and announced in writing to the employees of the company that is going to enter a merger, amalgamation or is being acquired.
- The amalgamation, merger or acquisition (including the merger/acquisition plan) must

be approved by the general meeting of shareholders that must be attended by at least three quarters of the total amount of voting shares, and the resolution is valid if it is approved by at least three quarters of the total amount of votes cast, unless the articles of association of the relevant company provides greater quorum for attendance and voting.

- The articles of association of the surviving company will only become effective once it is approved by the MOLHR.
- The board of directors of the surviving company must announce the consummation of the merger, amalgamation or acquisition in at one daily Indonesian newspaper with national circulation or more, after the effective date of the merger, amalgamation or acquisition.

There are no minimum requirements under the regulation that must be satisfied by a purchaser of assets or an acquirer of a business, such as financial metrics and industry expertise.

1.5 Central Planning Authorities

The central authority that oversees and administers the electricity supply and the development of the electricity supply and the development of transmission facilities is the MEMR. The MEMR's roles and powers are to: (i) issue regulations covering among others, licences and approvals required, safety and technical standards related to the construction and operation of power generation, transmission, distribution systems, (ii) issue the permits such as business licences and worthiness certificates.

1.6 Recent Changes in Law or Regulation

Over the past year, the government has issued new regulations in the power industry in particular for the acceleration of development of renew-

able energy power plants and energy transition. In September 2022, the President issued Presidential Regulation 112 of 2022 on the Acceleration of Renewable Energy Development for Power Supply (PR 112/2022). The PR 112/2022 regulates, among others:

- the mechanism for PLN to procure and appoint independent power producers (IPP) to develop renewable energy power plants – ie, through a direct selection process except in certain circumstances (such as expansion of the existing project), it can be by way of direct appointment;
- new electricity purchase price for renewable energy power plants, where it consists of ceiling price mechanism and agreed price mechanism. In the ceiling price mechanism, the price is based on negotiation with an upper limit based on a ceiling price, as set out in the PR 112 and with no escalation during the PPA period, except for geothermal power plants. In the agreed price mechanism, the price is solely based on negotiation between PLN and the IPP and approval must be obtained from MEMR. The agreed price mechanism is applicable to hydro peak power plants, biofuel, and tidal/ocean thermal energy conversion power plants; and
- the restriction on the operation and development of new, coal-fired power plants, except for those that have been listed in the PLN's Electricity Supply Business Plan before the issuance of PR 112/2022 or if they meet certain criteria (eg, they will not be in commercial operation beyond 2050). PR 112/2022 also imposes an obligation on the PLN to accelerate the decommissioning of its own coal-fired power plants and those owned by IPPs by way of early termination of the PPAs.

In addition to the above, the Minister of Finance issued regulations on carbon tax and carbon pricing. MEMR has also issued regulations on procedures for implementing carbon economy in the power generation subsector as one of the implementing regulations for Presidential Regulation No 98 of 2021 on Carbon Pricing for Achieving Nationally Determined Contribution Target and Controlling Greenhouse Gas Emissions in National Development (PR 98/2021).

1.7 Announcements Regarding New Policies

In addition to the issuance of several new regulations on renewable energy power plants and carbon economy in the power sector, the government also encourages and, to a certain extent, requires the implementation of environment, social, and good governance (ESG) in infrastructure and public interest projects, including power projects. MEMR and Indonesia's Stock Exchange are currently also developing the market for carbon trading, which may impact and change the power industry in Indonesia.

1.8 Unique Aspects of the Power Industry

The power industry in Indonesia is heavily regulated by the government, although the participation of private investors is allowed and is encouraged by the government. Nevertheless, the power industry in Indonesia, by nature, is still under the monopoly of PLN.

2. Market Structure, Supply and Pricing

2.1 The Wholesale Electricity Market

The wholesale electricity market in Indonesia is still monopolised by PLN, although by regulation, private-owned companies can directly sell

electricity to end-consumers, subject to the requirements of the regulations. There are several private power utility (PPU) companies, or integrated power companies, in Indonesia that sell electricity to end-consumers in an industrial area or parks (such as PT Cikarang Listrindo and PT Bekasi Power). The wholesale price of electricity is determined by the central government with the approval from the House of Representatives. The wholesale electricity market in Indonesia is based on the energy market. The main supplier of electricity to end consumers is PLN, although there are certain areas, such as industrial parks, where the electricity is supplied by PPU. The electricity tariff charged to end consumers is determined by the central government and may vary in every region.

2.2 Electricity Imports and Exports

Import and export of electricity to/from other jurisdictions is permitted. The import of electricity can be made subject to the following conditions:

- there is a shortage of electricity supply in the local areas that cannot be met by PLN or private power companies in Indonesia;
- the import is only to support and meet the local electricity needs;
- it is not detrimental to the state and national interest (ie, sovereignty, security and economic development);
- to improve the quality and reliability of local power supply;
- to not disregard the development of domestic power supply capability; and
- to not have dependence on power procurement from abroad.

Electricity can be exported if: (i) there is no shortage of electricity in the local area, (ii) the sale price is not subsidised and (iii) it does not

compromise the quality and reliability of local or domestic power supply.

The export-import of electricity can only be done by the holder of the Electricity Supply Business Licence with a separate or additional electricity business licence for the export-import of electricity from MEMR. The (export-import) Electricity Supply Business Licence is valid for five years and can be extended.

2.3 Supply Mix of Electricity

The coal-fired power plant is still dominant in the supply mix of electricity for the entire market. Supply from new and renewable energy power plants was still relatively low in 2022 – ie, around 14.11% of the energy mix.

2.4 Law Governing Market Concentration Limits

There is no regulation on market concentration limits. However, the electricity market in Indonesia is generally controlled by the government with PLN, as the electricity state-owned enterprise is given the mandate (and thus priority) in making sure the supply of electricity for public interest is met. Consequently, the electricity market is monopolised and, to a certain extent, controlled by PLN.

2.5 Surveillance to Detect Anti-competitive Behaviour

Although the private-owned companies are allowed to participate in the power market in Indonesia, the market itself is heavily regulated by the government and thus it is not as free or competitive a market as in other jurisdictions. Market surveillance in Indonesia is conducted by the Indonesia Competition Commission (*Komisi Pengawas Persaingan Usaha* or KPPU). KPPU's scope of power includes to conduct an assessment of business activities and/or actions of

business actors that may result in monopolistic practices and/or unfair business competition, conduct investigation or examinations into cases or alleged monopolistic practices and/or unfair business competition and conduct interviews for the purpose of obtaining evidence. KPPU also has the authority to impose administrative sanctions on the business actors that violate anti-competition law or conduct anti-competitive behaviour.

3. Climate Change Laws and Alternative Energy

3.1 Climate Change Law and Policy

Climate change is primarily regulated under Presidential Regulation No 98 of 2021 on Carbon Pricing for Achieving Nationally Determined Contribution Target and Controlling Greenhouse Gas Emissions in National Development (PR 98/2021). There are also specific regulations relating to the power industry – ie, MEMR Regulation No 16 of 2022 on Procedures for Implementing Carbon Economy in the Power Generation Sub-sector (Regulation 16/2022). Under these regulations, to limit carbon or GHG emissions, the government imposes carbon tax and implements a cap-and-trade policy.

Regulation 16/2022 provides that each CFPP will be subject to GHG Emission Limits determined by MEMR. The CFPP IPP can purchase carbon credit from the holder of an Emission Reduction Certificate that is verified and registered in the Climate Change Control National Registration System (locally known as SRN PPI) as an offset of its GHG emissions. Further implementation regulation from MEMR is still pending GHG emission calculation. MEMR is also in the process of establishing and developing the web-based application (APPLE-Gatrik) that is going

to be used for the calculation and reporting of GHG emission and mitigation action (including offset carbon trading).

3.2 The Early Retirement of Carbon-Based Generation

PR 112/2022 restricts the operation and development of new coal-fired power plants, except for those that have been listed in the PLN's Electricity Supply Business Plan before the issuance of PR 112/2022 or if they meet certain criteria (eg, it will not be in commercial operation beyond 2050). PR 112/2022 also imposes an obligation on the PLN to accelerate the decommissioning of its own coal-fired power plants and those owned by IPPs by way of early termination of the PPAs. Issuance of new regulations or amendments to existing regulations may be required to implement the foregoing mandates under PR 112/2022, including compensation that may need to be provided to PLN or the CFPP IPP for loss of income and/or value of the disposed generation assets.

3.3 Programmes for the Development of Alternative Energy Sources

There are no specific programmes to encourage development of alternative energy sources. However, the government encourages development by way of supporting and participating in the pre-feasibility and feasibility studies of alternative energy sources, such as hydrogen. At the moment, the development of hydrogen is still in early development and there is no specific regulation for the rights to explore hydrogen or any incentives or subsidies from the government.

4. Generation Facilities

4.1 The Construction and Operation of Generation Facilities

The construction of generation facilities is subject to the Electricity Law, Construction Law (Law No 2 of 2017 as amended by Government Regulation in Lieu of Law No 2 of 2022 on Job Creation (which has become law pursuant to Law No 6 of 2023)) and the implementing regulations – ie, Government Regulation No 25 of 2021 on Implementation of Energy and Mineral Sector, Government Regulation No 62 of 2012 on the Electricity Supporting Services Business and Government Regulation No 22 of 2020 on Construction Services as amended by Government Regulation 14 of 2021. The operation of generation facilities is subject to the Electricity Law and the implementing regulation – ie, Government Regulation No 62 of 2012 on the Electricity Supporting Services Business.

In order to construct generation facilities, the contractor must have: (i) a Construction Business License, (ii) a Business Entity Certificate from the Ministry of Public Works and Housing and the Ministry of Energy and Mineral Resources, and (iii) an Electricity Supporting Business Licence. If the operation of the generation facilities is conducted by a third-party O&M contractor or company instead of the IPP/asset owner, the O&M contractor must have: (i) an Electricity Supporting Business Licence and (ii) Business Entity Certificate.

4.2 Obtaining Approvals for the Construction and Operation of Generation Facilities

In addition to the licences associated with the construction contractor, to construct a generation facility, the project company/IPP/owner of

the asset must obtain the following main licences:

- Approval of Conformity of Space Utilisation Activities;
- Environmental Approval or Approval of Environmental Impact Analysis Documents (AMDAL); and
- Building Approval.

In the preparation and making of the AMDAL, the project company/IPP/owner of the asset must conduct public consultation and the relevant authority (ie, the Ministry of Environment and Forestry or its regional office) will conduct detailed review or assessment processes before it issues the Approval of AMDAL.

To commercially operate the generation facility, the project company/IPP/owner of the asset must initially obtain a Worthiness Certificate (*Sertifikat Laik Operasi* or SLO) for the generation installations.

4.3 Terms and Conditions Imposed in Approvals for the Construction and Operation of Generation Facilities

The construction and operation of the generation facility must comply with the conditions set out in the approved AMDAL and the design approved under the Building Approval. It must also comply with any standard safety, health and environment under the regulations (which also should have been incorporated or reflected in the AMDAL). The regulations do not contain provisions which provide for relaxation of a term or condition for approval.

4.4 Eminent Domain, Condemnation or Expropriation Rights

Generally, a proponent for the construction and operation of a generation facility does not have

eminent domain, condemnation or expropriation rights in order to obtain surface access and use. In order to acquire the land or obtain surface access and use, the proponent must obtain Approval of Conformity of Space Utilisation Activities as evidence that the location where the generation facilities are to be built and operated can be used for power generation activities. Upon obtaining the foregoing approval, the proponent can purchase or acquire the land from the landowners. There is no specific regulation on the procedure for compensation to the landowners unless it is a Public Private Partnership (PPP) project, which land acquisition is based on Law No 2 of 2012 on Acquisition of Land for Development in Public Interest as amended by Law No 11 of 2020. In general, the compensation must be based on market price or value, and for a PPP project, it must be based on calculation determined by a land appraiser who holds a permit from the Minister of Finance and a licence from the Land Administrator.

4.5 Decommissioning a Generation Facility

There is no specific regulation for decommissioning a generation facility. However, since decommissioning activities will likely have an impact on the environment, decommissioning must comply with any environmental and safety regulations applicable to the activities. Further, the AMDAL should also contain terms and conditions for the decommissioning of the relevant generation facilities and thus the project company/IPP/owner of the asset must follow and comply with its AMDAL that has been approved by the Ministry of Environment and Forestry.

5. Transmission Lines and Associated Facilities

5.1 Regulation of the Construction and Operation of Transmission Lines and Associated Facilities

Please see 4.1 **The Construction and Operation of Generation Facilities**, as the same regulations are also applicable for the construction and operation of transmission lines and associated facilities. For transmission lines, the proponent must prepare Environmental Management Efforts and Environmental Monitoring Efforts and obtain a recommendation from the Environment and Forestry Office. Environmental Management Efforts and Environmental Monitoring Efforts do not require detailed review and assessment (including public hearing) and only inspection of the documents by the Environment and Forestry Office and the issue of a recommendation (which serves as an approval), is required.

5.2 Obtaining Approvals for the Construction and Operation of Transmission Lines and Associated Facilities

The contractor that builds or constructs, and the O&M contractor that operates the transmission lines and associated facilities must obtain the same licenses as set out in 4.1 **The Construction and Operation of Generation Facilities**. The project company or the owner of the asset must also obtain: (i) an Approval of Conformity of Space Utilisation Activities, (ii) an Environmental Approval in the form of recommendation of Environmental Management Efforts and Environmental Monitoring Efforts and (iii) a Building Approval.

Please see 5.1 **Regulation of the Construction and Operation of Transmission Lines and**

Associated Facilities for the process of obtaining the Environmental Approval.

5.3 Terms and Conditions Imposed in Approvals for the Construction and Operation of a Transmission Line and Associated Facilities

Please refer to 4.3 **Terms and Conditions Imposed in Approvals for the Construction and Operation of Generation Facilities**, as the same principles are also applicable to the construction and operation of transmission lines and associated facilities. MEMR also issued technical regulations on transmission lines standard and associated facilities. Further, in IPP projects with BOOT scheme with PLN, transmission lines and associated facilities build by the IPP are going to be transferred to PLN, and thus the construction must be in accordance with the design and standard determined by PLN.

5.4 Eminent Domain, Condemnation and Expropriation Rights

Please refer to 4.4 **Eminent Domain, Condemnation or Expropriation Rights**. In addition to the compensation for acquisition of land for the tower footage, the proponent must also provide right of way compensation to the landowners whose land is traversed by the transmission cables. The compensation is regulated under MEMR Regulation No 27 of 2018 concerning Compensation for Land, Buildings, and/or Plants Under the Free Space of the Electric Power Transmission Network. The MEMR regulation sets out the formula to calculate the compensation for buildings, land and/or plants. The calculation and determination of the compensation amount must be done by the Independent Appraisal Agency. The right-of-way compensation is to be paid once to the landowner

5.5 Monopoly Rights to Provide Transmission Services

Transmission lines in Indonesia are mostly owned and operated by PLN and only handful of transmission lines are owned and operated by private entities such as PT Cikarang Listrindo or captive power plant. By regulation, it is possible for a private entity to own and operate transmission lines subject to obtaining Stipulation of Business Area (which sets out the specific area in which the transmission company can construct, operate the transmission lines and provide transmission services) from the Minister of Energy and Mineral Resources. Once it has received the Stipulation of Business Area for transmission services, the transmission entity has an exclusive right to construct and operate transmission facilities within a defined territory under the Stipulation of Business Area and competitors are prohibited from building transmission lines in that territory and offering transmission services, since under the regulation, there cannot be more than one holder of Stipulation of Business Area covering the same area.

5.6 Transmission Charges and Terms of Service

The Electricity Law only provides that electrical grid rent price must be charged based on the principle of sound business. The rent price is also subject to approval from the Ministry of Energy and Mineral Resources. The term of services is not regulated and thus can be agreed contractually by the parties.

5.7 Open-Access and Non-discriminatory Transmission

The electricity regulations require or oblige a transmission entity to open opportunities for shared utilisation of transmission networks for the public interest and to provide transmission service to all parties that request it, but accord-

ing to, or taking into consideration, the ability and capacity of the transmission lines.

6. Distribution

6.1 Law Governing the Construction and Operation of Electricity Distribution Facilities

Please see 4.1 **The Construction and Operation of Generation Facilities**, as the same regulations are applicable to the construction and operation of electric distribution facilities.

6.2 Obtaining Approvals for the Construction and Operation of Electricity Distribution Facilities

Please see 5.1 **Regulation of the Construction and Operation of Transmission Lines and Associated Facilities** and 5.2 **Obtaining Approvals for the Construction and Operation of Transmission Lines and Associated Facilities**, as the same requirements are applicable to the construction and operation of electric distribution facilities.

6.3 Terms and Conditions Imposed in Approvals for the Construction and Operation of Electricity Distribution Facilities

Please see 5.3 **Terms and Conditions Imposed in Approvals for the Construction and Operation of a Transmission Line and Associated Facilities**.

6.4 Eminent Domain, Condemnation or Expropriation Rights for the Construction and Operation of Electricity Distribution Facilities

Please see 4.4 **Eminent Domain, Condemnation or Expropriation Rights** and 5.4 **Eminent**

Domain, Condemnation and Expropriation Rights.

6.5 Monopoly Rights for Electricity Distribution Entities

Once they have received the Stipulation of Business Area for distribution from the Minister of Energy and Mineral Resources, the distribution entities have an exclusive right to construct and operate distribution facilities within a defined territory under the Stipulation of Business Area, and competitors are prohibited from building distribution facilities in that territory, since under the regulation, there cannot be more than one holder of Stipulation of Business Area for distribution covering the same area.

6.6 Electricity Distribution System Charges and Terms of Service

The distribution entities can open opportunities for shared utilisation of the distribution network but are not obliged to do so. The charges and terms of service can be agreed between the parties. However, the service charge or price is subject to approval from the Minister of Energy and Mineral Resources.

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