Indonesia energy storage regulations

In March 2023, Indonesia"s Minister of Energy and Mineral Resources, Arifin Tasrif, announced the Ministry of Energy and Mineral Resources Regulation No. 2 of 2023 concerning Implementation of Carbon Capture and Storage, as well as Carbon Capture, Utilization and Storage in Upstream Oil and Gas Business Activities (the "MEMR 2/2023"). Indonesia, which has geological formations well suited to the development of carbon capture and storage ("CCS") as well as carbon capture, utilization and storage ("CCUS") projects, has become one of the first countries in Southeast Asia to promulgate regulations to support the integration of CCS/CCUS projects within upstream exploration and production activities with the goal of helping to decarbonize the industry.

According to the International Energy Agency, "successfully deploying CCUS relies on the establishment of legal and regulatory frameworks to ensure the effective stewardship of CCUS activities and the safe and secure storage of CO2"1. MEMR 2/2023 (which consists of 11 chapters and 61 articles) has been drafted with the goal of encouraging the development of commercial scale CCS/CCUS projects in Indonesia. Some of the key items addressed in MEMR 2/2023 include:

Although the regulation does provide some much needed clarity around the scope and requirements of CCS/CCUS activities, there are a number of issues that remain to be addressed, including leakage risk, allocation of title and risk in the context of commingled carbon and ensuring quality specifications. It is also unclear to what extent Indonesia will look to offer financial incentives to attract investment across the CCS/CCUS value chain, and it will be interesting to see whether the Indonesian government will follow jurisdictions such as the United States, the United Kingdom and Europe by introducing tax breaks and credits for CCUS technologies.

CCS/CCUS technologies are set to play an important role in supporting the clean energy transition across Southeast Asia. Indonesia"s neighboring countries Malaysia, Vietnam, Thailand and the Philippines all have potential for geological storage of CO2andare working to draft their own regulations and so are likely closely monitoring the developments in Indonesia and the impact MEME 2/2023 has on the development of domestic CCS/CCUS projects.

Also, we may wait and see whether Indonesia"s MEMR 2/2023 could serve as a stepping stone towards discussion around regional cooperation. Although domestic regulations such as MEMR 2/2023 will be important to the development of domestic CCS/CCUS projects, regional cooperation will be absolutely critical to unlock the region"s vast carbon-capture potential. A series of issues will inevitably arise in a cross-border context, so without regional cooperation to foster confidence and certainty around a cross-border/transboundary legal and regulatory regime, the idea of transporting CO2from Singapore to Indonesia through pipeline or shipping CO2from countries such as Japan and South Korea to Malaysia may merely remain a lofty ambition.

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Interstate oil, liquid and refined products pipelines regulated by the Federal Energy Regulatory Commission (FERC) will soon be able to raise their transportation rates (provided they were set using FERC"s popular Index rate methodology) in the wake of a significant new decision by the District of Columbia Circuit (the D.C. Circuit) in Liquid Energy Pipeline Association v. FERC (LEPA).

On July 9, 2024, the U.S. Court of the Appeals for the D.C. Circuit held that the Federal Energy Regulatory Commission (FERC or the Commission) erred in ordering refunds for certain bilateral spot market transactions in the Western Energy Coordinating Council (WECC) region that exceeded the $1,000/megawatt-hour (MWh) "soft" price cap for such sales.1 Finding FERC failed to conduct a "Mobile-Sierra public-interest analysis" before "altering" those contracts by ordering refunds, the court vacated FERC"s orders and remanded the case to FERC for further proceedings.2

On June 28, 2024, in Loper Bright Enterprises v. Raimondo, the U.S. Supreme Court overruled Chevron U.S.A. Inc. v. Natural Resources Defense Council, Inc., which for 40 years required court deference to reasonable agency interpretations of federal statutes in certain circumstances, even when the reviewing court would read the statute differently. The Court ended "Chevron deference" and held that courts "must exercise their independent judgment in deciding whether an agency has acted within its statutory authority." In doing so, the Court upended a longstanding principle of administrative law that is likely to make agency decisions more susceptible to challenge in the courts.

We are pleased to share a recording of Akin and ICF"s recently presented "Powering Progress: Decoding FERC Order No. 1920" webinar, along with the program materials.

Join projects & energy transition partner Ben Reiter at Infocast's Transmission & Interconnection Summit, where he will moderate the "Dealing with the Impacts of Increased Interconnection Request Requirements and Costs" panel.

Join projects & energy transition partners Hayden Harms and Vanessa Wilson at Infocast's RNG & SAF Capital Markets Summit, where Hayden will moderate the "Investor Perspectives: Private Equity, Infrastructure Funds, & Strategies" panel, and Vanessa will moderate the "Opportunities in Other Biogas/Fuels Markets" panel.

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Web: https://kary.com.pl/contact-us/
Email: energystorage2000@gmail.com
WhatsApp: 8613816583346