
CONTRACTUAL REGULATION IN THE ENERGY SECTOR

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Original Article

**CONTRACTUAL RELATIONS IN GAS SUPPLY AND ISSUES
OF IMPROVING THEIR REGULATORY FRAMEWORK****L. I. Shevchenko**Moscow State Institute of International Relations (University), Russian MFA, Moscow, Russian Federation
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Abstract. The reforms carried out in the Russian energy industry have led to some intensification of legislative work in this direction, the emergence of a number of new regulations that establish the basis for contractual regulation of relations for the supply of consumers with energy and energy resources. At the same time, the regulation of contractual relations in this most important area of the national economy requires significant improvement, since the prescriptions of regulations regarding the application of contractual structures designed to mediate relations for the movement of natural resources in energy markets do not always have the necessary clarity and certainty, which creates difficulties in their implementation in practice. The applicability of individual agreements mediating relations on energy supply, their legal nature, content, correlation with each other, is the subject of discussion among scientists in the science of energy law. Under these conditions, it is necessary to have a more thoughtful legislative consolidation of contracts that are most acceptable and effective in supplying consumers with energy and energy resources, and to overcome contradictions in their regulation. Scientific developments on these issues are intended to serve as a necessary prerequisite for the further development and improvement of the legal and contractual regulation of energy relations. This article is devoted to the analysis of contractual relations in gas supply in order to determine a more effective mechanism for using the regulatory potential of the contract in the most important area of the fuel and energy complex.

Keywords: energy law, contractual regulation, contractual relations in gas supply.

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The need to further enhance the role of contracts in the modern economy, to expand the scope of contractual regulation as an independent legal way of organizing specific economic relationships, existing along with their regulatory legal regulation, is indicated by scientists who study relations in various spheres of economic activity. However, it should be noted that a single regulatory model cannot be established for each industry, as well as the same type of contractual regulation can be applied. In all cases, it is necessary to search for an optimal combination of mechanisms of state and contractual regulation. This is especially typical for the fuel and energy complex of the economy, where in order to choose the most effective regulatory instruments (including contractual structures), researchers need to conduct a detailed analysis of the specifics of the functioning of a particular energy market and, accordingly, the specifics of the property relations that develop on the basis thereon.

Gas supply, as the most important area of the fuel and energy complex (FEC) of Russia, includes various

activities, ranging from the formation of a fund of explored gas fields, its production, transportation through main gas pipelines and gas supply directly to consumers using it as a fuel or energy resource. The implementation of those activities is ensured by their legal regulation, a number of laws, other legal acts, as well as through contractual regulation, which involves the most complete and effective use of the regulatory potential of the contract.

In the Soviet period (1970 to 1980), the regulation of relations in gas supply, their transportation through main pipelines was carried out at the level of departmental regulations: by resolutions of the State Arbitration Court under the Council of Ministers of the USSR, as well as the State Supply Committee of the USSR. The subsequent updating of the regulatory framework of relations in gas supply is mainly related to Russia's transition to a market-based management system and was aimed at achieving the following goals: to lay the legal foundations for the creation and functioning of the gas market in Russia, to consolidate the methods of state

regulation and contractual structures used in gas supply. At the same time, the current regulatory framework for contractual relations on gas supply is not of a systemic nature; regulatory prescriptions in this part are often contradictory, requiring further improvement.

The provision contained in Article 548(2) of the Civil Code of the Russian Federation, whereby priority in regulating relations with gas supply is given to the norms of special regulations, is of fundamental importance for the formation of the regulatory framework for gas supply. At present, the most important special legal acts regulating relations in gas supply include Federal Law of the Russian Federation No. 69-FZ, dated August 31, 1999 (as amended by the Federal Law dated April 5, 2013), "On Gas Supply in the Russian Federation", as well as a number of resolutions of the Russian Government, i.e., No. 162 dated February 5, 1998 (as subsequently amended, including on March 19, 2020) "On Approval of the Rules for Gas Supply in the Russian Federation"; No. 317 dated May 17, 2002 (as subsequently amended on August 8, 2013) "On Approval of the Rules for the Use of Gas and the Provision of Gas Supply Services in the Russian Federation"; No. 534 dated September 2, 2006 "On Conducting an Experiment for the Sale of Gas on an Electronic Trading Platform"; No. 1370 dated November 24, 1998 (as subsequently amended) "On Approval of the Regulations on Ensuring Organizations' Access to Local Gas Distribution Networks"; No. 858 dated July 14, 1997 "On Ensuring Access of Independent Entities to the Gas Transmission System of Open Joint Stock Company Gazprom".

The current laws refer to the main contractual form mediating gas supply relations a supply contract entered into between suppliers and consumers in accordance with the requirements of the Civil Code of the Russian Federation, federal laws and other regulations (Article 18 of the Federal Law on Gas Supply and Clause 5 of the Gas Supply Rules). The above-mentioned norms indicated that the gas supply contract must comply with the requirements of the regulatory requirements contained in paragraph 3 of Chapter 30 of the Civil Code, which regulates contractual relations on supplies. At the same time, in the future, the indication of compliance of the gas supply contract with the requirements of the norms specified in paragraph 3 of Chapter 30 of the Civil Code of the Russian Federation was excluded (by Decree of the Russian Government No. 305 dated March 19, 2020).

Along with this, the legislation specifies the use of a gas transportation agreement in gas supply. According to Clause 20 of the Gas Supply Rules, if the supplier does not have the possibility of direct gas supply to the buyer, the supply contract determines the party concluding

a gas transportation agreement with gas transportation and/or gas distribution entities. Thus, if the supplier does not have the possibility of direct gas delivery, the parties to the supply contract determine which of them enters into a gas transportation agreement. It should be taken into account that the gas distribution networks may also belong to the buyer, in which case gas transportation services are not provided thereto, and, therefore, the relations between the parties concerned are determined only by the gas supply contract, including its transportation through the gas pipeline, which greatly complicates the nature of the relationship, which do not fit into traditional delivery relationships.

In regulations, the contract, under which gas transportation is performed, is referred to differently. It follows from the content of Article 548(2) of the Civil Code that this agreement should be referred to as a gas supply contract through an attached network. The Federal Law "On Gas Supply" provides for the conclusion, along with supply contracts, of contracts for the provision of gas transportation services (Article 25). The Gas Supply Rules refer to the relationship of gas supply through pipeline networks (Clause 1), as well as the gas transportation agreement (Clauses 20, 22, etc.). The Regulation on ensuring access of entities to local gas distribution networks (Clause 2) refers to the transportation of gas on the basis of an agreement between a gas distribution entity and a supplier or buyer of gas through which gas is transported (Clause 2). The Regulations on Ensuring Access of Independent Entities to the Gas Transmission System of OJSC Gazprom refers to both the supply of gas and its transportation (Clauses 1 to 3).

There is another uncertainty in the Gas Supply Rules in establishing the legal nature of gas supply relations. Thus, Clause 1 of the said regulation establishes the following scope of its action: "The rules define the relations between suppliers and buyers of gas, including gas transportation entities and gas distribution entities, and are mandatory for all legal entities involved in supply relations through pipeline networks" (Clause 1). The wording of the provision under consideration gives grounds to assume that the gas supply relations with other subjects (individuals, including individual entrepreneurs), in the absence of special rules governing those relations, are subject to the rules of the Civil Code on energy supply. At the same time, the relations on gas supply to citizens are characterized in some regulations as relations for the provision of services, in others, for the provision of public utility needs of citizens as gas supply [1].

In the legal literature, it is rightly noted that the above regulations created some uncertainty in the regulation of relations in gas supply to consumers and the use of certain contractual structures. The rule on the application

of the norms of the Civil Code of the Russian Federation on the supply contract to relations for the supply of gas through the main pipeline system causes a different assessment in the scientific literature. Accordingly, on the characteristics of the gas supply contract, various points of view have been expressed in the literature, and continue to be expressed. Thus, O.N. Sadikov spoke about “the similarities between gas service contracts and gas supply contracts” [2]. According to O.S. Ioffe, contracts for the supply of energy and gas can neither be separated from the supply nor identified therewith, they should be considered as independent, which are directly adjacent to the supply contract [3]. M.I. Braginsky noted that those legal relations differ from delivery in a limited scope, as well as in a special tangible object, which also do not coincide in content [4]. S.M. Korneev included contracts for the supply of gas (together with contracts for the supply of electricity and heat) in a special group of contracts for the supply through the connected network, noting that it has a number of inherent features [5].

In the subsequent period, some scientists began to talk about the gas supply contract as a kind of energy supply contract [6], about the applicability of the rules on energy supply to relations related to supply through the connected network, unless otherwise established by law, other legal acts or does not follow from the nature of the obligation [7].

It is obvious that the question of the expediency of subsidiary application to contractual relations for the supply of gas of the norms of the Civil Code on supplies or energy supply can be solved by analyzing the contractual relations under study, identifying their connection with contractual structures of supply and energy supply, their relationship with contracts in the gas industry.

In a market economy, the old grounds for using a supply contract as a necessary legal instrument in the entity and functioning of economic relations in all spheres of trade have disappeared. In the current Civil Code of the Russian Federation, it was decided to keep the supply contract, but not as an independent contractual structure, but as one of the types of the sale and purchase agreement, according to which the supplier undertakes to transfer the goods produced or purchased by it to the buyer within the stipulated time or terms. The relations forming in the sphere under consideration, to which pipeline transport enterprises have become a participant, have become more complicated, combine elements of various obligations and, accordingly, do not fit into the framework of supply relations regulated by Articles 506 to 534 of the Civil Code. It is known that the main obligations of the parties constituting the supply contract are: for the supplier, the transfer of goods, and for the buyer, its acceptance and payment. For the

implementation of those obligations, it is necessary to detail the requirements related to the time, methods of delivery of goods, their assortment, quality, completeness, the procedure for acceptance in terms of quantity and quality, and the settlement procedure. All the noted features that are characteristic of the supply contract led to the conclusion that it is impossible to fully apply them to gas supply relations through the main pipeline [8].

It is difficult to agree with attributing a gas transportation agreement to an energy supply contract, since there are significant differences between those contractual structures. In contrast to the transmission of gas through a system of main pipelines, the supply of energy under an energy supply agreement is carried out through an attached network, which includes operated energy networks, devices and other equipment of the energy supply entity, power receivers (power plant) of the subscriber connected to the networks of the energy supply entity, equipment (devices) that account for energy consumption. The power supply entity is obliged to ensure that the subscriber receives the appropriate amount of energy for its power plant by connecting (accessing) through the connected network to the power system capacities. The subscriber is obliged to ensure the proper technical condition and safety of the energy networks under its control and the serviceability of the relevant instruments and equipment used by it, compliance with the mode of energy consumption as a special product; the power supply entity is endowed with additional rights to monitor the technical condition of the subscriber's power plant, its instruments and equipment. One cannot but agree with the opinion of B.M. Seinaroev that the term “connected network” is borrowed from the electrical energy industry, where it is understood as a system of power transmission facilities (power transmission lines, transformer substations, etc.) [9]. Federal Law No. 35-FZ dated March 26, 2003 “On the Electrical Energy Industry” (Articles 3 to 4) classifies as objects of the electrical energy industry property objects directly used in the process of production, transmission of electrical energy, operational dispatching management in the electrical energy industry and sale of electrical energy, including electric grid facilities (transmission lines, transformer and other substations, distribution points and other equipment designed to provide electrical networks and transmit electrical energy). S.L. Sitnikov also believes that in relation to the transportation contract, there can be no question of any connected network in the sense in which this design is used in the Civil Code in relation to the energy supply agreement [10].

Based on the study of the scientific approaches presented on this problem, the current laws and technical

norms and rules, it is concluded that “connected network” and “main pipeline” are not identical concepts, they are characterized by a different composition of objects and, accordingly, a different purpose, which is fundamental to the differentiation of energy supply contracts, as well as contracts, according to which the supply of energy resources (gas, oil, petroleum products, etc.) is carried out through a main pipeline [11].

Thus, there is a need to give certainty to contractual structures used in gas supply, to improve their regulatory and legal regulation.

According to Article 27 of the Federal Law “On Gas Supply”, owner entities of gas supply systems are obliged to provide non-discriminatory access to any entities operating in the territory of the Russian Federation to the free capacities of their gas transmission and gas distribution networks in the manner established by the Russian Government.

The procedure for access to the gas transmission system of PJSC Gazprom is performed in accordance with the Regulation on Ensuring Access of Independent Entities to the Gas Transmission System of PJSC Gazprom. PJSC Gazprom provides access of independent entities to its gas transmission system on the basis of agreements entered into by these entities with Gazprom or on behalf of the latter with its gas transmission entities. In order to obtain access to the specified gas transmission system, independent entities must submit to PJSC Gazprom within a certain period of time applications of the established form, which must contain the information listed in Clauses 6 to 8 of the Regulations on Ensuring Access of Independent Entities to the Gas Transmission System of PJSC Gazprom. In the absence of sufficient free capacity of the gas transmission system to satisfy all the considered applications, priority in supply is given to: firstly, gas suppliers for communal and domestic needs of the population; secondly, entities that sell and purchase natural gas on commodity exchanges; thirdly, gas suppliers providing for gas supplies for a longer period compared to other applicants. Applications are subject to consideration by PJSC Gazprom in the prescribed manner and within the established time limits with the possibility of making the following decisions, such as on consent to enter into an agreement in accordance with the application; on consent to enter into an agreement with partial satisfaction of the application; reasoned refusal to enter into an agreement. The applicant entity is informed about the decision taken within 3 days. When deciding on full or partial access to the gas transmission system, gas transportation agreements are entered into in the form developed by PJSC Gazprom in accordance with the laws of the Russian Federation. At the same time, this form should not be binding on the parties entering into the

contract; otherwise it will help to strengthen the dominant position of PJSC Gazprom, giving it the opportunity to unilaterally influence the general conditions for the circulation of goods in the gas market. The laws of the Russian Federation (including Article 427(4) of the Civil Code) provides for the possibility of determining the terms of the contract by exemplary conditions that are advisory in nature. Sample terms may be set out in the form of a sample contract or other document containing those terms and published in print. The Russian Government is vested with the right to issue rules binding for the conclusion and execution of public contracts (Article 426(4) of the Civil Code). Imperative provisions of such standard contracts and rules are binding for counterparties.

If an independent entity does not agree with the decision taken by PJSC Gazprom to partially satisfy the application or refuse to enter into an agreement, the independent entity may apply to the Federal Energy Commission of the Russian Federation, which, based on the results of consideration of the necessary documents submitted by the independent entity, makes a final decision on this issue.

In the current regulations there is no direct indication of the public nature of those contractual relations. However, the point of view has become widespread that in the absence of a special indication in the law on the publicity of the contract, the latter can be classified as such, based on the nature and public nature of contractual relationships arising between counterparties. In this case, the specified contractual relations are subject to the mandatory procedure for their conclusion.

Federal Law No. 147-FZ dated May 17, 1995 “On Natural Monopolies” refers the transportation of oil and petroleum products through main pipelines, as well as the transportation of gas through pipelines to the activities of subjects of natural monopolies (Article 4).

Thus, the analysis indicates the need for further improvement of both legal and contractual regulation of relations that develop during the delivery and transportation of gas through the existing system of gas pipelines. As V.V. Romanova correctly notes, contractual regulation is one of the key elements of the system of legal regulation in energy, designed to ensure the implementation of the principles of energy law, to ensure the proper state of energy security, energy law and order. [12]

REFERENCES

1. See: Decree of the Russian Government No. 317 dated May 17, 2002 “On Approval of the Rules for the Use of Gas and the Provision of Gas Supply Services in the Russian Federation” (as amended and supplemented

- on August 8, 2013); Decree of the Russian Government No. 307 dated May 23, 2006 “On the Procedure for Providing Public Services to Citizens” (as amended and supplemented on August 27, 2012); Russian Government Decree No. 549 dated July 21, 2008 “On the Procedure for Supplying Gas to Meet the Domestic Needs of Citizens (as amended and supplemented, including on March 19, 2020).
2. Sadikov, O.N. *Pravovye voprosy gazosnabzheniya* [Legal Issues of Gas Supply]. Moscow, Legal Literature, 1961, pp. 158–159 (188 p.)
 3. Ioffe, O.S. *Obyazatel'stvennoe pravo* [Obligation Law]. Moscow, Legal Literature, 1975 p. 277 (880 p.)
 4. Braginsky, M.I., *Obshchee uchenie o khozyaystvennykh dogovorakh* [General Doctrine of Business Contracts]. Minsk, Science and Technology, 1967, p. 33 (260 p.)
 5. Korneev, S.M., *Dogovor o snabzhenii elektroenergiiy mezhdu sotsialisticheskimi organizatsiyami* [Agreement on the Supply of Electricity Between Socialist Entities]. Moscow, Gosyurizdat, 1956, pp. 102–105 (107 p.)
 6. Kulikova, L., *O dogovore energosnabzheniya* [On the Energy Supply Agreement]. *Economy and Law*, 1996, No. 6, 88 p. (pp. 79–90)
 7. Blinkova, E.V., *Yuridicheskaya konstruktsiya dogovora vodosnabzheniya* [The Legal Construction of the Water Supply Contract]. *Lawyer*, 2002, No. 1, 15 p. (pp. 12–15)
 8. Shevchenko, L.I., *Problematic Aspects of Law Enforcement under Contracts for the Supply of Energy Resources. Pravovoy energeticheskiy forum* [Legal Energy Forum], 2017, No. 2, pp. 24–31
 9. Seinaroev, B.M., Power Supply Contract. *Bulletin of the Supreme Commercial Court of the Russian Federation*, 2000, No. 6, 134 p. (pp. 128–141)
 10. Sitnikov, S.L., Civil Law Regulation of Oil Transportation by Means of an Oil Pipeline System, Moscow, *Justinform Publ.*, 2012, 62 p. (p. 182)
 11. Shevchenko, L.I., *Ponyatiya «prisoedinennaya set'» i magistral'nyy truboprovod i ikh znachenie pri razgranichenii dogovornykh konstruktsiy, ispol'zuemykh v sfere snabzheniya energiiy i energoresursami*. [The concepts of “connected network” and the main pipeline and their significance in distinguishing between contractual structures used in energy and energy resources supply]. *Trudy Instituta gosudarstva i prava RAN Moskva* [Proceedings of the Institute of State and Law of the Russian Academy of Sciences, Moscow], 2016, No. 6, pp. 112–122
 12. Romanova, V.V., *Energeticheskoe pravo. Uchebnik dlya podgotovki kadrov vysshey kvalifikatsii*. [Energy Law. Textbook for the Training of Highly Qualified Personnel]. Moscow, Lawyer Publishing Group, 2021, pp. 145–179.

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