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LAW ENFORCEMENT PRACTICE ON AN AGREEMENT ON TECHNOLOGICAL CONNECTION TO ELECTRICAL GRIDS

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Abstract. The article analyzes materials of the judicial practice on issues of technological connection to electrical grids. The reviewed examples show that: a) the judicial practice is contradictory, and judgments in certain cases are issued at violation of the principle of technological connection on a once-only basis; b) the laws on technological connection need to be updated in terms of determination of the party responsible for payment for grid operator services if the technological connection procedure started by the initial owner of a connected real estate unit is completed by a new owner. Law improvement proposals are brought forward as a result of the performed study, in particular, it is suggested to include in the Technological Connection Rules a provision to place title holders of real estate units, on the territory of which the applicant's energy receiver is located, under an obligation to throw no obstacles in the way of a grid operator performing technological connection. It is also suggested to supplement the standard technological connection agreement with a clause imposing the obligation to pay for grid operator services on the real estate owner.

Keywords: energy law, energy law and order, technological connection, technological connection agreement, principle of technological connection on a once-only basis, electrical grid facilities.

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ПРАВОПРИМЕНИТЕЛЬНАЯ ПРАКТИКА ПО ДОГОВОРУ ТЕХНОЛОГИЧЕСКОГО ПРИСОЕДИНЕНИЯ К ЭЛЕКТРИЧЕСКИМ СЕТЯМ

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Аннотация. В статье проведен анализ материалов судебной практики по вопросам технологического присоединения к электрическим сетям. Рассмотренные примеры свидетельствуют о том, что: а) судебная практика противоречива, и при вынесении решений в отдельных случаях нарушается принцип однократности технологического присоединения; б) законодательство о технологическом присоединении требует доработки в части решения вопроса о том, кто является обязанным лицом в части оплаты услуг сетевой организации в случае,

если процедура технологического присоединения, начатая при первоначальном собственнике подсоединяемого объекта недвижимости, завершается при последующем собственнике. В результате проведенного исследования сформулированы предложения по совершенствованию законодательства, в частности, предложено включить в Правила о технологическом присоединении норму об обязании правообладателей объектов недвижимости, на территории которых расположено энергопринимающее устройство заявителя, не чинить препятствий сетевой организации при осуществлении ею технологического присоединения. Также предложено дополнить содержание типового договора технологического присоединения в части возложения обязанности по оплате услуг сетевой организации на собственника объекта недвижимости.

Ключевые слова. энергетическое право, энергетический правопорядок, технологическое присоединение, договор технологического присоединения, принцип однократности технологического присоединения, электросетевые объекты.

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INTRODUCTION

The energy industry is one of the most important spheres of life in the today's world. It covers all processes related to generation, transformation and use of energy to satisfy human needs and develop the society. The electrical energy industry is a major industry in the energy complex in general. That's why the condition of the energy law and order in the electrical energy industry is of special importance.

V.V. Romanova notes that "the energy law and order constitutes the law and order that relates to the interaction between all parties to social relations in the energy industry including relations associated with search, generation, supply, transportation, transfer, storage of various energy resources, construction of energy facilities. Efficiency of the energy law and order largely depends on the efficiency of the system of legal regulation of social relations in the key sector of the economy, elements of the legal regulation system and the interrelation between them" [1].

Further prospective development of this law and order type and raising its efficiency level is impossible if the judicial practice is contradictory and unpredictable, court judgments vary and are opposed one to another, court judgments and legal justification are worlds apart from one another while the factual background is the same.

Scientific justification of bill development is required to avoid such cases. It is necessary to study and sum up the law enforcement practice to justify law improvement proposals.

V.V. Vitryansky points out that one needs to develop civil laws and aim at achievement of the principle of uniformity of law enforcement to overcome an economic crisis [2].

The practice shows that regulation of the legal position of subjects in the technological connection sphere is insufficient in the electrical energy industry.

Consumers need to be supplied with electrical energy without any interruptions as receipt of electrical energy is vitally important, thus, there may be no "insufficient regulation" or any major gaps in the legal regulation sphere. Such legal consolidation of the procedure for technological connection of consumers to electrical grids is caused by the desire to ensure safety of the population and normal functioning of grid operators.

PROBLEM ONE: VIOLATION OF THE PRINCIPLE OF TECHNOLOGICAL CONNECTION ON A ONCE-ONLY BASIS DUE TO THE NEED TO DISASSEMBLY EQUIPMENT OF ELECTRICAL GRIDS

The principle of technological connection on a once-only basis is an essential basis of the agreement under consideration. Pursuant to Letter of the Federal Antimonopoly Service of Russia No. BK/42082/19 of May 21, 2019, On Review of an Application: "Once-only basis means one-off performance of the procedure for technological connection

of energy receivers of electrical energy consumers, electrical energy generation facilities, electrical grid facilities owned by grid operators and other persons and built electrical energy transmission lines, in the maximum capacity of such energy receivers stated in the documents confirming technological connection in the procedure established by the Government of the Russian Federation" [3].

Thus, this principle states that upon connection of a facility to electrical grids, one does not need to "reconnect" it even in case of disposal of property, in other words, "no repeated technological connection of an energy receiver that was duly technologically connected earlier is required in the event of a change of the owner or other legitimate holder" [4], payment for the technological connection procedure is collected once only. A change of the owner (or the form of ownership) and reconstruction of a capital facility without any increase in capacity of an energy receiver requires neither repeated technological connection nor new payment for the connection procedure [5]. A consumer is only under an obligation to notify the grid operator of the change of owner of energy receivers (the Federal Law On the Electrical Energy Industry) by filing an application and preparation of new documents (Clause 57, Subclause c, Clause 59 of the Technological Connection Rules approved by Resolution of the Government of the Russian Federation No. 861 of December 27, 2024). These provisions are stated in detail in Article 26 of the Federal Law On the Electrical Energy Industry and explained in Clause 7 of Review of the Judicial Practice of the Supreme Court of the Russian Federation No. 3.

The once-only basis of technological connection is designed to ensure safe and continuous receipt of paid electrical energy by consumers. However, there are cases in the legal practice where strict observance of this principle is not always possible. The problem is as follows.

A court judgment on disassembly and removal of electrical grid equipment from a land plot not owned by a grid operator results in inevitable disconnection of consumers and thus, violates one of the fundamental goals of the energy law and order: the opportunity for safe and continuous receipt of electrical energy by subjects.

The reviewed situation is the case of violation of the principle of technological connection on a once-only basis: the judicial act contradicts the law: the court is forced to make a judgment that will knowingly result in a violation of provisions of the Federal Law On the Electrical Energy Industry.

Such situations most often occur with regards to a dispute between a grid operator and an owner of the land plot, where the electrical grid property of the company is located. If electrical grid facilities are not registered and entered in the Unified State Register of Real Estate (USRRE) for some reason, and the relations with the former land plot owner were not duly documented, the new owner has a justified right to request removal of the equipment placed on the land plot.

However, an analysis of the judicial practice proves that courts not always issue an order to disassemble the equipment even if the person who placed the equipment has no documented rights to land. The reason is that such judgment may result in a violation of rights of consumers connected to the electrical grid.

The Supreme Court resolved as follows upon review of one of such cases [6].

A person who had another person's electrical grid property on its land plot filed a negative claim to court for disassembly and removal from its land the energy transmission line owned by the defendant. The claim was based on the fact that placement of the mentioned property on the claimant's land plot was not approved by the latter, and the electrical grid property was not registered in the Unified State Register of Real Estate (the protected zone was registered only). The first instance court dismissed the claim, however, the appeal court changed the judgment and obligated the defendant to remove the equipment from the claimant's land plot.

The Supreme Court reversed the ruling of the appeal court and remitted the case for a new trial stating that it was necessary to carry out an additional study of the impact of disassembly of a part of a linear facility on the general functionality of the energy transmission line. Besides, it's important to mention that such removal will inevitably result in a violation of rights of applicants, and the disputed facility is not an unauthorized construction.

The appeal court dismissed the claim for disassembly of the equipment during retrial stating that the concrete post located on the claimant's land plot is a constituent part of immovable electrical grid equipment, and removal of the constituent part will impact the capacity of the entire facility and inevitably affect the connected consumers [7].

Besides, a study of the judicial practice shows that courts review and assess, inter alia, the social relevance of disputed facilities: how will removal of property affect the interested parties, will the balance of private and public interests be disrupted in this case [8]? The person filing such claim also needs to prove the fact of violation of its rights and justify the impossibility to use the land plot for its intended purpose if other person's equipment is located there [9].

Thus, the practice provides enough criteria to determine whether electrical grid property of a grid operator located on other person's territory is subject to removal.

In order to ensure uniform law enforcement activities, simplify the proving procedure, lower the burden on courts and reduce the number of trials, it seems possible to review the application of a legal analogy mentioned in Clause 1, Art. 6 of the Civil Code of the Russian Federation.

Since the legislator failed to directly stipulate the obligation of commercial entities and other persons with an applicant's energy receiver on their territory to throw no obstacles in the way of technological connection, the situation at hand (upon origination of the need to disassemble property and, consequently, appearance of a risk of violation of the principle of technological connection on a once-only basis) may be governed by Paragraph 2, Clause 8 (5) of Rules No. 861: "In the event of technological connection of energy receivers owned by citizens engaged in horticulture on land plots located within the territory for horticulture or other holders of title to real estate facilities located within the territory for horticulture, the horticultural non-profit partnership may not throw obstacles in the way of a grid operator performing technological connection of such energy receivers or request any payment".

At present, there is judicial practice on application of this clause: courts place horticultural non-profit partnerships under an obligation to throw no obstacles in the way of technological connection of applicants.

A dispute between Rosseti Lenenergo, PJSC (the claimant) and Maly Petersburg 1st Generation Horticultural Non-Profit Partnership of Real Estate Owners for the obligation to throw no obstacles in the way of technological connection of an applicant (third party) was reviewed in the trial in case No. A56-117463/2022. The energy receiver of the third party was located within the boundaries of the territory owned by the defendant.

The grid operator referred to Article 426 of the Civil Code of the Russian Federation, public and obligatory character of a technological connection agreement and stated that it was not entitled to deny connection of the applicant to the electrical energy in accordance with Clause 3 of Rules No. 861.

The court resolved that the claimant's position was in line with the law and placed the defendant under an obligation to throw no obstacles in the way of performance of a technological connection agreement: in accordance with Paragraph 2, Clause 8 (5) of Rules No. 861, horticultural non-profit partnerships may not throw obstacles in the way of electrical energy transfer [10]. Such judicial practice is quite common [11].

However, courts are forced to apply legal analogy because the laws currently contain no provision placing such partnerships and all other parties under an obligation to throw no obstacles in the way of technological connection. Let's review case No. A55-11996/2021 as an example [12].

Rosseti Volga, PJSC (the claimant) filed a claim against Voskresenka, LLC (the defendant) for throwing no obstacles in the way of performance of a technological connection agreement. The claim was based on the impossibility to connect an applicant using other means, not touching the defendant's electrical grid equipment.

Voskresenka, LLC, is not a horticultural partnership, so Clause 8 (5) of Rules No. 861 cannot be applied directly. The Commercial Court of the Samara Region states that the laws contain no special regulation of such situation, that's why general legal mechanisms mentioned in Clause 8 (5) of Rules No. 861 and Clause 6 of Rules No. 861 are to be applied by analogy.

The Commercial Court of the Tomsk Region arrives at a similar conclusion in the judgment in case No. A67-13250/2018 [13]. Tomsk Distribution Company, PJSC (the claimant) filed a claim against Kaskad housing association (the defendant) for eliminating obstacles in the way of technological connection of applicant's receivers.

The court applies Clause 8 (5) of Rules No. 861 in the case under consideration and states that no one may throw obstacles in the way of electrical energy transfer as access to electrical energy is a vital

necessity, and the law contains no regulations to the contrary. The court also notes that a different judgment would disrupt the balance of interests as the weaker party to the agreement (the applicant) would not be protected. Superior courts agreed with the position of the first instance commercial court.

However, there exists diametrically opposed judicial practice [14].

Thus, the Commercial Court of Saint Petersburg and the Leningrad Region issued a judgment in case No. A56-71363/2022 and dismissed the claim filed by Rosseti Lenenergo, PJSC, for placing Aqua-Plus Management Company, LLC, under an obligation to throw no obstacles in the way of performance of a technological connection agreement.

The first instance court pointed out that Clause 8 (5) of Rules No. 861 was not applicable to the case because the defendant was not classified as a horticultural partnership. Besides, the judgment stated that commercial entities were not under an obligation to provide an opportunity for technological connection to their facilities and that based on Paragraph 2, Clause 4, Art. 26 of Federal Law No. 35-FZ of March 26, 2003, On Electrical Energy, such connection was possible only based on an agreement and on a reimbursable basis. While this article is prepared, this judgment has not entered into legal force yet, and is appealed.

The conclusion of the first instance court does not seem to be fully justified.

Thus, the court judgment states that: "The applicable laws do not place commercial entities under an obligation to throw no obstacles in the way of new technological connection..." [15]. This conclusion directly contradicts Clause 6 of Rules No. 861 that states that any owner of and holder of title to electrical grid facilities may not throw obstacles in the way of transfer of electrical energy.

The reference made by court to Paragraph 2, Clause 4, Art. 26 of Federal Law No. 35-FZ of March 26, 2003, On Electrical Energy, is also unjustified.

The Supreme Court of the Russian Federation stated in Ruling No. АПЛ16-632 of February 2, 2017, [16] that a person wishing to transfer electrical energy had to conform to the legally established criteria listed in Resolution of the Government of the Russian Federation No. 184 of February 28, 2015. If a company loses the status of a territorial grid operator for some reason, it is no longer entitled to carry out such activities on a reimbursable basis and has to observe the prohibition set in Clause 6 of Rules No. 861.

This position is also described in Explanation of the Presidium of the Federal Antimonopoly Service of Russia No. 12 of September 13, 2017: persons that do not conform to the criteria of territorial grid operators, have to bear the property maintenance burden in accordance with Art. 210 of the Civil Code of the Russian Federation, may not throw obstacles in the way of transfer of electrical energy or request any payment for it [17].

The defendant in the case under consideration is Aqua-Plus Management Company, LLC. This company is not a territorial grid operator, so the conclusion of the court that the claimant and the defendant have to enter into a technological connection agreement seems unjustified.

The performed analysis shows that this matter is solved differently in the judicial practice, but this issue is extremely important as electrical energy must be available to everyone. Commercial entities, nonprofit institutions, horticultural partnerships, individual entrepreneurs and individuals must have an opportunity to receive electricity on an uninterrupted basis.

Thus, in order to minimize the risk of violation of the principle of technological connection on a once-only basis, it seems reasonable to amend Paragraph 2, Clause 8 (5) of Rules No. 861 by removing reference to property and land plots located within a horticultural partnership and thus expanding the effect of this paragraph to cover all land plots and other real estate with placed electrical grid property.

This clause is suggested to be worded as follows: "When a grid operator performs technological connection, title holders of land plots and other real estate with placed energy receivers of applicants may not throw obstacles in the way of technological connection of such receivers or request any payment for it".

PROBLEM TWO: WHO IS TO PAY FOR GRID OPERATOR SERVICES IF THE OWNER CHANGES IN THE COURSE OF TECHNOLOGICAL CONNECTION

Apart from the reviewed problem related to the violation of the principle of technological connection

on a once-only basis, the law enforcement practice contains different solutions of the issue associated with the obligation to pay for the connection procedure. The cause for this problem is as follows.

The most common point of view in the legal environment is the position that the essence of the agreement under consideration is fee-based services. This position was reflected in Russian L.Yu. Akimov, G.A. Gadzhiev point out that no tangible result in a material form to be transferred to the applicant is created as a result of performance of a technological connection agreement. The value in this case is the service of technological connection of applicant's energy receivers to grids of a grid operator, in other words, assurance of electrical energy transfer to the recipient with the use of connected electrical equipment [19]. The judicial practice also tends to believe the named position to be correct [20].

Following a review of the principle of technological connection on a once-only basis from the standpoint of a service agreement, one arrives at the following conclusion: a grid operator provides services to a specific legal entity or individual, such services need to be paid for by the consumer. Thus, it seems quite logical that the new owner is not under an obligation to pay for technological connection once more due to the principle of relativity of obligations (in particular, the existence of this principle in the Russian legal system is proven by provisions of the Civil Code of the Russian Federation, e.g., Clause 1 Article 307, Clause 3 Article 308 and Article 324).

In a real-world context, it's not uncommon for the owner to enter into a technological connection agreement and then to sell the real estate to another person before the technological connection procedure is over. The issue of payment for grid operator services acquires relevance: who is to pay: the initial or the new owner?

The currently predominant position is that a technological connection agreement is a service agreement, so courts rely on Clause 1, Article 779 and 781 of the Civil Code of the Russian Federation and place the applicant under an obligation to pay for technological connection services even after transfer of title to the connected object to another person [21].

However, in this case, in trials, applicants rely on Article 416 of the Civil Code of the Russian Federation and state that the obligation is terminated in view of the impossibility to discharge it because of the transfer of title to the real estate to another person. Therefore, any further interaction is to take place only between the grid operator and the new owner. However, this position is not fully justified.

In accordance with the explanations given in Clause 36–37 of Decree of the Plenum of the Supreme Court of the Russian Federation No. 6 of June 11, 2020, "the obligation of a party is terminated in view of the objective impossibility to discharge it that arises after origination of the obligation and bears a non-removable (permanent) character if such party does not bear the risk of origination of such circumstances" [22]. However, disposal of property to another person is a deliberate act, so the provisions of Article 416 of the Civil Code of the Russian Federation cannot be applied to the reviewed case. Besides, there exists the principle of relativity of obligations that stipulates a general rule that an obligation does not give rise to any rights or duties for anyone that is not a party to such obligation. Therefore, while the judicial practice sticks to the position that a technological connection agreement is a service agreement, the obligation in the situation under consideration cannot be terminated based on Article 416 of the Civil Code of the Russian Federation.

A potential solution of this matter is tying payment under the agreement to the origination of title to the object. That means amendments to Rules No. 861 through wording a provision by analogy to Part 3, Article 158 of the Housing Code of the Russian Federation: "upon transfer of title to premises in an apartment block, the new owner acquires the former owner's obligation to pay costs of major repair of common property of the apartment block".

Thus, one needs to establish whether a technological connection agreement has a so-called "real effect", in other words, whether the reviewed agreement survives at change of the property owner (e.g., as a rent agreement) [23].

This novelty will introduce a fair condition to govern reimbursement of expenses by the party that receives material value and help reduce the number of trials between grid operators and initial and new real estate owners.

Thus, the performed analysis shows that legal regulation of rights and obligations of parties to a technological connection agreement in the energy sphere requires further reformation based on generalization of the judicial practice and development of proposals

for improvement of laws on technological connection.

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