SPECIFIC FEATURES OF THE LEGAL STATUS OF GENERATING COMPANIES IN THE WHOLESALE ELECTRICITY AND CAPACITY MARKET IN VIEW OF THE SANCTIONS PRESSURE AND RESTRICTIVE MEASURES*

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The article considers specific features of the legal status of generating companies in the wholesale electricity and capacity market associated with restrictive economic measures and other changes in the current laws. The author provides an analysis of current problems of energy projects implemented with the participation of generating companies. Debt restructuring projects for resource supplying companies with poor repayment discipline and electric power generation facility construction (modernization) projects are evaluated in terms of influence of: restrictive economic measures (in particular, the prohibition of mutual settlements using promissory note without the Government Commission's transaction authorization), the bankruptcy moratorium (its influence on recovery based on enforcement documents), changes in the accrual and payment of penalties in the WECM, and changes in energy project deadlines.

Keywords: *energy law, wholesale electricity and capacity market, generating companies, debt restructuring.*

The beginning of 2022 can be described as a period of active rule-making. The adopted regulations affect the wholesale electricity and capacity market (WECM) and its players, in particular, generating companies. As A.G. Lisitsyn-Svetlanov, LL.D., Professor, Academician of the Russian Academy of Sciences, rightly noted in his report *Energy Projects under Political and Legal Turbulence* presented at the scientific and practical conference *Musin Readings 2022. Actual Issues of Energy Law*, nowadays there is an actual threat to the implementation of energy projects. [1]

When operating in the wholesale electricity and capacity market, generating companies take part in various energy projects, such as generating capacity construction and modernization under capacity supply agreements (CSA, CSA-prime, CSA RES, etc.), debt restructuring projects for debtors with poor repayment discipline, etc.

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Today, the main factors of vulnerability of energy projects that affect the legal status of generating companies in the WECM are as follows:

— Sanctions pressure of foreign countries;

— Restrictive economic measures introduced under decrees of the President of the Russian Federation;

— The bankruptcy moratorium.

The problem of non-payments in the wholesale electricity and capacity market is one of the key problems in the electric power industry and it will only get worse given the economic instability.

A number of studies have been devoted to the problem of non-payments in the WECM. For example, V.V. Romanova [2] examines it in the context of legal protection of energy market players' interests, and O.A. Simvolokov [3] notes that "the lack of timely received funds negatively affects the implementation of infrastructure modernization programs, creates risks of accidents and disconnections of consumers".

The following incentives are applied as part of current regulation to improve the WECM repayment discipline: penalties and fines, withdrawal of default supplier status, mandatory security for obligations to pay for consumed electric power, withdrawal of the right to trade in the wholesale market, withdrawal of wholesale market entity status for an electric power generating entity, debtor bankruptcy, etc.

In recent years, the debt restructuring procedure has been widely applied to sales organizations with poor repayment discipline. This measure includes special conditions of debt repayment for a certain category of debtors, most often it is a payment in installment condition, while creditors, in their turn, refrain from debt collection in court.

In the first quarter of 2022, the Accession Agreement was amended in terms of the WECM settlement in order to implement a debt restructuring project for default suppliers with poor repayment discipline. The Regulation on Financial Settlement in the Wholesale Electricity Market (Annex 16 to the Agreement of Accession to the Wholesale Electricity Market Trade System) [4] was supplemented by Annex 114.15. *Obligation Performance Agreement Form*. An overwhelming number of researchers [5] agree that, in terms of the way it is concluded, the agreement of accession to the wholesale electricity market trade system is an accession agreement, the rules on which are defined in Article 428 of the Civil Code of the Russian Federation. Given the legal nature of an accession agreement and the fact that the obligation performance agreement form is an integral part of the Agreement of Accession to the Wholesale Electricity Market Trade System, the form is binding upon all signatories of the Accession Agreement, i.e., all WECM entities.

The agreement form under consideration is a typified document that contains not only wordings of terms and conditions of an agreement, but also commercial terms of a transaction, such as:

— The Buyer (Rossetti North Caucasus PJSC or Chechenenergo JSC);

— The procedure for and terms of the Buyer's obligations to pay for electric power and/or capacity under contracts concluded in the wholesale market for the periods till December 2021 and for the periods from January 2022;

— The mandatory nature of registration of such agreement with Financial Settling Center, JSC, and the termination procedure for the agreement.

In fact, the Seller (i.e., a generating company) is the only "unknown variable" in this "equation", though rather arbitrary, because all generators would like to reduce the amount of debt.

Determining personal terms of obligations for a specific list of debtors under contracts concluded in the wholesale market is not

new. It has already been implemented as part of debt restructuring of default suppliers of Rosseti, PJSC, (North Caucasus IDGC, PJSC, (Rosseti North Caucasus, PJSC), Kalmenergosbyt, JSC, Chechenenergo, JSC, and Tyvaenergosbyt, JSC) [6] in 2020-2021.

The performance of obligations under the Agreement is determined as follows: electric power and/or capacity debt under contracts concluded in the wholesale market for the periods till December 2021 shall be repaid by means of a promissory note (Annex 1) provided to the seller, for the period starting from January 2022, the sellers can choose payment either in promissory notes or in cash deferred for 13 years (Annex No. 2).

The first vulnerability of this project was linked to the promissory notes used as a means of settlements in the WECP. The additional temporary economic measures to ensure the financial stability of the Russian Federation were introduced based on Presidential Decree No. 81 dd. March 1, 2022 (as amended on March 31, 2022) *On Additional Temporary Economic Measures to Ensure the Financial Stability of the Russian Federation* and stipulate compliance with "the special procedure for performing (effecting) transactions (operations)". The special procedure means that transactions require permission from the Government Commission on Monitoring Foreign Investment in the Russian Federation. The established procedure applies to "persons and foreign states committing unfriendly acts". The list of such foreign states is approved by the Government of the Russian Federation in Order of the Government of the Russian Federation No. 430-p dd. March 5, 2022, *On Approval of the List of Foreign States and Territories Committing Unfriendly Acts against the Russian Federation, Russian Legal Entities and Individuals.*

In order to determine a person controlled by a foreign state, Resolution of the Government of the Russian Federation No. 295 dd. March 6, 2022, (as amended on March 26, 2022) *On Approval of the Rules for the Government Commission on Monitoring Foreign Investment in the Russian Federation to Issue Permits to Implement the Additional Temporary Economic Measures to Ensure the Financial Stability of the Russian Federation and Amendments to the Regulations on the Government Commission on Monitoring Foreign Investment in the Russian Federation* refers to Article 5 of Federal Law No. 57-ФЗ dd. April 29, 2008 (as amended on February 16, 2022) *On Procedures for Foreign Investment in Business Entities of Strategic Importance for the National Defense and State Security of the State*. Thus, the above regulation covers business entities, in which foreign shareholding amounts to more than 50%, a foreign person may determine resolutions of such business entity, may elect governing bodies of a controlled legal entity, or acts as a management company.

Lacking a Government Commission's authorization, "persons of foreign states" may not raise borrowed funds or acquire ownership of securities and immovable property. As per clause 2 of Article 142 of the Civil Code of the Russian Federation, a promissory note falls under the category of securities. Thus, "persons of foreign states" may not acquire a promissory note without a Governmental Commission's authorization. Due to its universal legal nature, a promissory note can be both a way to register obligations and a type of things, a security (Article 143 of the Civil Code of the Russian Federation). The latter feature allows it to be part of civil-law transactions and be freely alienated or transferred by way of universal succession from one person to another (clause 1 of Article 129 of the Civil Code of the Russian Federation).

In the WECM, promissory notes are used by electric power (capacity) buyers to pay for goods received as well as to restructure debts and make current payments for certain WECM players with poor repayment discipline. The possibility to use a promissory

note as a means of payment is stated in Resolution of the Plenum of the Supreme Court of the Russian Federation No. 33 and Resolution of the Plenum of the Supreme Commercial Court of the Russian Federation No. 14 dd. February 4, 2000, *On Certain Issues of Consideration of Disputes Association with the Circulation of Promissory Notes*. Thus, the availability of promissory notes is a condition for full participation in WECM settlement.

Among generating companies trading in the WECM, Fortum, PJSC, [7] Enel Russia, PJSC, [8] and Unipro, PJSC, [9] meet the above criteria. The gross installed capacity of generating facilities owned by the said companies is about 22.5 GW, which makes 9% of all generated electric power within the UES of Russia in percentage terms. Thus, generating companies meeting the criteria of a "person of a foreign state" appear to be in a situation that differs from that of other generating companies in the WECM. Thus, there is a risk of inability to ensure performance on equal terms with other generating companies.

This risk can be addressed by applying to the Ministry of Finance for authorization to effect transactions with promissory notes. To use promissory notes in full, the seller will need at least an authorization to perform at least the following operations:

— Receive promissory notes issued by Russian lending institutions and denominated in rubles from debtors in payment for supplied electric power (capacity);

— Use the above promissory notes as a means of payment;

— Effect transactions on subsequent sale of the above promissory notes received from debtors in the WECM.

Moreover, in order to participate in WECM settlements in full, such authorization of the Government Commission should cover an unlimited range of persons from whom the generator can accept the performance under a promissory note scheme, because it is impossible to predict which person will offer a promissory note as a means of payment, and the list of WECM entities existing as of the date of application to the Government Commission is not sufficient, because it may change at any time due to new members of NP Market Council Association receiving the WECM entity status. Thus, the Government Commission's authorization should be of a framework nature to ensure optimal WECM settlements, because the parties to the transaction may not know its specific conditions in advance.

This raises two important questions. Does a generating company need to apply to the Government Commission upon conclusion of each agreement which stipulates the receipt of a promissory note and specify all material terms and conditions of the transaction, or will a one-time application specifying the framework terms of the proposed transactions suffice? Who should apply to the Government Commission: each generator separately, a group application of stakeholders, NP Market Council Association on behalf of its members, or a supervising federal executive body (the Ministry of Energy)?

From a formal point of view, answers to these questions can be found in the form of application for authorization to perform (effect) a transaction (operation) or a group of transactions (operations) [10] approved by the Ministry of Finance of Russia. The form requires, among other things, a description of the transaction (operation), including a transaction (operation) included in a group of interrelated transactions (operations), containing the material terms and the amount of the transaction (operation) (including individual transactions (operations) included in a group of interrelated transactions (operations)). Thus, the form of application refers us to the fact that the Government Commission should be contacted in conclusion of each transaction, and the current regulation stipulates no application for framework terms.

As for the second question, the form also requires that the name of a specific applicant be specified (no multiple applicants are provided for). We believe that this approach may cause the following problem in the WECM. Assuming that each generator will apply to the Government Commission independently and therefore specify different terms, for example, under the same debt restructuring project for approval, there is a risk that the Government Commission will approve different terms for transactions.

The author believes that the optimal solution to neutralize the said risks would be as follows:

— Enabling framework approval of terms and conditions of transactions;

— Authorizing NP Market Council Association to apply to the Government Commission on behalf of its members.

The official website of the Ministry of Finance of Russia in its section *Authorizations under Orders No. 79, 81, and 95*[11] provides no information on authorization or prohibition to perform operations with promissory notes, which, unfortunately, makes it impossible to analyze the decisions already made by the Government Commission.

Another specific feature of the Agreement is the mandatory registration of such agreement with Financial Settling Center, JSC, and the termination procedure for the agreement. Agreements under similar conditions were concluded before 2022, however, in view of the counter-sanctions regulation they have taken on new significance. Thus, according to the approved terms and conditions, Financial Settling Center, JSC, shall terminate the registration of the agreement as specified in clause 6 of the approved form. Agreement termination is directly associated with the termination of its registration with Financial Settling Center, JSC. Such conditions pose no risks, if the parties duly perform the agreement, but if the Buyer violates the procedure for obligations to the Seller or other parties that concluded the agreement in a standard form, the agreement is automatically terminated as of the date of termination of its registration with Financial Settling Center, JSC. It is the termination of the agreement before full implementation that has negative consequences for generators. Depending on the stage at which the restructuring agreement is concluded, the following scenarios are possible:

— The restructuring agreement is signed prior to filing a lawsuit for debt recovery. In this situation, if the restructuring agreement is not performed, the generator will have to go from filing a claim to obtaining a writ of execution in order to recover the debt;

— The restructuring agreement is signed during while the debt recovery claim is being considered or at the stage of enforcement proceedings, and the parties entered into an amicable agreement. In this situation, the generator will also have to apply to court for a writ of execution due to the failure to perform the amicable agreement.

Obtaining a writ of execution in no way guarantees debt repayment, but if normally it is possible to enforce recovery by applying to the Federal Bailiff Service or directly to the bank with which the debtor has an account, this option is unavailable in the current reality. Since April 1, 2022, Resolution of the Government No. 497 dd. March 28, 2022, *On Introducing the Moratorium on Initiating Bankruptcy Proceedings under Applications Filed by Creditors* introduced a moratorium on initiating bankruptcy proceedings under applications filed by creditors against legal entities and individuals, including individual entrepreneurs in accordance with Article 9.1 of Federal Law No. 127-ФЗ dd. October 26, 2002, *On Insolvency (Bankruptcy)*. The moratorium on initiating bankruptcy proceedings is a mechanism that has already been tested during the pandemic of coronavirus. However, the existing moratorium is distinguishably different.

The "first" moratorium introduced due to the spread of the new coronavirus

infection was established by Resolution of the Government of the Russian Federation No. 428 dd. April 3, 2020, *On Introducing a Moratorium on Initiating Bankruptcy Proceedings under Applications of Creditors against Certain Debtors*. The moratorium lasted from April 6, 2020, to October 6, 2020.

The characteristic feature of the coronavirus moratorium was that it applied to a limited number of debtors: organizations and individual entrepreneurs belonging to the branches most affected by the pandemic and organizations included in the list of backbone organizations according to the resolution of the Government Commission, or in the List of Strategic Enterprises and Strategic Joint-Stock Companies, or in the List of Strategic Organizations.

The identification of a debtor subject to the moratorium was simplified by a reference to a specific type of activity (OKVED) verifiable via extract from the Unified State Register of Legal Entities. Moreover, the Government of the Russian Federation has set a limit in order to prevent the abuse by debtors not belonging to the affected economic branches, according to which organizations and individual entrepreneurs could be referred to the corresponding area of activities most affected by the coronavirus infection, if their core activity (OKVED) was specified in the Unified State Register of Legal Entities as of March 1, 2020 (clause 2 of Resolution of the Government of the Russian Federation No. 409 dd. April 2, 2020).

The existing moratorium applies to citizens and legal entities as well as individual entrepreneurs without reference to any branches, types of activity (OKED codes), and/or other criteria, which resulted in the total (complete) moratorium for all citizens and legal entities (except for developers of apartment blcoks and/or other real estate units exempt from the moratorium) for 6 months from April 1, 2022.

The imposed moratorium entails:

— For the Federal Bailiff Service of Russia, the compulsory suspension of all enforcement proceedings initiated within the Russian Federation on debts of any citizens and legal entities and a similar prohibition to execute enforcement documents for any banks and other lending institutions for a period of 6 months;

— The impossibility to apply any sanctions (fines, forfeits, penalties) to any debtors (except for those exempt from the moratorium) for a failure to fulfill or improper fulfillment of monetary obligations, including debts for supplied utilities (provided utilities services);

— The prohibition of claim set-off and foreclosure;

— The impossibility to initiate judicial bankruptcy proceedings against any citizens and legal entities (except for those exempt from the moratorium) within the Russian Federation for a period of 6 months.

The "first" moratorium gave rise to law enforcement practice, in particular, at the level of the Supreme Court of the Russian Federation in plenum No. 44 dd. December 24, 2020, according to which excluded, from the date of the moratorium, the possibility to apply any sanctions (fines, forfeits, penalties) to the debtor for a failure to fulfill or improper fulfillment of monetary obligations and suspended enforcement proceedings against any debtor, including those who have no signs of insolvency and/or insufficiency of assets as stipulated by the Bankruptcy Law.

"From the day the moratorium becomes effective, as expressly required by law, any enforcement proceedings on property claims having arisen before the moratorium shall be suspended (sub-clause 4 of clause 3 of Article 91 of the Bankruptcy Law). Enforcement proceedings shall be deemed suspended based on the act establishing the moratorium until resumption. It means that enforcement measures are not allowed during the moratorium period and an enforcement document submitted by the claimant directly to the bank or any other lending institution (hereinafter referred to as the bank) may not be executed as per clause 1 of Article 8

of Federal Law No. 229-ФЗ dd. October 2, 2007, *On Enforcement Proceedings*. If a bank receives an enforcement document against a debtor covered by the moratorium, the bank shall accept such enforcement document and leave it unexecuted until the end of the moratorium".

A similar opinion with references to subclause 4 of clause 3 of Article 9.1 of Federal Law No. 127-ФЗ *On Insolvency (Bankruptcy)* and explanations of the Supreme Court of the Russian Federation (Resolution of the Plenum of the Supreme Commercial Court of the Russian Federation No. 36 dd. June 6, 2014, *On Certain Issues Related to Lending Institutions Maintaining Bank Accounts of Persons Undergoing Bankruptcy Proceedings*) was expressed by the Bank of Russia (Letter of the Bank of Russia No. 31-4-4/2940 dd. December 28, 2020, *On the Moratorium on Initiating Insolvency (Bankruptcy) Proceedings*).

In view of the above, banks accept enforcement documents, but no execution of such documents takes place. And this is the reason why negative consequences of the moratorium for generating companies (in particular, the impossibility to obtain funds under writs of execution) cannot be neutralized by the fact that banks accept writs of execution submitted to them.

Despite the fact that the moratorium rules have already been applied and are not new, the issues of applying the moratorium rules are extremely relevant. In April 2022 we saw discrepancies between the opinions of the Federal Bailiff Service and the Supreme Court of the Russian Federation on the issue of compulsory suspension of enforcement proceedings. The Federal Bailiff Service drafted letters explaining actions of a bailiff in the course of enforcement proceedings (was not published officially). [12] According to the Federal Bailiff Service:

— When a Debtor informs of the need to suspend enforcement proceedings, a bailiff should verify whether the debtor specified in its information the impossibility to fulfill the requirements of the enforcement document.

The absence of information on funds on bank accounts sufficient to meet the requirements of the enforcement document as well as the absence of property belonging to the debtor, which exceeds the amount of debt, may prove the absence of property.

— In the course of suspended enforcement proceedings, a bailiff shall perform certain enforcement actions by sending requests to lending organizations and registration authorities, obtaining necessary information from the parties to the enforcement proceedings, seizure, restraints on property disposal, etc.

The Supreme Court of the Russian Federation in its Ruling dd. April 18, 2022, on case A40-233155/2020 (305-ЭС21-25305) stated that the bailiff must suspend enforcement proceedings in case of introduction of a bankruptcy moratorium. [13]

The opinion of the Federal Bailiff Service has a number of significant advantages for creditors. Enforcement proceedings are not suspended by default, it is the debtor who should apply to the bailiff to suspend enforcement proceedings, since recovery may negatively affect the debtor and jeopardize its business operations. Moreover, the debtor shall provide evidence of its financial difficulties. Solvent debtors will not be able to "borrow" at the expense of their creditors. The measure established by law will be aimed exclusively at supporting stranded people.

Unfortunately, the introduced measures are likely to cause a non-payment crisis, because, firstly, not paying for electric power (capacity) received is much better in terms of economy than borrowing from lending institutions; secondly, as mentioned above, no penalties are accrued during the moratorium, which also does not motivate debtors to pay.

We believe that the legislator's refusal to apply the qualifying factor to entities covered by the moratorium will negatively affect the performance of obligations to pay for

purchased electric power and capacity. As for the suspension of enforcement proceedings during the moratorium, we believe that a legal framework, under which a debtor should take actions in the course of enforcement proceedings (apply to the bailiff service to suspend enforcement proceedings and attach documents proving financial difficulties), is more complementary. According to the author, the above legal framework can help to maintain the best balance of interests of creditors (ensure performance under an enforcement document) and debtors (preserve business in the time of influence of external negative factors).

The legislator developed a mechanism for organizations to waive the moratorium. Such waiver provides a number of advantages to the company, the most significant advantage is, in our opinion, the right to dividend payment. But the "coronavirus moratorium" showed that this right is exercised by generating companies only, energy sales organizations prefer not to exercise it.

Due to restrictive measures, the very structure of sanctions for failure to fulfill WECM obligations has changed.

The meeting of the Supervisory Board of NP Market Council Association approved amendments to the Agreement of Accession to the Wholesale Market Trade System (AoA) stipulating temporary "freezing" of payment of penalties (fines) for a failure to perform or improper performance of obligations to pay for electric power and/or capacity and services of commercial and technological infrastructure organizations of the wholesale market for the payment date of April 25, 2022.

The above "freezing" is introduced in view of planned changes in the regulations that systematically govern the application of WECM penalty provisions. The key interest rate of the Central Bank soared from 9.5% [14] to 20%, [15] which caused problems in the application of WECM penalties. The majority of WECM penalties are linked to the key interest rate. If the key interest rate is 20%, the liability for a failure to perform obligations becomes disproportionate to the consequences of such violation. Therefore, the question arises as to what rate of the Central Bank shall be applied in penalty calculations.

In legal writing "freezing" is formulated as follows: "The Financial Settling Center shall not include in the Consolidated Payment Register it transfers to an authorized lending institution the obligations to pay a forfeit (penalty) for a failure to fulfill or improper fulfillment of obligations to pay for electric power and/or capacity as well as services of commercial and technological infrastructure organizations of the wholesale market, which are paid through an authorized lending institution, if such penalty obligations become due on April 25, 2022. The Financial Settling Center shall include in the Consolidated Payments Register the obligations to pay the forfeit (penalty) specified in this paragraph taking into account the specifics of forfeit (penalty) payment in accordance with subclauses 12.5, 12.5.3, and 12.6.7 of these Regulations in case MC's Supervisory Board decides to include the specified forfeit in the Consolidated Payment Register and there is an extract from the minutes of the meeting of MC's Supervisory Board with the said decision received from MC."

Based on the wording added to the AoA, "freezing" means temporary suspension of penalty accrual until a special event occurs. WECM penalties are contractual penalties in their legal nature; the amount and procedure of calculation of such penalties may be changed by agreement of the parties or otherwise as stipulated by the contract. The resolution of the Supervisory Board in this case changes the terms and conditions of contracts annexed to the AoA. Therefore, this change applies to all WECM players. Such flexibility in regulating legal relations in the WECM under current legal turbulence proves to be extremely positive. The existing system is able to promptly respond to current changes, which is impossible for systems

that have no organization uniting all market players, like NP Market Council Association does for the WECM.

The current legal turbulence also affects electric power generation facility construction (modernization) projects. Generating facilities can be construction and modernized in the WECM under capacity supply agreements (CSA). O.A. Simvolokov [16] describes capacity supply agreements as "mechanisms of forced investment".

In its legal nature, a capacity supply agreement is an investment agreement under which generating companies are compensated for costs incurred in the construction (modernization) of energy facilities at the expense of fees paid by capacity buyers.

In the first place, a generators' obligation to comply with energy facility commissioning deadlines is at risk. This problem has already been considered by courts. [17] Generating companies that violated the obligations fulfilment procedure under capacity supply agreements were held liable by way of payment fines for delay in starting to fulfill obligations to supply capacity to the wholesale market for a generating facility. The company's account was extrajudicially debited for an amount equivalent to the fine. The decrease in revenue for the period when lower capacity rates (tariffs) apply is another negative consequence for a generator in case of delay in payment under a capacity supply agreement.

NP Market Council Association considers the possibility [18] to amend the Agreement of Accession to the Wholesale Market Trade System in terms of changing the commissioning deadlines for energy facilities built under CSA programs as a way to prevent the downside risks for generating companies due to the objective impossibility to implement projects. These measures cause an understandable concern of the community of power consumers; however, the market infrastructure has been tasked with maintaining the balance of suppliers' and consumers' interests in the current situation, and the measures under consideration still seem justified.

These changes are planned to be introduced in view of Draft Law No. 106868-8 *On Amendments to Certain Legislative Acts of the Russian Federation* to the extent of establishing specific features of legal regulation of relations in power generation and gas, heat, and water supply (water disposal) in 2022-2023. [19]

As far as the regulation of WECM relations is concerned, the draft law supplements Federal Law No. 35-ФЗ dd. March 26, 2003*, On the Electric Power Industry* with Article 46^3, under which, until December 31, 2022, inclusive, the Government of the Russian Federation is authorized to establish specific features of accrual, payment, and writing off penalties (fines, forfeits) and other liabilities for a failure to perform or improper performance of obligations in the wholesale market, specific features of arranging and conducting power take-off on a competitive basis and other competitive procedures which result in sales contracts and capacity supply agreements as well as specific features of performance of the said contracts, including those stipulating changes in power supply start and/or end dates, within the period determined by the Government of the Russian Federation.

Starting from February 28, 2022, the refinancing rate of the Central Bank of the Russian Federation used to calculate penalties is to be replaced by a value determined in accordance with the procedure established by the Government of the Russian Federation.

We will be able to fully assess the consequences of these measures only in the context of law enforcement practice, but we are now witnessing the flexibility of regulatory mechanisms in the wholesale electricity and capacity market, but flexibility alone is not enough in the current reality. The scientific and practice community will have to do a lot of work to adapt market mechanisms to the reality. ■

References

1. https://musinlc.ru/obzor-nauchno-prakticheskoj-konferenczii-musisnkie-chteniya-2022-aktualnye-zadachi-energeticheskogo-prava/
2. Energy Markets: Problems and Tasks of Legal Regulation: Monograph / edited by LL.D. V.V. Romanova. Moscow : Yurist Publishing House, 2018. 240 p.
3. Simvolokov O.A. Contracts in the Electric Power Industry: Problems of Theory and Practice: Monograph. Moscow : Infotropic Media, 2021. 186 p.
4. https://www.np-sr.ru/ru/regulation/joining/reglaments/index.htm
5. Form more detail, see: Kashlikova I.A. Agreement of Accession to the Wholesale Market Trade System // Energy Law Forum. 2015. No. 4. P. 28–33; Krassov E.O. Agreement of Accession to the Wholesale Electricity Market Trade System // Journal of Russian Law. 2008. No. 1(133). P. 87.; Bakshin, A.N., Pustovalova, E.Yu. Wholesale Electricity Market Entities // Law and Economy. 2005. No. 11; Zhane, A.D. Commentary to the Federal Law on the Electric Power Industry (article-by-article). Moscow, 2005; Svirkov, S.A. Contractual Obligations in the Electric Power Industry. P. 92.
6. https://www.np-sr.ru/ru/announce/51101-o-zaklyuchenii-soglasheniy-o-restrukturizacii-zadolzhennosti-po-cessii-v-novoy
7. https://purchase.fortum.ru/analyst/shareholders-Information/
8. https://www.enelrussia.ru/investors/share-capital/structure
9. https://unipro.energy/shareholders/disclosure/annual_reports/interactive/2020/corp/invest
10. Extract from Minutes No. 9 of the Meeting of the Sub-Commission of the Government Commission on Monitoring Foreign Investment in the Russian Federation dd. March 14, 2022, (communicated by the Ministry of Finance of Russia on March 17, 2022, No. 05-06-10/BH-12520) https://minfin.gov.ru/ru/permission/79-81/?id_65=135694-forma_rassmotrenie_voprosov_podkomissiei_v_tselyakh_vydachi_razresheniya_pravitelstvennoi_komissiei
11. https://minfin.gov.ru/ru/permission/
12. https://t.me/vs_court/2230
13. Ruling of the Supreme Court of the Russian Federation dd. April 18, 2022, on case A40-233155/2020 (305-ЭС21-25305)// https://www.vsrf.ru/stor_pdf_ec.php?id=2110782
14. https://www.cbr.ru/press/pr/?file=11022022_133000Key.htm
15. https://www.cbr.ru/press/pr/?file=28022022_094500Key.htm
16. Simvolokov O.A. Contracts in the Electric Power Industry: Problems of Theory and Practice : Monograph. Moscow : Infotropic Media, 2021. 186 p.
17. Ruling of the Judicial Chamber on Economic Disputes of the Supreme Court of the Russian Federation dd. November 30, 2017, on case No. 307-ЭС17-9329, A13-4150/2015; No. A40-188880/2020; https://kad.arbitr.ru/Card/4a24ed39-90f9-4cff-80ea-f9bd1816dbd7
18. https://www.np-sr.ru/sites/default/files/uvedomlenie_29042022.pdf
19. https://sozd.duma.gov.ru/bill/106868-8