TRANSFORMATION OF LEGAL VIEWS ON CROSS-SUBSIDIZATION IN THE ELECTRIC POWER INDUSTRY: PROBLEMS AND PROSPECTS

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Cross-subsidization is one of the systemic problems of the Russian electricity market, primarily its retail segments.

The history of cross-subsidization shows that there are different approaches to such a legal phenomenon.

In the Russian law and order, cross-subsidization is recognized at the legislative level as a problem that needs to be addressed.

At the same time, the original complete ban on cross-subsidization was replaced by an indication of the need to reduce its volume up to complete termination.

While recognizing the need to solve the problem, it is proposed to consider the meaning of this phenomenon in economics and law, to consider possible approaches to its application, and to form proposals on the prospects of cross-subsidization.

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The phenomenon of cross-subsidization itself, in its most common form, implies that the electricity price for some categories of consumers will decrease due to a proportional increase in prices for other categories.

First of all, the introduction and existence of cross-subsidization is aimed at supporting the least socially and economically protected category of consumers, the population, by increasing the financial burden on industrial consumers and other consumers of the "other" category.

Back in the late 1990s, a decision was made to completely ban cross-subsidization [1], which was later detailed in the form of an indication of the phased elimination of cross-subsidizing for the population – this refers to Resolution of the Government of the Russian Federation dd. September 26, 1997 No. 1231 On the Phased Termination of Cross-Subsidization in the Electric Power Industry and Bringing the Level of Electricity Tariffs for the Population to the Actual Cost of its Generation, Transmission, and Distribution.

With the development of economic relations in the electric power industry and the creation of a regulatory legal framework for these purposes, it also established a complete ban on cross-subsidization (Clause 5, Article 23 of Federal Law dd. March 26, 2003 No. 35-FZ On the Electric Power Industry (hereinafter

referred to as the Law on the Electric Power Industry) as amended on April 5, 2013, which later received its exceptions (Federal Law dd. November 6, 2013 No. 308-FZ On Amendments to the Federal Law On the Electric Power Industry and Article 81 of the Federal Law On Joint-Stock Companies).

The current regulations are based on the admissibility of cross-subsidization taking into account the limitations on its growth and the need for phased elimination.

Strategic documents in the fuel and energy complex (for example, Resolution of the Government of the Russian Federation dd. June 9, 2020 No. 1523-r On the Approval of the Energy Strategy of the Russian Federation for the Period up to 2035 and Resolution of the Government of the Russian Federation dd. April 3, 2013 No. 511-r On the Approval of the Strategy for Development of the Electric Grid Complex of the Russian Federation) are based on the recognition of cross-subsidization as one of the industry problems and risk factors in the electric power industry and determine its phased elimination in the list of strategic tasks.

The Government of the Russian Federation is currently recommended to continue work on reducing various types of cross-subsidization in the electric power industry while preventing the emergence of new non-market surcharges in the electricity and capacity prices [2].

Given that the Law on the Electric Power Industry, along with strategic documents, positions the relevant commodity markets, including their retail segments, as striving for competition, it is fair to say that cross-subsidization refers to that part of pricing that creates prerequisites for the discrimination upon price (tariff) setting [3], the phased elimination of which is also recognized as one of the main goals of the pro-competitive tariff policy [4].

The need to improve tariff regulation seems to be confirmed in the works of V.V. Romanova, who notes that one of the main problematic aspects of the legal regulation of the electric power industry is the procedure for tariff setting [5], which undoubtedly includes the issue of cross-subsidization.

V.V. Romanova fairly states that the improvement of laws in the field of the electric power industry takes into account the need for legal settlement of existing industry problems [6], the list of which is very long, and the repeatedly mentioned cross-subsidization is not the last problem on this list.

Moreover, it is noted that there are many types of cross-subsidization, in particular: explicit and hidden; territorial, resource and stimulating [7].

An analysis of Russian laws on the electric power industry suggests that cross-subsidization may include not only a certain redistribution of the financial and tariff burden, but also various types of non-market surcharges in the wholesale electricity and capacity market, in particular, such as increased fees under capacity supply agreements.

A common characteristic of all such surcharges is the need for some kind of support of individual consumers, investment projects, and so on.

At the same time, such support is provided through the inclusion of various surcharges in the final electricity price, the economic imbalance of cost formation parameters for the most economically stable consumers, etc.

As a general rule, it seems that such an approach entails the formation of negative effects for those consumers, at the expense of which compensation is provided for the relevant social and economic decisions.

These negative effects may include the following principal ones:

– economically unjustified distribution of the financial burden among various categories of consumers;

– growth of the tariff, financial burden on the industrial consumers, which potentially has adverse effect on the production activities; and

– violation of the basic principles of the electric power industry and civil legal relations: equality of the market players, the use of competition and market mechanisms, and the balance of economic interests of the parties.

Despite the presence of negative effects from the use of the cross-subsidization mechanism, positive social and economic results are also achieved due to its operation, in particular:

– support for the most vulnerable category of the electricity consumers, the individuals, which is expressed in reduction of the cost of energy for them;

– implementation of investment projects for the construction of new generating capacities;

– development of "green" energy production, and so on.

At the same time, it seems that the cross-subsidization mechanism itself has more potential to be used, provided that it is properly "adjusted", which excludes market injustice in pricing but retains the possibility of achieving certain positive results.

Thus, in foreign law and orders, cross-subsidization is also observed but in a slightly different form.

For example, in the Anglo-Saxon legal system, cross-subsidization expressed as the transfer of some costs of one category of the consumers to another received a negative assessment and it was banned by the court [8].

At the same time, both in the common law system and in the Romano-German law and order, cross-subsidization is actively used to implement strategic tasks in the electric power industry, the implementation of which leads to general market systemic improvements in turnover.

For example, it is used to achieve such effects as: decarbonization, infrastructure development, improvement of energy efficiency, and a number of others [9].

In some countries, as in Russia, cross-subsidization is also used as a measure of social support but it is more targeted, which seems to make it possible to ensure a more balanced distribution of such an additional burden.

However, as a general rule, such an approach to cross-subsidization involves participation in the accumulation of appropriate funds that have a particular purpose through a surcharge on electricity for all categories of consumers, without any exceptions (or with their minimum number).

In view of the foregoing, it seems that it is permissible to reconsider cross-subsidization in Russian law as well.

As possible approaches, one can think of expanding the categories of the consumers participating in cross-subsidization, while simultaneously changing its direction from absolute subsidizing of prices for the population and the categories of the consumers equated with it to targeted support for the most economically vulnerable individuals and the implementation of strategic tasks.

The legal understanding and implementation of the cross-subsidization mechanism shall be reformed, as it seems, first of all, through the transformation of the system of contractual relations in the retail electricity markets as the most extensive segment of the electric power industry.

The turnover of electricity in the retail segment should allow the use of a detailed system of contracts, which implies both a conditionally "basic" energy supply that meets the minimum needs of the consumer and contains additional parameters, such as the supply of exclusively environmentally friendly energy if the consumer expresses the corresponding will [10].

Within the framework of such a competitive system of contracts, the suppliers will be able to use market instruments that encourage the consumer to pay for energy consumption on time and in full, such as the provision of discounts on payment [11], which can later be used to encourage the consumer to choose one or another "energy supply plan" for additional effects.

With such a contractual model in place, the energy supplier will be able to offer to consumers terms and conditions that will take into account the balance between the price and the desired characteristics of the energy supply.

For example, if the consumer wishes to be more energy efficient, the supplier can offer a tariff plan that will influence private or public energy programs so that higher energy costs

will be offset by future reductions in energy consumption.

Despite the fact that such a contractual mechanism is already provided for in laws on energy saving and energy efficiency, it seems to be somewhat isolated from the energy supply process itself, and, therefore, its full potential has not been realized.

There can be many such variations of contractual terms and conditions: from energy efficiency to consumer participation in the decarbonization of the economy and the creation of "smart" energy consumption, etc.

No need to say that a certain element of non-market surcharges can and probably should be preserved but it should be more targeted (for example, cross-subsidizing not all individual consumers but those who, in accordance with the procedure established by law, are recognized as needy, poor, etc.), and it shall be more evenly distributed among all categories of the consumers with a minimum negative impact on the price of the resource.

Herewith, of course, such measures should not be one-time and such a large-scale mechanism shall be implemented with a long transition period and a gradual increase to the amount of surcharges that will not cause economic damage to the consumers, primarily, the individuals and which they will pay as part of the electricity price.

Systemic effects that seem appropriate to achieve with the use of cross-subsidization in the above model can be described as follows:

– active development of energy efficiency, primarily, in the residential sector, which will make it possible to compensate for a certain increase in the price burden by reducing consumption volumes, thereby minimizing the economic consequences for individuals as much as possible;

– improvement of the systemic security of the energy infrastructure, which includes both "imperceptible" potential harm, that is, improving the environmental friendliness of the infrastructure, and enhancing its reliability, performance, and durability, which will make it possible in the future to reduce the cost of eliminating emergencies primarily caused by the wear and tear of the electric power industry facilities, including grid facilities; and

– acceleration of the digitalization of the electric power industry, which contributes to the overall increase in the efficiency of the industry.

Naturally, this list of effects is not comprehensive and it can be assumed that, in practice, the number of such positive industry changes that can be created by "adjusting" the mechanism for their financing is much greater and they will ensure the sustainable, reliable, and economically justified operation of the industry. ■

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