

# LEGAL REGULATION OF THE SUPPLIED AND CONSUMED ENERGY RESOURCES METERING: PROBLEMATIC ASPECTS

DOI 10.18572/2410-4390-2018-3-67-72



## Romanova Viktoriya V.

Head of the Department of Energy Law  
of the Kutafin Moscow State Law University (MSAL)  
Doctor of Law

■ [energylawdep@msal.ru](mailto:energylawdep@msal.ru)

*Proper legal regulation of energy resources metering is based on the provisions of the Constitution of the Russian Federation set forth in Part 1, Article 9 of the Constitution of the Russian Federation documenting that the land and other natural resources shall be used and protected in Russia as the foundation of life and activity of the peoples inhabiting the corresponding territory, and Article 58 of the Constitution of the Russian Federation establishing the obligation of each person to protect the nature and the environment and treat natural resources with due care.*

*General provisions on the energy resources metering procedure are documented in Article 13 of Federal Law dd. November 23, 2009, No. 261-Φ3 On Energy Saving and Enhancement of Energy Efficiency and on Amending Certain Legislative Acts of the Russian Federation. The metering requirements for particular types of energy resources are documented in Federal Law dd. March 26, 2003, No. 35-Φ3 On the Electric Power Industry, Federal Law dd. July 27, 2010, No. 190-Φ3 On Heat Supply, the Housing Code of the Russian Federation, and in subordinate regulatory legal acts.*

*An efficient legal regulation of social relations arising in connection with metering of the supplied and consumed energy resources is aimed at ensuring the balance of interests of the suppliers and the consumers and minimizing disputable situations in making settlements between the energy resources suppliers and consumers.*

*At the same time, today a considerable amount of disputes arise due to the controversies in the settlements regarding the supplied and consumed energy resources, energy resources non-metered consumption, and various construction of the regulations of material law. These disputes are typical for various branches of energy industry and concern various consumer categories, both legal entities and individuals.*

*The Constitutional Court of the Russian Federation considered a case on verification of the constitutionality of part 1, Article 157 of the Housing Code of the Russian Federation, paragraphs three and four, Clause 42 of Rules for Utility Services Provision to Owners and Users of Premises in Apartment blocks and Dwelling Houses. Acts of the Constitutional Court of the Russian Federation constitute the crucial source of energy law. In this connection, legal analysis of the conclusions made by the Constitutional Court of the Russian Federation in Regulation dd. July 10, 2018, No. 30-II seems topical. The Regulation adopted is essentially relevant for resolution of disputable situations and further development of legal regulation in the sphere of heat supply.*

**Keywords:** energy law; legal regulation of the supplied and consumed energy resources metering; legal regulation in the sphere of heat supply.

An efficient legal regulation of social relations arising in connection with metering of the supplied and consumed energy resources is aimed at ensuring the balance of interests of the suppliers and the consumers and minimizing disputable situations in making settlements between the energy resources suppliers and consumers.

General provisions on the energy resources metering procedure are documented in Article 13 of Federal Law dd. November 23, 2009, No. 261-Φ3 On Energy Saving and Enhancement of Energy Efficiency and on Amending Certain Legislative Acts of the Russian Federation.

In accordance with Part 1, Article 13 of the Federal Law On Energy Saving and Enhancement of Energy Efficiency and on Amending Certain Legislative Acts of the Russian Federation, the energy resources being produced, transmitted, and consumed shall be metered on a compulsory basis using energy resources metering devices. The requirements of the given article regarding arranging of metering of the energy resources being used cover the facilities connected to power grids of centralized power supply and (or) to systems of centralized heat supply and (or) systems of centralized water supply and (or) systems of centralized gas supply, and (or) other systems of centralized supply of energy resources.

The metering requirements for particular types of energy resources are also documented in Federal Law dd. March 26, 2003, No. 35-Φ3 On the Electric Power Industry, Federal Law dd. July 27, 2010, No. 190-Φ3 On Heat Supply, the Housing Code of the Russian Federation, and in subordinate regulatory legal acts.

Administrative liability is established for incompliance with the statutory requirements regarding energy resources metering devices. The Administrative Offence Code of the Russian Federation provides for administrative liability for failure to comply, in the course of designing, construction, renovation, and overhaul of buildings, structures, and edifices, with the requirements for their equipping with metering devices for the energy resources used; for failure by the persons responsible for the apartment blocks maintenance to comply with the requirements for equipping such houses with metering devices for the energy

resources used; for failure by the organizations obliged to perform the activity of installation, replacement, and operation of the metering devices for the energy resources being used and supplied or transmitted by such organizations, to comply with the requirement on providing the owners of the dwelling houses, summer houses, and garden cottages (or the persons representing their interests), owners of the premises in apartment blocks, and persons responsible for the apartment blocks maintenance with proposals on equipping with metering devices for the energy resources being used if the provision of such persons with such proposals is mandatory; for failure by the owners of non-residential buildings, structures, and edifices, in the course of operation of the same, to comply with the requirements for equipping such facilities with metering devices for the energy resources being used (Article 9.16).

The regulations adopted are aimed at ensuring the implementation of the fundamental principles of energy law and strengthening of the energy law order. [1]

Despite the considerable number of regulations of the law establishing the requirements to the energy resources metering devices, quite a number of problematic aspects remain that must be addressed, inter alia, at the legislative level.

The State Duma is considering bill No. 139989-7 On Amending Certain Legislative Acts of the Russian Federation in Connection with the Development of the Electric Power (Capacity) Metering Systems in the Russian Federation. The bill submitted has been adopted at first reading but requires considerable revision. [2]

Stating that revision of the given bill is required, the Chairperson of the Energy Committee of the State Duma P.N. Zavalny highlights the necessity to vest either the grid company or the energy resources supplier with the responsibility of creation of an intellectual metering system and the electric power metering devices installation. Moreover, the plan is to apply the same approach to gas and heat metering devices to release the consumers from corresponding requirements. At the same time, it was underlined that the suggested approach will prove efficient in case of remote access metering units making and installation. [3]

One should note the considerable amount of disputes in connection with controversies regarding the settlements for the energy resources supplied and consumed due to the non-metered energy resources consumption.

In order to ensure a unified court practice of enforcement of the laws governing the relations involving payments for utility services and residential premises, occupied by citizens in an apartment block under a subsidized municipal housing agreement or beneficially owned by them, as well as taking into account the issues arising at courts in the course of their consideration of cases of the given category, the Plenum of the Supreme Court of the Russian Federation gave explanations dd. June 27, 2017. [4]

Clause 14 of Regulation of the Plenum of the Supreme Court of the Russian Federation dd. June 27, 2017, No. 22 states that common property maintenance in an apartment block should be understood as, *inter alia*, the permanent readiness of the metering units for the purposes of the utility services provision.

Clause 19 of Regulation of the Plenum of the Supreme Court of the Russian Federation dd. June 27, 2017, No. 22, referring to parts 1 and 2, Article 157 of the Housing Code of the Russian Federation, explains that the amount of the utility payments shall be calculated on the basis of the amount of the utility services consumed determined by the readings of the metering devices or, if there are no such devices, based on the standard values of utility services consumption as approved by the state authorities of the constituent entities of the Russian Federation using the tariffs established by the state authorities of the constituent entities of the Russian Federation under the procedure provided for in the federal law or by the local government authority, if the latter is vested with particular state powers.

The regulation in Part 1, Article 157 of the Housing Code of the Russian Federation provides for the differences in calculations for the purposes of settlements for the energy resources consumed depending on whether metering devices are present or not.

It is necessary to note that constitutionality of Part 1, Article 157 of the Housing Code of the Russian Federation, had become the subject of

consideration by the Constitutional Court of the Russian Federation.

On July 10, 2018, the Constitutional Court of the Russian Federation adopted the Regulation on the case on verification of the constitutionality of Part 1, Article 157 of the Housing Code of the Russian Federation, and paragraphs three and four, Clause 42<sup>1</sup> of the Rules for Utility Services Provision to Owners and Users of Premises in Apartment blocks and Dwelling Houses, in connection with a complaint filed by citizen S.N. Demints. [5]

Citizen S.N. Demints, challenging the constitutionality of the above regulatory provisions, owns an apartment in an apartment block with all its premises, as of the moment of the house commissioning, equipped with individual heat metering devices, however, by the beginning of the heating period of 2016, the devices had been partially dismantled.

S.N. Demints tried in court to oblige the management company to recalculate the payment for the heat supply, however, the claim was dismissed by the award of the Pushkin Municipal Court of Moscow Region with a reference to the above provisions of Clause 42<sup>1</sup> of the Rules for Utility Services Provision to Owners and Users of Premises in Apartment blocks and Dwelling Houses. The submission of the cassation appeal of S.N. Demints for consideration in a court hearing by a cassation court was denied by the ruling of the judge of the Moscow Region Court dd. September 29, 2017.

The claim of S.N. Demints to invalidate paragraphs three and (partially) four, Clause 42<sup>1</sup> of the Rules for Utility Services Provision to Owners and Users of Premises in Apartment blocks and Dwelling Houses was dismissed by the Award of the Supreme Court of the Russian Federation dd. May 31, 2017. The award was left unchanged by the Ruling on Appeal of the Supreme Court of the Russian Federation dd. September 5, 2017. The demand of S.N. Demints to submit a supervisory appeal against the given judicial acts for consideration in a court hearing by the Presidium of the Supreme Court of the Russian Federation was dismissed by the Ruling of the Judge of the Supreme Court of the Russian Federation dd. December 25, 2017.

According to the results of the case consideration, the Constitutional Court of the Russian Federation ruled to recognize the interrelated regulatory provisions contained in Part 1, Article 157 of the Housing Code of the Russian Federation, and paragraph three, Clause 42<sup>1</sup> of the Rules for Utility Services Provision to Owners and Users of Premises in Apartment blocks and Dwelling Houses, incompliant with the Constitution of the Russian Federation, its Articles 17 (Part 3), 19 (Part 1), 35, and 55 (Part 3), to the extent these provisions (based on the meaning they are assigned by law enforcement practice within the system of the existing legal regulation) do not provide for the opportunity to use the readings of individual heat energy metering devices in determining the amount of payment for the heat supply utility service in an apartment block which, at its commissioning, including after an overhaul, has been equipped, according to regulatory requirements, with a collective (building-level) heat energy metering device and with its residential and non-residential premises equipped with individual heat energy metering devices but their preservation in particular premises has not been ensured.

According to the Decree of the Constitutional Court of the Russian Federation dd. July 10, 2018, the proceedings in the case were also terminated as related to verification of the constitutionality of paragraph four, Clause 42<sup>1</sup> of the Rules for Utility Services Provision to Owners and Users of Premises in Apartment blocks and Dwelling Houses.

According to the Decree adopted by the Constitutional Court of the Russian Federation dd. July 10, 2018, No. 30-П, the court awards adopted in relation to citizen S.N. Demints and based on the regulatory provisions of Part 1, Article 157 of the Housing Code of the Russian Federation, and paragraph three, Clause 42<sup>1</sup> of the Rules for Utility Services Provision to Owners and Users of Premises in Apartment blocks and Dwelling Houses, shall be subject to revision under the established procedure to the extent such provisions have been recognized incompliant with the Constitution of the Russian Federation.

The Constitutional Court of the Russian Federation has also ruled that the Federal

Assembly and the Government of the Russian Federation shall make changes to the current legal regulation as necessary, including the stipulation of a procedure to determine the amount of payment for the heat supply utility service in apartment blocks equipped with a collective (building-level) heat energy metering device where not all of their premises are equipped with individual heat energy metering devices taking into account the readings of the latter.

The Regulation notes that such changes shall be based on the legal positions of the Constitutional Court of the Russian Federation expressed in the Regulation adopted. Taking into account these circumstances, let us study in detail the positions of the Constitutional Court of the Russian Federation expressed in Regulation dd. July 10, 2018, No. 30-П.

In accordance with Part 1, Article 157 of the Housing Code of the Russian Federation (the version in effect as of the moment of adoption of Decree of the Constitutional Court of the Russian Federation dd. July 10, 2018, No. 30-П), the amount of payment for utility services shall be calculated on the basis of the amount of the utility services consumed determined by the readings of the metering devices or, if there are no such devices, based on the standard values of utility services consumption.

Paragraph 3, Clause 42<sup>1</sup> of the Rules for Utility Services Provision to Owners and Users of Premises in Apartment blocks and Dwelling Houses as approved by Decree of the Government of the Russian Federation dd. May 6, 2011, No. 354 (the version in effect as of the moment of adoption of Decree of the Constitutional Court of the Russian Federation dd. July 10, 2018, No. 30-П), states that in an apartment block equipped with a collective (building-level) heat energy metering device with not all of its residential or non-residential premises equipped with individual and (or) common (apartment-level) heat energy metering (distribution) devices, the amount of payment for the utility service of heat supply to the premises shall be determined using formulae 3, 3\_1 and 3\_2 of appendix No. 2 to these Regulations, based on the readings of the collective (building-level) heat energy metering device.

According to Paragraph 4, Clause 42<sup>1</sup> of the Rules for Utility Services Provision to Owners



and Users of Premises in Apartment blocks and Dwelling Houses, in an apartment block equipped with a collective (building-level) heat energy metering device with all of its residential and non-residential premises equipped with individual and (or) common (apartment-level) heat energy metering (distribution) devices, the amount of payment for the utility service of heat supply to the premises shall be determined using formulae 3\_3 and 3\_4 of appendix No. 2 to these Regulations, based on the readings of the individual and (or) common (apartment-level) heat energy metering devices and the readings of the collective (building-level) heat energy metering device.

Substantiating the necessity to terminate the case as related to paragraph four, Clause 42<sup>1</sup> of the Rules, the Constitutional Court of the Russian Federation indicated that the given paragraph of the Rules expressly prescribes to use the readings of the individual and (or) common (apartment-level) heat energy metering devices to determine the amount of payment for the utility service of heat supply to premises in an apartment block equipped with a collective (building-level) metering device, and, due to that, may not be treated as violating the applicant's constitutional rights. Along with that, the Constitutional Court of the Russian Federation noted that the grounds for termination of the proceedings in the case do not prevent from taking into account the contents of the given paragraph in evaluating the constitutionality of other provisions challenged by the applicant.

Considering the regulatory provision of paragraph three, Clause 42<sup>1</sup> of the Rules, the Constitutional Court of the Russian Federation notes that the given provision is based on the readings of the collective (building-level) heat energy metering device. By virtue of the provision mentioned, the payment for the heat supply utility service shall be determined using the principle of distribution of the entire utility resource supplied to the apartment block among the owners (proprietors) of particular premises taking into account the floor area of those premises, i.e. neglecting the readings of the individual heat energy metering devices, which, in fact, contravenes the instructions of Part 3, Article 17 of the Constitution of the Russian Federation, to

the prejudice of law-obedient owners and users of premises in a particular apartment block, and creates conditions encouraging unfair conduct of the consumers of the given utility service allowing their use of the heat energy with the payment for it partially charged to other consumers, including those economizing the heat energy.

Apart from that, Decree of the Constitutional Court of the Russian Federation dd. July 10, 2018, No. 30-Π states that the regulatory provisions of paragraph four and paragraph three, Clause 42<sup>1</sup> of the Rules, construed in their interrelation, mean that metering of the heat energy actual consumption in the premises of an apartment block equipped with respective individual metering devices is possible in case of the availability of sound devices in all other premises of the apartment block, and underlines that the obligation to duly operate and ensure preservation and timely replacement of the metering devices lies with the owners and users of such premises. Given such circumstances, the regulatory provision of paragraph three, Clause 42<sup>1</sup> of the Rules, violates the constitutional principle of equity and ensuring equal conditions for exercising by the persons referred to the same category of their rights and legitimate interests.

Regarding part 1, Article 157 of the Housing Code of the Russian Federation, Decree of the Constitutional Court of the Russian Federation dd. July 10, 2018, No. 30-Π states that the documented regulation allowing calculation of the payment amount for the consumption of the utility services on the basis of their amount determined by the readings of metering devices does not differentiate between the roles of the collective (building-level) devices and individual metering devices and creates an uncertainty entailing the possibility of violation of the constitutional parameters in regulation of the given issue by the Government of the Russian Federation.

With these circumstances in mind, the Constitutional Court of the Russian Federation recognized Part 1, Article 157 of the Housing Code of the Russian Federation, and paragraph three, Clause 42<sup>1</sup> of the Rules as incompliant with the Constitution and violating the principles of legal certainty, justice, and proportionality of the rights' and liberties' limitations, as well as of the

balance of constitutionally relevant values and the public and private interests.

The Regulation adopted by the Constitutional Court of the Russian Federation also contains the conclusion that until necessary changes are made to the legal regulation, payment for heat supply to an apartment block which, at its commissioning, including after an overhaul, has been equipped, according to regulatory requirements, with a building-level heat energy metering device and with its residential and non-residential premises equipped with individual heat energy metering devices but their preservation in particular premises has not been ensured, shall be calculated using the model established by paragraph four, Clause 42<sup>1</sup> of the Rules, and the value derived from the standard value of consumption of the heat supply utility service shall be used in relation to the premises lacking individual heat energy metering devices instead of their readings.

It seems that the act adopted by the Constitutional Court of the Russian Federation addresses a crucial task to ensure the balance of interest among the energy resources consumers representing one of the key categories of energy law entities and is aimed at the suppression of non-metered consumption of energy resources and the establishment of unified requirements for consumers regarding the installation, operation, and preservation of the devices metering the energy resources supplied.

At the same time, as fairly noted by members of the expert community, it seems expedient to further develop the existing system of legal regulation of the relations arising in connection with metering of the energy resources supplied and consumed to ensure the transfer of the responsibility for the metering devices' installation and operation from the consumers to the suppliers, including the heat energy suppliers. ■

#### References

1. Romanova V.V. Energy Law Order: Current State and Tasks. Moscow : Yurist Publishing House. 2016. S. 15.
2. Energy Markets: Issues and Tasks of the Legal Regulation. Monograph edited by V.V. Romanova, Doctor of Law. Moscow : Yurist Publishing House, 2018. S. 29–33.
3. <http://www.komitet2-13.km.duma.gov.ru/Novosti-Komiteta/item/16665878/>
4. Decree of the Plenum of the Supreme Court of the Russian Federation dd. June 27, 2017, No. 22 On Certain Questions of Consideration by Courts of Disputes on Payments for Utility Services and Residential Premises Occupied by Citizens in an Apartment block under a Subsidized Municipal Housing Agreement or Beneficially Owned by Them // Russian Gazette. 2017. July 4.
5. Decree of the Constitutional Court of the Russian Federation dd. July 10, 2018, No. 30-II adopted on case on verification of the constitutionality of Part 1, Article 157 of the Housing Code of the Russian Federation, and paragraphs three and four, Clause 42<sup>1</sup> of the Rules for Utility Services Provision to Owners and Users of Premises in Apartment blocks and Dwelling Houses, in connection with a complaint filed by citizen S.N. Demints // Russian Gazette. 2018. July 16.