

LEGAL MEASURES TO ENSURE TIMELY AND FULL PAYMENT BY THE CONSUMERS OF ENERGY RESOURCES

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Laws and law enforcement practice in the field of supplying the consumers with various types of energy resources have been analyzed. The participants of the relations in the field of energy supply have been identified, and legal measures that contribute to ensuring timely and full payment by the consumers of energy resources have been specified. In particular, the legal measures that have been elected by the legislator in order to strengthen the payment discipline of the consumers of energy resources have been defined more exactly. Additional legal measures that could contribute to achievement of this goal are proposed. In particular, it is advisable to use the possibility of indemnification provided for in Article 393 of the Civil Code of the Russian Federation since according to the legal position of the Constitutional Court of the Russian Federation, if actual property damage is caused to the contractor (managing entity) or the supplier (resource supplying entity) of utility resources and services, recovery of damages is an acceptable mechanism to compensate for property damage. The possibilities of contractual regulation are considered. It is advisable to include a provision that interest shall accrue on the amount of the monetary obligation for the period of the consumer's use of funds according to the rules of Article 317.1 of the Civil Code of the Russian Federation as payment for the use of the funds into the energy supply contracts.

Keywords: energy law; energy supply contracts; consumers of energy resources; legal measures to strengthen payment discipline.

The efficiency of the legal regulation of social relations largely depends on the rightly chosen legislative goal and the relevant legal measures [1, 2].

The purpose of this article is to identify the legal measures that contribute to ensuring timely payment by the consumers of energy resources as well as the reasoning to support the practicability of the use by the participants of legal

relations of additional legal measures contributing to the same.

Public relations associated with energy resources are complex in terms of the object of legal relations, and in terms of the composition of the parties as well as their rights and obligations.

The object of the relations under consideration is energy resources. According to the

definition given in the Federal Law *On Energy Saving and Enhancement of Energy Efficiency and on Amending Certain Legislative Acts of the Russian Federation*, the energy resource is an energy carrier, energy of which is or can be used in business and other activities as well as a kind of energy (nuclear, heat, electrical, electromagnetic, or another kind of energy). Relations related to the supply of utility resources to the consumers are also inextricably linked with relations arising out of the listed types of energy resources.

The subjects (participants) of relations in the field of supply and use of energy resources are defined in special laws. One of the participants of the relations under consideration is the energy consumer, whose main obligation is to timely pay for the used energy resources (or utilities). Thus, according to Article 3 of the Law *On the Electric Power Industry*, “consumers of electricity are persons who purchase electricity for their own domestic and/or production needs; the consumers of capacity are the persons acquiring capacity, including for their own domestic and/or production needs, and/or for subsequent sale, the persons selling electricity in retail markets, the persons selling electricity in the territories where the electric power systems of foreign countries are located”. According to Article 2 of the Law of the Russian Federation *On Gas Supply*, “a gas consumer is a person acquiring gas for own domestic needs, as well as for own production or other business needs”. According to Article 2 of the Law of the Russian Federation *On Heat Supply*, “a consumer of heat energy is a person acquiring heat energy (capacity), a heat carrier for use on heat-consuming installations belonging to it under the right of ownership or other legal grounds, or for provision of utilities as related to hot water supply and heating”. According to clause 2 of Decree of the Government of the Russian Federation No. 354 dated May 6, 2011 *On Provision of Utilities to the Owners and the Users of Premises in Apartment Buildings and Residential Houses*, “a consumer” is the owner of premises in an apartment building, residential house, housing estate as well as the person legally using a room in an apartment building, residential house, or housing estate and consuming utilities.

For various reasons, there is a long-standing problem of late payments by the consumers in the area of payments for the used energy resources.

Therefore, the legislator establishes steps (measures) to strengthen the payment discipline of the consumers. Thus, to strengthen the payment discipline, Federal Law No. 307-Φ3 dated November 3, 2015 (hereinafter referred to as Federal Law No. 307-Φ3) amended the basic laws defining the legal, economic, and organizational basis of relations connected with production, transmission, and consumption of different kinds of energy: gas, “electricity”, heat energy as well as in the field of water supply and disposal.

These aspects were the subject of legal research, including those of V.V. Romanova [3] and L.Yu. Akimov [4].

For cases of untimely and/or incomplete payment for energy resources (gas, electricity, utility resources), Federal Law No. 307-Φ3 sets forth the possibility to apply the following legal measures:

1. Collection of a penalty in a fixed amount. The amount of the legal penalty is set depending on the consumer. Thus, for example, the gas consumer shall pay a penalty to the supplier at the rate of one hundred and thirtieth of the refinancing rate of the Central Bank of the Russian Federation effective on the date of actual payment from the outstanding amount for each day in arrears starting from the day following the due date to the date of actual payment. And partnerships of homeowners, housing, housing and housing construction, and other specialized consumer cooperatives that purchase gas for the purpose of provision of utilities, in case of late and/or incomplete payment for gas, shall pay a penalty to the supplier at the rate of one three hundredth of the refinancing rate of the Central Bank of the Russian Federation effective on the date of actual payment from the outstanding amount for each day in arrears starting from the thirty-first day following the due date to the date of actual payment made within ninety calendar days from the due date of payment, or to the expiry date of the ninety-day period after the due date if the payment is not made within ninety days.

2. Reduction or termination of energy supply in the manner established by the Government of the Russian Federation.

3. Provision by the consumers who fall under a special list of criteria established by the Government of the Russian Federation of security for fulfillment of the obligations to pay for energy resources supplied under the supply contracts. Unless otherwise agreed upon by the parties, the security for fulfillment of the obligations to pay for energy resources in these cases is provided by the consumers in the form of an independent guarantee issued by a bank (bank guarantee). It should be noted that, as agreed with the supplier, a state or municipal guarantee may be provided or the payment obligations may be secured by other means provided for by law or by contract.

The law specifies that this obligation shall not be established for the consumers acting as the public authorities, the municipal authorities, state, autonomous and budget-funded institutions, owners and users (lawful owners) of residential buildings and premises in apartment buildings, management companies, partnerships of homeowners, housing, housing and housing construction, and other specialized consumer cooperatives that were formed to meet the housing needs of the public and act in accordance with housing laws.

4. Bringing the energy consumers to administrative liability for violation of the procedure for complete and/or partial restriction of the electricity consumption, the rules for restriction of gas supply and extraction, or the procedure for interruption or restriction of water supply and/or disposal, transportation of water and/or sewage, and for violation of the established procedure for provision of the security for fulfillment of the obligations to pay for electricity (capacity) and/or heat carrier associated with a failure to fulfill (improper fulfillment of) the obligations to pay for them.

5. Implementation of federal energy supervision with regard to the consumers of electricity, except for the activities of the consumers of electricity associated with the operation of power receiving devices used for domestic needs as well as other power receiving devices the total maximum power of which does not exceed 150 kilowatts with a rated voltage up to 1,000 volts and which are connected to the same power supply.

6. Imposition of additional obligations in accordance with clause 7.1., Article 38 of the Law the *On Electric Power Industry* and the requirement to fulfill them.

As indicated in Article 8 of Federal Law No. 307-Φ3, the introduced amendments apply to relations arisen out of electricity (capacity) sale and purchase (supply) contracts, power supply contracts, hot water supply contracts, and other types of energy supply contracts concluded prior to the effective date of this law.

We believe that, along with the legal measures introduced by Federal Law No. 307-Φ3 and established in special laws, it is advisable for the participants of the relations in the supply of energy resources to use the possibility to include the provisions intended to ensure timely payment in the contracts, as well.

Firstly, it is advisable to use the possibility to compensate for damages as provided for in Article 393 of the Civil Code of the Russian Federation. Decree of the Plenum of the Supreme Court of the Russian Federation No. 7 dated March 24, 2016, specifies that “unless otherwise provided for by law, the use by the creditor of other methods to defend the violated rights provided for by law or by contract shall not deprive it of the right to demand compensation for damages caused by non-fulfillment or improper fulfillment of the obligations from the debtor” [5]. In the energy supply relations, application of the provisions of Article 393 is an acceptable legal mechanism. Thus, Resolution of the Constitutional Court of the Russian Federation No. 2256-O dated October 10, 2017, [6] specifies that “in addition to the general methods of protection of rights provided for in Article 12 of the Civil Code of the Russian Federation, civil law also establishes other (special) methods, provided, however, that by virtue of the general principles of civil law, the admissible by law combination of several methods for protection of the right is not intended to ensure unjust enrichment of the lender”. Herewith, the Constitutional Court of the Russian Federation emphasizes that the normative provision challenged by the applicants, which establishes the method for calculation of payments for unrecorded utility resources, is intended to encourage the consumers of utility resources

and services to save energy by prevention of unauthorized interference with the operation of the meters, and in the event the actual property damage is caused to the contractor (managing entity) or to the supplier (resource supplying entity) of utility resources and services, it is a valid mechanism for its reimbursement.

Secondly, it is advisable to use the possibilities of **Article 317.1.** of the Civil Code of the Russian Federation, which makes it possible to specify in the contract that interest shall accrue on the amount of the monetary obligation for the period of use of the funds, and the amount of interest shall be determined by the key interest rate of the Bank of Russia prevailing in the relevant

periods (legal interest) unless different interest is set forth by law or by contract. It is reasonable to establish this rule in the contract as an additional condition (legal measures) aimed at securing fulfillment of the obligation to pay for energy resources rather than as a provision on liability. Thus, clause 53 of Decree of the Plenum of the Supreme Court of the Russian Federation No. 7 dated March 24, 2016, specifies that “unlike the interest stipulated by clause 1, Article 395 of the Civil Code of the Russian Federation, the interest established by Article 317.1 of the Civil Code of the Russian Federation is not a measure of liability, and it shall be deemed payment for the use of the funds”. ■

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