

LEGAL REGULATION OF CONSTRUCTION OF ENERGY FACILITIES BY RUSSIAN COMPANIES ABROAD: PROBLEMS AND PROSPECTS

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This article discusses the problems of legal regulation of construction of energy facilities by Russian companies abroad, examines the problems of legal regulation in this field at the national and international levels. The problems of legal regulation cover issues of legal regulation with due account for the requirements of the national laws of the states, in which the energy facilities are constructed, the requirements of international treaties, and the peculiarities of contractual regulation. Russian companies engaged in construction of Russian energy facilities abroad are forced to take into account a wide range of international legal rules in force in the relevant field: multilateral interstate agreements, recommendations of the IAEA, intergovernmental and interdepartmental agreements. The study of the peculiarities of contractual regulation of construction of energy facilities by Russian companies abroad requires considerable attention to the specific nature of the procedure for conclusion of these agreements in accordance with the laws of various foreign countries, the requirements to their execution, the procedure for amendment of the agreements, and the procedure for their termination. Considering the role of the national laws of the states, in which the energy facilities are constructed, the author concludes that it is advisable to conduct comparative legal studies of the regulatory framework in foreign countries in the field of construction of energy facilities.

Keywords: energy law, energy law order, legal regulation of construction of energy facilities by Russian companies abroad.

It is difficult to overestimate the strategic importance of expansion of Russian presence in the energy sector of foreign countries, export of domestic high-tech production in this area concurrently stimulating growth in the non-resource sector of the national economy of Russia as well as strengthening of international cooperation in the energy sector in the context of volatile energy markets and geopolitical turbulence. Herewith, the increased attention of legal science to international

legal and foreign economic aspects of development of the energy sector is justified [1].

It is no coincidence that integration into the global energy system was mentioned as one of the main vectors of the prospective development of the sectors of the fuel and energy complex provided for by the Energy Strategy of Russia for the period up to 2020 (which is currently no longer valid). At the same time, “lack of developed and stable legislation that fully takes into account the specific nature of

functioning of the fuel and energy enterprises” was specified as one of the key factors restraining development of the fuel and energy complex.

In the Energy Strategy of Russia for the period up to 2030, the foreign economic vector of development of the energy system is also mentioned as one of the most important. In particular, it is noted that “the main external challenge lies in the need to overcome the threats associated with instability of world energy markets and volatility of world energy prices as well as to ensure contribution of the country’s energy sector into improvement of efficiency of its foreign economic activity and strengthening of Russia’s position in the global economic system.

However, at the same time, the tasks of legal regulation of development of the energy sector are still not achieved in full.

In the draft Energy Strategy of Russia for the period up to 2035 posted on the website of the Ministry of Energy of the Russian Federation, the international vector for development of the energy sector is considered as one of the most important, while “support of Russian companies in acquisition by them of energy assets in the segment of production, processing and marketing abroad, assistance in protection of Russian investments” as well as “support of Russian companies in implementation of international infrastructure projects in the energy sector” [2] are specified among the measures in this field.

Currently, many sectors of the energy sphere actively interact with foreign counterparties, including construction of energy facilities abroad.

For example, Gazprom, PJSC, expands its presence abroad. Thus, according to the company’s information, “in 2019, construction of a combined-cycle heat and power plant (HPP) commenced in Pan evo (the Republic of Serbia); herewith, the Pan evo HPP with an electric capacity of about 200 MW will be the first project of Gazprom Energy Holding Group implemented outside the Russian Federation and the first combined-cycle heat and power plant in Serbia. The HPP is constructed in an industrial area on a site with the area of about 2 hectares in the immediate vicinity of the Pančevo oil refinery (refinery), which belongs to NIS a.d. Novi Sad (Gazprom Neft Group). The generated heat will be used to meet the needs of the Pančevo refinery, and electricity will be sold in Serbia and neighboring countries.

Commissioning of the Pančevo HPP is scheduled for 2020” [3].

Rosatom State Corporation implements a large-scale program for construction of nuclear power plants both in the Russian Federation and abroad. 6 power units are currently under construction in Russia, while the portfolio of foreign orders includes 36 units, which clearly demonstrates the demand for Russian specialists and technologies in the field of construction of energy facilities. In particular, Rosatom State Corporation currently constructs the following energy facilities abroad: Akkuyu NPP (Turkey), Belarusian NPP (Belarus), El-Dabaa NPP (Egypt), Kudankulam NPP (India), Paks-2 NPP (Hungary), Ruppur NPP (Bangladesh), Tianwan NPP (China), and Hanhikivi-1 NPP (Finland), 36 power units in total [4].

Rosneft, PJSC, is actively presented abroad. The company positions itself as a global energy company, whose target areas of presence are South America, North and East Africa, the Middle East, and the Asia-Pacific region. Herewith, in the development of foreign assets, the company often carries out construction of certain necessary facilities. For example, according to the company, “Petromiranda S.A. joint venture was established in Venezuela in 2010 for implementation of the project at Junin-6 block, where phase 1 providing for additional exploration of the field and design of infrastructure facilities is implemented. At the block, pilot development of the priority area is carried out in order to determine the characteristics of the reservoir. In 2014, PetroVictoria S.A. joint venture was founded to implement the Carabobo 2/4 project. Under the Carabobo 2/4 project, in 2017, production drilling was started at the early production site. As a part of the additional exploration program, sites were built and the first drilling rig was mobilized to start drilling wells. Permanent infrastructure is designed and construction of temporary infrastructure is underway” [5].

The above examples demonstrate the importance of creating an effective legal framework for construction of Russian energy facilities abroad, their relevance and demand for them in practice. Difficulties in the field of legal regulation of construction of energy facilities abroad are caused by differences in legal regulation in accordance with national laws, absence of unified international legal provisions at the level of a universal convention [6].

Let us consider these aspects in more detail.

Requirements of the National Laws of the Russian Federation and Foreign Countries.

The sphere of construction of energy facilities itself as a part of an extremely important system for ensuring Russia's energy security in a harsh climate when problems with energy supply are directly related to the quality of life of citizens is the subject of close attention of the legislator.

Public relations with regard to construction of energy facilities are included in the subject of energy law and are regulated by legislation that is complex in its legal nature [7]. The legal regulation of relations with regard to construction of energy facilities in the Russian Federation involves various sources of energy law.

Herewith, it should be noted that the normative legal acts of the Russian Federation should be taken into account in the construction of Russian energy facilities abroad in so far as they do not conflict with the requirements of the laws of the foreign state, on the territory of which the energy facilities are constructed.

For example, Article 7 of Federal Law No. 317-Φ3 dated December 1, 2007 *On State Atomic Energy Corporation Rosatom* establishes that to achieve the goals established by this Federal Law, this Corporation shall also exercise such a power as verification of design documentation on those nuclear facilities, construction of which "is carried out outside the Russian Federation in accordance with international treaties of the Russian Federation and is financed with the funds of the budget system of the Russian Federation, funds of legal entities established by the Russian Federation, legal entities, the share of the Russian Federation in the authorized (share) capital of which exceeds fifty percent". Herewith, this verification is performed "to assess compliance with the requirements of the laws of the foreign state, in the territory of which the nuclear facility is constructed, the requirements of the technical regulations in force in the Russian Federation, sanitary and epidemiological, environmental requirements, fire, industrial, nuclear, radiation and other safety requirements (to the extent not inconsistent with the requirements of the laws of the foreign state, in the territory of which the nuclear facility is constructed)".

Legal regulation of construction of energy facilities by Russian companies abroad is complicated by the fact that it is carried out in other countries and,

therefore, cannot but take into account legal regulation of the energy sector of the host country, especially with regard to state regulation and state control over construction of energy facilities.

The following example in the sphere of construction of Russian nuclear facilities abroad is illustrative: "in December 2014, the Ministry of Environment and Urban Planning of Turkey approved the Report on Assessment of Environmental Impact of the Akkuyu NPP (EIA). The ceremony of laying the foundation of the offshore structures of the nuclear power plant was held in April 2015. On June 25, 2015, the Turkish Energy Market Regulatory Authority issued a preliminary license for generation of electricity to Akkuyu Nuclear, JSC. On June 29, 2015, a contract was signed with Cengiz Inaat, a Turkish company, for design and construction of offshore hydraulic structures of the nuclear power plant. In February 2017, the Turkish Atomic Energy Agency (TAEK) approved the design parameters of the Akkuyu NPP site [8]. This example clearly shows how important the jurisdiction of construction of the energy facility is and the need to coordinate various stages of construction with the public authorities of the host country.

International Legal Regulation of Construction of Energy Facilities Abroad

According to the Conceptual Approach to the New Legal Basis for International Cooperation in the Energy Sector, "a future more sustainable model of long-term development requires a modern, world-wide energy supply system being adequate to the current conditions", the construction principles of which include, among other things, "transparency of all segments of international energy markets (production/export, transit, consumption/import); non-discriminatory promotion and protection of investments, including new investments in all parts of the energy chain; encouraging the mutual exchange of assets of the energy business as a part of investment activities; ensuring non-discriminatory access to energy technology and participation in technology transfer; facilitating implementation of infrastructure projects that are important for ensuring global and regional energy security" [9].

Russian companies engaged in construction of Russian energy facilities abroad are forced to take into account a wide range of international legal rules

in force in the relevant field: multilateral interstate agreements, recommendations of the IAEA, inter-governmental and interdepartmental agreements.

Contractual Regulation of Construction of Energy Facilities Abroad.

An equally significant component of regulation of relations in construction of energy facilities abroad is related to contractual regulation.

Study of peculiarities of contractual regulation of construction of energy facilities by Russian companies abroad requires considerable attention to the specific nature of the procedure for conclusion of these agreements in accordance with the laws of various foreign countries, the requirements for their execution, the procedures for amendment of the agreements and their termination.

The rules on the applicable law, the dispute settlement procedure as well as the provisions on fulfillment of obligations by the parties are also of great importance in legal regulation of relations complicated by a foreign element.

In this regard, it seems appropriate to conduct fundamental scientific comparative legal studies of the legislation of foreign countries in the field of construction of energy facilities.

At the same time, it seems appropriate to pay more attention to studying the laws of countries such as the People's Republic of China, other Asian countries, India, Brazil, and other countries of Latin America, etc.

Development of legal regulation of innovation in the field of construction of energy facilities also deserves special attention.

In the situations when the market cannot always sufficiently guarantee implementation of the required fundamental scientific research, the state should support innovative development of the energy sector since in these areas, it is possible to occupy a niche in the global energy market of a modern non-resource cluster taking into account Russia's unique experience in the energy sector, availability of qualified personnel and educational institutions. Thus, in future, new spheres for construction of Russian energy facilities abroad can be mastered on the basis of breakthrough innovative technologies in the energy sector. Highly qualified personnel in the field of energy law will play a significant role in achievement of these goals.

Settlement of the specified issues will contribute to development of legal regulation of construction of energy facilities abroad. ■

References

1. Gudkov I.V. Problems of International Legal Regulation of Energy Relations in Terms of Interaction of Russia and the European Union / I.V. Gudkov // Law. 2015. No. 1. P. 84-95; Zekker F.Yu. German Energy Law in Development: Transformation in Post-Mineral Era / F.Yu. Zekker // Energy Law. 2015. No. 1 (24). P. 2- ; Lisitsyn-Svetlanov A.G. Energy Law: Goals for Further Development of the Branch / A.G. Lisitsyn-Svetlanov // Legal Regulation in Electric Power and Heat Supply : Materials of International Scientific and Practical Conference (Moscow, December 13, 2013) : Collection of Scientific Works. Moscow : Yurist, 2013. P. 9-; Lakhno P.G. Energy Law of the Russian Federation. Formation and Development : monograph / P.G. Lakhno. Moscow : Moscow University Publishing House, 2014. 477 p.; Problem Issues and Trends of Legal Regulation in the Sphere of Nuclear Energy Use : Monograph / V.V. Romanova, K.A. Stalmakhov, A.A. Shkarbanov [et al.] ; Edited by V.V. Romanova. Moscow : Yurist, 2017. 223 p; Romanova V.V. Energy Law Order: Current State and Tasks / V.V. Romanova. Moscow : Yurist, 2016. 255 p. (Романова В.В. Энергетический правопорядок: современное состояние и задачи / В.В. Романова. Москва : Юрист, 2016. 255 с.) ; Romanova V.V. Legal Regulation of Construction and Modernization of Energy Facilities : Monograph / V.V. Romanova. Moscow : Yurist, 2012. 425 p.
2. Section 4.8 of the Draft Energy Strategy of the Russian Federation for the Period up to 2035 (revision of February 1, 2017) // Official Website of the Ministry of Energy of the Russian Federation. URL: <https://minenergo.gov.ru/node/1920>
3. Gazprom Started Construction of Combined-Cycle Heat and Power Plant in Serbia // Official Website of Gazprom, PJSC. 2019. March 7. URL: <https://www.gazprom.ru/press/news/2019/march/article476543/>
4. NPPs under Construction. URL: <https://rosatom.ru/production/design/stroyashchiesya-aes/>
5. Development of Foreign Projects in Promising Oil and Gas Areas // Official Website of Rosneft Oil Company, PJSC. URL: <https://www.rosneft.ru/docs/report/2017/ru/results/international-projects.html>
6. Romanova V.V. Legal Regulation of Construction and Modernization of Energy Facilities : monograph / V.V. Romanova. Moscow : Yurist, 2012. 425 p.
7. Energy Law. General Part. Special Part : Textbook / Edited by V.V. Romanova, 2nd edition, revised and updated. Moscow : Yurist, 2015. 677 p.
8. NPPs under Construction. URL: <https://rosatom.ru/production/design/stroyashchiesya-aes/>
9. Conceptual Approach to the New Legal Basis for International Cooperation in the Energy Sector (Goals and Principles). URL: <http://kremlin.ru/supplement/258>