

LEGAL SUPPORT OF ENERGY FACILITIES CONSTRUCTION BY RUSSIAN COMPANIES ABROAD: TOPICAL TASKS OF ENERGY LAW SCIENCE

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Today, it is hard to imagine Russian energy policy without investments in energy facilities construction abroad. Quality legal support of such construction is becoming crucial as a solid basis for solving strategical tasks of Russia's presence on the foreign energy markets, broadening its geopolitical influence, integration in global economic chains, and strengthening both economic and cultural relations with other countries through exchanging experts and training foreign specialists in Russia.

One may note an evident trend of increasing the Asian projects' share in the Russian foreign investment portfolio. In the modern multipolar world, Asia is becoming an increasingly influential pole of attraction both politically and economically on a global scale, so the trend is rather justified offering more stability to Russian external energy policy in a tense and geopolitically volatile situation. In this connection, construction of nuclear energy facilities abroad by Russian energy companies may be illustrative. The article analyses legal studies dedicated to issues of legal support of energy facilities construction. The author comes to the conclusion that it is necessary to research legal regulation of energy facilities construction stipulated by the laws of those foreign states where Russian energy companies intend to build energy facilities.

Keywords: *energy law; energy legislation; legal regulation of energy facilities construction by Russian companies abroad.*

Public relations arising in connection with energy facilities construction (including overseas projects) belong to the subject of the energy law [1].

The most comprehensive analysis of problematic aspects of legal regulation of energy facilities construction is given in writings of V.V. Romanova which cover issues of legal

regulation of the private law and public law relations arising in energy facilities construction [2–4].

As V.V. Romanova justly notes, “efficiency of the energy law order, which is the law order manifested in the interaction of all participants of public relations in the sphere of energy, including relations in the fields of energy resources searching, extraction, supply, transportation, transfer, storage and energy facilities construction, depends to a large extent on efficiency of the system of legal regulation of public relations in the key economic sector, legal regulation system’s elements, and their interrelation” [5].

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In this connection, construction of nuclear energy facilities abroad by Russian energy companies may be illustrative. One of topical tasks is Russia’s participation in the international legal cooperation in this sphere, since such construction is associated with potential transborder risks in case of an accident at such facilities, and, consequently, building such a facility may not belong to internal affairs of a particular country and should be based on a developed system of international legal regulation of the corresponding operations.

Analyzing legal bases, current state, and tasks of the international energy law order, V.V. Romanova notes that “the international

energy law order is based on the system of international legal regulation in the sphere of energy, which consists of various elements establishing the procedure for interaction of participants of international relations in the sphere of energy, their liability for damage that may be caused through energy facilities operation, requirements for energy and industrial safety, and anti-terrorist security of energy facilities” and underlines that “international treaties are the key instrument ensuring functioning of the international energy law order” [6].

As M.N. Lysenko correctly notes, Russia is an active participant of the global nuclear energy market leading in terms of the number of nuclear power plants being constructed abroad [7].

State Atomic Energy Corporation ROSATOM (hereinafter referred to as “Rosatom State Corporation”) actively performs international activity, including engagement in international organizations and forums, and other international platforms aiming at promotion of Russian nuclear technologies in the international market. Ensuring preparation of intergovernmental agreements and interagency understandings also receives its special attention. For instance, according to data provided by the State Corporation, in 2017, 16 interagency understandings and 11 major intergovernmental agreements were signed. In particular, in order to lay the basis for bilateral cooperation in the nuclear sphere between the Russian Federation and the Kingdom of Cambodia, Republic of Paraguay, Republic of Sudan, Republic of Tajikistan, and Republic of Uzbekistan, five “framework” intergovernmental agreements were signed. Successful entering into an intergovernmental agreement requires diligent and thoughtful work with foreign partners. Rosatom State Corporation is developing a network of its foreign representative offices to refine this process. Thus, by the end of 2017, representative offices of Rosatom State Corporation had been operating in 10 countries worldwide based on Russian embassies and trade missions, as well as at the permanent delegation of the Russian Federation under international organizations in Vienna, Austria’s capital [8].

Today, Atomstroyexport, CJSC (ASE, CJSC) is the leading engineering company of Rosatom

State Corporation engaging in construction of nuclear energy facilities abroad. The Tianwan NPP in China is one of its major projects implemented. This NPP is considered the biggest object of economic cooperation between the People's Republic of China and the Russian Federation. Particularly, "the intergovernmental agreement on cooperation in building a nuclear power plant in the PRC was entered into on December 18, 1992. Construction on the site started in 1998, followed by commissioning of the facility in 2007. On September 12, 2009, the two-year warranty operation of units 1 and 2 of the Tianwan NPP ended. On April 15, 2010, final acceptance statements were signed for units 1 and 2 of the Tianwan NPP. The rated contract power of each power unit is 1,060 MW. Each power unit includes a reactor installation featuring a reactor of the WWER-1000/428-type and a turbine of the K-1000-60/3000 type with TBB-100002Y3 generator. On September 27, 2010, during Russian President's visit to the People's Republic of China, a contract was signed for development of a detail design for the second construction stage of the Tianwan NPP [9].

The outlooks of cooperation with China in the sphere of energy are fueled by constantly growing energy needs of the actively developing Chinese economy. While the country possesses the world's biggest coal reserves, they cannot cover these needs due to imperfect infrastructure hindering energy delivery to all required destinations, including the most remote ones. Besides, year after year, environmental issues remain rather tense, especially in Chinese megalopolises, which also interferes with development of the energy industry in China based on its own energy resources.

The cooperation with China can serve as a good example of importance of quality legal support for energy facilities construction by Russian companies abroad, as well as goals of such support, such as preserving energy security of Russia and its leadership in the field of these technologies, and prevention of an excessive transfer of latest technologies abroad in order to remain the global leader in the sphere of energy.

For instance, researchers note that today's main issue and obstacle is that the foreign entities'

readiness to transfer technologies is the condition precedent for building NPPs in China. Probably, this requirement was the original reason for Atomstroyexport to bid for the NPP construction in China only formally in December 2006, with the contract finally awarded to Westinghouse. Apart from that, Atomstroyexport was busy with a bunch of international orders at that time and was the only enterprise building seven power units beyond its home country simultaneously: 2 units for the Tianwan NPP in China, 2 units for the Kudankulam NPP in India, 1 unit for the Bushehr NPP in Iran, and 2 units for the Belene NPP in Bulgaria. Currently, the Russian party refuses to transfer the NPP construction technology [10].

However, Russia and China should continue their mutually beneficial cooperation in the nuclear field, since the PRC is planning to implement its large-scale strategy in this sphere. Particularly, the country plans to develop technology for molten salt reactors with liquid nuclear fuel being also a heat carrier allowing fuel replacement without the reactor's shutdown. Thus, the PRC is reviewing the nuclear sector's development plan up to 2050. Presently, investment aims mainly at mastering the 3rd generation reactors and creating the 4th generation ones. With clearly defined goals of the PRC, China can be considered one of the leaders in the global nuclear renaissance [11].

Thus, further cooperation with the PRC in the sphere of energy facilities construction will probably be still beneficial for Russia. Consequently, when ensuring legal support of construction operations under contracts made, the law has for its objective balancing interests of Russia and its foreign partners, equally allowing preservation of strategically valuable energy secrets and potentially mutually beneficial long-term strategic cooperation.

Another goal of legal support of energy facilities construction abroad by Russian companies is developing science-based theoretical (doctrinal) tools supporting practical operations. For example, as a rule, such operations are performed under a works contract, primarily, a construction contract. However, such a contract can have different construction and specific legal regulation

in countries practicing different law systems. Failure to take these particularities into account may have adverse consequences.

Thus, numerous studies point out that in international legal relations between continental Europe's countries a works contract is understood as an agreement where one of the parties (the contractor) undertakes to perform work stipulated in the agreement and provide its deliverables to the customer, who is obliged, under this agreement, to accept and pay for such deliverables (e.g., § 631 of the German Civil Code). For instance, in the United States and England, the legal theory and practice offer no general definition for the notion of works contract, while the notion of construction contract plays an important role. It should be taken into account that, first of all, relations arising in case of entering into a construction contract and further performing the corresponding work are clearly regulated by standard contracts. Standard contracts are drafted by special associations of civil engineers and advisors or other associations. For example, FIDIC (International Federation of Consulting Engineers) develops most typical standard contracts; secondly, in case of a capital construction contract, both abroad and in Russia, administrative orders, often organized in architectural legislation (France, Germany), matter significantly. They establish necessary rules for construction operations safety and quality. Court practice shows that a construction contract differs significantly from other contracts.

It should be added to the above that foreign legislation outlines a clear range of contract types not known for the Russian Civil Code and intended specifically for the sphere of construction (this refers to the contract with an architect, regulated by the French Civil Code) [12]. The legal nature of contract forms developed by FIDIC is analyzed including in writings of V.V. Romanova [13].

Summarizing the best foreign examples and international practices in the relevant field as well as legislative initiatives to amend Russian laws to accommodate the most positive experience may constitute another goal of legal support of energy facilities construction by Russian companies abroad.

Thus, for example, experts from the National Association of Construction Engineering Consultants (NACEC), set up in 2015 at the initiative of Rosatom's entities (ASE, Institution of Rosatom BCCC, and JSC GSPI), suggest that developing and managing projects beyond the Russian Federation always requires cooperation with numerous foreign partners and contractors. And successful project implementation under the terms and conditions usual for Rosatom is not always possible. NACEC suggests creation of a contract platforms package enabling implementation of construction projects for nuclear power facilities (NPF) in various combinations which, in their turn, should be made common for all countries, through, for example, IAEA's support. Besides, same as with the International Federation of Consulting Engineers (FIDIC), there is a need in the system of pre-judicial arbitration in nuclear projects allowing settlement of disputes between national entities prior to applying to the court. This would simplify communication and internal intraproject logistics between partners and contractors" [14].

Presently, it seems crucial to conduct researches in the field of legal regulation of energy facilities construction within the framework of legislation of those foreign states where Russian energy companies intend to build energy facilities. Findings of this researches may become the basis for unified provisions governing energy facilities construction in the territory of various states. ■

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