

## SPECIFIC FEATURES OF THE LEGAL STATUS OF ROSSETI PJSC

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*Legal support of the electric grid sector is one of the priority spheres of energy law. The structural changes in the Russian electric grid sector were aimed at uniting the main and distribution grids, setting up a common center of responsibility to shareholders, increasing efficiency of coordination efforts in investment operations, as well as, in particular, developing unified quality standards and indicators. Today, the state-owned major holding company, ROSSETI PJSC, is the key entity in the electric grid sector. This Article analyses specific features of the legal status of ROSSETI PJSC, conducts a rather-legal analysis of the legal status of ROSSETI PJSC and that of the State Atomic Energy Corporation Rosatom, studies the current state of legal support of ROSSETI PJSC's operations considering the tasks outlined in the Development Strategy for the Electric Grid Sector of the Russian Federation approved by Order No. 511-p of the Government of the Russian Federation dd. April 3, 2013.*

**Keywords:** energy law, energy legislation, legal status of energy companies, legal regulation of the electric grid sector.

In terms of market economy development, the energy sector occupies a special status generating most of the income for the federal budget. Energy law sees legal support for the electric grid sector as one of its priorities. Considering the main elements of the legal regulation system in the sphere of energy forming the energy law order, V.V. Romanova correctly notes that specific features of the legal status of entities participating in public relations in the sphere of energy depend primarily on the need in energy systems' functioning. [1]

On November 22, 2012, V.V. Putin signed Decree No. 1567 On ROSSETI Public Joint-Stock Corporation in order to develop unified

management principles for the Russian electric grid sector and implement a common investment, financial and economic, and human resources policy.

The structural changes in the electric grid sector of the Russian Federation were aimed at uniting the main and distribution grids, setting up a common center of responsibility to shareholders, increasing efficiency of coordination efforts in investment operations, as well as, in particular, developing unified quality standards and indicators.

Today, the state-owned major holding company, ROSSETI PJSC, is the key entity in the electric grid sector (hereinafter referred to as "ROSSETI PJSC").

Bases of the legal status of ROSSETI PJSC are defined in the Civil Code of the Russian Federation (hereinafter referred to as “CC RF”), Federal Law No. 208-FZ On Joint-Stock Companies dd. December 26, 1995 (hereinafter referred to as the “Joint-Stock Companies Law”), Federal Law No. 135-FZ On Protection of Competition dd. July 26, 2006, Decree No. 1567 of the President of the Russian Federation On ROSSETI Public Joint-Stock Corporation dd. November 22, 2012 (hereinafter referred to as “Decree No. 1567”), Order of the Government of the Russian Federation No. 526 On Reforming the Electricity Sector of the Russian Federation dd. July 11, 2001 (hereinafter referred to as “Order No. 526), and Order of the Government of the Russian Federation No. 511-p On Approval of the Development Strategy for the Electric Grid Sector of the Russian Federation dd. April 3, 2013. ROSSETI PJSC operates on the basis of its Articles of Association and corresponding by-laws.

According to Article 2 of the said Articles of Association, the company is a legal entity and public joint-stock company.

At the same time, the essence of the legal status of ROSSETI PJSC evokes numerous questions when analyzing its specific features in the context of rules of the laws in effect. Let us take a detailed look at these aspects.

First, it is necessary to identify features distinguishing ROSSETI PJSC from other public joint-stock companies.

Public joint-stock companies are set up by a resolution of the founders (a founder), and such a resolution is made by the foundation meeting or the sole founder. In contrast, ROSSETI PJSC was set up under Order No. 1567, with Russia’s contribution to the authorized capital of ROSSETI PJSC being 79.64 % of state-owned shares in FGC UES, JSC.

Today, the Russian Federation, represented by the Federal Agency for State Property Management (Rosimushchestvo), owns 0.59% shares in FGC UES, PJSC. ROSSETI PJSC, as the controlling shareholder, and Rosimushchestvo signed an agreement on the procedure for FGC UES, PJSC shares managing and voting governing shareholders’ interaction regarding their

rights in relation to FGC for the purposes defined in Decree of the President of the Russian Federation No. 1567 dd. November 22, 2012.

The company’s interaction with the state as a shareholder has procedural specific features defined by regulations of the President and the Government of the Russian Federation. Particularly, the state’s agents in the company’s management bodies are obliged to vote in accordance with the Government’s instructions regarding a particular range of issues. [2]

Presently, the Russian Federation, represented by Rosimushchestvo, owns 88.04% of shares in ROSSETI PJSC.

Accordingly, the first difference of ROSSETI PJSC from other public joint-stock companies is the procedure of its founding.

Regarding the operations goals of public joint-stock companies and the company in question, one should pay attention to the fact that any public joint-stock company’s goal is deriving profit as a result of its business operations. While when looking at the mission of ROSSETI PJSC, based on its constituent instruments, it can be pointed out that, apart from deriving profit, ROSSETI PJSC’s operations primary goals include management of the electric grid sector (hereinafter referred to as the “EGS”), ensuring the Russian Federation’s control over operations of territorial grid organizations set up in the process of restructuring joint-stock companies operating in the energy and electrification sectors and operations of the organization managing the unified national (all-Russian) power grid, as well as provision of reliable functioning and development of the EGS. Thus, the conclusion is made that ROSSETI PJSC, in addition to achieving the profit-deriving task of a commercial entity, also completes tasks in the sphere of state regulation and control. The question is, whether such specific features vest public functions, and, eventually, powers of state authority in ROSSETI PJSC.

Today, ROSSETI PJSC’s public powers are not established statutorily. ROSSETI PJSC acts in an administrative and supervisory capacity through corporate mechanisms based on the Articles of Association and corresponding by-laws (Article 3.1. of ROSSETI PJSC’s Articles of Association).

In relation to its subsidiaries, ROSSETI PJSC is the main business entity by virtue of major equity holdings in their authorized capitals or in accordance with conclusion of a corporate agreement with them, or otherwise is their controlling person.

ROSSETI PJSC's subsidiaries are: Yantarenergo JSC, IDGC of Volga, PJSC, IDGC of the South, PJSC, IDGC of Siberia, PJSC, MOESK PJSC, FGCUES, PJSC, Tyumenenergo JSC, IDGC of Centre, PJSC, IDGC of the North-West, PJSC, LENENERGO PJSC, TDC PSC, IDGC of Centre and Volga Region, PJSC, IDGC of Urals, JSC, IDGC of Northern Caucasus PJSC, and Kubanenergo PJSC. Using corporate mechanisms, ROSSETI PJSC can also influence subsidiaries of the organizations listed. Taking into account these circumstances, it should be noted that the holding company performs the main task of administering the EGS and controlling the operations of territorial grid organizations through corporate mechanisms (appointments to the board of directors, issue of binding instructions).

Analyzing the possibility of vesting and statutorily securing powers of state authority in the legal status of ROSSETI PJSC, it should be underlined that this holding company is not a state authority.

Considering specific features of the legal status of ROSSETI PJSC, one should take into account goals and tasks of the Russian electric grid sector's development as outlined in the Development Strategy for the Electric Grid Sector of the Russian Federation approved by Order No. 511-p of the Government of the Russian Federation dd. April 3, 2013.

According to this strategic planning instrument, ROSSETI Public Joint Stock Company will be entrusted with the following main functions:

- strategic functions (planning, methodology, etc.);
- coordinating functions (coordinating investment, technical, financial, and procurement policies and investment programs);
- control functions (financial statements, benchmark analysis, audit; setting key performance indicators and monitoring of their achievement, etc.);

- solving institutional tasks faced by the entire industry;

- participating in consolidating territorial grid organizations to ensure the required level of reliability and quality in supplying electricity to consumers.

However, within the framework of performing these functions, Strategy 511-p stipulates no issue of special acts or subordinate legislation defining the legal status or legal regulation of the said powers.

Further, a rather-legal analysis of specific features of the legal status of ROSSETI PJSC and State Atomic Energy Corporation Rosatom (hereinafter referred to as “Rosatom State Corporation”) seems logical.

Federal Law No. 317-FZ On State Atomic Energy Corporation Rosatom dd. December 1, 2007 (hereinafter referred to as the “Law on Rosatom State Corporation”) stipulates that State Atomic Energy Corporation ROSATOM is an authorized management body for nuclear energy use vested with the powers to perform on behalf of the Russian Federation public administration of nuclear energy use, as well as statutory regulation, state service provision, and public property management in the sphere of nuclear energy use.

ROSSETI PJSC is included in order No. 511-p of the Government of the Russian Federation, as well as the schedule of regulations issuing for implementation of the development strategy for the electric grid sector of the Russian Federation, however, the federal law does not provide for vesting ROSSETI PJSC with publicly relevant functions aimed at achieving socially beneficial goals and public administration in the electric power industry. Statutory regulation in the fuel and energy sector (FES), as well as development and implementation of the state policy are performed by a competent state authority.

In accordance with the Regulation on the Ministry of Energy of the Russian Federation approved by Order No. 400 of the Government of the Russian Federation dd. May 28, 2008, the Ministry of Energy of the Russian Federation is a federal executive body performing the functions of developing and implementing the state policy and statutory regulation in the fuel and energy

sector, as well as state service provision, and public property management in the sphere of fuel and energy resources production and use. The Ministry of Energy of the Russian Federation performs the listed and other functions itself or through its subordinate organizations, meaning that the legislator stipulates no delegation of state authority's powers to an external business entity, particularly, ROSSETI PJSC.

Next particularity of Rosatom State Corporation's legal status is that the above law grants it the powers of the main budget funds administrator, budget funds beneficiary, major budget income administrator, budget income administrator, and state customer as related to state programs of the Russian Federation in the field of defense and security. In accordance with the Budget Code of the Russian Federation, 'main budget funds administrator' is understood as a state body, body for state non-budgetary fund management, local government authority, local administration body, or the most important institution of science, education, culture, and health-care. 'Budget' is understood, accordingly, as a form of generating and spending funds intended for funding tasks and functions of the state and local governments.

Rosatom State Corporation goals and tasks as set forth in Article 4, Law on Rosatom State Corporation, have an evident public nature.

Legal literature has repeatedly raised the issue of the specific legal status of legal entities with major share in them owned by the state.

According to S.N. Bratus, "attempts to divide legal entities into private and public ones are fruitless and unjustified. In terms of property-based legal personality, the nature and availability of public authority granted to the state and its bodies do not matter when it comes to their participation in civil circulation" [3]. M.I. Kulagin supports a similar position: while dividing legal entities into public and private ones, he used to note that "the division lacks any practical importance" [4].

V.E. Chirkin notes that "the necessity to distinguish a special category of legal entities, a 'legal entity under the public law', is explained through such specific features as power of authority, special management appointment procedure, and public entities' participation in constitutional and

administrative legal relations, in addition to civil ones" [5].

Given the above doctrinal findings, adopting Federal Law No. 236-FZ On Public Companies in the Russian Federation and Amending Particular Legislative Acts of the Russian Federation (hereinafter referred to as the "Public Companies Law") dd. July 3, 2016, with Article 2 of the given Law defining a public company as "a unitary non-commercial organization set up by the Russian Federation following the procedure established in this Federal Law, vested with public functions and powers, and operating for the benefit of the state and society".

A public company may be set up based on a federal law or decree of the President of the Russian Federation and acts under the resolution on setting up a public company and the Articles of Association, as approved by the Government of the Russian Federation.

In accordance with parts 1 and 2 of Article 5 of the Public Companies Law, the Russian Federation is the founder of a public company. A public company has a seal featuring the State Coat of Arms of the Russian Federation and its full name.

Thus, both Rosatom State Corporation and ROSSETI PJSC show signs of a public company as defined and interpreted by Federal Law No. 236-FZ. However, Rosatom State Corporation's signs of a public company are more pronounced.

The legal status of State Atomic Energy Corporation ROSATOM provides for its engaging in international cooperation in the field of nuclear energy on behalf and for the benefit of the Russian Federation.

International operations of Rosatom State Corporation are aimed at creating favorable legal and political conditions for further promoting Russian nuclear technologies in the international market, strengthening practices of nuclear safety and nuclear non-proliferation, as well as at an active engagement in international organizations and forums.

The legal status of Rosatom State Corporation allows it to participate in development and refinement of documents underlying the international legal regulation of relations in the nuclear energy sector.



In accordance with the data published on the official website of Rosatom State Corporation, “the international operations’ unit of Rosatom State Corporation ensures preparation of intergovernmental agreements of the Russian Federation, as well as interagency understandings ensuring implementation of these agreements” [6].

Federal Law No. 164-FZ On the Fundamentals of State Regulation of Foreign Trade Activity dd. December 8, 2003, contains a provision in Article 10 saying: “Any Russian and foreign persons (entities) have the right to engage in foreign trade activity”.

As part of foreign trade operations, the legal status of ROSSETI PJSC allows it to enter into foreign trade contracts with foreign counterparties. Thus, for example, on November 29, 2018, ROSSETI PJSC and China Energy Engineering Corporation Ltd. signed a bilateral agreement on technology exchange and long-term mutually beneficial cooperation in facilities construction for electricity transfer and distribution with the possibility of funding provision by CEEC, as well as joint projects implementation in third countries [7].

Apart from being authorized to perform foreign trade activity on behalf of the Russian Federation, Rosatom State Corporation also enjoys a broad range of rule-making authorities.

In accordance with Article 7 of the Law on Rosatom State Corporation, it may, in particular, for the purposes specified by the Federal Law, develop suggestions regarding the state policy in the field of nuclear energy use.

Article 8 of the Law on Rosatom State Corporation also provides for the corporation’s authority to adopt regulations in the specified sphere of operations.

In his Address to the Federal Assembly dd. December 4, 2014, Russian President Vladimir Putin named the National Technology Initiative (hereinafter referred to as “NTI”) one of the priorities of the state policy.

NTI includes systemic solutions to identify the key technologies required to implement changes in the sphere of standards and rules, efficient measures for financial and HR development, and mechanisms for involving and

rewarding transmitters of necessary competences. Such technologies will be selected taking into account the main global development trends with the priority given to the network technology concentrated around the human as the end consumer.

ROSSETI PJSC has a special body within its structure, the Investment, Technical Policy, Reliability, Energy Efficiency, and Innovation Committee, which advises the company’s board of directors in the field of NTI.

Rosatom State Corporation’s management took things a step further and adopted a resolution to create a special NTI Portal, which has grown by now into an information system storing more than 50 thousand research documents in the sphere of nuclear energy.

ROSSETI PJSC has a range of subsidiaries fully compliant with the criteria set forth in Article 67.3 of CC RF, allowing it to implement projects within the NTI framework acting through its subsidiaries. For instance, IDGC of the North-West, PJSC implements the Digital Power Distribution Zone project in Novgorod Region as part of the agreement signed between the Government of Novgorod Region and ROSSETI PJSC in April 2017.

The goal of the SmartGrid technology implementation is an enhanced reliability and quality of consumer electricity supply. IDGC of the North-West’s investment in the project has totaled about RUB 488 million [8].

Given the versatility of ROSSETI PJSC’s operations, including those in the sphere of innovative technology, as well as those involving raising significant investment funding, it is only logical to describe ROSSETI PJSC’s taxpayer legal status.

In accordance with civil legislation, ROSSETI PJSC is an organization, which fact obliges it to pay taxes (Article 8 of TC RF (Tax Code of the Russian Federation)). ROSSETI PJSC is not privileged in any way as related to the duty to pay statutory taxes as compared to other participants of civil circulation. Rosatom State Corporation enjoys no privileges releasing it from the tax burden either. However, their special legal status of companies, which are public-law legal entities, leads to their special legal status as taxpayers. Thus, in accordance with the tax legislation,

ROSSETI PJSC is assigned the status of a major taxpayer with all the ensuing consequences.

Presently, the criteria being the grounds for referring ROSSETI PJSC to a major taxpayer are set forth in Order No. CAЭ-3-30/290@ of the Russian Ministry of Taxes and Levies dd. April 16, 2004.

Summarizing the analysis of the legal status of ROSSETI PJSC, the fact can be established that the role of the state regulation in the electric power market has strengthened.

The state renders considerable financial assistance to the electric grid sector as a strategically important one.

It is worth noting that the state's engagement witnessed in crucial economy sectors is aimed,

primarily, at ensuring stability and reliability of economic development.

State's engagement in corporate relations is merely one of the forms of performing its internal functions (social and economic ones) vested in it directly by the Constitution of the Russian Federation.

In each particular case of the state's engagement in business partnerships and companies, the goal of such engagement must be clearly defined and recorded as the basis for the efforts of the designated managing persons. Consequently, today the most crucial task is increasing the efficiency of public administration in the energy sector through engagement in corporate relations and public assets management. ■

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