

the electric power systems of these states are connected to specific integrated energy systems (hereinafter referred to as the IES), of which the UES of Russia consists, and in which, as a rule, electricity (capacity) is produced and consumed. Third, it is the discrepancy between the price areas established by the Wholesale Electricity and Capacity Market Rules approved by Resolution No. 1172 of the Government of the Russian Federation dd. December 27, 2010 upon implementation of the IST across the territory of the Russian Federation and, as a result, the mismatch of electricity prices in these price areas. Taking into account the above-mentioned factors, it is currently impossible to talk about the technical and economic possibility of movement (transit) across the territory of the Russian Federation of electricity (capacity) upon implementation of the IST within the EAEU.

The mechanism of substitution of electricity (capacity) as a variant of the IST conforms to the established international practice as evidenced by the provisions of the Geneva Convention on Transit Transmission of Electricity of 1923 as

related to the exclusion of possible transit if during its transmission through power grid facilities located in the territory of the Russian Federation, electric energy is “fully or partially depleted, used or transformed”. However, according to the author, substitution as a variant of the IST has a drawback, because in practice, this approach can lead to the fact that the UES of Russia will turn into a balancing system. In order to implement the IST in the form of substitution, the producers of electricity (capacity) of the Russian Federation will be forced to unload one IES and, on the contrary, to increase production of electricity (capacity) in the other IES.

In the Soviet era, creation and operation of Mir electric power system with the capacity of power plants of about 400 million kilowatts indicates the technical feasibility of integrating the electric power systems of the EAEU member states; as for the economic potential of the work of the common electric power market of the EAEU, it may be ensured if the member states are committed to building economic and effective cooperation in the sphere of energy. ■

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# LICENSING OF THE RIGHT TO USE SUBSURFACE RESOURCES IN ORDER TO DEVELOP OIL AND GAS FIELDS ON THE CONTINENTAL SHELF OF NORWAY: EXPERIENCE OF LEGAL REGULATION

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**Abstract:** Against the background of depletion of onshore fields, the Russian shelf is justified as a strategic reserve of hydrocarbons and it is it where large and unique fields may be discovered. In fact, in the absence of special laws regulating oil and gas activities and establishing the legal status of oil and gas producing companies in the Russian continental shelf area, and due to inconsistency of the existing ones, legal model of the Norwegian licensing system, where all oil and gas fields are located on the continental shelf of the country, is of considerable interest for Russia in several aspects.

First, the investment regime in the oil and gas industry is of great interest: on the one hand, all necessary conditions are provided to attract investments, and, on the other hand, the active participation of the state in order to protect national interests and ensure significant budget revenues can be traced at all stages of the project. Moreover, the Norwegian continental shelf is located in a similar climate and geographic conditions, and the legal model of exploration and production in the shelf area takes into account this factor too, reflecting it in environmental laws. Second, both legal systems take the licensing model as a basis to some extent.

The author examines the licensing system for the development of offshore fields under the laws of Norway, the right of investor to access to the development of offshore hydrocarbon fields, and an agreement on oil and gas activities concluded by several oil companies in order to jointly develop the hydrocarbon field.

**Keywords:** energy law; continental shelf; offshore hydrocarbon fields; exploration and development of hydrocarbons; licensing; right to use subsurface resources.

More than half of the income of Norway ranked fourth in the world as per GDP per capita [1] is currently formed by a specifically built licensing system of use subsurface resources [2, s. 99]. This system is built in

such a way that the state directly participate in licenses, and also guarantees maximum efficiency in the activities of licensee companies.

The principal normative legal act governing development of oil and gas fields on

the continental shelf of Norway is the Act on Petroleum Activities adopted in 1996 [3] (*Lov om petroleumsvirksomhet*; hereinafter referred to as the LoP), provisions of which are detailed in Resolution No. 653 dd. June 27, 1997 “To the Act on Oil and Gas Activities dd. November 29, 1996” [4].

Moreover, it should be noted that the European Directive 94/22/ On the Conditions for Granting and Using Authorisations for the Prospection, Exploration and Production of Hydrocarbons (*Licensing Directive 94/22/EC*) is also applicable to Norway which is an associate member of the European Economic Area (EEA) [5].

Pursuant to § 1-1 of the LoP, “the Norwegian state has the right of ownership to all offshore oil and gas fields, and also has an exclusive right to manage these resources”. Therefore, the oil and gas activities in Norway are regulated by a number of government agencies and institutions — in licensing, the Ministry of Petroleum and Energy as well as the Petroleum Directorate and the Oil Safety Authority play a key role.

According to § 3-2 of the LoP, the continental shelf of Norway is subject to division into plots (the so-called “**blocks**”) 15 minutes of longitude wide and 20 minutes of latitude long. This division applies to the entire continental shelf of the country, in addition to the cases when the Norwegian continental shelf section is bordered by the continental shelf of other states and other conditions significantly altering the legal or geological setting of the site occur.

Before any of these “blocks” is “open for oil and gas activities”, a comprehensive assessment must be conducted in its regard in accordance with § 3-1 of the LoP, which will predict possible consequences of the introduction of the block into economic circulation for the economic, environmental situation and social sphere.

The text of the article itself says only that the procedure of “opening” must precede the issue of production licenses, but based on the text of § 2-1 of the LoP, it can be concluded that this procedure is also necessary before a license for exploration in a certain section is issued.

In addition, this integrated assessment procedure involves conducting public hearings, which allows taking into account opinions of all parties

concerned (including the local population and non-state companies). It should be noted that a similar assessment procedure is also applied at the subsequent stages of licensing.

Access to oil and gas activity at the “blocks” opened following the results of the above procedure, is granted to companies by issuing licenses. There are two types of independent licenses in Norway: a license for exploration (undersøkelsstillatelse, governed by § 2-1 of the LoP) and a license for development (utvinningstillatelse, governed by Chapter 3 of the LoP). Moreover, a number of analysts identify a third type of license — a special license for installation and operation of oil and gas equipment (særskilt tillatelse til anlegg og drift av innretninger, governed by § 4-3 of the LoP). However, it seems that this type of license is not independent but it is subject to on the licensee’s license to production as it is directed to obtaining by the company of a separate permit for installation and management of oil and gas equipment that was not received under the Equipment Installation and Management Plan approved upon extension of the production license (see below for details).

Final decision on issue of both types of independent licenses is made by the Ministry of Petroleum and Energy (herewith, the production license is formally certified by a signature of the monarch on the part of the state).

Pursuant to § 2-1 of the LoP, the license for exploration may be issued to any legal entity (regardless of the country of incorporation) as well as to any individual permanently residing within the EEA (the latter provision, however, has never been implemented in practice). The scope of the rights acquired by the licensee under this license includes study of geological, geophysical, geochemical, geotechnical, and other characteristics of the relevant block. The standard term for this type of license is 3 years. It is noteworthy that obtaining a license for exploration does not give the licensee the advantage upon obtaining a license for development at the same block.

According to the provisions of Chapter 3 of the LoP, the production license may be issued only to a legal entity established under Norwegian law and registered in the Norwegian Business Register as well as to other persons if this is

provided for by international treaties of Norway (it also applies to individuals permanently residing within the EEA). The procedure for obtaining and operating this license is much more complicated as it is carried out in several stages, at each of which the scope of the licensee's rights to oil and gas activities at the section under consideration may be changed.

The standard licensing procedure (the licensing round) carried out in Norway every two years (beginning in 1965) assumes that persons interested in obtaining licenses for development at open blocks shall submit to the Ministry of Petroleum and Energy of Norway a comprehensive application that specifies the open blocks of interest to them, the action plan under the license, and the information on the applicant making it possible to assess its finance and availability of relevant experience. The application for a production license may be submitted for several open blocks — in this case, these blocks shall be ranked by the candidate depending on their priority for it. The application may also be filed jointly by a group of companies — in this case, during further state expert review, their combined group competence shall be taken into account.

After a comprehensive examination of the applications involving all authorized state departments of Norway, the Ministry of Petroleum and Energy sends a proposal listing the blocks covered by the license, a description of the action plan and other special conditions as well as a list of companies recommended for development of the listed blocks to the selected candidates — the Ministry of Petroleum and Energy also suggests which of the companies in the group must act as the operator.

Thus, the state can determine members of the group of companies that jointly obtain a license and fulfill their obligations thereunder, and also change the composition of the group if the submitted application was originally a group application. In case of agreement with the conditions proposed by the state, the companies shall obtain the license — most often, it is issued to several oil companies [2, s. 99] (in this case, the license requires these companies to establish a joint venture without incorporation of a business entity and conclude an agreement on oil and gas activities).

The first period of validity of the production license lasts 10 years and grants the licensee the right to exploration including exploratory drilling [7]. If the licensee has completed the required scope of work and discovered a field of commercial interest for it, it shall be entitled to submit another application to the Ministry of Petroleum and Energy and to “request” extension of the production license (the extension period is determined by the Ministry and, as a rule, it is 30 years). Within the framework of this application, a candidate for extension of the license shall submit a so-called Development Plan (Plan for utbygging og drift av petroleumforekomster, the content is determined in § 4-2 of the LoP), and if the field development project also provides for construction of pipelines and ground terminals, an additional Plan for Installation and Management of Equipment (Plan for anlegg og drift av innretninger).

It shall be separately noted that according to Norwegian laws, the field decommissioning plan shall be developed prior to the expiry of the license: according to Chapter 5 of the LoP and Chapter 6 of Resolution No. 653 dd. June 27, 1997, “To the Act on Oil and Gas Activity dd. November 29, 1996”, the licensee is obliged to provide such a plan in advance — the licensee shall be granted a period of time from 2 to 5 years before the license expires for submission of this plan.

With the development of the oil and gas industry, on the continental shelf of Norway, the country's government gradually faced the problem of companies withdrawing from the projects for development of fields located in licensed sections whose resources were not fully developed. Moreover, the advantage of companies in determining the blocks of interest to them for development led to the fact that exploration on the continental shelf was uneven, and a number of neighboring blocks could significantly differ in the level of knowledge.

As a result, a risk of “loss” of large fields near the already built infrastructure and unjustified investments in exploration at remote blocks appeared — an example could be late, almost accidental discovery of Johan Sverdrup field in the central part of the Norwegian shelf of the Barents Sea [7].

In order to solve this problem, in 2003, Norway introduced a new type of licensing round at the legislative level. Its main difference from the standard one is that under it, licenses are issued only for already “explored areas” of the continental shelf — whereas the standard licensing procedure now applies only to poorly explored or unexplored areas located at a significantly greater distance from the shoreline and existing infrastructure. [7]

Technically, the procedure for the second type of licensing round differs in that candidates for a license do not have the right to specify open blocks in their applications that are of interest to them for further licensing activities (as in the case of a licensing round of the first type). The decision on open blocks for which the license will be issued in the course of the round shall be taken by the state unilaterally, and the preliminary assessment procedure is simplified (since it already occurred upon licensing the oil and gas activities at this block during previous rounds). Moreover, this type of licensing round is held in Norway every year. In other respects, the production license obtained during the round of the second type does not differ from the license obtained during the round of the first type.

Projects to develop the oil and gas resources of the continental shelf of Norway are usually implemented by several oil companies.

A comprehensive examination of these applications is performed by a number of government departments of Norway among which the Ministry of Petroleum and Energy plays a coordinating and defining role. Following the results of the examination, it is the Ministry that determines the composition of groups of licensees [2, s. 99], suggests which of the group will act as the operator, and sends proposals on the conditions for granting the license to these companies. Even if the application was originally submitted by a group of companies, the Ministry can change its composition.

It is important that under the license, the companies are required to establish a joint venture without formation of a legal entity, and to conclude an Agreement on Oil and Gas Activities [7]. This Agreement is a model agreement and it shall consist of two parts (annexes): the Joint Venture Agreements and the Agreements on Accounting.

The Joint Venture Agreement regulates the procedure to arrange for interaction of licensee companies upon management of the JV (the supreme management body of the JV is the Management Committee consisting of representatives of licensee companies, where the operator of the JV is the chairman without the right to vote; the Management Committee also has the right to establish subcommittees for solving certain industry-specific issues) [8].

The liability of the licensee companies corresponds to their shares in the capital of the JV. It is secondary, and joint and several, and it arises in relation to other licensee companies. At the same time, the operator does not receive reimbursement for its operating activity but it is not responsible for the activities of the JV (exception is made for intentional negligence of the operator, its personnel or contractors). The Agreement on Accounting is technical and it relates to the issues of joint financing of JV activities by the licensee companies [2, s. 102-103].

The Petroleum Taxation Act of 1975 formalized the provision on mandatory state participation in joint ventures established for development of oil and gas fields in the Norwegian shelf area [9]. The corresponding role in the joint venture formed according to the licenses is currently performed by Petoro AS, a Norwegian state-owned company [10].

Upon issue of production licenses, preliminary exploration data for open blocks may not be sufficient, and the licensees may find that they have obtained a license to develop a field that extends to several sites, each with its own production license. In this case, the groups of companies that have received these licenses are invited to conclude a standard Unitization Agreement (it is also a model agreement and, with few exceptions, it is drawn on the model of the Joint Venture Agreement) [11].

Otherwise, the licensees may face the fact that the license area will be stratigraphically divided (that is, it will include strata of various geological formations complicating development process and increasing associated geotechnical and environmental risks). In this case, the licensee companies are obliged to conclude a model Operating Agreement for stratigraphically



divided production licenses (in the first place, such an agreement divides responsibility for possible environmental damage between the companies and determines the conditions for mutual exchange of information) [8].

As the established JV is not a legal entity, it is not covered by the Act on Partnership of 1985 and it is not a taxpayer — each of the partners acts as a taxpayer on a pro rata basis, and a company with several licenses has the right to consolidate its payments thereon. Herewith, a number of tax benefits granted to the licensee companies (for example, tax deductions for financial expenses, quick depreciation, discounts on the tax on capital expenditures tax, etc.) is compensated by a very high level of the marginal rate of the profit tax (78%). The proceeds of the JV's activity are also received by each company on a pro rata basis — according to the company's participation in the JV's capital, it receives a share of the total volume of oil produced by the joint venture. Each licensee company further sells the received share of oil on an individual basis [2, s. 103].

Furthermore, it would be interesting to turn to the legal nature of the Joint Venture Agreement (conclusion of this Agreement is a precondition for issue of a license; prior to conclusion, this Agreement shall be approved by the Ministry of Petroleum and Energy of Norway) which is currently discussed in Norwegian legal literature — whether it is possible to consider provisions on the “mandatory scope of work”, which, as shown above, are part of the license and should be included in the Joint Venture Agreement in the same form as in the license, the subject matter of contractual regulation, and whether this gives grounds for their amendment.

The point is that paragraph 4 of the standard production license contains provisions on the so-called “mandatory scope of work” (arbeidsforpligtelse [12]), implementation of which is the licensee's obligation to the state and the necessary condition for the licensee to optionally assign or transfer this license, or to sell its assets in the enterprise established for development of this field (see Articles 10-12 of the LoP, Section 10 of Act on Taxation of Subsea Petroleum Deposits No. 35 dd. June 13, 1975 [13]). It should be

noted that, according to the license, the provisions on the “mandatory scope of work” should be included in the Joint Venture Agreement to be concluded between the licensee companies in the same form as in the license.

Legal research devoted to the peculiarities of the legal status of oil and gas producing companies, and the legal regime of energy facilities of the oil and gas industries is not currently widespread [14-16]. In this regard, it seems useful to conduct the study.

Therefore, based on the above analysis of the licensing system of offshore hydrocarbon fields in Norway, the following conclusions may be made:

1. The licensing system in Norway is under almost exclusive control of the state, which not only determines the territorial limits of license areas and the nature of the companies' activities at it, but also participates in the projects themselves as state oil and gas companies holding a control or majority stake in relevant enterprises.

2. The system of licensing for use subsurface resources in Norway is primarily aimed at ensuring the intensity and consistency of the exploration conducted by the companies, which makes it possible to avoid inefficient financial investments in exploration at remote sections of the shelf and the “loss” of relatively more accessible fields.

3. The forms of joint development of offshore hydrocarbon fields by several oil companies established by Norwegian laws are well developed and include various standard contracts for sites with different geological settings. It is important to note that the need to introduce contractual forms of subsurface resources use in Russian laws has been repeatedly mentioned by the leading oil companies of Russia, in particular, by Gazprom Neft, PJSC.

4. Forms of interaction of the licensee companies upon joint development of sections of the Norwegian continental shelf are primarily subject to administrative regulation — in fact, provisions of the state license require the licensees to enter into a certain type of contract and incorporate certain conditions determined by the license. ■