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PROBLEMATIC ASPECTS OF LEGAL GROUNDWORK FOR ENERGY LAW ORDER IN THE ELECTRIC POWER MARKET

DOI 10.18572/2410-4396-2018-1-82-87



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Abstract: Various public bodies are authorized to exert control (supervision) in the electric power industry. Certain powers to supervise compliance with the laws in the electric power market are exercised by the bodies of the prosecutor's office. The need for meticulous implementation of the rules governing relations in the electric power market offers certain challenges for the bodies of the prosecutor's office. The bodies of the prosecutor's office systematically exercise supervision over compliance with the laws in the electric power market. The prosecutors monitor reports on restrictions and cut-offs of energy supply to the public and social facilities, emergencies at vital facilities; during inspections, the prosecutors assess ensuring of antiterrorist security and safety of energy facilities. Prosecutors ensure safety of electric power facilities by exercising supervision over precise and steady compliance with the laws on proper operation of electric power facilities, energy saving, tariff regulation, and protection of the rights of electrical consumers. A goal-oriented analysis of information on violations allows a prosecutor to timely identify and schedule for verification of legality specific authorities and bodies, municipal authorities, and business entities, and specify a range of issues to be clarified. The specified activity is aimed at ensuring the energy law order in the electric power industry.

Keywords: energy law order, prosecutor's supervision, operation of electric power facilities, safety of electric power facilities, tariff regulation, protection of the rights of electrical consumers.

One of the key elements of the system of legal regulation in the electric power industry ensuring energy law order is public control (supervision). [1] Various public bodies are authorized to exert control (supervision) in the electric power industry. Certain powers to supervise compliance with the laws in the electric power market are exercised by the bodies of the prosecutor's office. The need for meticulous implementation of the rules governing relations in the electric power market offers certain challenges for the bodies of the prosecutor's office "as ar-

rangements for uninterrupted power supply ensures stable functioning of public and municipal authorities, and critical facilities of the social infrastructure, and creates normal conditions for human life activities". [2]

The adoption of Federal Law No. 196-Φ3 "On Amendments to the Federal Law "On the Electric Power Industry" as Related to Improvement of Requirements to Ensuring Reliability and Safety of Electric Power Systems and Facilities" dd. June 23, 2016 (hereinafter referred to as Federal Law No. 196-Φ3) was

of great importance for improvement of the legal groundwork for safety of the electric power facilities.

The fact that until recently there were no unified compulsory technological rules in the electric power industry often led to uncoordinated, piecemeal actions of the owners of electric power facilities, including related ones that are part of the unified energy system, which significantly reduced reliability of the electric power regime.

In implementation of the provisions of Federal Law No. 196-ΦЗ, in its Resolution No. 244 dd. March 2, 2017, the Government of the Russian Federation authorized the Ministry of Energy of Russia to establish requirements for ensuring reliability of electric power systems, reliability and safety of electric power and power-consuming facilities. These requirements were envisaged in order of the Ministry of Energy of Russia No. 968 dd. October 16, 2017.

Therefore, Federal Law No. 196-ΦЗ established legal mechanisms to ensure safety of operation of electric power facilities and reliability of electric power supply to the consumers.

The law clarifies the subject of the federal state energy supervision, which is currently limited to the safety of electric power facilities only.

The bodies of the prosecutor's office systematically exercise supervision over compliance with the laws in the electric power market. The prosecutors monitor reports on restrictions and cut-offs of energy supply to the public and social facilities, emergencies at vital facilities; during inspections, the prosecutors assess **ensuring of antiterrorist security and safety of energy facilities**.

Information is constantly exchanged with regional regulatory and supervisory agencies, and executive bodies on detection and suppression of violations, work of law enforcement agencies is being coordinated to identify abuses in the activities of executive bodies of public authority and energy supply enterprises. Complex inspections of targeted and effective use of budgetary funds allocated for modernization and development of this sphere are being organized.

The need to ensure safety of industrial facilities including electric power facilities required more attention of the bodies of the prosecutor's office to these issues, and, as a result,

a department was formed as a part of the Main Directorate for Supervision over Enforcement of Federal Laws of the Prosecutor General's Office of the Russian Federation. **One of the main objectives of this department is supervision over enforcement of laws in the sphere of industrial safety.**

The main tasks of the prosecutor's supervision in this sphere are to ensure legality upon exercising by the regulatory authorities of the powers granted to them in the sphere of safety at electric power facilities; and legality of legal acts issued by authorized bodies and officials of executive authority and energy supply entities and enterprises. At the same time, prosecutors are authorized not only to verify compliance with the laws of legal acts published by these entities, but also to establish the very fact of their adoption if it is provided for by law as the public and municipal authorities often improperly implement the tasks assigned to them with regard to legal regulation of the sphere of electric power supply to territories within their jurisdiction. Thus, for example, in the absence of a normative list of facilities that shall not be disconnected from electric power supply in the Karachay-Cherkess Republic, it was the basis for making by the prosecutor's office of submission to the head of the republic. [3]

Prosecutors ensure safety of electric power facilities by exercising supervision over precise and steady compliance with the laws on proper operation of electric power facilities, energy saving, tariff regulation, and protection of the rights of electrical consumers.

The objects of supervision in the sphere of relations under consideration for prosecutors are:

- public authorities of the constituent entities of the Russian Federation and municipal authorities of general competence and their officials who, in accordance with federal and regional laws, are vested with powers in the sphere of electric power supply, regulation of electricity tariffs, and ensuring safety of electric power supply;

- state regulatory, control and supervisory bodies, bodies providing public services in the sphere of electric power supply — the Ministry of Energy of the Russian Federation, the Ministry of Industry and Trade of the Russian Federation, the Ministry of Construction, Housing and Utilities of the Russian Federation,

the Federal Tariff Service, the Federal Agency for State Property Management, the Federal Antimonopoly Service, the Federal Service for Surveillance on Consumer Rights Protection and Human Wellbeing, the Federal Service for Environmental, Technological and Nuclear Supervision, the Federal Agency for Technical Regulation and Metrology, and their territorial bodies;

management bodies and managers of commercial and non-profit organizations in the sphere of electric power supply. The latter include suppliers of electricity, power supply organizations, and grid entities.

A goal-oriented analysis of information on violations allows the prosecutor to timely identify and schedule for verification of legality specific authorities and bodies, municipal authorities, and business entities, and specify a range of issues to be clarified.

Prosecutor's inspections revealed numerous violations of the laws in the sphere of ensuring safety of the electric power industry, which are manifested in non-compliance with the rules and norms for construction and operation of electric power facilities including untimely performance of repair.

Municipal authorities sometimes do not follow the procedure for development and implementation of investment and production programs of the utilities complex, and target programs for energy saving and increasing energy efficiency.

The subjects of the electric power industry do not fully preserve, modernize and repair power grid facilities, violate the terms for implementation of measures for construction and reconstruction of power grids and power substations included in investment programs. Electric power enterprises do not ensure safety, modernization and repair of power grid facilities as well as other property required for generation and transmission of electric power.

Power grid facilities are often operated with an unacceptable level of wear. The reason for the problem is the desire of business owners to obtain the maximum profit from equipment and technical facilities without investing additional funds for their modernization. Often, accidents occur

due to poor-quality or untimely performance of maintenance and repair of facilities, adoption of ill-advised design and technical solutions, neglect of the requirements of industrial safety rules, bad technological and labor discipline. [4] Revealing facts of this kind requires that the prosecutors take adequate response measures.

In the Choysky District of the Republic of Altai, individual sections of the Turochak Distribution Grids of the Gorno-Altai Power Grids, through which more than 10 settlements are serviced, are in a dilapidated condition; the physical wear is 100%. As a result, constant shortages and cut-offs of power supply to the public are observed. After the submission to Director of IDGC of Siberia, JSC, the Gorno-Altai Power Grids, the company started repairing the power equipment. [5]

In the Mamsko-Chuysky District of the Altai Territory, the prosecutor's inspection established that the wires were sagging at the supports of the power transmission lines that had become unserviceable and, when wind was blowing, they touched the forest vegetation, which provoked the fire. Moreover, no clearing of the tree and shrub vegetation was performed alongside and along the perimeter of linear facilities. The district court satisfied the claim of the prosecutor's office to Oblkommunenergo enterprise on the obligation to clear cut-throughs of the power transmission lines of the tree and shrub vegetation and to replace temporary structures that replace the supports of the power transmission lines with permanent facilities. [6]

The prosecutors systematically identify and take measures to eliminate violations and abuses in the activities of public executive bodies and municipal authorities that do not comply with the laws upon detection, registration and acceptance of ownerless housing and utilities facilities including power grid facilities as the municipal property, and use ownerless power grid facilities.

In violation of the requirements of the Federal Laws "On the General Principles of Organization of Local Government in the Russian Federation" and "On State Registration of Rights to Immovable Property and Transactions therewith", municipal authorities do not register the title to the electric power facilities received in the

prescribed manner for a long time, the property is not used in accordance with the intended purpose, and no decision on its decommissioning and dismantling is adopted.

Thus, during inspections, the prosecutor's office of the city of Magadan detected 46 sections of ownerless power grids; in connection therewith 3 applications were sent to the Magadan City Court for the Magadan City Hall with a demand to register these grids, and they were satisfied by the court.

Prosecutors demanded that violations be eliminated in the Kosikhinsky District of the Altai Territory, where 1.3 km long ownerless power grids supplied electric power to Nalobikha Settlement, and in the Kemerovo Region, where electric power is supplied through a more than 8 km long ownerless power transmission line from Makarikha Village to Zagadnoye Settlement.

Having transferred to the settlements the powers to organize heat, electricity, water supply and water disposal for the population, the administration of the Rodinsky District of the Altai Territory did not allocate interbudgetary transfers for these purposes, so the prosecutor made a submission to the district administration demanding to eliminate the violation.

During inspections, the prosecutors attach primary importance to issues of compliance with payment discipline since formation of debts in the energy sector entails a threat of the impossibility of uninterrupted and high-quality provision of services to the public.

The prosecutors counteracted the withdrawal from the energy sector of funds intended for settlements for electricity and the use of property assets by business entities in prejudice of implementation of measures to modernize fixed assets and keep them in proper technical conditions, and prevented cases of unlawful infringements of electric power entities on budgetary funds.

To unlawfully withdraw financial resources, both their direct theft and the technical capabilities of intermediary firms are used. For example, in the Republic of Daghestan, director of a business entity used money received from the consumers for heat and electricity in the amount exceeding 300 million Rubles not to redeem debts to a gas supplying enterprise, but to pay bonuses,

security services, communications, etc. Law enforcement agencies of the republic initiated criminal prosecution against the head of this business entity under Article 201 of the Criminal Code of the Russian Federation (abuse of powers).

Inspection of the prosecutor's office of the Krasnoyarsk Territory showed that a recreation center for the top management of the enterprise was actually built instead of a training ground for improving the skills of employees at the expense of the investment program of the electric power supply organization in the amount of 76 million Rubles. Following the results of the inspection, a criminal case under Article 160 of the Criminal Code of the Russian Federation (misuse of funds) was initiated.

On the initiative of the prosecutor's office of the Irkutsk Region, director of a business entity that illegally received compensation for short-received income in the amount exceeding 15 million Rubles by providing fraudulent information to authorities about excessive volumes of electricity supplied to the residents of Arashan Settlement was brought to criminal liability pursuant to Article 159.2 of the Criminal Code of the Russian Federation (fraudulent practices upon receipt of payments).

The prosecutor's office of the Tenkinsky District of the Magadan Region established that within the framework of implementation of the "Integrated Development of the Utilities Infrastructure of the Tenkinsky District for 2015 to 2016" municipal program, it is envisaged to purchase and supply special timber for construction of supports of the power transmission line in Ust-Omchug Settlement. However, this measure was not implemented, and budget funds were unlawfully transferred by the administration of the Tenkinsky Urban District in the form of a subsidy to OlaInterCom, OJSC, in order to reimburse expenses for another measure not included in the municipal program.

The revealed violations served as the basis for initiation by the prosecutor's office of the district of the case on an administrative offense under Part 1, Article 15.15.5 of the Code of Administrative Offenses of the Russian Federation against the head of the Tenkinsky Urban District. As a result of consideration of

administrative materials, the official was brought to administrative liability in the form of a fine.

Violations of the procedure for setting tariffs for electric power and overstating the cost have been revealed. Upon submission to the tariff regulation bodies of requests for establishment of tariffs, organizations and enterprises do not submit a full package of documents confirming the planned costs, and, therefore, unreasonable expenses are included in the tariffs. As a result of the performed inspections, submissions were made to the heads of executive authorities. To implement them, unreasonable costs were excluded when setting tariffs for subsequent periods of regulation.

In the Tomsk Region, electric power supply companies included the costs for maintenance of subdivisions that perform duplicate functions as well as expenses for holding cultural and sports events and trade union fees were included in the tariff for consumers. All in all, the amount of fees increased by 340 million Rubles. After the intervention of the prosecutor's office of the region, these violations were eliminated.

Similar facts were established in the Krasnoyarsk Territory where the prosecutors forcedly reduced the cost of 1 kW of energy by 11% (from 40.78 to 36.45 Rubles).

The prosecutors take measures to restrain abuses on the part of the business entities that occupy a dominant position in the electric power market. In the course of inspections in this sphere, violations of the laws upon conclusion and performance of government and municipal contracts are systematically revealed. A significant number of violations are acceptable during procurement procedures for selection of contractors involved in construction and reconstruction of utility networks and implementation of target programs for repair of power grid equipment.

The results of inspections of grid organizations testify to the restriction of access to the market of services for execution of work in the sphere of construction and reconstruction of utility networks. Electric power supply organizations do not always agree to cooperate with out-of-town contractors ignoring their long-term positive experience, availability of the required material, technical, human, labor, and financial resources.

Applications of these contractors are often rejected by procurement commissions on formal grounds. Subsequently, it turned out that the organizations admitted to contracting works do not fulfill the scope of work specified in the statements of work, violate the terms of construction and reconstruction of power grids, do not have the permits to execute construction and installation work on power grids, and, therefore, their activity was suspended by bodies of the Federal Service for Environmental, Technological and Nuclear Oversight of Russia (Rostekhnadzor).

Thus, the absence of clear legislative requirements for procurement by other methods (other than tender or auction) creates conditions for manipulation of electric power supply organizations by the market of this type of services. [7]

The bailiff services do not always comply with the laws while enforcing court orders on collection of debts in the housing and utilities sector.

According to the Ministry of Construction of Russia, the total amount of debts in the sphere of housing and utility services in November 2017 exceeded 1.2 trillion Rubles. [8]

According to the Federal Bailiffs Service (FBS), the total amount of debts of non-payers for housing and utility services for the year increased by 10%. For example, in 2015, the FBS initiated 3.9 million enforcement proceedings for the amount of 82.6 billion Rubles while following the results of 2016, the debts for housing and utility services amounted to 91.1 billion Rubles. Herewith, 4 million cases relating to these debts were processed by the bailiffs.

The prosecutor's inspections systematically establish that the executive actions are performed untimely, the envisaged complex of executive actions is not implemented, and the enforcement proceedings are terminated without grounds and without taking the necessary measures aimed at establishing the property status of the debtor.

Upon challenging unlawful decisions of officials of territorial offices of the bailiff service, the prosecutors follow Directive of the Prosecutor General of the Russian Federation No. 155/7 dd. May 12, 2009 "On Organization of Prosecutor's Supervision over Implementation of Laws by Bailiffs", which orders that the prosecutors should pay special attention to compliance with