

POWERS OF STATE ATOMIC ENERGY CORPORATION ROSATOM IN THE FIELD OF CONSTRUCTION OF NUCLEAR FACILITIES

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In the context of development of the Russian energy industry, construction and reconstruction of energy facilities become one of the main tasks required for strategic goals of energy development. Given the strategic importance of the nuclear industry for domestic energy sector, the need to ensure sustainable development of facilities in this industry comes to the fore.

Construction and reconstruction of nuclear facilities is one of the key methods to solve state goals in the industry under consideration. In the construction of nuclear facilities, activity of the entity executing certain types of work at nuclear facilities falls under regulation of several bodies and organizations exercising public law powers in this field. The key among these entities is Rosatom State Corporation, which implements general state control in the field of nuclear energy use.

In this article, the author explores the regulations that consolidate the powers of entities regulating activities related to construction of nuclear facilities, highlights problems and tasks of improving legal regulation in the field of construction of nuclear facilities, proposes to consider inclusion of regulation of a special state register containing information on legal entities entitled to perform certain types of construction work at the nuclear facilities in the legal regulation system.

Keywords: energy law, legal regulation of construction of nuclear facilities, self-regulation.

Current development of the Russian energy sector is inextricably linked with strategic planning, which is implemented by state institutions and aimed at sustainable and safe development of the country's energy sector.

Strategic goals of energy development are set forth in the Energy Strategy of Russia approved by Resolution of the Government of the Russian Federation dated November 13, 2009, No. 1715-p On Approval of the Energy Strategy of Russia for the Period up to 2030.

In particular, this strategy specifies expanded construction and modernization of energy facilities as one of the main means of achieving the strategic goals of energy development.

The most urgent need to implement the provisions of the Energy Strategy of Russia is experienced by the nuclear industry, which needs timely and rational development. Safe operation of facilities while meeting the needs of a wide range of entities is of global importance.

Legal relations between the entities of the nuclear industry have certain peculiarities since the

activities of these entities are concurrently regulated by several institutes, and the activities of each of these institutes are aimed at ensuring safety of individual stages of production and use of nuclear energy.

However, behavior of the entities of the nuclear industry is also influenced through a special corporate regulation method [1] implemented by State Atomic Energy Corporation Rosatom (Rosatom State Corporation), which on behalf of the state is vested with special powers to perform state control of nuclear energy use and is able to perform legal regulation and issue relevant acts to regulate the nuclear energy. A wide range of powers related to ensuring full construction cycle of creation and reconstruction of nuclear facilities is distinguished among the listed powers of Rosatom State Corporation.

The Federal Law *On Nuclear Energy Use* specifies such activities among the types of activities in the field of use of nuclear energy as “location, design, construction, operation, and decommissioning of nuclear facilities, radiation sources and storage facilities, closing of radioactive waste disposal facilities, and safety assessment of nuclear facilities and/or activities in the field of nuclear energy use.

Summarizing the theoretical studies of the issue under consideration, construction of energy facilities can be considered in several ways: as a special type of entrepreneurial activity; as a part of investment activities; as the subject matter of a contract for construction of an energy facility; as one of the areas of state regulation; as an independent subject of self-regulation [2].

Taking into account the specific nature of Rosatom State Corporation, which is authorized to regulate, inter alia, relations associated with construction of nuclear facilities, and which, in fact, independently ensures implementation of state regulation of this industry, for the purposes of this study, it is advisable to consider construction as one of the main areas of state regulation.

Rosatom State Corporation, being a legal entity established in the form of a non-profit organization, combines in its legal status elements of a private legal entity and those of a public legal structure vested with powers and competencies

that ensure influence on behavior of entities in the industry to the full extent.

The powers of Rosatom State Corporation and its public legal functions for state control of nuclear energy use are set forth in Article 7 of the Federal Law *On State Atomic Energy Corporation Rosatom*.

For the purposes of this study, we will mention the following powers directly related to activities in the field of construction of nuclear facilities among the listed powers of the state corporation:

- issue of permits for construction of nuclear facilities, permits for commissioning of these facilities;

- issue of permits for construction of capital construction facilities and permits for commissioning to the Corporation’s institutions, joint-stock companies and subsidiaries as well as subordinate enterprises, according to the nature of activity of which, their closed administrative and territorial entities were created, in cases of construction, reconstruction of the specified facilities in the territories of these closed administrative and territorial entities;

- state examination of design documentation for capital construction projects of federal nuclear organizations and state examination of results of engineering surveys performed to prepare such design documentation;

- validation of the estimated cost of capital construction projects of federal nuclear organizations, construction of which is financed with involvement of the federal budget funds, in accordance with the laws of the Russian Federation;

- state construction supervision in the construction and reconstruction of facilities of federal nuclear organizations.

The central place in the system of authorities of Rosatom State Corporation in the field of construction is held by the powers granted by the legislator to issue permits for construction of nuclear facilities as well as permits for commissioning of these facilities in view of the following circumstances.

According to the provisions of the Urban Planning Code of the Russian Federation, a construction permit means a document that confirms compliance of project documentation with the requirements established by the urban planning

regulations, a territory planning project, a land surveying project, and other mandatory requirements established by the laws of the Russian Federation on urban development.

A key feature of such a permit is its legal significance, since it is this document that authorizes the developer to begin the technological process of building or reconstructing the facility. In other words, it starts the whole process of building a facility.

A permit for commissioning, in its turn, is a document that certifies completion of construction, reconstruction of the capital construction facility in full in accordance with the construction permit and design documentation as well as compliance of the facility with the established requirements, that is, it completes construction process and is one of the grounds for emergence of property rights in a newly created or reconstructed facility.

These powers are exercised subject to the general rules established by the Urban Planning Code of the Russian Federation by the Office of State Expertise and Permit Activities of the Corporation.

It is noteworthy that presence of the Corporation's power to issue permits for construction of nuclear facilities and permits for commissioning of these facilities generates the Corporation's derivative function of providing interested parties (applicants) with public services related to issuing relevant permits.

These public services are regulated by the local regulatory act of Rosatom State Corporation, namely, by the Order of Rosatom State Corporation *On Approval of the Administrative Rules for Rosatom State Corporation to Provide State Service for Issuing Permits for Construction of Nuclear Facilities* [3].

The said regulation contains a wide scope of terms and conditions, the observance of which is necessary for the applicant to obtain an appropriate permit for construction of a nuclear facility or to commission such a facility, and also specifies certain administrative procedures required for adoption by Rosatom State Corporation of a positive decision and for receipt by the applicant of this public service. Therefore, for the developer of such facilities, the specified administrative

regulation becomes a detailed instruction, subject to the provisions of which it becomes possible to begin construction of the facility or its operation.

It is noteworthy that the Administrative Regulations under study also contain provisions that establish a pre-trial procedure for appealing against decisions, actions (omission) of the Corporation and/or its officials within the framework of provision of public services.

As a general rule set forth in the provisions of the Urban Planning Code of the Russian Federation, construction permits as well as permits for commissioning of the facilities shall be issued by state authorities of various levels: federal, regional, or municipal authorities.

At the same time, in the construction of facilities in the nuclear industry, these powers are fully delegated to Rosatom State Corporation. This was obviously done in order to establish centralized regulation of activities of entities in the nuclear industry and implementation by the Corporation of the functions granted to it by the Law taking into account the specific nature of the used energy resource and the need for additional safety in the construction and design of nuclear facilities, such as, for example, nuclear power plants.

This measure seems efficient since authorization of Rosatom State Corporation to issue the above permits makes it possible to ensure comprehensive monitoring of construction of nuclear facilities.

Thus, it is the power to issue permits for construction of nuclear facilities and permits for commissioning of these facilities that has the key priority among the powers of Rosatom State Corporation in the field of construction.

Other powers related to the studied field of activity and listed in Article 7 of Law on Rosatom State Corporation can be described as auxiliary in relation to the powers of the Corporation to issue relevant permits required to begin construction or start operation of the facility respectively.

For example, as follows from an analysis of the rules of law on urban development, passing a state examination by the results of engineering surveys and design documentation of capital construction projects of federal nuclear organizations is a prerequisite for issue by Rosatom

State Corporation to the applicant of the permit for construction or reconstruction of a nuclear facility.

Construction supervision by Rosatom State Corporation in the construction and reconstruction of nuclear facilities, in its turn, is performed at the facility under construction from the moment the construction is started and the developer receives the appropriate permit and till the facility is commissioned, that is, directly during construction work at the nuclear facility.

The issue of delineation of powers between Rosatom State Corporation, authorized bodies and self-regulatory organizations as related to regulation of activities of entities in the field of construction of facilities related to nuclear energy is also of scientific interest.

The powers of the Government of the Russian Federation in the field of construction and design of nuclear facilities are set forth in Article 28 of the Federal Law *On Nuclear Energy Use*, the rules of which refer settlement of the following issues to the powers of the Government: on location and construction of nuclear facilities, radiation sources and storage installations; on the procedure for adoption of decisions on location and construction of nuclear installations, radiation sources and storage facilities, and others. The Government of the Russian Federation is also authorized to perform legal regulation of relations arising in connection with construction of nuclear facilities.

The central place among the bodies that exercise powers in the field of construction and design of nuclear facilities is occupied by the Federal Environmental, Industrial and Nuclear Supervision Service (Rostekhnadzor).

The powers of Rostekhnadzor in the field of state regulation of construction of nuclear facilities are specified in the Federal Law *On Nuclear Energy Use* and are also detailed in the Resolution of the Government of the Russian Federation *On Approval of the Provisions on Rostekhnadzor*.

As follows from these Provisions, Rostekhnadzor exercises the following powers as related to regulation of relations in construction and design of nuclear facilities:

- in accordance with the laws of the Russian Federation, it performs licensing of activities in the field of nuclear energy use;

- it establishes the procedure for issue of permits for the right to work in the field of use of nuclear energy to employees of nuclear facilities in accordance with the list of positions approved by the Government of the Russian Federation;

- it issues permits for the right to execute work in the field of use of nuclear energy to employees of nuclear facilities;

- it exercises control and supervision over observance of standards and rules in the field of use of nuclear energy, over the conditions of validity of permits (licenses) for the right to work in the field of use of nuclear energy, over nuclear, radiation and technical safety at facilities of this kind.

As follows from an analysis of the powers of Rostekhnadzor, the scope of activities of this body as related to regulation of behavior of nuclear industry entities extends not only to organizations engaged in construction and design work at nuclear facilities, but also to individuals being employees of the enterprises that have special competencies that allow them to obtain permits to work in the nuclear industry.

Moreover, this federal service has sufficient authority to independently draft and approve sources for regulation of relations being established in the nuclear industry.

Licensing the activities of nuclear industry entities is the key authority of Rostekhnadzor. Such licensing is performed in accordance with the Resolution of the Government of the Russian Federation *On Licensing Activities in the Field of Use of Nuclear Energy* and is carried out in the manner established by the Administrative Regulation on provision by Rostekhnadzor of a state service for licensing activities in the field of nuclear energy use approved by Order No. 453 of Rostekhnadzor dated October 8, 2014.

Moreover, the powers of Rostekhnadzor, according to Resolution No. 864 of the Government of the Russian Federation dated November 19, 2008, include state control (supervision) over the activities of self-regulatory organizations (SROs) in the construction industry as well as updating and maintaining the register of these organizations.

The activities of entities performing construction work at nuclear facilities are directly related

to the self-regulatory institution, which unites business entities in the SROs of the relevant type. The membership of such entities in a certain self-regulatory organization directly affects their legal capacity as related to execution of various types of work included in the construction cycle of a particular facility (engineering surveys, design and construction itself).

To introduce the institution of self-regulation in the construction industry, Order No. 624 of the Ministry of Regional Development of the Russian Federation dated December 30, 2009, sets a specific list of types of work relating to construction, design and engineering surveys. Among the types of work executed at nuclear facilities, this list identified such special types as: work for preparation of process solutions for nuclear facilities, arrangement for such facilities, installation of equipment, and other types of work.

However, as a result of amendments to the laws governing urban development, in 2017, the provisions of the current edition of the Urban Planning Code of the Russian Federation on self-regulatory organizations do not contain references to the list of types of work approved by Order No. 624 of the Ministry of Regional Development of the Russian Federation dated December 30, 2009.

As we can see, a member of the SRO of the relevant type is entitled to execute any types of work specified in the list of types of work per each type of activity in accordance with the claimed level of liability as well as the level of responsibility of the construction project, at which this work is executed.

It is also noteworthy that the SRO itself, which grants the right to execute work at nuclear facilities, must meet certain exclusive standards established by the law, and confirm its ability to grant such a right on a regular basis when Rostekhnadzor exercises control and supervision in the established field. It is no coincidence that the State Register of Construction SROs posted on the official website of Rostekhnadzor [4] contains information on the possibility of granting by the SROs to their members of the right to execute work at nuclear facilities.

Based on a comprehensive analysis of the rules of the Urban Planning Code of the Russian

Federation as well as the provisions of the Federal Law Technical Regulation on Safety of Buildings and Structures, four levels of responsibility of construction projects can be determined:

1) facilities of a reduced level of responsibility, including buildings and structures located on land plots provided for individual housing construction and other facilities that meet the criteria set in Part 10, Article 4 of the above Law;

2) capital construction facilities (except for especially hazardous, technically complex and unique nuclear facilities);

3) especially hazardous, technically complex and unique capital construction projects (except for nuclear facilities);

4) especially hazardous, technically complex and unique capital construction projects (including nuclear facilities).

If the Law does not establish special requirements for the subject executing the relevant work for execution of work at the first of the specified levels of responsibility, to perform activities at the facilities of the second and third levels of responsibility, the subject shall be a member of the relevant SRO and comply with its membership conditions.

To execute work at nuclear facilities, in addition to membership in an SRO of the relevant type authorized to provide its member with the right to execute work at nuclear facilities, the subject shall also have a valid license for the relevant activities in the field of nuclear energy issued in accordance with the requirements of the laws of the Russian Federation in the field of nuclear energy use.

It is important to emphasize that, while since 2010 in the field of construction and design of most civilian construction projects licensing of contractors was replaced by a self-regulatory mechanism, in the construction of nuclear facilities, mechanism of state licensing was preserved. Therefore, the state intends to further protect the public interest of such a strategically significant and especially hazardous type of activity as construction and design of nuclear facilities.

It is also noteworthy that in practice, there are some problems associated with the presence of uncertainties in the execution by the contractor of certain types of work at nuclear facilities and obtaining relevant license.

For example, up to date, no legal mechanisms have been developed for interaction between Rosatom State Corporation (as the main entity implementing state policy in the nuclear industry of the domestic energy industry), Rostekhnadzor and individual SROs.

To overcome the mentioned uncertainties in the legal regulation of the phenomenon under study, it is proposed to consider inclusion in the legal regulation system of a special state register containing information on legal entities entitled to execute certain types of construction work at nuclear facilities. Moreover, information in this register could be integrated into relevant databases of the main regulators of the activities of the controlled entity such as Rosatom State Corporation, Rostekhnadzor and SROs.

This measure will make it possible to coordinate interaction between bodies and organizations authorized to regulate activities of the organizations executing construction work at nuclear facilities.

It is worth considering that the contractor of construction and design work at nuclear facilities is actually subject to double regulation: as a legal entity executing construction, design or survey work, in accordance with the general provisions of the Urban Planning Code of the Russian Federation, it shall be a member of the relevant SRO and comply with its internal requirements for such work. At the same time, its activities are subject to state licensing and they must meet the legal requirements established for the holders of such licenses. Therefore, the organizations need to concurrently meet the requirements of two supervisory entities.

An attempt to solve the issue of such double regulation of the activities of the contractors at nuclear facilities was undertaken by the legislator in 2017, when, within the framework of the reform of construction self-regulation, the requirements imposed on the contractors at nuclear facilities were revised. It was reflected in the Resolution No. 559 of the Government of the Russian Federation dated May 11, 2017, which set forth the rules, according to which it shall be enough for the entity being a member of the relevant SRO and executing construction and design work at nuclear facilities to hold an issued license

for the relevant activities in the field of nuclear energy and availability of this license shall confirm both the compliance of this entity with the requirements of the energy laws in terms of their general requirements, and the compliance with the requirements of the self-regulatory organization as related to its powers.

However, in this matter, some uncertainty remains to this day, since clause 1, Part 1, Article 48.1. of the Urban Planning Code of the Russian Federation classifies nuclear facilities (including nuclear installations, storage facilities for nuclear materials and radioactive substances, storage facilities for radioactive waste) as particularly hazardous and technically complex facilities, and self-regulatory organizations continue to reasonably demand from legal entities claiming the right to execute “nuclear” work, compliance with the requirements imposed on the entities executing work at especially hazardous, technically complex and unique facilities of capital construction.

Consideration of amendments to the relevant provisions of the Urban Planning Code of the Russian Federation and classification of nuclear facilities as a separate category for the purpose of presenting special requirements for the legal entities executing work at facilities of such a high level of responsibility can be considered as one of the ways to overcome this uncertainty.

Summing up, it should be noted that presence of a wide range of powers of Rosatom State Corporation in the field of construction and design of nuclear facilities expresses, first of all, the public interest, which is due to the strategic importance of the nuclear industry as well as the need for additional and centralized control and supervision to ensure the required level of safety in the creation and reconstruction of nuclear facilities.

As a part of the analysis of development of the regulatory framework that ensures functioning of Rosatom State Corporation, trends to tighten control over the activities of entities related to construction of nuclear facilities as well as to create specialized business subdivisions within the Corporation and to engage highly qualified labor resources for these subdivisions are observed.

Based on the analysis of the regulatory framework, all powers of Rosatom State Corporation, Rostekhnadzor and individual self-regulatory organizations are to implement a system of regulatory functions on the part of the relevant bodies (organizations), each of which has the goal to ensure safe and efficient activities of the contractor at each stage of construction or design of nuclear construction projects.

The peculiarities and problems of self-regulation in the field of nuclear energy use were studied in the monograph titled *Problem Issues and Trends of Legal Regulation in the Sphere*

of Nuclear Energy Use, which rightly notes that the level of safety requirements in nuclear energy has always been and remains significantly higher as compared to other industries, and emphasizes the special importance of ensuring safety in the use of nuclear energy [5].

Considering the above issues and the identified problems in legal regulation in this field, it seems appropriate to continue research on the problems of legal support for construction of nuclear facilities, including those related to the legal status, delineation of powers, coordination of bodies and organizations at all stages of construction of nuclear facilities. ■

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