

THE PECULIARITIES OF THE LEGAL REGULATION OF ACTIVITIES OF COMMODITY DELIVERY OPERATORS IN THE GAS MARKET

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This article studies the peculiarities of the legal status of the gas transportation operator under exchange contracts organizing transportation and serving as a prototype of the new law institution of the commodity delivery operator. In order to balance interests of gas sellers, buyers, and consumers, commodity delivery conditions shall be met and commercial gas balancing in the exchange and over-the-counter markets shall be implemented to ensure the fulfillment of all delivery obligations. The article addresses the implementation of the institution of the commodity delivery operator in the gas exchange market, as well as the peculiarities of commercial gas balancing aimed at 100% fulfillment of exchange contracts and reduction of market players' costs. The role of the commodity delivery operator organizing gas transportation, metering, and monitoring of gas deliveries is important for the implementation of commercial balancing. Effective, well-balanced reforms are essential for the growth and creation of a favorable investment climate needed to modernize the gas market.

Keywords: energy law, legal support of the gas exchange market, commodity delivery operator, commercial balancing, supplied gas monitoring and metering.

Current tasks and objectives of energy law justly include the need for extensive research into problems of both general energy law and its specific institutions. A.G. Lisitsin-Svetlanov, M.I. Kleandrov, P.G. Lakhno, V.V. Romanova, L.I. Shevchenko, R.N. Salieva, etc., have contributed greatly to the development of energy law [1].

Many aspects of the legal regulation of the gas exchange market are also worthy of further legal research [2]. A fundamental task in this respect is to balance interests of gas market players by legal regulation. In order to balance interests of gas sellers, buyers, and consumers, commodity delivery conditions shall be met and commercial gas balancing in

the exchange and over-the-counter markets shall be implemented to ensure the fulfillment of all delivery obligations. As correctly pointed out by V.V. Romanova, the main objectives of energy law and order as a necessary component of public law and order include, among other things, “the legal regulation of the balance of interests between parties to private law relations in the energy sector. Therefore, energy law and order shall, first of all, enable energy companies supplying energy resources to make profit and enable different categories of buyers (businesses, non-profit organizations, natural persons) to purchase energy resources at an adequate price” [3]. At the same time, in order to balance interests of gas sellers, buyers, and consumers, commodity delivery conditions shall be met, and commercial gas balancing in the exchange and over-the-counter markets shall be implemented to ensure the fulfillment of all delivery obligations. In this regard, the development of the institution of commodity delivery operators seems of particular importance.

The legal status of parties to social relations in the energy sector is one of the fundamental elements of the system of energy legal regulation constituting energy law and order [4]. There are currently few legal studies on the peculiarities of the legal status of energy law subjects. The legal status of commodity delivery operators (hereinafter referred to as “CDOs”) responsible for gas supply monitoring and metering is also understudied. As rightfully stated by V.V. Romanova, “accurate metering data are important for proper payments for supplied energy resources” [5].

The CDO legal status and operating procedures are established by Federal Law No. 7-Φ3 “On Clearing, Clearing Activities and the Central Counterparty” dated February 7, 2011 (hereinafter referred to as the “Clearing Law”), regulations of the Bank of Russia, internal regulations of exchanges and clearing houses, internal regulations and contracts of the CDO.

As per Article 2 Clauses 13 and 13.1 of the Clearing Law, a CDO is a company carrying

out its activities under an internal regulation on service terms and conditions establishing the procedure for conducting, monitoring, and recording commodity deliveries under commitments arising from exchange sales contracts and admitted for clearing. CDOs shall be accredited by the Bank of Russia.

CDOs are accredited according to the Instruction of the Central Bank of the Russian Federation No. 194-И “On the Procedure and Terms of the Accreditation of Entities Acting as Commodity Delivery Operators by the Bank of Russia, Grounds and the Procedure for Accreditation Termination” dated December 17, 2018 (hereinafter referred to as “Instruction No. 194-И”). In order to be accredited by the Bank of Russia, a candidate shall be a legal entity incorporated as a business company, state or municipal unitary enterprise, and comply with the following requirements. It shall:

- Have a list of commodities selected by the entity for which it intends to act as a CDO,
- Have a valid contract (provisional contract) for information exchange with a clearing house when performing CDO functions, the rights and obligations under which are contingent on the candidate’s accreditation,
- Have software and hardware necessary to conduct, monitor, and record commodity deliveries under commitments arising from on-exchange supply contracts admitted for clearing in accordance with the clearing regulations of the clearing house the candidate has a valid contract (provisional contract) for information exchange with,
- Approve such documents as CDO service terms and conditions, a confidentiality document, and a document regulating procedures ensuring the integrity and protection of the information the candidate will become aware of while performing its activities as a CDO,
- Have an official website on the Internet and make the CDO service terms (including amendments thereto) and other documents publicly available 24/7 in accordance with Instruction No. 194-И.

Moreover, the candidate shall undertake to inform the Bank of Russia on such significant

events as a change in the company name, address, restructuring, and other circumstances stipulated by the regulations of the Bank of Russia.

An accredited CDO has to meet all the Bank of Russia's requirements, otherwise the regulatory authority may terminate accreditation (e.g., in case of the CDO's repeated failure to follow instructions issued by the Bank of Russia within one year, failure to perform CDO functions, etc.).

The rules on on-exchange trading and clearing activities shall stipulate the CDO name, state whether the CDO stores the property used to fulfill the obligations admitted for clearing under a corresponding storage contract or not, and whether the CDO opens a commodity trading account and/or commodity clearing account in the course of its business.

In relation to the gas exchange market, the peculiarities of the legal regulation of CDOs are established in the Bank of Russia's regulations [6]. This applies to CDOs responsible for conducting, monitoring, and recording commodity deliveries of property in the gaseous state of matter. Such CDOs shall own or otherwise be in legal possession of tamper-proof meters and/or technical systems and devices with metering functions allowing the CDO to gather and record information on characteristics and quantity of the property of each entity that has a commodity account with the CDO in physical terms. In addition, the CDO shall have automated software and hardware for continuous consolidation of information on commodity deliveries. The CDO is liable for its operations under a commodity delivery operator service contract.

Currently, there are no companies acting as CDOs in the gas market. However, a transportation operator (hereinafter referred to as "TO") has become a blueprint for a CDO. This function is performed by Gazprom Mezhhregiongaz Postavka, LLC that has been enabling the transportation of gas supplied under sales contracts executed on the exchange of Saint Petersburg International Mercantile Exchange, Joint-Stock Company since 2014 [7]. For this purpose, Gazprom Mezhhregiongaz

Postavka, LLC [8] (hereinafter referred to as the "agent") enters into agent agreements with on-exchange traders under which the agent performs legal and other actions stipulated by the agreement in its own name, but at the account of the principal.

In particular, the agent follows the principal's (seller's) instructions to arrange the transportation of the gas volumes sold by the principal on the exchange from the point of gas source connection (hereinafter referred to as the "Entry Point") to Gazprom, PJSC's gas transmission system (hereinafter referred to as "GTS") up to the GTS facility where ownership is transferred from the seller to the buyer under the gas supply contract (hereinafter referred to as the "Balance Point"). The Balance Point is the delivery basis (point of delivery) for the discharge of obligations under exchange gas supply contracts and at the same time the point of contract pricing established in the commodity specification. In the gas market, it is the Gazprom, PJSC's GTS facility through which gas is transported and delivered from multiple Entry Points and can be transported to multiple Exit Points. At the balance points, gas is transferred from the seller to the buyer.

Under an agreement with the principal (buyer), the TO follows instructions to arrange the transportation of gas volumes purchased by the principal (buyer) on the exchange from the Balance Point to Exit Points (i.e., the interface between the GTS and gas distribution plants (GDP); gas distribution networks of gas distributors (GD), as well as gas consumer networks connected directly to the GTS of Gazprom, PJSC).

The agent implements the instructions to transport gas under a gas transportation service contract between the agent and Gazprom, PJSC. The TO follows the principal's instructions in accordance with the consolidated register based on the on-exchange trade results provided by the clearing house. The TO receives information on the transported gas quantity.

Gas metering is performed according to the current standards, laws, and other regulations of the Russian Federation. For instance, Decree

of the Government of the Russian Federation No. 162 “On the Approval of the Regulations on Gas Delivery in the Russian Federation” dated February 5, 1998 (hereinafter referred to as “Decree No. 162”) provides for several methods of gas metering, including the possibility to measure gas volume as stipulated by the contract.

On-exchange gas is metered in accordance with the contracts. The quantity of on-exchange gas of the principal (seller) delivered to the agent for transportation is currently determined in the common gas stream at custody transfer meters by calculation within the readings of the instrumentation installed at the corresponding GTS Entry Points. The gas quantity delivered by the agent to the principal (seller) at the point of delivery at the Balance Point (in this case, the Exit Point) is confirmed by a gas handover certificate upon discharge of the transportation obligations. After that, the gas is transported to the Exit Point under the agent agreement with the buyer. If the volume delivered to the agent by the principal (buyer) during the reporting period exceeds the volume collected at the Exit Point, the agent may impose a penalty on the principal under the contract.

In addition to the organization of gas transportation, the TO gathers, processes, and verifies data on the collection of the gas volume purchased by the principal (buyer) on the exchange by gas consumers, including data on uncollected gas or collection irregularities from day to day during the delivery period.

Thus, the TO processes information on transported gas volumes. The entire information exchange occurs in the unified electronic document flow system of on-exchange gas trade infrastructure companies.

So far, functions of the sole TO in the gas market has been performed pursuant to the Rules of On-Exchange Trading in the Natural Gas Section of Saint Petersburg International Mercantile Exchange, Joint-Stock Company registered by the Bank of Russia on June 18, 2018 (hereinafter referred to as the “2018 Rules”).

According to the 2018 Rules, Gazprom Mezhhregiongaz Postavka, LLC does not only

follow traders’ instructions to transport the gas they sold/bought under contracts in the Natural Gas Section of SPIMEX, JSC via the GTS, but also performs a number of other key functions. For instance, the TO shall submit information on occurrence of force majeure events or circumstances equivalent thereto, including introduction of Schedule 1 or Schedule 2, to the clearing house. Schedule 1 is a schedule involving switching of consumers to reserve fuels during a cold snap and a schedule implementation procedure for the purpose of performance of a state contract for gas supply for public needs, export contracts under international commitments, contracts for gas supply for domestic needs and the population drawn up under Clause 19 of Decree No. 162.

Schedule No. 2 is a schedule involving the limitation of gas supply to buyers and a sequence of their disconnection in case of a disturbance in operation process conditions of the gas transmission system during an accident drawn up under Clause 19 of Decree No. 162.

If such information becomes available, the exchange gas supply contract may be amended and, if necessary, suspended.

It should be noted that, according to the 2018 Rules, the TO is not responsible for supplied gas metering. The General Terms and Conditions of supply contracts executed in the Natural Gas Section of SPIMEX, JSC and included in the 2018 Rules as Appendix 1 contain provisions obliging the supplier and the buyer only to promptly submit information on the delivered and collected/received gas quantity to the TO. Furthermore, contracting parties incur obligations to notify one another, the TO, and the clearing house immediately on any accidents and malfunctions at the unified gas supply system facilities resulting in gas supply disturbances, as well as any other circumstances of importance for proper performance of their obligations under supply contracts.

In order to develop exchange gas trading, Gazprom Mezhhregiongaz Postavka, LLC was accredited by the Bank of Russia to act as a CDO in 2018. Since 2018, a scheme has been developed for gas supply and commercial

balancing in the Russian commodities exchange, on-exchange trading rules have been prepared, clearing and clearing activity regulations have been refined, and terms of services of Gazprom Mezhhregiongaz Postavka, LLC as a commodity delivery operator have been developed and approved. In particular, the CDO will ensure gas supply monitoring and recording of gas supplied under exchange contracts on commodity trading accounts at the Entry Point, Balance Point, Exit Point and upon receipt of the gas by consumers, allowing for gas balancing directly upon completion of the delivery period.

Currently, the main goal is to implement commercial balancing making the CDO responsible for supplied gas metering and monitoring.

Commercial gas balancing implies sale of uncollected or purchase of underdelivered gas volumes at on-exchange or off-exchange prices. In order to sell uncollected and underdelivered volumes, these gas volumes have to be metered. If such metering is applied, with unused gas volumes, it will be clear, for example, how much gas can be sold by the buyer that failed to collect all the gas delivered by the supplier at the balance point.

According to the Rules of On-Exchange Trading in the Natural Gas Section of Saint Petersburg International Mercantile Exchange, Joint-Stock Company registered by the Bank of Russia on October 25, 2019, but not yet enacted (hereinafter referred to as the 2019 Rules), while performing its activities, the CDO will open commodity trading accounts, including special commodity trading accounts serving as an accounting register for recording property, i.e., gas volumes. The ownership of the gas, risks of its accidental destruction, loss, shortfall, or accidental damage will be transferred from the supplier to the buyer when the CDO records the gas transfer at the Balance Point on the seller's and the buyer's trading accounts. The 2019 Rules contain provisions similar to those of the 2018 Rules and obliging the supplier and the buyer to promptly submit information to the TO,

inform one another and the TO immediately on accidents and malfunctions at the unified gas supply system facilities resulting in gas supply disturbances, as well as any other circumstances of importance for proper performance of their obligations under supply contracts.

The 2019 Rules contain new provisions on the system of reselling gas volumes not collected by the buyer under exchange contracts. As the buyer sells these volumes to third parties on the exchange, the traders consequently perform their obligations to collect gas under previous exchange contracts.

At the moment, there is a problem of gas undercollection at the Balance Point under exchange contracts. If obligations under exchange contracts are not fulfilled, liability under exchange contracts shall be imposed. Commercial balancing ensures the fulfillment of all the obligations and negates the need for penalties.

At the same time, there are situations when it is difficult to sell the gas uncollected at the Balance Point, and guarantees are required to ensure such sale. The new rules of on-exchange gas trading propose a mechanism under which the so-called balancing buyer (the GTS owner) participating in the trade incur unconditional and irrevocable obligations to purchase uncollected gas volumes. At the same time, the role of the CDO metering transported and delivered gas, as well as uncollected gas to be sold and gas sold via the balancing buyer, i.e., Gazprom, PJSC, is crucial.

The created commercial balancing scheme, gas metering at the corresponding meters, recording and monitoring by the CDO using gas volume accounting registers help balance the interests of buyers and sellers, i.e., create a scheme where unbalanced volumes can be sold or bought at any time. The key aspect of the commercial balancing effect is not only 100% performance of supply contracts, but also reduction of the producers' expenses for management of unclaimed volumes. ■

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