

ON STRATEGIC TASKS OF THE USE OF RENEWABLE ENERGY SOURCES AND THE DEVELOPMENT OF LEGAL REGULATION

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The development of the national scientific and technological potential, creation and application of advanced technologies in the power industry, including the technologies related to the use of renewable energy sources, are defined in the Energy Security Doctrine of the Russian Federation as the main tasks of ensuring technological independence and raising competitiveness of the fuel and energy complex. Renewable energy sources and energy storage units are referred to breakthrough technologies that may trigger structural and technological changes in the management and functioning of power systems and facilitate the transition of the power industry to a new technological basis (the so called “energy transition”). The above-mentioned strategic tasks of the further development of the power industry of the Russian Federation require financial support and due legal regulation. The paper brings forward proposals for the further development of the legal regulation of renewable energy sources on the legislative level enabling to fill in the gaps in the current legal regulation.

Keywords: energy law, legal regulation of breakthrough technologies in the power industry, legal regulation of the use of renewable energy sources.

According to the Energy Security Doctrine of the Russian Federation approved by Order of the President of the Russian Federation No. 216 of May 13, 2019, the energy security risks include insufficient development of the regulatory framework, which hinders the deployment of innovative technologies, including the technologies related to the use of renewable energy sources, distributed power

generation, and digital technologies in the power industry. The development of the national scientific and technological potential, creation and application of advanced technologies in the power industry including the technologies related to the use of renewable energy sources are defined in the Energy Security Doctrine of the Russian Federation as the main tasks of ensuring technological independence and

raising competitiveness of the fuel and energy complex.

Pursuant to the Energy Strategy of the Russian Federation until 2035 approved by Order of the Government of the Russian Federation No. 1523-p of June 9, 2020, renewable energy sources and energy storage units are referred to breakthrough technologies that may trigger structural and technological changes in the management and functioning of power systems and facilitate the transition of the power industry to a new technological basis (the so called “energy transition”).

The above-mentioned strategic tasks of further development of the power industry in the Russian Federation require due legal regulation. A.G. Lisitsyn-Svetlanov notes that one of the arising tasks is the determination of the legal policy parameters in the power industry. In this case, the systematic approach, combining adoption of public and private legal acts and ensuring a balance of private and public interests, is needed. Meeting these conditions is required for energy law being the central chain of regulation in the power industry. [1]

M.I. Kleandrov, in his review of the strategic development of green power use, studies the legal means to be referred to in order to achieve the named improvement: tough means, administrative coercion, or soft power, primarily through financially-oriented encouragement. [2] It should be noted that many issues of legal regulation of the use of renewable energy sources become an increasingly frequent research subject. [3]

Representatives of the Renewable Energy Development Association note that 2019 became an extremely important year for the Russian renewable energy sector, export of solar panels of manufactured in Russia was launched, the first multimegawatt wind parks were commissioned, enterprises producing the key elements of wind turbines started mass production, first specialists majoring in RES completed the educational programs. [4]

The common feature of support of the use of renewable energy sources abroad is primarily financing of the subjects of relationships arising in the use of renewable energy sources. In addition, the corresponding statutory

regulation is in place abroad in respect of strategic RES development tasks.

BloombergNEF (BNEF) has published the data on global investments in RES in 2019: investments in the renewable energy sector (excluding large hydroelectric power stations) reached USD 282.2 billion last year, which exceeds the amount of 2018 by 1%. The volume of investments on the world’s largest market (China) reduced, while the second largest market (USA) set a new record. China again turned out to be the largest investor in renewable energy sources having invested USD 83.4 billion in 2019, however it was by 8% less than in 2018 and the lowest value since 2013. The PRC investments in the wind industry grew by 10% and reached USD 55 billion, while the ones in the solar energy decreased by 33% making USD 25.7 billion which equaled just a third of Chinese investments in the solar energy in the record-setting 2017. Notwithstanding the decrease in the volume of investments in renewable energy sources, Great Britain invested USD 5.3 billion, which did not prevent clean energy from besting hydrocarbons in electric energy generation. According to the data presented by BloombergNEF (BNEF), offshore wind industry showed a record-breaking growth of investments, which reached USD 29.9 billion exceeding the values of 2018 by 19%. [5]

Order of the Government of the Russian Federation No. 2749-p of October 24, 2020, approved changes to Order of the Government of the Russian Federation No. 1-p of January 8, 2009, increasing the term for the Main Areas of the State Policy in Raising the Energy Performance of the Power Industry Based on the Use of Renewable Energy Sources from 2024 to 2035.

Order of the Government of the Russian Federation No. 1-p of January 8, 2009, still indicated the following reasons for the slow pace of the development of power industry based on RES:

- Non-competitiveness of projects stipulating the use of renewable energy sources in the existing market environment compared to projects based on the use of mineral fuel types;
- Institutional barriers related to the absence of the required statutory acts encouraging the

use of renewable energy sources in the power industry, absence of any federal and regional programs supporting the large-scale use of renewable energy sources;

— The absence of the infrastructure needed for the successful development of the power industry based on renewable energy sources, including insufficient level and quality of the scientific support of its development, absence of due information environment including data on potential resources of renewable energy sources, reliable data on the implemented project values, absence of regulatory, engineering and methodological documents, software required for design, construction and exploitation of generating objects that operate based on the use of renewable energy sources, lack of the required personnel and the absence of any community resource application mechanisms to support the power industry development based on the use of renewable energy sources.

Considerable financial support and due legal regulation are required to solve the indicated issues and perform the relevant strategic tasks of the power industry in the use of renewable energy sources.

Order of the President No. 204 of May 7, 2018, *On National Goals and Strategic Tasks of the Development of the Russian Federation until 2024* provides for the implementation areas of national projects (programs). Today, the development of the use of RES is stipulated in Order No. 204 of May 7, 2018, only within a complex plan of the main infrastructure modernization and expansion (sub-clause (c) of clause 15 of the said Order). According to Order of the President of the Russian Federation No. 474 of July 21, 2020, the Government of the Russian Federation needs to bring forward proposals for bringing Order of the President of the Russian Federation No. 204 of May 7, 2018, *On National Goals and Strategic Tasks of the Development of the Russian Federation until 2024* in compliance with Order of the President of the Russian Federation No. 474 of July 21, 2020, *On National Goals of the Development of the Russian Federation until 2030*.

In this respect, it seems reasonable to pose the question of the development of a national program (project) in the use of renewable energy sources.

In order to secure the presence of the Russian Federation among the world's leading countries using renewable energy sources, it is necessary to increase to a considerable extent the funding of research and development in the use of renewable energy sources and increase the costs of the expansion of the use of renewable energy sources up to the level of similar costs of the world's leading countries using renewable energy sources.

The following should be referred to the main tasks of the national program on the use of renewable energy sources:

Creation of a complex financing system including venture financing and other development institutions in respect of projects involving the use of renewable energy sources, primarily in remote and isolated territories;

Creation of a regulatory framework ensuring the use of renewable energy sources;

Creation of a flexible range of financial instruments of support of the implementation of projects involving the use of renewable energy sources;

Facilitation of access to concessional financing including the annual growth of the volume of concessional loans extended to implement projects involving the use of renewable energy sources, *inter alia*, within the framework of public-private partnership projects;

Creation of advanced research and development infrastructure for the use of renewable energy sources;

Construction of objects using renewable sources ensuring achievement of the target values of the use of renewable energy sources;

Elimination of administrative procedures and barriers in construction of objects using renewable energy sources;

Creation of a system of the legal regulation of training and professional growth of scientific, academic and field-oriented personnel in the use of renewable energy sources.

It seems reasonable to use venture investment mechanisms for the purposes of the development of the use of RES. According to Smart Energy International, Norwegian classification society DNV GL has declared the establishment of venture capital fund DNV

GL Ventures to support initiatives of transition to renewable energy sources and achievement of sustainable development goals. [6] Apple Corporation together with its ten Asian suppliers has established an investment fund of USD 300 million. This news is given in a special report of the company. The money is aimed at investments in Chinese clean energy projects exceeding 1 GW. Apart from Apple, ten more suppliers of this American corporation – Catcher Technology, Compal Electronics, Corning Incorporated, Golden Arrow, Jabil, Luxshare-ICT, Pegatron, Solvay, Sunway Communication and Wistron – invest in the fund called China Clean Energy Fund. DWS Group, a subsidiary of Deutsche Bank, will manage the fund. [7] It should be noted that Rosatom State Atomic Energy Corporation established a venture fund in 2018 for the development of new and promising initiatives, it is planned to invest in the fund up to RUB 3 billion. The fund will focus on the development of new business initiatives related to promising branches of the Russian and world economy. The key initiatives include, *inter alia*, renewable and smart energy. [8]

The main areas and means of implementation of the state policy in the general scientific and technological development are outlined in the Scientific and Technological Development Strategy approved by Order of the President of the Russian Federation No. 642 of December 1, 2016. Along with the above, in order to solve the tasks of the development of scientific, technological and innovative activities in branches of the fuel and energy complex and related branches of industry, the Energy Strategy of the Russian Federation until 2035 provides for the development of venture business in innovations and support of commercialization of the results of research, design and experimental works in the power industry, including with through the mechanism ensuring continuous financing of a promising project at all innovative cycle stages.

The above strategic tasks of the development of the use of RES need to be reinforced by the required legal regulation. The applicable legal regulation in the use of renewable energy sources in the Russian Federation is still insufficient; attention should be paid to the tendencies

of expansion of the development of the legal regulation in this sphere on the level of legal acts as well as by-laws, acts of the Association NP Market Council.

The Federal Law *On Power Industry* is currently holding the key place in the legal regulation of the use of renewable energy sources. This law has been amended multiple times in terms of the use of renewable energy sources, including in 2019 when Federal Law No. 471-Φ3 of December 27, 2019, introduced provisions in the Federal Law *On Power Industry* establishing the legal regime of a microgeneration object. Chairman of the State Duma Energy Committee P.N. Zavalny has noted that “the adoption and creation of a regulatory framework for microgeneration is fully in line with the world tendencies of decentralization, decarbonization and, to some extent, personalization of the power industry, and will facilitate the development of environmentally-friendly power supply technologies, that will be easier available to users, primarily in hard-to-reach, remote and isolated areas, will enable preventing power interruptions, flatten consumption peaks and reduce consumers’ costs”. [9]

Decree of the Government No. 1298 of August 29, 2020, *On Encouragement of the Use of Renewable Energy Sources, Amendment of Some Acts of the Government of the Russian Federation and Annulment of Separate Provisions of Some Acts of the Government of the Russian Federation* was adopted to improve the mechanism of support of the projects involving the use of renewable energy sources in retail markets. The adopted changes introduce a complex approach to the selection and implementation of projects concerning RES generation facilities on retail markets.

The Ministry of Energy of Russia emphasizes the fact that the indicated novelties are able to motivate mass introduction of RES objects with capacity below 25 MW on retail power markets, which will raise the power supply reliability due to diversification of energy sources, trigger the development of innovations and introduction of new generation types adapted to the local conditions, and facilitate the fulfillment of tasks of the Paris Agreement and the Sustainable Development Goals set by the UN General Assembly. [10]

However, even taking into account the microgeneration provisions supplementing the Federal Law *On Power Industry*, there currently exist gaps in the legal regulation of encouragement of the use of renewable energy sources by different players of the RES market, the required peculiarities of the use of renewable energy sources are absent from the energy, tax, urban development, land regulation.

Recommendations to the Government of the Russian Federation for the improvement of the legal regulation in the use of renewable energy sources adopted by the State Duma Energy Committee of the Russian Federation are worth supporting; such recommendations include:

- Review of an opportunity to provide investors building generating objects with the use of RES with a fine-free deferment of object commissioning due to the coronavirus pandemic for up to 9 months upon shifting of time frames for power supply under a RES power supply agreement for the declared deferment period, which cannot exceed 3 months from the initial ending date of power supply;

- Review of an opportunity to broaden the state program of the socioeconomic development of the Far East and the Arctic Region by inclusion of costs of co-financing of distributed generation projects in the federal budget;

- Development of a set of measures encouraging the attraction of budgetary funding in alternative energy, including support of “green” and sustainable development bonds issue;

- Review of the possibility of establishing a warranty fund or another mechanism guaranteeing return on investments in RES projects in isolated and hard-to-reach territories. [11]

Areas of the legal regulation in the use of RES abroad where many countries (including the USA, China, Australia, the European Union member states, the Eurasian Economic Union member states) have adopted separate legal acts on the use of renewable energy sources that, *inter alia*, cover the following:

- Determination of the concept of means (schemes, types) of support of the use of RES and regulation of the procedure for provision of support means;

- Specifics of the legal regulation of location of generation objects using RES, also depending on the used renewable energy source type, the absence of the need to obtain a construction permit in some cases;

- Peculiarities of control and supervision over initial construction and exploitation of energy objects by state authorities;

- Peculiarities of the procedure for connection of generation objects to electric power networks;

- Establishing the electric power sale rates (tariffs) for producers;

- Financial, corporate and institutional regulation of generating companies using RES;

- Tax regulation peculiarities (including inclusion of provisions on tax deductions, exemption from some tax types).

It seems reasonable to pose the question of the development and adoption of a separate federal law *On the Use of Renewable Energy Sources and the Amendment of Separate Legal Acts of the Russian Federation* to provide for the achievement of strategic goals of the use of renewable energy sources in the Russian Federation taking into account the foreign legal regulation experience in this sphere.

The proposed Federal Law will determine the legal framework, principles of regulation of relationships arising in the use of renewable energy sources, the procedure for cooperation between the subjects of relationships arising in the use of renewable energy sources. The law should, *inter alia*, include a conceptual framework, in particular, a definition of the concept of renewable energy sources, objects of the use of renewable energy sources, objects of accumulation of energy produced using renewable energy sources, a definition of the concept of isolated and hard-to-reach territories, types of activities in the use of renewable energy sources, types of project support in the use of renewable energy sources, the procedure for the implementation of support types, provisions on the amendment of applicable legal acts concerning the types of project support in the use of renewable energy sources, including amendments to energy, urban development, land, tax, customs laws. In the development of the law, the foreign legal regulation experience,

which, *inter alia*, covers the legal regulation of the use of renewable energy sources not only in

the power supply sphere, but also in heat supply and cooling, should be considered.

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