

STRATEGIC TASKS OF THE DEVELOPMENT OF THE MAIN GAS TRANSPORTATION INFRASTRUCTURE AND CHALLENGING ASPECTS OF THE LEGAL REGULATION OF CONSTRUCTION OF MAIN GAS PIPELINES

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The development of the main gas transportation infrastructure and a socially and economically justified increase in the gas infrastructure expansion level in the constituent entities of the Russian Federation including creation of the conditions for preferential supply of gas to land plots used for housing construction are referred to strategic gas industry development tasks. The gas infrastructure expansion level and its growth pace are currently low in a number of regions of the Russian Federation. The citizens view this situation as social injustice, especially when main export gas pipelines are located in close proximity. Solution of strategic tasks related to the gas infrastructure expansion requires an improvement of the legal regulation of social relations arising at the gas infrastructure expansion, and that is impossible without legal research. The author brings forward proposals for the development of the legal regulation in the gas infrastructure expansion including provisions on the single operator of gas supply and gas infrastructure expansion programs.

Keywords: energy law, legal support of gas infrastructure expansion, legal regulation of construction of main gas pipelines.

Priorities of the power industry development in the Russian Federation according to the Energy Strategy of the Rus-

sian Federation until 2035 (the “Strategy”) approved by Decree of the Government of the Russian Federation No. 1523-p of June 9, 2020,

include inter alia preferential satisfaction of the internal demand for power industry products and services.

The Strategy includes the greatest possible assistance in the socioeconomic development of the country in the targets of the development of the power industry of the Russian Federation, including the improvement of housing conditions for at least 5 million families every year: raising the availability of the electrical grid infrastructure, reliability and quality of power supply to consumers to the level, comparable with the best foreign analogues, gas infrastructure expansion in the constituent entities of the Russian Federation.

The Strategy views the gas industry tasks in the context of the spatial and regional development as, *inter alia*, the main gas transportation infrastructure development and a socially and economically justified increase in the gas infrastructure expansion level in the constituent entities of the Russian Federation including creation of conditions for preferential supply of gas to land plots used for housing construction within the framework of the implementation of national projects and national programs.

The Strategy is implemented by federal executive authorities, government authorities of the constituent entities of the Russian Federation, subordinate state budgetary institutions, interested profit-making, non-profit organizations in the power industry and related economic branches by adoption of legal, political, organizational, informational, industrial and other measures within the framework of their competence.

The development of gas supply and gas infrastructure expansion systems in the regions of the Russian Federation is one of the first priorities of Gazprom, PJSC (the “Company”).

Legal research focuses on relevant issues of the legal support of the gas infrastructure expansion. V.V. Romanova studying the issues of the legal regulation of the gas infrastructure expansion emphasizes the absence of any clear definition of the gas distribution property concept including whether it is referred to the gas pipeline transport, the absence of a precise definition of the legal positions of parties to

gas infrastructure expansion relationships including gas distribution organizations, etc. [1]

The gas infrastructure expansion level in the constituent entities of the Russian Federation was 70.1% as of January 1, 2020. [2]

Gas supply and gas infrastructure expansion programs are implemented in 67 regions of the Russian Federation. The gas infrastructure expansion program of the regions of the Russian Federation is drafted based on proposals from regional administrations and approved by Gazprom, PJSC. Bringing gas to the ultimate consumer has been the main project aim since 2005.

Gazprom, PJSC, finances construction of inter-settlement gas pipelines, i.e. builds the gas infrastructure up to settlements, while the regional government is responsible for street network laying and preparation of consumers for gas intake.

V.V. Romanova notes in her study of the issues of the legal support of the gas infrastructure expansion that there is an imbalance between the legal position of the companies entering the Gazprom Group and that of independent gas suppliers as the existing legal regulation stipulates no obligation of any independent gas suppliers to develop any gas distribution networks. [3]

The following statutory acts establishing the procedure for the implementation of the Gas Infrastructure Expansion Programs in the Regions of the Russian Federation are worth noting: Federal Law No. 69-Φ3 of March 31, 1999, *On Gas Supply in the Russian Federation*, Decree of the Government of the Russian Federation No. 903 of September 10, 2016, *On the Procedure for the Development and Implementation of Inter-Regional and Regional Gas Infrastructure Expansion Programs in the Housing and Utilities Infrastructure, Industrial and Other Organizations*.

According to the evaluation of the Accounts Chamber of the Russian Federation (the “Accounts Chamber”), the gas infrastructure expansion in the country is substantially behind the schedule. The gas infrastructure expansion plan of the last three years has been implemented only by 15%. [4]

Several reasons may be singled out:

1. No alignment in the operations of the Company and the regions. The gas infrastructure expansion plans do not coincide.

2. The absence of funds of the constituent entities of the Russian Federation to build gas distribution networks.

3. Unprofitability of gas supply as the cost is often higher than the set tariff.

4. Accumulated consumers' debt to Gazprom, PJSC, for gas consumption amounting to RUB 331 billion.

Since August 2020, Gazprom, PJSC, has started to sign five-year Regional Gas Supply Development and Gas Infrastructure Expansion Programs for 2021 to 2025 (the "Programs") with the regions to align the works of construction of inter-settlement gas pipelines and gas distribution networks and preparation of consumers for gas intake. The Programs include objects where the regions have confirmed their readiness to finance the development of gas distribution networks and preparation of consumers. Mutual obligations of Gazprom, PJSC, and the regions are annually validated by Roadmaps of Alignment of Gas Infrastructure Expansion Program Performance. The name of settlements provided with gas supply, the number of houses and boiler rooms subject to gas supply and work performance terms are indicated in respect of each inter-settlement gas pipeline.

Thus, the Gas Supply and Gas Infrastructure Expansion Programs for 2021 to 2025 are already signed with the Leningrad, Tula, Kaluga, Tambov, Rostov, Penza, Arkhangelsk, Smolensk, Yaroslavl and Amursk Regions, the Komi Republic, the Chuvash Republic, the Perm, Primorsk and Kamchatka Territories.

It seems more efficient from the standpoint of accelerating the gas infrastructure expansion pace to grant Gazprom, PJSC, the status of the single operator of gas supply and gas infrastructure expansion programs. In this case, Gazprom, PJSC, will be able to build not only gas pipeline branches and inter-settlement gas pipelines, but also intra-settlement gas pipelines and the so-called "last mile gas pipelines", which are now built by constituent entities of the Russian Federation.

Apart from acceleration of the gas infrastructure expansion pace, this will allow the constituent entities of the Russian Federation to use the released budgetary financing for heat power engineering, e.g., boiler rooms. Budgetary funds may also be redistributed between the regions.

An additional advantage of this approach is exclusion of cases of creation of excess capacities, underutilized gas pipeline branches as it becomes possible to plan starting from the end consumer.

The President of the Russian Federation has instructed the Government of the Russian Federation together with the executive authorities of constituent entities of the Russian Federation at the participation of Gazprom, PJSC, and other interested organizations to ensure staged completion of the gas infrastructure expansion in the country by 2024 and 2030. [5]

Gazprom, PJSC, plans to increase financing of the Gas Supply and Gas Infrastructure Expansion Programs by almost three times, up to RUB 526.1 billion during the five coming years. [6] One of the main aims of the Program is the gas infrastructure expansion in rural areas. Thus, the new Programs have a strongly pronounced social nature as compared to previous ones.

Besides, the President of the Russian Federation has given an instruction to create sources to financing of connection of the Russians to gas distribution networks on a free of charge basis.

Gazprom, PJSC, will be able to connect houses to gas distribution networks on a free of charge basis provided that it receives a status of the single operator of gas supply and gas infrastructure expansion programs. The costs of such connection should be reimbursed to the Company.

The compensation may take the form of mineral extraction tax benefits. To do that, it is required to reduce the Coefficient characterizing export profitability of coal equivalent (the "Coefficient") determined pursuant to Clause 18 Article 342.4 Chapter 26 of the Tax Code of the Russian Federation (Part Two). The Coefficient is set equal to 1.4441 from January 1, 2019. The exact reduction amount

may be calculated so that the final amount of provided benefit could be equal to the target amount of connection costs borne by the single operator of gas supply and gas infrastructure expansion programs. Taking into account that the Programs are concluded for a five-year period, the reduced Coefficient should be fixed for 2021 to 2025 subject to further Coefficient recalculations, considering the connection costs that will be stipulated in the subsequent Regional Gas Supply Development and Gas Infrastructure Expansion Programs for 2026 to 2030.

Gazprom, PJSC, can also finance such costs by bond issue. As a rule, the implementation of large infrastructure projects requires long-term investments. So the bonds should be issued for a long term. The most attractive option seems to be the issue of non-redeemable bonds provided that pursuant to Clause 4 Article 27.5-7. of Federal Law No. 39-Φ3 of April 22, 1996, *On the Securities Market*, a resolution on the issue of non-redeemable bonds may stipulate the issuer's right to renounce the payment of interest on such bonds on a unilateral basis. It is worth noting that non-redeemable bonds are designed for qualified investors only.

One more option is attraction of funds of the National Wealth Fund (the "NWF").

All the above listed money attraction means for the implementation of the Regional Gas Supply Development and Gas Infrastructure Expansion Programs may be applied jointly or separately, at the same time or in different Program implementation periods.

Moreover, taking into account the social nature of the implementation of the Development Programs, it seems justified to release the infrastructure built within the framework of the Program implementation of property tax whether in full or in part. It should be noted that the corporate property tax is a regional tax, i.e. paid in the specific constituent entity of the Russian Federation where the real estate is located.

Pursuant to Clause 1 Article 380 of the Tax Code of the Russian Federation (Part Two), property tax rates are set by laws of the constituent entities of the Russian Federation and may not exceed 2.2 percent. Clause 3.1

of the same article lists real estate types and requirements such real estate should comply with for the application of a tax rate of 0 percent.

Thus, there are two options for fixing the tax benefit expressed in the form of a reduced property tax rate:

1. To consolidate the application of a reduced tax rate e.g. 0 percent in Article 380 of the Tax Code of the Russian Federation (Part two), in respect of real estate objects built within the framework of the Regional Gas Supply Development and Gas Infrastructure Expansion Programs for 2021 to 2025 and 2026 to 2030 first commissioned during the tax periods starting from January 1, 2021.

2. Pursuant to Article 372 of the Tax Code of the Russian Federation (Part Two), to consolidate the application of a reduced tax rate, e.g. 0 percent, in the law of the constituent entity of the Russian Federation implementing the corresponding Program, in respect of real estate objects built within the framework of the Regional Gas Supply Development and Gas Infrastructure Expansion Program for 2021 to 2025 and 2026 to 2030 first commissioned during the tax periods starting from January 1, 2021.

The gas infrastructure expansion level and its growth pace are currently low in a number of regions of the Russian Federation. The citizens view this situation as social injustice, especially when main export gas pipelines are located in close proximity. It must be admitted that the mechanism of joint liability of Gazprom, PJSC, and the constituent entities is not working. Granting Gazprom, PJSC, the status of the single operator of gas supply and gas infrastructure expansion programs can seriously improve the current position and extend a gas pipeline to citizens, longing for gas supply. The gas infrastructure expansion, in its turn, will boost the socioeconomic development of the regions and improve the quality of life. It will make a favorable impact on the environmental situation as gas is a hydrocarbon fuel with the lowest greenhouse gas and hazardous substance emissions.

The forms and means of brought forward proposals for the development of the legal regulation of the gas infrastructure expansion

require further research. V.V. Romanova reviewing various forms and means of the legal support of the gas infrastructure expansion focuses on the possibility of raising the issue of the development of a separate Federal Law regulating the gas infra-

structure expansion relations as a basis for the development of an internal gas market and emphasizes that a clear system of the legal regulation of public relations in the gas infrastructure expansion should be created in any circumstances [7].

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