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# Legal Support of Rational Use of Energy Resources

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## Аннотация

The applicable laws place the highest value on the rational use of energy resources in the sphere of energy saving and energy efficiency in the Russian economic development. However, there remains legal uncertainty in terms of direct levers of the promising and rational use of energy resources. The legislator maintains “qualified silence” in this matter, the judicial practice is contradictory and ambiguous in the issues of acknowledgment of irrational behavior of energy market participants, there is no standard of proof. Along with these stagnation processes in legal support of the rational use of energy resources, the legislator piles up new constituent elements of administrative offenses and criminally punishable acts in the energy security sphere. Such instruments fail to deliver the desired results in form of the establishment of the rational use of non-renewable energy resources. Renewable energy resources in the context of legal support of the rational use are out of the question as there is no respective framework law. That’s why the author concludes that it is needed to establish a legal model of the rational and safe use of energy resources (legal compliance).

**Ключевые слова:** energy law, rational use, energy saving, renewable power generation, non-renewable energy resources, legal uncertainty, energy security

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## 1 **I Scope**

2 The present-day level of concern over the state of energy security is stably growing both globally and in Russia, which is reflected in strategic economy development programs and annual addresses to the government authorities from the key government officials of the country. The President of the Russian Federation talked in the address to the Federal Assembly in 2022 [1] about the need for strict control and monitoring of the carbon footprint, reduction in greenhouse gas emissions taking into account climatic and geographic features of our country and its scientific and technological potential. V.V. Putin also called for the need to elaborate new complex approaches in the sphere of development of advanced areas of renewable power generation. The environmental agenda comes from real threats to the environment and proven destabilization of economic activities of the humanity. Subjects of the internal market are not especially interested in energy efficiency and are unwilling to attract investments to the sphere of the use of advanced green technologies. Domestic instruments constituting in growth of resource prices and upgrading of penalties fail to deliver the desired results in form of the establishment of the rational use of non-renewable energy resources.

3 The nearest bill review agenda covers the issues of amendments in terms of improvement of the existing systems of liquidation of the accumulated damage to the environment, amendment of the applicable administrative and criminal laws by upgrading of penalties for violations in the reviewed branch, in particular, by creation of systems of control and monitoring of violations in the branch, as well as in terms of information support [2]. The mentioned efforts are not small, however, there remains legal uncertainty in terms of direct levers of the promising and rational use of energy resources, the country follows the stagnation scenario of management of accumulated discrepancies forecasted by scientists of the Russian Academy of Natural History [3].

4 Such sequence of events in accordance with the natural laws and the economic development course embarked upon by the government will sooner or later reach a new qualitative phase of development of the society, economy and power industry. However, criminal interference of some groups with the safe and competitive energy market systems, terrorist threats and negative political and economic ambitions of hostile countries yet again challenge the Russian legal community to review the existing system of provisions that is unable to duly ensure the rational and safe use of energy resources at present and in the foreseeable future. Now is the time when one needs legislative boosting in the energy security sphere as the basis for the rational use and accumulation of energy resources.

## 5 **II. Strategic Planning Documents and Regulations**

6 One of the most important strategic planning documents of the branch is the Energy Strategy of the Russian Federation for the Period until 2035. The document highlights the inextricable connection between development of the energy industry and the national security. Rational management of natural resources and energy efficiency are among the priority areas. Risks in this sphere are managed exclusively by the state.

From the doctrinal standpoint, energy security is a component of the national security and means the “condition of protection of the economy and population of the country from energy threats” in accordance with Clause (a), Part 4 of the Energy Security Doctrine of the Russian Federation. Irrational consumption or use of energy resources is an internal energy security threat in accordance with Art. 17 of the Energy Security Doctrine, another threat is absence or underdevelopment of the respective regulatory framework (Art. 20). That’s why improvement of the regulatory framework is named one of the main tasks of public administration in the energy security sphere (Art. 25).

7 The main federal laws in the energy saving sphere are as follows:

8 – The federal law On Energy Saving, Raising Energy Efficiency and Amendment of Separate Legal Acts of the Russian Federation (the “FL On Energy Saving”) [4] aimed at regulation of energy saving relations and raising energy efficiency by means of creation of legal, economic and organizational incentive grounds (Art. 1);

9 – The federal law On the Electrical Energy Industry [5] that inter alia stipulates regulation of relations between electric energy supplied to consumers and energy from non-renewable sources used for these purposes, i.e., energy efficiency (Art. 3);

10 – The federal law On Gas Supply [6] that regulates gas supply relations and stipulates principles of government regulation of the rational use of gas reserves (Art. 4);

11 – The federal law On Heat Supply [7] that establishes relations in terms of production, transmission, consumption of heat energy and general principles of the arrangement of safe and rational heat supply and activities in this sphere (Art. 3);

12 – The federal law On Security of Facilities of the Fuel and Energy Complex [8] that defines categories of security of facilities of the fuel and energy complex, the degree of protection, security threats, types of protected facilities, security requirements, the list and authorities of subjects of the fuel and energy complex (Art. 2, 3 and other articles of the named law).

13 The last named regulation seems to be the closest to the establishment of energy security criteria. The named regulation also stipulates liability for violation of laws in the fuel and energy complex in accordance with the applicable Russian industry-specific laws and a risk insurance agreement (Art. 13-15 of the federal law).

14 Civil laws stipulate obligations of the buyer under the supply agreement that lie in maintenance and operation of grids, devices and equipment. Art. 543 of the Civil Code of the Russian Federation states that one of such obligations is the consumer’s obligation to ensure due engineering condition and safety of operated power grids, which can be treated as a component of the rational use of power grids.

15 Administrative laws stipulate liability of officials, business entities for violation of laws on energy saving and raising energy efficiency (Art. 9.16 of the Administrative Offense Code of the Russian Federation). Art. 20.30 of the Administrative Offense Code of the Russian Federation stipulates liability for violation of requirements for safety of facilities of the fuel and energy complex. However, sanctions for the mentioned constituent elements of administrative offenses are not ranked, which is a shortcoming of the stimulative role of an administrative fine.

16 Criminal laws also stipulate liability for violation of requirements for security and anti-terrorist protection of facilities of the fuel and energy complex (Art. 217.1 of the Criminal Code of the Russian Federation), violation of safety rules at nuclear power facilities (Art. 215 of the Criminal Code of the Russian Federation), damaging of power facilities (Art. 215.2 of the Criminal Code of the Russian Federation) and public actions discrediting the Armed Forces of the Russian Federation and resulting in harmful consequences for power facilities (Part 2, Art. 280.3 of the Criminal Code of the Russian Federation).

17 Unfortunately, the listed regulations fail to establish a link or criteria of any link between the rational use of energy resources and the status of security of the energy industry, and stipulate no special liability for the irrational use of energy resources. We believe that this is a flaw in the applicable laws subject to obligatory correction.

18 Even today, the laws stipulate a system of standards and certification of ratios of energy consuming equipment being an important tool to raise the efficient use of energy resources. Administrative actions in the utility sphere and government-financed organizations are aimed at liquidation of wasteful energy consumption, which speaks of a consistent state policy aimed at creation of the regulatory framework for the efficient use of energy resources. Legal support in the energy saving sphere and thus in the sphere of the rational use of energy resources is generally focused on the following key areas:

19 – direct economic impact by state regulation of prices on energy commodities, investment support of pilot projects in the public sector;

20 – indirect economic impact through investment benefits for update of manufacturing equipment, concessional lending, tax preferences, energy service contracts.

21 It is worth mentioning that an analysis of more than 700 federal regulations and 9,000 regional documents has shown the absence of a unified regulation that defines the concept and criteria of the “rational use of energy resources”. It means that this matter is outside the legal field or state control and supervision.

### 22 **III Degree of Theoretical Development**

23 Statutory regulation only is not enough in the system of legal support of the rational use of energy resources. Successful implementation of adopted and planned laws requires a solid theoretical and legal paradigm. In this respect, one should point out the available scientific achievements.

24 The process of the establishment of the Russian law branch named Energy Law is relatively new. In 2020, Russia created Autonomous Non-Commercial Organization V.A. Musin Research Center for the Development of Energy Law and Modern Legal Science [9] that trains top-qualification personnel, offers retraining and advanced training under programs of additional professional education. In fact, this is the only academic institution in our country aimed at fundamental and applied research in the energy law sphere.

25 Scientists [10] believe that energy law is a legal branch that covers private law and public law relations appearing on the national and international levels.

<sup>26</sup> Let us not engage in controversy about the need for existence of this branch within this study; since functioning of the energy sphere and public administration of the energy industry are ones of the priority strategically important economic development areas, they require the respective legal and scientific support. Speaking of the legal regulation subject, the authors agree that the rational and prudent use of energy resources is a constituent element of energy law.

<sup>27</sup> Let us turn our attention to etymology of the “rational use” term. Environmental law understands this term as the use of natural resources to the maximum extent, prudent use with minimal losses, the lowest negative impact on the environment [11]. In the energy industry, rational use includes but is not equal to energy saving. In accordance with the national standard: Resource Saving. Terms and Definitions. GOST R 52104-2003 No. 235-st of July 3, 2003, “the rational use of resources means the achievement of the maximum efficiency of the use of resources in the economy at the existing level of development of engineering and technology and simultaneous reduction in the negative impact on the environment” (Clause 5.12).

<sup>28</sup> There is an opinion that the rational, prudent use of the energy resource should result in the accumulation of the additional or even new good for further use or reuse. This is the approach followed by the scientific community of the American continent. A. Bradbrook believes that energy saving is an independent energy resource [12]. The above named FL On Energy Saving does not name obtainment of the good in form of saved energy as the object of regulation. The applicable Russian laws understand energy saving as an activity type aimed at reduction in the energy consumption volume [13]. That’s why the obligation of a subject to use energy resources rationally cannot be attributed to objects of legal relations in the power industry.

<sup>29</sup> The legal science increasingly mentions lack of proper regulation of the rational use of energy resources, no due state control in view of the study and the need for legal regulation of renewable energy sources [14]. Thus, E.M. Kologermanskaya suggests inclusion in the legal regulation model of provisions on the National Energy Company in the sphere of renewable energy sources with the authorities focused on deployment of energy efficient and energy saving technologies [15]. S.V. Gavryusev has studied the experience of foreign countries and mentioned in his thesis that there is a need to simplify the procedure for registration of small-scale power generation suppliers, support the tendency of the transition to the green economy, concessional lending to companies reducing negative emissions [16].

<sup>30</sup> We believe that in Russia, the rational use of energy resources obtained from renewable and non-renewable sources is a two-way street due to a number of geographic, climatic features, uneven distribution of energy resources and population density. The efficient and prudent attitude to energy directly depends on development of the energy market, establishment of a competitive environment, which requires considerable amount of time. The rational use cannot be made conditional only on the availability and fee-based transfer of energy from renewable sources. Since Russia is a resource-based country, the market of non-renewable sources is and will be the primary one over a medium-term horizon.

<sup>31</sup> In view of that, it's worth mentioning the idea expressed by T.R. Gilyazov with regards to the launch of pilot projects across the country to cover separate municipal structures or even constituent entities implementing an institutional approach towards regulation of statutory risks in the energy sphere [17]. Regions are suggested to develop in the test mode the algorithm of conduct of energy market participants, building of relations with the government, establishment of the system of benefits, incentives and liability. If the effect turns out to be positive, the approach will be upscaled to the federal level, and the respective laws (already tested in practice) will be adopted. This idea is not new, it has already proven effective in some countries applying the European energy law.

#### <sup>32</sup> **IV Legal Positions of Supreme Courts on the Rational Use of Energy Resources**

<sup>33</sup> Absence of the legislative regulation of legal relations between energy market participants on the rational use of energy results in the non-systemic and controversial character of court rulings, provides fertile ground for subjectivity and abuse (excess judicial discretion). On the other hand, the means of filling of statutory regulation gaps with judicial standards (legal positions) has become a characteristic law enforcement instrument of regulation of difficult complex relations of the latest decades in the conditions of qualified silence of the legislative authority.

<sup>34</sup> The study of rulings of supreme courts has yielded the following results. The supreme courts have evaluated the content, guarantees and responsibility for violation of the principle of the rational use of energy resources from the moment of its introduction in the system of energy saving principles; the total number of such judgments from 2009 to the present day is not more than 30. Legal positions of the Constitutional and Supreme Courts can be summarized as follows.

<sup>35</sup> 1 Judgments of the Constitutional Court of the Russian Federation point out that:

<sup>36</sup> – the rational use of energy resources is a complex task that requires statutory consolidation due to the presence of the energy saving technology, metering devices. Their absence does not release the parties to legal relations from the obligation to ensure the efficient use of energy resources all the way to restriction of the parties' rights (Clause 3, 4.1, 4.3 of Ruling No. 30-P of July 10, 2018);

<sup>37</sup> – the rational use of energy resources is a relation in the sphere of supply of energy resources that has its principles of certainty, fairness, proportionality of introduced limitations for the purposes of achievement of the balance of property interests of parties to such relations (Clause 2 of Ruling No. 16-P of April 27, 2021);

<sup>38</sup> – a feature of the rational use of energy resources is the fact that the consumer is the economically weaker party in the reviewed relations and thus should be protected against any legal uncertainty in the establishment of regulatory energy resource supply volumes, supply uniformity, system of prices and ratios (Clause 2 of Ruling No. 3088-O of November 28, 2019), otherwise, compensatory mechanisms should be applied (Clause 2 of Ruling No. 16-P of April 27, 2021);

39 – the legal model of the rational use of energy resources includes presumptions of accession and actual consumption of energy (Rulings No. 16-P of April 27, 2021 and No. 46-P of December 20, 2018).

40 There is no uniform interpretation of the provisions of the fundamental law of the country in judgments of the Constitutional Court on the issue under consideration. The legal positions present the rational use of energy resources as a task of government authorities in charge of management in the energy sphere, as a group of legal relations or as a legal model of exercising of rights and discharge of obligations by subjects.

41 2 Judgments of the Supreme Court of the Russian Federation:

42 – in case of origination of a dispute over the priority of civil or energy law provisions, the energy law provisions prevail. This follows from court judgments on periods of limitation, bringing of persons of the retail power energy market to liability and the conflict between the provisions of the Civil Code of the Russian Federation and the federal law On the Electrical Energy Industry (Judgment No. AKPI19-580 of October 2, 2019); on challenging of rules for calculations under a gas supply agreement introduced by the Government of the Russian Federation and their non-conformance to civil and housing laws (Judgment No. AKPI19-2 of March 13, 2019);

43 – a concluded energy saving, gas saving agreement, other agreement between a supplier and a consumer is a legal guarantee of good faith and rational energy use (Judgments No. AKPI19-580 of October 2, 2019, No. AKPI19-2 of March 13, 2019, No. VAS-6305/12 of July 2, 2012);

44 – courts refer progression ratios of payment for over-consumed energy resource to measures of encouragement of implementation of the rational energy resource use principle (Judgment of the Supreme Commercial Court No. VAS-6305/12 of July 2, 2012), the opportunity to select the tariff option by the consumer is an encouragement (Ruling No. 303-ES16-20419 of June 28, 2017, Resolution No. 06AP-7535/17 of February 12, 2018, Judgment No. AKPI18-603 of August 22, 2018), encouragement at calculation of energy resource consumption is only applicable to the consumer (Ruling No. 60-APG17-6 of April 27, 2017, Resolution No. 11AP-20072/22 of February 3, 2023);

45 – state regulation of prices on energy resources is a measure of legal protection of the rational use of energy resources (Ruling No. 309-KG14-7891 of June 18, 2015), setting of price and capacity rates is of imperative character and cannot be changed at the discretion of the parties even if both parties agree to it (Ruling No. 306-ES16-3962), state regulation of prices should encourage the rational use by consumers (Ruling No. 309-ES14-237 of October 19, 2014);

46 – the standard of proof of violation of the principle of the rational use of energy resources at court dispute resolution includes the explanation of the person that consumed electric energy without an agreement, non-recorded energy consumption certificate issued by a commission and signed by two non-interested persons or confirmed by photo, video records (Judgment No. AKPI19-580 of October 2, 2019);

47 – the requirement for the rational use of energy resources is based on the presumption of actual consumption of heat energy that can be disproved only by

complete absence of any consumption or agreed transition to a new energy source (Ruling No. 308-ES18-25891).

<sup>48</sup> The institutional approach to the rational use of energy resources, prevalence of energy law provisions at dispute resolution, rational use principles, legal guarantees of good faith and rational energy use are traced in judgments of the Supreme Court.

#### <sup>49</sup> **V Legal Compliance of the Rational Use of Energy Resources**

<sup>50</sup> To sum up the performed study, let's single out the following. Establishment of legal compliance of the rational use of energy resources should be started taking into account the conceptual energy law approaches, present-day tasks of the energy law and order. For the purposes of the subject of this article, one should keep in mind gaps and contradictions of legal regulation of the rational use of energy resources with the attributable goals, tasks, subjects and authorities, guarantees and liability. The performed generalization of the developing judicial practice shows that the law enforcer has no uniform understanding of the rational use concept apart from state regulation of prices, tariffs, capacities of supplied energy on the wholesale or retail market. The cause of this is the availability of a more or less adjusted rate setting system. Other than that, the courts are forced to address a large number of statutory acts in search of a legal regulation instrument. We believe that this situation will require the legislator to adopt a uniform legal act in the future, codify the energy sphere.

<sup>51</sup> Today, energy saving laws refer the rational use to the system of principles (Art. 4 of the FL On Energy Saving). That's why the rational use of energy resources is an energy law principle and a policy of the Russian state in the energy sector. The object of its implementation is energy, energy resource from various sources (renewable and carbon). The use of the energy resource stipulates full consumption of energy, completeness of the life cycle of produced, extracted good, without any remains, reuse and/or accumulation. The content of the principle covers the following structural elements:

<sup>52</sup> – uniformity of energy resource consumption without over-consumption,

<sup>53</sup> – balance of interests of an energy resource consumer and a contractor,

<sup>54</sup> – presumptions of actual consumption of heat energy and accession,

<sup>55</sup> – imperative character of energy resource pricing,

<sup>56</sup> – state and regional encouragement of fulfillment of instructions on the rational use of energy resources,

<sup>57</sup> – obligation to conclude an energy supply agreement,

<sup>58</sup> – use of energy consumption meters including personal ones when using alternative energy sources.

<sup>59</sup> The rational use of non-renewable energy resources is impossible without the creation of a legal platform aimed at encouragement of the increased use of renewable energy resources by subjects of the energy market. The respective federal law needs to be adopted for these purposes.



<sup>60</sup> Legal support should be supplemented with new opportunities for statutory law making in the constituent entities depending on the available climatic, geographic features, number of the population. Some regions should be provided with an opportunity (in a test mode) to develop their own legal model of the rational use of energy resources, build a system of internal control of legal risks.

<sup>61</sup> The encouragement system should stipulate regional bonuses to companies and company employees depending on the saved energy resource volume. The incentive for companies should be legislative consolidation by the constituent entity of the Russian Federation of reduction in the taxable base depending on energy saving. Company employees should have a system of monetary bonuses and penalties for compliance/non-compliance with the specific energy resource consumption rates on the level of a collective and labor agreement, provisions on bonuses to company employees and other local regulations.

<sup>62</sup> There is a need in an individual approach to the violator of the energy saving laws based on the interdependence between the fine amounts and the “level of energy losses, energy cost and full damage recovery expenses” [18]. Energy compliance should be based on awareness of the population and active, potential market subjects of energy saving programs, measures of encouragement of the rational use of energy resources.

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## Abstract

The applicable laws place the highest value on the rational use of energy resources in the sphere of energy saving and energy efficiency in the Russian economic development. However, there remains legal uncertainty in terms of direct levers of the promising and rational use of energy resources. The legislator maintains “qualified silence” in this matter, the judicial practice is contradictory and ambiguous in the issues of acknowledgment of irrational behavior of energy market participants, there is no standard of proof. Along with these stagnation processes in legal support of the rational use of energy resources, the legislator piles up new constituent elements of administrative offenses and criminally punishable acts in the energy security sphere. Such instruments fail to deliver the desired results in form of the establishment of the rational use of non-renewable energy resources. Renewable energy resources in the context of legal support of the rational use are out of the question as there is no respective framework law. That’s why the author concludes that it is needed to establish a legal model of the rational and safe use of energy resources (legal compliance).

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