

Energy-service sector: problems of government regulation

N. Gorodnova¹, S. Chernov², E. Shablova¹, N. Rossetti³
& A. Berezin¹

¹*Ural Federal University, Russia*

²*Novosibirsk State Technical University, Russia*

³*Turboden LLC, Italy*

Abstract

The paper focuses on an energy-service sector and its value to the economy of developed countries. The processes of formation of energy service in Russia and the problems that accompany this type of economic activity are analysed. The subjects of the research are methods, forms, and tools of government regulation in the energy-service sector. The purposes of the research are an explanation of the regulatory mechanisms and influence of the government in the energy-service sector. We evaluated efficacy of the regulatory impact of legal regulations (national and international) on the implementation of the Russian government's energy strategy and government policy in the sphere of energy conservation and increasing energy efficiency. We used economic analysis of law and individual institutions and comparative-legal method. We established correlation of economic and legal concepts for energy conservation, energy efficiency, and energy services. The characteristics of energy services as a business activity from perspectives of the target object, the legal status of participants, sources of legal regulation were justified. The paper draws conclusions about future trends in the development of government regulation for the energy-service sector (medium term), the prospects for the development of a special (energy) legislation, the possibility and advisability of borrowing positive foreign experience of the regulatory influence of the government in the energy-service sector. Progressive norms of national and foreign laws and business practices of implementation energy-service contracts were evaluated. Conclusions can be used in domestic law-making practices and legislative initiatives of various subjects of law making. Generalizations of contractual practices and recommendations for the

use of legal structures in the energy-service sector could be of interest to entrepreneurs. The significance of the research derives from the need for strengthening of government regulation in the energy-service sector, the effectiveness of the use of certain legal forms, methods and tools for these purposes.

Keywords: energy services, energy conservation, energy efficiency, regulation, private–public partnership.

1 Introduction

For energy service industry, the strategy of energy conservation and energy efficiency is an important component of government regulation that supports the social and economic development in many countries. Principles of energy conservation and energy efficiency are embedded in legal framework to protect public interest. The paradigm of sustainable socio-economic systems capitalizes the need to conserve energy resources for future generations. To follow this path, a government body needs to develop a separate strategy on a national level. For Russian Federation, the Energy Strategy has been adopted for the period until 2020 with provisions till 2030. Key objectives of the Energy Strategy include formations of strategic goals (SG) in the field of energy efficiency and development of indicators of success for these SG. The proposal of Russia's Energy Strategy till 2035 indicates the need to address the problem of utilization of the existing potential of energy conservation and energy efficiency improvement in all sectors of the Russia's economy using the world best practices [1]. To achieve international standards of energy efficiency and energy conservation, Russian Federation should employ a wide array of available tools to maximize energy conservation and energy efficiency. Proposal emphasizes the development of technological and institutional energy conservation through government regulation and stimulation with the corresponding savings in costs for consumers, and a moderate rise in energy tariffs as the main focus of the energy efficiency improvement in the Russian economy. The Energy Strategy should include the following:

- The tax benefits and regulatory framework of energy efficiency and energy conservation in all sectors of the Russian economy (especially energy-intensive ones) and improve the quality of services offered in the market;
- Organization of preferential debt financing for projects that improve energy efficiency and energy conservation (including compensation interest rates by appropriately loans);
- The provision of state guarantees for loans for the implementation of energy efficiency projects and energy conservation;
- The development of tax incentive mechanisms for the acquisition of energy efficient equipment;
- The development of market and other promising energy conservation and energy efficiency mechanisms (Energy Service, target agreement from large consumer's energy, regional and industry funds and etc.);



- The development of energy efficiency standards and labeling systems for buildings, structures, equipment, and technology;
- Improvement of the Russian legislation on the contract system in the sphere of public procurement;
- Organization of training, promotion of research and development work to improve energy efficiency;
- Improvement of public information systems and Internet resources, popularization and promotion of energy conservation and others.

According to the doctrine of the Russian business law, the legal form of government regulation of economic activity is an act (a planned act, the target program, permits, licenses, etc.), which is connected to specific legal consequences [2, p. 328]. In legislator practice, government regulation takes form of the legal acts for the norms of different levels, different sectorial legal affiliation, often with cross-sectorial action.

Russia's energy conservation program till 2020 (approved by the Government of the Russian Federation of December 27, 2010 № 2446-p) provides the basic measures of legal regulation in the sphere of energy saving and energy efficiency, confirms the need to update and improve government regulation, regulatory and legal framework, taking into account enforcement of accumulated experience and consistent increase of requirements to the implementation of energy saving measures [3].

Noteworthy, comprehensive approach of governing the legal consequences indicated by the State program, which covers the social and economic areas, is reasonable. Target indicators of energy efficiency are incorporated in all state and municipal programs. Regions of Russian Federation play an important role in the state energy conservation program, because program's grants have become one of the major financial sources in regions. In 2012, about 105 billion rubles were allocated to implementation of regional programs (The federal budget 5.6 billion rubles; regional and local budgets – 17.6 billion rubles; non-budgetary sources – 81.4 billion rubles) [4].

2 Analysis of experience

Acceptance and implementation of target programs in the field of energy conservation is not unique to Russia, and efficiency of target programs is confirmed by regulatory impact. The European experience confirms adaptation of target programs in the field of energy conservation at the level of the EU directives. The European Union has been developed “20-20-20” plan, one of the key objectives of which is to reduce energy consumption by 20%. According to this program, the anticipated implementation will save up to 100 billion euros per year. In 2009, the European Union adopted a directive on eco-design, which sets binding environmental requirements for products that are associated with high energy consumption. Strategic goal of this directive is to avoid the negative impact of excessive energy use (80% of the excess energy can be prevented at the design stage). Also, mentioned directive, EU countries can save about 12% of the energy



that is consumed. Recently, the EU adopted a new program “Horizon 2020”, which was started January 1, 2014. One of the priorities is to promote scientific and technological innovation and development in the field of “green” energy [5].

Experience in the implementation of energy efficiency programs in the residential sector in Hungary is of high interest. In realization since 2007, the program “For a successful Hungary” offers preferential loans for the implementation of residential projects aimed at improvement of energy efficiency and use of renewable energy sources. The preferential debt financing can be used along with a grant from the energy conservation program, or separately [6].

A serious impetus to the development of specific legislation in the Russian Federation in the field of energy conservation and energy efficiency came from the Federal Law of 23 November 2009, № 261-FL “On improvement of energy conservation and energy efficiency and amendments to Certain Legislative Acts of the Russian Federation” (hereinafter, the Energy Conservation Law) [7]. This law is the base for determining the state regulatory policy in the sphere of energy conservation. The normative content of Energy Saving Law has been growing because of generalizations in law enforcement; regulatory needs that arisen, including the development of energy service industry in Russia. One of the novelties of the Energy Conservation Law provided in Article 6.1 (as amended by Federal Law of 13.07.2015g, № 233-FZ), which secures a flexible model transfer of the powers from federal executive bodies in the field of energy conservation to executive bodies of subjects of the Russian Federation.

State regulatory norms, which are related to energy efficiency and energy services, are characterized by the gradual implementation of certain regulatory initiatives. The very same specific legislation in the field of energy conservation is characterized by promising studies.

To follow Energy Conservation Law, Russian Federation government adopted 25 resolutions directly or indirectly related to energy efficiency, so a significant set of rules in this area has been formed in the last five years.

In the past five years, trend of improvement in the efficiency of the regulation of socio-economic relations in the sphere of energy conservation was set.

The State Energy Conservation Program till 2020 is focused on regional legislative acts. The legal tools, which used for regulatory purposes at different stages of the development of specific legislation in the field of energy efficiency, are spread from imposition of obligations on development and adaptation of regulatory acts to these acts’ adoption by regional authorities in connection with certain large-scale energy-conservation projects within the institute of public–private partnership. The implementation of projects in the field of energy efficiency at regional level of public utility requires investments in public–private partnership projects. (5 to 30 years) Long-term investment projects aimed at energy-conservation with financing from Vnesheconombank have value of around 2 billion rubles. These projects have been implemented in Kurgan and Kostroma regions [8]. Researchers actively study economic aspects of public–private partnerships related to development of energy-efficient residential housing. International experience helps to facilitate implementation of these projects [9].

Legal support of public–private partnerships in the implementation of the energy policy is the subject of the study and on the part of legal science.

It is very important to notice trend in legislation development in this sphere of relations: its interaction with the legislation in the field of public-private partnership. The wider prospective applications of mechanism of public–private partnership in the implementation of federal and regional energy efficiency projects are related to the adoption of Federal Law of 13 July 2015, № 224-FL “On public–private partnership, municipal-private partnership in the Russian Federation and the Introduction of Amendments to Certain Legislative Acts of the Russian Federation” (hereinafter, the Federal Law № 224-FZ), which entered into force from 01.07.2016 (except Article 46) [10]. Authors believe that a number of novels will enhance the effectiveness of regulation. The new law will give a trend of development of specialized public–private partnership legislation and will increasingly contribute to the consistency of acts of public and private law, which are implicated in the regulation of relations in the implementation of public–private partnership projects [11].

International experience confirms that national legislation on energy conservation determined by obligations. Energy efficiency and conservation are important aspects of international legal cooperation. Projects within associations, such as EEU, SOC and BRICS, will continue development that aimed at improvement of energy efficiency. Energy industry is an area of high priority for cooperation BRICS’s countries, because the economic development of the BRICS countries requires sustainable consumption and production of energy. Given the growing demand for energy and energy-efficient technologies, the leaders of the member states of the BRICS emphasized the exchange of experience in areas related to energy planning, energy production and consumption so that BRICS development strategy included these aspects [12]. Conservation of non-renewable resources in the interests of future generations and efficient use of energy are priorities of the economic and technological innovation in BRICS countries [13].

Member states of BRICS need to form a common base for the legal regulation in areas related to energy efficiency. Implementation of energy saving projects, joint research and development efforts aimed at harmonizing the legal environment, including energy services, using the mechanisms of public–private partnerships can be a unifying focus for the BRICS countries. Thus, construction of housing with the use of energy efficient norms and standards is important for the BRICS countries with a rapidly growing population [14]. In this respect, the study of European experience of the houses’ construction with low energy consumption (up to 30% compared to a standard) is important.

Ministry of Energy of the Russian Federation emphasized cooperation with BRICS countries in Energy Efficiency field 16.04.2015. BRICS countries received a Memorandum of Understanding in the field of energy efficiency with the possibility of its signing in 2015. Emphasis is placed on proposals from the Ministry of Energy to study effects on BRICS member countries from restrictive acts of third countries on access to energy efficient technologies; establishment a base of new energy-efficient technologies; establishment a joint

Institute of Forecasting and co-ordination of energy-efficient sectors in the countries of the BRICS [15].

From assessment of development of Russian legislation in the field of energy conservation, we can assume that the special component will develop in the coming years. In the framework of whole energy legislation, interpretation of the special component is required [16]. In the Russian legal doctrine, the question about the prospects of differentiation in the area of energy turnover legislation, energy saving is controversial [17]. According to Belyh, "...the development and establishment of energy legislation should take place through the consolidation and codification of existing legislation. Russia and Western countries should adopt the Energy Code or consolidated law, which is a necessary condition for the convergence of regulation of processes in the energy sector" [18]. The proposal on consolidation of energy legislation under a separate code or a special law has an objective and subjective conditions, one of which should include the isolation and specificity of the energy turnover and the availability of sufficient development of special legislation aimed at traffic and energy conservation.

In the medium term, we must assume that technical regulation system will follow trend of energy conservation. According to Article 6 of the Federal Law of 22 December 2002 № 184-FL (as amended by 23rd of June 2014) "On Technical Regulation" technical regulation should be aimed exclusively at achieving the objectives defined by the law, including energy efficiency and resource conservation [19].

Public way to regulate relations in the sphere of business is to define the requirements for the legal status of market participants. In accordance with Federal Law № 261-FL, activity for the energy audit is entitled only to members of self-regulatory organizations in the field of energy audits. In accordance with the Russian legislation, self-regulation is the development and establishment of standards and regulations in the business or professional activities, as well as control over their implementation. This method of regulation for relations is justified, yet the state has mainly enforcement powers.

Since 2010, Russian Federation Ministry of Energy maintains the Register of self-regulating organizations in sphere of energy audits. As of 08.09.2010, the registry includes 18 non-profit partnerships of energy auditors, which have 608 companies. As of 15.02.2016, the list has grown to 847 energy audit companies [20]. It seems that achievement of energy efficiency goals at large-scale requires the use of regulatory impact assessment in the form of membership in self-regulatory organizations for all providers of energy services, not only in the energy audit. Therefore, standards must apply to all activities covered by the collective term "energy services".

The novels of the Civil Code (paragraph 3, Article 49) as part of the capacity of legal entities that are entitled to carry out activities, which requires membership in the self-regulatory organization or certificate of admission from self-regulatory organization, which is given upon entry of the legal entity in the self-regulatory organization or self-regulatory organization issuing the certificate of admission to a particular type of work, and revoked at the termination of membership in a self-regulatory organization. Thus, self-regulation by virtue of laws regulations

restricts the legal capacity of legal entities in this area of business and professional activities such as an energy audit.

It appears that one of the areas of development, in the medium term self-regulation, may include: expansion of the professional participants in the field of energy efficiency, provision of full range of energy services; consolidation of large energy service companies in the development of standards to achieve a higher quality of energy services, development of quality indicators; increased use of certification procedures for specialists in this professional field.

It is possible that there are preconditions of separation of energy services as an independent economic activity, which will require not only a formal review of the Russian Classification of Economic Activities, which serves as a well-defined goals and above all – a generalization of the statistical economic data.

Foreign businesses' turnover of contractual offers detailed set of contractual structures designed to mediate contractual obligations in the field of energy services, which serve as a general idea of energy efficiency and the balance to meet contractual obligations the parties' interests.

Currently, there is a revitalization of domestic research towards finding effective models of contractual regulation under the Energy Conversation Law on a new energy service contract. The current concept of legal regulation of this contract in the Russian legislation can be characterized as fragmented. In this regard, the role of self-regulatory organizations in the development of pro forma agreements aimed at implementation of energy saving strategies. One of the important problems of energy contracts is the problem of creating conditions of reimbursement, which corresponds to real energy-saving effect, which is achieved by the customer as a result of energy saving measures, and the maximum price of energy service contracts. Entitled to the energy service company, risk of failure to achieve energy saving requires further studies.

The legislator resorted to making contracts in the sphere of energy saving. It is important to note aspect of the composition of an administrative offense under Section 12 Article 9.16 Code of Administrative Offences of the Russian Federation "Infringement of the legislation on energy saving and energy efficiency improvement" [22]. The objective side of the analyzed administrative violation represents refusal or evasion of organization, which is obliged to conduct work on the installation, replacement, maintenance of metering devices for energy resources, to sign contract and (or) to execute under established procedure. For example, conditions of competition and (or) term of the contract were not met. In addition, the objective side of the offense considers the fact that an organization might fail to comply with installation or replacement terms for manual metering devices for energy resources. In assessment of the legal nature of such contracts, one needs to remember that, from the point of view of civil qualifications, these contracts have public nature so that these contracts are subjected to the legal regime of Article 426 and Article 445 of Russian Federation Civil Code, including the legal consequences in the form of compulsion on the conclusion of the contract in case of failure to sign one. The legislator is not limited to the civil law structures that ensure the implementation of compulsory mechanism to enter into such an agreement, recourse to administrative and legal sanctions, namely an

administrative fine on officials in the amount of twenty to thirty thousand rubles; to persons engaged in entrepreneurial activities without forming a legal entity – from twenty to thirty thousand rubles; for legal entities – from fifty to one hundred thousand.

Article 9.16 of Russian Federation Administrative Code, except for the offense indicated above, includes eleven separate parts, which include administrative sanctions for administrative violations on energy conservation and increasing energy efficiency. In general, one can note strengthening of measures of administrative liability in the designated sphere of relations. The question of what is efficient in the deployed arsenal of administrative sanctions for enforcement of national energy efficiency of domestic industry is not well studied in legal science, but we can assume that tougher sanctions don't give positive economic effects.

Enforcement effects of the regulatory impact of the law have not yet become the subject of intense study and analysis of specialists in respective areas of scientific knowledge (jurisprudence). Monitoring of assessment of the regulatory impact of legal norms regulating social relations in the field of energy savings with the use of economic analysis of legal institutions is necessary.

Promising direction of research may be theoretical and legal issues of incentive norms and standards – rewards. The US experience on the implementation of energy efficient technologies indicates widespread usage of tax breaks and incentives. Implementation of the laws of Japan provides accelerated depreciation regime for energy-efficient equipment so that 25 thousand pieces of equipment were installed in each year from 1996 to 1998. The Danish Government has provided program of investment in the energy sector. Companies that have savings from the use of energy-efficient technologies can take advantage of tax deductions [23]. The European experience of legal incentives to reduce energy intensity, certainly deserves attention, in particular the EU Directive № 2010/30/EC, according to which three new energy efficiency classes A + A ++, and A +++ were introduced [24].

Certainly, Russian legislator and Russian legal science are interested in studying progressive norms of foreign law, summarizing the business contractual practices in this sphere of relations, the implementation of scientific research in the aspect of comparative law [25]. The role of comparative studies of legal structures is rising.

Energy service is a booming type of business that requires in-depth research by scientists in the field of business law. This fact applies to the legal status of participants in energy services, law sources, which will ensure such control, and other aspects.

3 Conclusions

1. There is an intensification of development of the Russian special legislation in the sphere of energy conservation and energy efficiency, including the provision of energy services, which are important component of the implementation of the Russian National Energy Strategy. In the medium term, state-legal regulation in the sphere of energy services will be provided through



the implementation of state target program. For the Russian market of energy services, the method of mandatory impact on the regulated area of public relations is not important, but the formation, which includes the disposition of legal regulatory regimes focused on the formation of the balance of interests of individual partners involved in contractual obligations.

2. In the indicated context, increasing necessity for the disposition regulatory method leads to scientific research in the following directions:
 - a. Development of general legal normative action theory – incentives and stimulating measures including at the level of cross-sectorial cooperation is required (tax, civil, labour, administrative and other branches of law).
 - b. Improvement of the conceptual apparatus for the purposes of more efficient and uniform rules application, not only at the level of the national legal system, but also in acts of international law unification.
 - c. Activation of comparative legal researches for the purpose of summarizing and borrowing effective legal structures that mediate the relationship of providing energy service facilities, including in the direction of achieving energy efficiency results.
3. Accounting for trends and importance of the energy services sector development and identification of this sector as an independent area of the business, the role of researches in the area of standardization processes of the providing energy services is rising (it seems that the objective and subjective prerequisites formed for this).
4. Improvement is required in well-known and new contractual models of regulation in the sphere of energy services offered by civil doctrine, as well as the development of contracts form for consolidation of energy service companies, including – at the level of activities of self-regulatory organizations.
5. An urgent task is development of the common base for the legal regulatory principles in this area for member countries of the BRICS. Implementation of energy saving projects, joint scientific development, which are aimed at the unification of the legal environment, are an important task of the regulatory impact of member states of BRICS.

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