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CONTENT OF THE ENERGY SUPPLY CONTRACT

The article reveals essential terms of energy supply contract, compares the terms of this contract with terms of other types of contracts and explains specificity of energy supply contracts, which essential terms significantly differ from other related types of contracts. In the paper suggestions were formulated to include certain conditions as essential exactly for this category of contracts. In addition, the author examines controversial issue of special physical properties of energy that goes beyond traditional understanding of things and considering this justifies a position about differences between energy supply contracts and the terms of other types of contracts; eventually, the author represents own proposal for reflection of certain terms of energy supply contracts in particular articles of the Civil Code of Ukraine.

Key words: energy supply contact, supply contact, contract of sale, heat energy, electric energy.

Formulation of the problem. Legal literature nowadays widely discusses problems and development prospects of institution of energy and other resources supply. Legal form which mediates consumption of energy and other resources is a contract of energy and other resources supply through an attached network¹.

Due to significant changes in legal regulation of energy supply, which were brought by the reform of energy sector, this topic evokes increased interest. Change of legal regulation of contractual forms in energy sector is the result of deep theoretical comprehension, aimed to improve the structure of relations between contractual parties and the state.

Regulation of contractual relations in this area has recently become the subject of scientific research works. The energy supply contract takes a special place among controversial statements on improving of this type. Specificity of this object requires special rules to regulate legal relations connected with supply of energy.

However, current legislation is imperfect and researchers cover a lot of issues, including definition of the energy supply contract as a contract of a separate type, considering its content.

Level of exploration. The paper researches differences between energy supply contract and other types of contracts, what was studied in works of many authors, including S. Korneev, B. Seinaroiev, V. Yehiazarov, M. Libkind, A. Shafir, etc. However, a comparative study of content of the energy supply contract and other types of contracts under Ukrainian legislation was not carried out, that's why today this issue should still be defined as unexplored, hence the relevance of this article is high both in theoretical and practical aspects.

The purpose of the article: to conduct a detailed analysis of content of the energy supply contract and set important issues, which are the most relevant and require close attention for today.

Presentation of the basic material. Mixing essentially different obligations, applied in energy supply, the legislator confuses enforcement activity and leads to taking illegal and unreasonable decisions, because enforcement authorities should be guided, first of all, by literal meaning of the words and expressions contained in a law. Thus, by the contract of energy and other resources supply through an attached network one party (the supplier) shall provide the other party (the consumer, the subscriber) with energy and other resources prescribed by the contract; and the consumer (subscriber) is obligated to pay for accepted resources and follow the regime for their use prescribed by the contract, and to ensure safe operation of energy and other equipment (art. 714 Civil Code of Ukraine). It should be noted that the supply of energy to consumers is based on provisions of the contract.

The legislator determines content of a contract as terms (items) determined at the discretion of the parties and approved by them, and terms that are mandatory under civil law (art. 628 Civil Code of Ukraine).

The vast majority of civil law rules, which determine terms of contract, have dispositive nature, i.e. the parties to the contract may derogate from provisions of the law and regulate their relations at their

¹ Стефанчук, Р.О. (2005). *Цивільне право України: навчальний посібник*. Київ: Прецедент.

discretion, but terms on the subject of a contract is mandatory for conclusion of any contract.

The subject of the energy supply contract is energy and other resources delivered through the attached network. The concept of "energy resources" is covered by another concept that is more frequently used - "energy", which traditionally includes electricity, crude oil, petroleum products, natural gas and products of their processing. The "other resources" usually include thermal fluids - liquid or gaseous substance that circulates in pipes or channels and transmits heat energy in heating systems, ventilation and process plants, drinking water and other resources.

Earlier legal literature generally recognized energy as value and independent economic good to be the subject of the energy supply contract. According to B. Seinaroiev "a subject of the contract for electricity supply is electricity, and action on its development and delivery are the necessary means to perform contractual obligations by energy supplying organization"¹.

Unlike things energy is a property of matter - the ability to do useful work, to ensure implementation of various technological operations, to create necessary conditions for business and any other activities².

The possibility to involve energy in economic cycle appeared only with advent of appropriate technical equipment for its production, transportation and consumption. The specific feature of energy supply relations is that links between producers and consumers of this product do not involve accumulation (storage) of products because of limited opportunities at this stage of technological development³.

As it was noted, energy and other resources are delivered through the attached network, rather, through the network, which is directly connected with a consumer (subscriber). If energy resource is not delivered through the attached network (such as gas in cylinders), the corresponding relations are mediated not by the contract of energy and other resources supply through the attached network, but by contracts of sale or delivery. Therefore, the subject of energy supply contract is energy.

The specificity of the subject of the energy supply contract, which distinguishes it from of obligations arising from other types of contract, are the following:

- Firstly, the transfer of goods to the consumer is carried out through the attached network to the power plants of this consumer (subscriber);

- Secondly, because of use of such product as energy the subscriber is imposed with additional obligations: to ensure adherence of its consumption, safety of energy networks and serviceability of used instruments and equipment;

- Thirdly, an energy supplying organization is endowed with additional rights to monitor technical condition of metering devices;

- Fourthly, legal regulation of the energy supply contract is not limited to the norms contained in the Civil Code. Instead, detailed regulation of these relations is ensured by laws and other legal acts about energy supply, adopted in accordance with the mandatory rules⁴.

Thus, according to the energy supply contract an energy supplying organization is obliged to provide consumers with energy from its network within contracted limits. This is the essence of commitment on the side of the energy supplying organization⁵.

It should also be noted that a contract is concluded, if the parties have agreed on all essential terms of the contract (art. 638 Civil Code of Ukraine).

Essential terms of the energy supply contract, except of conditions about its subject, is the amount of energy and other resources, their quality, the regime for their use, the duty to ensure safe operation of energy and other equipment, as well as the payment on current account with special use⁶.

The legislator differently determines terms of the energy supply contract about amount of transmitted energy depending on who is a subscriber: an individual or organization. In the event when a

¹ Сейнароев, Б.М. (2000). Договор энергоснабжения. *Вестник Высшего Арбитражного Суда Российской Федерации*, 6.

² Крылова, З.Г., Гаврилова, Е.П. (2001). *Российское гражданское право: учебник для ВУЗов*. Москва: Центр ЮрИнфо, 236.

³ Егизаров, В.А. (2001). *Договор энергоснабжения: учебное пособие*. Москва: Право и экономика, 182.

⁴ Шешенин, О.Д. (1964). К вопросу о понятии хозяйственного договора и его соотношении с договором хозяйственных услуг. *Зборник научных трудов Свердловского юридического института*, 4, 244.

⁵ Корнеев, С.М. (1956). *Договор поставки электроэнергии между социалистическими организациями*. Москва, 99.

⁶ Стефанчук, Р.О. (2005). *Цивільне право України: навчальний посібник*. Київ: Прецедент.

subscriber of the energy supply contract is a citizen, which uses energy to meet domestic needs, he\she has a right to use energy in any desired quantity. That is a condition of amount is not significant for such contract.

As for energy supply contracts concluded with subscribers-organizations, in this case an energy supply organization must transmit energy through attached network in amount stipulated by the contract.

To recognize condition on the amount of transmitted energy, which is agreed by parties, is not enough to determine the annual amount of energy released. This fact has already drawn attention of B. Seinarioiev. Disagreeing the opinion expressed in legal literature, according to which the energy supply contract determines only total annual amount of released energy and there is no need to set additional terms of performance, B. Seinarioiev stressed that "the amount of electricity in the limit is defined not only for quarters and months, but for a day. Therefore, in the contract concluded on the basis of limit, an amount of supplied electricity is determined on private terms, which is the day"¹.

Condition of the electricity supply contract on amount of energy deemed as agreed, while respecting two mandatory conditions: the contract should provided, firstly, the number of kilowatts - hours of electricity to be delivered to a subscriber, and, secondly, the size of attached subscriber's electrical installations. The point is that total contract value if consumption of electrical energy and power should not exceed production capacity of energy supply organizations for all consumers of electricity supply grid².

Also, should be considered that energy supply organizations are usually natural monopolies in respect of which the method of control of activities may be used, the essence of which is to determine the categories of consumers subjected to obligatory service or definition of a minimum level of their security (art. 9 of the Law of Ukraine "On natural monopolies"). Such regulation, according to N. Klein, can be used when it is impossible to meet energy needs of a consumer in full. In this case, the amount of transported energy is set according to customer orders but not least the level defined by body regulating natural monopolies³.

Performance of the term on the amount of energy delivered by energy supplying organization makes it obliged to provide subscriber with the appropriate amount of energy to its power unit by its connecting (access) via attached network to the power grid. Proper enforcement of this obligation by the energy supplying organization involves providing a subscriber with the opportunity to receive energy continuously by maintaining voltage and current in the network, regardless the amount of energy actually received by a subscriber⁴.

Energy as the subject of the energy supply contract has features that cause originality of its acceptance by a subscriber. Naturally, in this case, the possibility to receive energy as a conventional product, i.e. by visual inspection, counting of items and so on is excluded. This refers to rigid dependence between energy production and its consumption at any given moment, which allows seeing continuity of the process of energy production and consumption. Therefore, the amount of actually received energy may be determined only by meters.

This circumstance was particularly marked by A. Shafir, who stressed that disputes between power supply organization and a subscriber about the amount of accepted energy usually occur in the form of contestation the accuracy of readings of meters. According to A. Shafir, the procedure for determining the amount of energy and contestation the accuracy of readings of metering devices is essentially a special form of energy acceptance⁵.

The energy released by energy supplying organization to subscriber in quality must meet the requirements established by technical regulations, other binding regulations or provided by energy supply contract. When it comes to quality of electricity, it refers to such parameters as voltage and current frequency. The quality of heat energy is characterized by temperature and steam pressure, hot water temperature and so on⁶. The value of current voltage is determined by the parties in the contract of supply.

Giving to contractual parties the right to establish necessary current voltage is caused by the fact

¹ Сейнароев, Б.М. (1975). *Правовые вопросы договора на снабжение электроэнергией предприятий и организаций*. Алма-Ата, 56.

² Шафир, А.М. (1990). *Энергоснабжение предприятий: (правовые вопросы)*. Москва, 54.

³ Клейн, Н.И. (1976). *Организация договорно-хозяйственных связей*. Москва: Юридическая литература, 209.

⁴ Егизаров, В.А. (2001). *Договор энергоснабжения: учебное пособие*. Москва: Право и экономика, 195.

⁵ Шафир, А.М. (1990). *Энергоснабжение предприятий: (правовые вопросы)*. Москва, 59-60.

⁶ Стефанчук, Р.О. (2005). *Цивільне право України: навчальний посібник*. Київ: Прецедент.

that different electrical consumers designed to work at a certain voltage. Therefore, choosing the voltage parties should proceed from technical characteristics of the consumer energy economies and its mode of operation¹.

The other electric power quality parameter is current frequency defined by state standards and other mandatory rules and is not related to contractual terms produced by agreement.

Delivering heat energy the supplying organization should ensure accordance of temperature and steam pressure or hot water temperature (heat carrier) to conditions of the signed energy supply contract.

An essential feature of relations connected with supply of electricity, is that compliance of requirements for electricity quality, depends on the actions of not only energy supply organization, but most consumers. Violation of the rules of operation of electric appliances and mode of electricity consumption may result decrease of quality indicators of electricity, including those submitted from the grid to other consumers. Moreover, energy supply organizations often do not have technical capacity to address such violations². The party whose actions led to a decline in quality of electricity (except current frequencies) is determined by recording consumer devices, and in their absence by acts drawn up by energy supply organizations, a consumer and a body of State Energy Inspection³.

If the energy supplying organization violates requirements for quality of energy, under art. 24 of the Law of Ukraine "On electric energy industry" it is responsible in prescribed manner and amount. That is, in the case of delivering electric energy which quality parameters, as a result of acts or omissions of a supplier, are beyond parameters specified in the electricity supply contract, the energy supplier is liable to a fine in the amount of twenty-five percent of the cost of such electricity. In the heat supply contracts such liability of heat supplying organization is absent.

N. Klein thinks that if the energy supplying organization violates requirements for quality, a consumer has the right to refuse to pay for such energy⁴.

The assertion that a consumer uses all rights of a buyer, granted the latter when seller passes goods with defects raise serious doubts. Recall that we are talking about such rights as claims for: proportional reduction of the price; free elimination of defects within a reasonable time; reimbursement of expenses for elimination of defects of goods; replacement of defective commodity with a commodity that meets requirements of a contract (in case of significant flaws).

Regarding energy supply contract, considering special characteristics of electricity and heat (continuity of production and consumption, impossibility of accumulation, etc.), it is impossible to imagine any correction of defective energy or replace it with energy that meets requirements of a contract.

In our view, possibility to apply to energy supply relations legislation of buyer-seller relations concerning goods with defects is excluded, because the article 24 of the Law of Ukraine "On heat energy supply" makes impossible to apply the Law of Ukraine "On protection of consumer rights".

In this regard it would be expedient to introduce a rule at which consumers would be entitled to refuse to pay for low-quality energy; that would be a special rule that fixes a different right in comparison with the rights available to a buyer under a contract of purchase-sale.

A subscriber under the contract for energy supply is obliged to observe mode of electricity and heat consumption, to ensure safe operation of energy networks, under his control and keep instruments and equipment related to energy consumption in good condition.

Implementation of these terms of energy supply contract concluded with a subscriber-organization, involves implementation of the following main responsibilities:

- to ensure proper technical condition and operational safety of energy networks, devices and equipment;
- to observe established mode of energy consumption;
- to immediately notify the energy supplying organization about accidents, fire, malfunctioning of metering devices and other violations arising from the use of energy.

Accordingly, the energy supplying organization has corresponding rights to claim strict implementation of the energy supply contract that defines the responsibilities of a subscriber on exploitation of energy networks, devices and equipment. To this end, energy supplying organizations and bodies of

¹ Сейнароев, Б.М. (1971). *Правовое регулирование снабжения электроэнергией социалистических предприятий и организаций*. Москва, 60.

² Либкинд, М.С. (1979). О качестве электрической энергии. *Стандарты и качество*, 10, 32.

³ Шафир, А.М. (1990). *Энергоснабжение предприятий: (правовые вопросы)*. Москва, 64.

⁴ Клейн, Н.И. (1993). *Предпринимательское право. Курс лекций*. Москва: Юридическая литература.

State Energy Inspection are entitled to exercise proper control over technical condition of networks, energy installations, devices and equipment and their safe operation. Standards for technical condition and safety of energy networks, devices and equipment are determined by Rules on technical exploitation of electrical installations, approved by the Ministry of Fuel and Energy, order №258 of 25.07.2006.

The consumer is responsible for technical condition, safety and operation of electrical installations, heat consumption systems that are under his control. Energy consumption by means of own technical installations is also covered by contractual relations because their correct operation affects opportunity and quality of fulfillment of obligations by energy supplying organization¹.

Performance of consumers obligations on proper maintenance and operation of technical devices in practice means that a consumer should maintain in good condition electrical and heat supply equipment, power mains and heat transfer system, control devices, isolation of pipelines; to make preventive renovation and testing of electrical and heat installations in volumes and terms stipulated by applicable rules and regulations and agreed with the energy supplying organization; to execute orders of the energy supplying organization and inspectors of State Energy Inspection to correct defects in devices, operation and maintenance of electrical systems, heat consumption system, etc.

Mentioned responsibilities of consumers are largely technical in nature and defined by regulations. Therefore, in legal literature, these rules are usually referred as technical standards which received compulsory character².

The consumer commitment to proper maintenance and operation of technical devices and their safety is not only an obligation under the energy supply contract, but public legal obligation also. This fact was previously underlined in legal literature. For example, B.Seinaroiev emphasizes that violation of technical regulations for which the consumer is responsible before a power supplying organization, is at the same time the responsibility of all energy consumers, regardless their departmental affiliation, before the state³.

When the subscriber under a contract of electric energy supply is a citizen using energy for domestic consumption and has electrical installations for voltage above 1 kw, a duty to ensure proper technical condition and safety of energy networks, meters of energy consumption, as a rule, is imposed on the State Energy Inspection on supervision over modes of consumption of electric and heat energy and other executive bodies.

One of the main responsibilities of a consumer under energy supply contract is to make payments for received energy. For legal entities payments for received energy are usually made in the form of prepayment; by agreement the parties may use planned payments with subsequent recalculation or payments for actually supplied energy. Population makes payments for actual energy subscriber has received according to the energy accounting; other may be provided by law, other legal acts or by agreement.

Due to the fact that the energy supply contract is a public contract the same prices should be established for all consumers. Exceptions possible only if the law or other legal acts allowed privileges for some categories of consumers.

These circumstances make state regulation of prices for electricity and thermal energy necessary.

Executive authorities and local governments according to their authority define issues of state regulation of tariffs for electric and heat energy, which is released by all energy supplying organization. In some cases, energy prices may be set freely at discretion of the parties, in particular, this opportunity is provided by the Terms and rules of business with supply of electricity on unregulated tariff, approved by the National Commission for Electricity Regulation of Ukraine, decree № 36 of August 12, 1996.

The order of payments made under the energy supply contract is determined by law, other legal acts or by a contract itself. Herewith, a party is entitled to use any form of payment stipulated by laws, banking regulations and customs of business turnover applicable in banking practice.

The contract is concluded for a period determined by direct agreement between the parties, regardless its subject composition (whether it is concluded with an individual to meet domestic needs, or with a legal entity or individual entrepreneur for business). Under this contract the supplier is obliged to

¹ Шафир, А.М. (1990). *Энергоснабжение предприятий: (правовые вопросы)*. Москва, 75.

² Корнеев, С.М. (1956). *Договор поставки электроэнергии между социалистическими организациями*. Москва, 51.

³ Сейнароев, Б.М. (1971). *Правовое регулирование снабжения электроэнергией социалистических предприятий и организаций*. Москва, 80.

ensure the continuity of energy and other resources supply for consumer. In this regard, if no application to terminate the contract was submitted, the contract is extended for the same period.

Conclusions. To summarize the abovementioned we may conclude that actual content of the energy supply contract are the subject of a contract, rights and obligations of the parties. In particular, the energy supplier's main duty is to provide energy and other resources to a consumer (subscriber) by technical means of communication: a) in agreed quantity; b) with compliance of agreed mode of supply; c) of specified quality. The duties of a consumer are: a) to pay the cost of received resources; b) to observe the regime of their use prescribed by the contract; c) to ensure safe exploitation of energy and other equipment.

The relevant terms of the energy supply contract are classified as essential and must be compulsorily included in the energy supply contract, otherwise it will be considered non-concluded.

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