

RIGHTS AND OBLIGATIONS OF THE PARTIES UNDER THE ENERGY SUPPLY CONTRACT

ПРАВА ТА ОБОВ'ЯЗКИ СТОРІН ЗА ДОГОВОРОМ ЕНЕРГОПОСТАЧАННЯ

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In the analysis of this article, attention is devoted to the study of the rights and obligations of the parties under the energy supply contract, namely: Acquaintance with the terms of a specific energy supply contract, including requirements for payment for services, order and conditions of electricity supply, responsibilities of the parties and other conditions. The issue of determining the rights and obligations of both the consumer and the supplier, including their obligations to ensure high-quality and uninterrupted supply, payment for electricity, terms of termination of the contract, etc., was also analyzed. Attention is paid to the analysis of the responsibility of the parties for non-fulfillment or improper fulfillment of the terms of the contract, including sanctions and fines. The study of these issues will help to better understand the legal position of the parties under the energy supply contract and to observe the relevant rules and conditions when interacting with the electricity supplier.

It is established that the relationship of purchase and sale of electric energy is regulated by a bilateral contract, the parties of which are the Guaranteed buyer acting on the basis of a license for carrying out business activities for the performance of the functions of a guaranteed buyer, and power supply manufacturer. It was determined that all conflicts that arise between a household consumer and a provider of universal electricity services during the conclusion of a contract and the purchase and sale of electric energy that was produced using alternative of energy sources by a private economy, are resolved either out of court by submitting a complaint to the NCRECP, or in court. It is also emphasized that the participants of the electricity market carry out their activities on the electric energy market on a contractual basis. It is emphasized that the problem of establishing clear rights and obligations in the energy supply contract provides an opportunity for high-quality performance of the contract, provision of timely and expected services, and the absence of conflict situations between the parties. In the absence of such rules of conduct, the parties to the contract do not fulfill their obligations as expected by the other party.

Key words: electrical energy, energy supply contract, consumer of electrical energy, producers and suppliers of energy, power supply, electricity market.

При аналізі даної статті увага приділяється вивченню прав та обов'язків сторін за договором енергопостачання, а саме: ознайомлення з умовами конкретного договору енергопостачання, у тому числі вимогами щодо оплати послуг, порядком та умовами постачання електроенергії, обов'язки сторін та інші умови. Також проаналізовано питання щодо визначення прав та обов'язків як споживача, так і постачальника, у тому числі щодо забезпечення якісного та безперебійного постачання, оплати електроенергії, умов розірвання договору тощо. Прیدілено увагу аналізу відповідальності сторін за невиконання або неналежне виконання умов договору, в тому числі санкції та штрафи. Вивчення цих питань допоможе краще зрозуміти правове становище сторін за договором енергопостачання та дасть можливість сторонам дотримуватись відповідних правил та умов при взаємодії між собою. Встановлено, що відносини при купівлі-продажу електричної енергії регулюються двостороннім договором, сторонами якого є Гарантований покупець, який діє на підставі ліцензії на провадження господарської діяльності для виконання функцій гарантованого покупця і виробник блоку живлення. Визначено, що всі конфлікти, які виникають між побутовим споживачем та постачальником універсальних послуг з електроенергії під час укладення договору купівлі-продажу електричної енергії, виробленої з використанням альтернативних джерел енергії приватним господарством, вирішуються або поза судовим або в судовому порядку. Також наголошується, що учасники ринку електричної енергії здійснюють свою діяльність на ринку електричної енергії на договірних засадах. Підкреслено, що проблема встановлення чітких прав та обов'язків у договорі енергопостачання дає можливість якісного виконання договору, надання своєчасних та очікуваних послуг та відсутності конфліктних ситуацій між сторонами. В разі відсутності прописаних таких правил поведінки сторони договору не виконують свої обов'язки так, як очікує інша сторона. Тому при укладанні договору енергопостачання досить важливо прописувати всі права та обов'язки обох сторін, навіть стосовно зміни ціни, тарифів енергопостачання та міри відповідальності третіх осіб, які можуть бути залучені до договору.

Ключові слова: електрична енергія, договір енергопостачання, споживач електричної енергії, виробники та постачальники енергії, електропостачання, ринок електричної енергії.

According to Art. 275 of the Economic Code of Ukraine under the energy supply contract, the energy supply company (energy supplier) releases electric energy, steam, hot and superheated water (hereinafter referred to as energy) to the consumer (subscriber), who is obliged to pay for the received energy and observe the mode of its use stipulated in the contract, as well as to ensure safe operation of the power equipment used by him [1].

The mutual rights and obligations of the Supplier and Consumer of electric energy are defined: The Law of Ukraine "On the Electric Energy Market" [2]. By the rules of the retail market of electric energy approved by Resolution of the NCRECP No. 312 of March 14, 2018 [3].

Rights and obligations of the consumer

THE CONSUMER IS OBLIGED:

1. use electric energy exclusively on the basis of the contract (contracts);

2. to pay for electric energy and services provided to him in accordance with concluded contracts;

3. under the condition of incomplete payment for the consumed electric energy, stop own electricity consumption in accordance with the terms of the contract;

4. to pay invoices issued on the basis of acts of violation of these Rules and terms of the contract;

5. to comply with the rules of technical operation, safety rules during the operation of own electrical installations, legal acts regulating the operation of the electric energy market, and the terms of concluded contracts;

6. ensure proper technical condition and safe operation of their electrical installations and electrical devices in accordance with the requirements of regulatory and technical documents and regulatory legal acts of Ukraine;

7. regulate, in the manner determined by the Code of Distribution Systems and these Rules, relations regarding the technical support of the distribution of electric energy with the operator of the distribution system by concluding a separate agreement on the provision of services for the provision of reactive electric energy flows (or in the form of an appendix to the consumer agreement on the provision of services with distribution of electrical energy);

8. ensure the preservation and integrity of the calculation means of commercial electric energy accounting and seals (imprints of their brands) established on its territory and/

or object (in its premises) in accordance with the act on sealing;

9. immediately notify the system operator and the provider of commercial accounting services about deficiencies in the operation of the measuring device;

10. agree with the system operator on new connections and conversions of internal wiring, carried out in order to increase the consumption of electric power;

11. provide settlement documents at the request of the representatives of the electricity supplier and/or the system operator (after they present their official certificates or after the consumer receives an official request from the relevant retail market participant) to check the correctness of the payment and the compliance of their records with the readings of the commercial accounting tool;

12. ensure unimpeded access to representatives of the commercial accounting service provider, electricity supplier and/or system operator (after they present their official certificates) to the calculation means of the commercial accounting of electric energy installed at the consumer's facilities, for visual or automated removal of the calculation means commercial accounting;

13. not to prevent the replacement of commercial accounting tools in case of such replacement at the expense of the commercial accounting service provider or the system operator;

14. timely take appropriate measures to eliminate detected violations;

15. prevent the unaccounted use of electrical energy from the consumer's technological electrical networks, as well as compensate the losses caused to the system operator and/or the consumer (primary consumer), in case of detection of the unaccounted use of electrical energy from the consumer's technological electrical networks;

16. calculate and balance the electrical energy of own networks;

17. maintain own networks in a condition that meets the requirements of regulatory documents;

18. the consumer must provide access to the system operator's personnel for operational switching, disconnection of the system operator's electrical installations, maintenance of electrical energy measuring devices, emergency system automation, and performance of work related to the construction and repair of the system operator's electrical networks located on the consumer's territory;

19. the consumer (the main consumer) compensates the participants of the retail market for losses, the occurrence of which is associated with the forced violation of the terms of the contract of other consumers (sub-consumers) regarding the volumes of supply, indicators of the quality of electricity supply and/or the contractual capacity, caused by the actions and/or inaction of the consumer (the main consumer);

20. in the event of a violation of the electricity metering scheme, damage or theft of electricity metering devices as a result of actions (inaction) of the consumer, their repair, replacement, installation of measuring equipment and technical inspection shall be carried out at the expense of the consumer.

ACCORDING TO THE LAW OF UKRAINE "ON THE ELECTRICITY MARKET" (THE LAW) [2], THE CONSUMER OF ELECTRICITY HAS THE RIGHT:

– to buy electric energy for own consumption under bilateral contracts and on organized market segments, on the condition that he concludes an agreement on the settlement of imbalances and an agreement on the provision of services for the transmission of electric energy with the transmission system operator, and in the case of joining the distribution system – an agreement on the provision of services from the distribution of electric energy with the operator of the distribution system; or buy electricity on the retail market from electricity suppliers or from producers producing electricity at distributed generation facilities, according to the rules of the retail market;

– to change the electricity supplier under the conditions defined by this Law and the rules of the retail market;

– to receive electric energy of appropriate quality in accordance with the terms of the contract and requirements for the quality of electric energy;

– for compensation applied in case of non-compliance with the quality indicators of electricity supply services;

– for compensation for losses caused as a result of non-fulfillment by its counterparties of the terms of contracts concluded on the electricity market;

– for access to information regarding activities on the electric energy market in the manner and scope determined by the market rules and other normative legal acts regulating the functioning of the electric energy market;

– submit appeals, complaints and claims to the relevant electricity supplier, operator of the distribution system, in particular regarding the quality of electricity supply, regarding the provision of electricity supply services, and receive, in accordance with the procedure established by law, reasoned answers or notifications about measures to eliminate the causes of the complaint by the electricity supplier;

– submit complaints to the Regulator in accordance with the procedure for considering complaints and resolving disputes.

ACCORDING TO THE RULES OF THE ELECTRICITY RETAIL MARKET (hereinafter – the RULES) THE ELECTRICITY CONSUMER HAS THE RIGHT [3]:

– for the connection of own electrical installations to the networks of the system operator or other owner of power networks in the manner prescribed by the Code of distribution systems or the Code of the transmission system [4];

– at the choice of the electricity supplier;

– to purchase electric energy for own consumption under bilateral contracts in accordance with the Market Rules and on organized market segments, provided that he concludes an agreement on settlement of imbalances and an agreement on the provision of electric energy transmission services with the operator of the transmission system, and in the case of joining the distribution system, in addition, an agreement on provision of electric energy distribution services with the distribution system operator; or buy electric energy on the retail market from electricity suppliers or from producers producing electric energy at distributed generation facilities, according to these Rules;

– to receive high-quality services for the distribution (transmission), supply and commercial accounting of electric energy;

– change the electricity supplier under the conditions defined by the Law of Ukraine "On the Electricity Market" and these Rules;

– to receive electric energy of the appropriate quality in accordance with the terms of the contract and the standards of the quality of electric energy;

– receive information about the quality of electric energy, tariffs (prices), payment procedure, terms and conditions of its distribution and consumption;

– for compensation applied in case of non-compliance with the quality indicators of electricity supply services;

– to conclude contracts with the system operator and electricity supplier using electronic identification using information and communication systems and/or electronic communication means;

– to receive information regarding the procedure for concluding and joining the consumer to contracts with the system operator and electricity supplier, including using electronic identification using information and communication systems and/or electronic communication means.

Rights and obligations of the supplier

THE SUPPLIER HAS THE RIGHT:

1. for timely and full receipt of funds for the sold electric energy in accordance with the concluded contracts;

2. contact the system operator regarding the disconnection (restriction) of the consumer's power supply in cases specified by these Rules, except for cases of supply to vulnerable consumers specified by the Cabinet of Ministers of Ukraine;

3. contact the system operator regarding restoration of power supply to the consumer in the cases defined by these Rules;

4. for non-discriminatory access to distribution and transmission systems on the basis of a contract with the system operator in accordance with the requirements of the Transmission System Code, the Code of Distribution Systems and these Rules;

5. for unimpeded access (upon presentation of an official ID) to the calculation means of commercial accounting of electric energy, installed at consumer facilities, for visual or automated removal of the indications of calculation means of commercial accounting;

6. for the collection of fines and the application of other sanctions for late payment of consumed electric energy in accordance with the requirements of the law;

7. for all types of ensuring the fulfillment of obligations by the consumer regarding the payment of contractual amounts of electricity consumption in the form and types provided by the legislation of Ukraine;

8. for the compensation of losses caused by the actions or inaction of the consumer, another electricity supplier, network owner, operator of a small distribution system, system operator, provider of commercial accounting services;

9. create the possibility of functioning on the Internet on the own official website of the consumer's personal account;

10. purchase and sale of electricity under bilateral agreements and on organized market segments for the purpose of supplying it to consumers and providing demand management services;

11. in the presence of a debt in the amount greater than the cost of electric energy consumed during the previous two months, to terminate the contract for the supply of electric energy to the consumer in accordance with its terms.

THE SUPPLIER IS OBLIGED:

1. enter into contracts that are mandatory for the implementation of electricity supply activities and fulfill the terms of such contracts;

2. to supply electricity at free prices under the electricity supply contract to the consumer and in compliance with these Rules;

3. supply electricity on a non-discriminatory basis;

4. not to apply unfair methods of competition to consumers;

5. ensure the transparency of provisions and conditions of contracts with consumers, which must be clearly and clearly stated and be accessible for understanding by the consumer, not contain procedural obstacles that restrict the rights of the consumer, including for changing the electricity supplier;

6. bear financial responsibility in accordance with the contracts concluded in accordance with these Rules;

7. issue contract forms, receipt forms or payment documents free of charge;

8. open current accounts with a special mode of use for making calculations in accordance with the requirements of the Law of Ukraine "On the Electric Energy Market" in the institutions of one of the authorized banks;

9. to provide consumers with data on their consumption of electric energy in accordance with the procedure defined by these Rules;

10. to provide, at the request of the consumer, the information necessary for the transition of the consumer to another electricity supplier, in accordance with these Rules;

11. provide the consumer with an estimated final bill no later than five days before the date of the change of electricity supplier;

12. notify the commercial accounting operator of the consumer's appeal with a statement of intention to change the electricity supplier;

13. to ensure unimpeded and free access of consumers to information in accordance with the Law of Ukraine "On Peculiarities of Access to Information in the Fields of Electricity Supply, Natural Gas, Heat Supply, Centralized Hot Water Supply, Centralized Drinking Water Supply and Sewerage" [5];

14. the supplier of electric energy is not responsible for damages caused to the consumer in case of non-compliance with the contractual volumes of electricity supply, if such non-compliance occurred as a result of the actions or inaction of the system operator;

15. the supplier of electricity is not responsible for property damage caused to the consumer or third parties as a result of the termination or limitation of electricity supply carried out in accordance with the procedure established by these Rules.

Conclusions. So, regarding the rights and obligations of the parties. If we summarize everything above that being said, we have the following. An electric power facility that produces electricity energy from alternative energy sources, has the following obligations: 1) to supply the Guaranteed Buyer with full the amount of electrical energy produced by him; 2) provide the Guaranteed Buyer with mandatory physical indicators, data daily and long-term applications, actual and other data; 3) in the event of a change in the taxation system, notify the Guaranteed Buyer in writing about the date transition to a new taxation system; 4) provide the Guaranteed Buyer with all necessary information according to the requirements standard PPA and Procedure. The guaranteed buyer must fulfill the following obligations: 1) purchase the manufacturer has all the electrical energy that he produces; 2) timely pay for electricity purchased from the manufacturer energy in full; 3) comply with the terms and conditions specified in the agreement about a guaranteed purchase.

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