

TARIFF REGULATION 2018: SPECIFICS OF APPLICATION AND JUDICIAL PRACTICE

The Russian Union of Industrialists and Entrepreneurs (RSPP) and the VEGAS LEX law firm, involving FAS Russia and the Ministry of Energy of the Russian Federation (Minenergo of Russia), held a round-table meeting that was devoted to specifics and prospects for development of law enforcement practices in tariff regulation taking into account the legislation in force.

On 28 February 2018, the VEGAS LEX law firm jointly with RSPP Committee for Energy Policy and Energy Efficiency arranged and held a round-table meeting on “*Tariff regulation 2018: prospects for development of law enforcement practices*” at RSPP.

[Alexander Sitnikov](#), the Managing partner of VEGAS LEX, welcomed the audience and drew their attention to the fact that legislator cannot provide for everything in the “written law”, meanwhile, many legal problems are resolved at the pre-trial law enforcement stage. Even exploring the most authoritative expert opinions, including those of judges of the Superior Arbitration Court of the Russian Federation (currently, it is the Supreme Court of the Russian Federation), it is often impossible to get a valid answer to the question raised. This happens because the judges prefer first to see how lower courts will resolve a problem and, accordingly, what judicial practice will be established. Under these circumstances, the problem for entities subject to regulation is that activities are conducted much quicker than approaches as to what is correct and what is wrong are formed.

Mr Sitnikov further highlighted the key indicators, based on which one cannot state with certainty that the Supreme Court’s clarifications contained in Resolution No.63 of the Plenum of the Supreme Court of the Russian Federation dated 27 December 2016 were successful.

Alexey Voronin, the Deputy Head of FAS Russia’s Energy Regulatory Department, and **Artem Molchanov**, the Head of FAS Russia’s Legal Department, spoke of the specifics and promising trends in tariff regulation in electric power industry.

The National Plan for Promotion of Competition in the Russian Federation for 2018–2020 determines the guidelines of the state policy for promotion of competition including those in the electric power industry. According to experts from antimonopoly service, certain important steps are to be taken in this regard. In particular, it is necessary: (i) to approve the 2018–2020 Competition Promotion Action Plan for this industry; (ii) to determine a list of key indicators that ensure, inter alia, the achievement of expected results in the industry and the results of promotion of competition; and (iii) to adopt a number of statutes and regulations that ensure the unified procedure for development, approval and control of implementation of investment programmes of natural monopoly entities and entities that conduct other regulated activities, if the source of financing of investment program is the monetary resources accounted for when approving the tariffs. In order to adopt the statutes and regulations that ensure the unified procedure for development, approval and control of implementation of investment programmes of natural monopoly entities, certain steps are also to be taken.

The principal directions of activities within the framework of the competition promotion plan are elimination of tariff discrimination, transparency and continuity of tariff regulation. In order to avoid tariff discrimination in the regulated sector, the changeover to a reference control mechanism in the electric power industry is being carried out.

As for implementation of the reference mechanism, FAS’s experts informed that they have initiated a comparative analysis of the costs of the Russian local grid operators and the global best practices.

The experts stressed the need to create economic mechanisms for motivation and improvement of tariff regulation procedure. In this regard, FAS Russia submitted to the Government of Russia for consideration the draft federal law that prohibits exceeding the cap tariff rates **without consent of FAS Russia**, and approved methodology guidelines for determination of the amount payable for technological connection to electricity networks (Order No.1135/17).

Maria Golovko, the Head of the Industry Legal Framework Development Division of the Electric Power Industry Development Department of Minenergo of Russia, explained the key changes in statutory regulation, such as the Law on Licensing of the Power Supply Activities, Decree No.1365 of the Government of Russia regarding the procedure for depriving of the status of a last resort provider for debts owed to a grid operator, etc.

In the second session of the round-table meeting, its participants together with [Evgeniy Rodin](#), the Partner and the Head of Energy practice of VEGAS LEX, discussed the results of application of the basic provisions of Resolution No.63 of the Plenum of the Supreme Court of the Russian Federation dated 27 December 2016 in the context of settlement of disputes involving tariff regulation, using the real legal cases (both positive and negative practice) as an example.

The program of the round-table meeting received a great number of favourable feedbacks for the detailed consideration of theoretical and practical aspects of tariff regulation, which allowed clarifying a number of important issues relating to the topic of the meeting.

The major Russian energy providers and companies operating in other industries, such as Auchan, Basic Element, Gazprom Neft, Inter RAO, LUKOIL, Mechel, IDGC of Centre, Rosvodokanal, RusHydro, Fortum, Unipro and others, took part in the discussion of the current issues.

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For more information on VEGAS LEX's activities in antimonopoly regulation, please click [here](#).