

PROBLEMS OF NATIONAL PUBLIC AND PRIVATE LAW

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LEGAL REGULATION OF INVESTMENT ACTIVITIES IN THE SPHERE OF MUNICIPAL HEAT ENERGY OF UKRAINE: PROBLEMS AND PROSPECTS

The article aims to determine the directions to improve investment attractiveness of enterprises in the sphere of municipal heat energy of Ukraine. General condition and topical problems of municipal heat energy sphere in Ukraine were defined. The paper analyzes basic principles concerning tariffs formation and procedures of investment activities in the sphere of municipal energy. The principle of incentive tariffs' regulation was considered as one of directions to improve investment attractiveness of enterprises due to the possibility of its application in the sphere of municipal heat energy of Ukraine. The problems that may arise during the transition to incentive regulation of tariffs in Ukraine and the ways to resolve them were analyzed.

Key words: the sphere of municipal heat energy, investment activities, methods of tariffs formation, incentive regulation of tariffs.

Statement of the problem. Lack of consolidated system reforms aimed at modernization of municipal power system in previous years, resulted a critical level on the rate of depreciation of fixed assets in the industry. Today, service life of the most objects in the sphere of municipal heat energy much higher than 20 years. Unsatisfied technical condition of heat supply objects, exploitation of outdated and worn-out equipment leads to significant losses of heat energy in systems, environmental pollution and excessive burden on a consumer who, in fact, is forced to pay not only for consumed heat but also for losses during its transportation. This condition of municipal heat energy system is caused by a number of political and economic factors.

For a long time formation and implementation of pricing policy in the sphere of heat energy and public utilities was performed not in economic, but only in political sphere. Therefore, the question of tariffs' increase has always had political overtones and was used primarily for pre-election manipulation.

Tariffs for heat energy, which were approved for population, budget institutions and organizations did not cover actual cost of heat energy. Tariffs difference was compensated by means of subventions from state budget to local budgets to repay this debt. A failure to finance these subsidies and constant delays of payments for consumed heat from budgetary institutions and organizations the activities of municipal heating enterprises became unprofitable. As a result, the mechanism which for political reasons artificially restrained increase in tariffs for heat energy over the years, led to complication of the situation regarding payments for consumed energy and inability of companies to finance modernization of its capital assets independently.

The lack of clear and transparent rules for investment activity in the municipal heat sphere and lack of guarantees for investors to refund invested funds and opportunities for their profit do not improve investment attractiveness of enterprises.

Therefore, today an extraordinary importance exists to form an effective mechanism for ensuring investment attractiveness of enterprises in the field of municipal heat energy, which in turn will contribute to the modernization of basic infrastructure facilities of the system and further stable and safe operation of the entire industry.

Level of exploration. The issue concerning state regulation of public utilities was the subject of many national research scientists. The theoretical basis of the research was the work of such scholars as V. Averianov, O. Bukhanevych, Y. Vashchenko, O. Kushch and others.

The purpose of this article is to determine the main directions to improve investment attractiveness

of enterprises in the field of municipal heat energy.

Presentation of the basic material. Formation of legal framework for implementation of a mechanism to attract investments for construction and reconstruction of municipal heating infrastructure was started only in 2012. Thus, by amending some laws of Ukraine the general principles of the investment activity in the sphere of housing and public utilities were defined¹.

According to the Article 26-1, which was added to the Law of Ukraine "On Heat Supply", investments in heating supply should be exercised in accordance with investment programs.

The investment program is a complex of measures on construction (reconstruction, modernization) exercised by entity in the sphere of centralized heating supply of relevant objects, improving of service quality. The structure of the investment program also includes calculations and justification of the planned expenditures for capital investments in construction, reconstruction, modernization of heat supply objects, acquisition of tangible and intangible assets and (or) amounts directed to repayment, funding and time schedule of the appropriate measures².

Investment programs are developed and approved directly by economic entities in the sphere of heat supply. Then the programs are submitted to the National Commission that exercises state regulation in energetics and public utilities or to the relevant local authority for approval.

In case when the competent authority is the National Commission, which performs state regulation in energetics and public utilities, but the object of heating supply belongs to municipal ownership, the investment program should be approved by local government before its approval by the National Commission.

Approved (determined) investment program is the basis for inclusion of funds provided for its implementation, to calculation of tariffs for heat energy³.

According to the Law of Ukraine "On Heat Supply" under the tariff (price) for heat necessary to understand monetary expression of costs for production, transportation, supply of heat energy unit (1 Gcal) taking into account profitability, investment and other components that are determined according to the methods, developed by the National Commission for state regulation of public utilities⁴.

Tariffs for heat energy should provide compensation for all economically reasonable costs of production, transportation and supply of heat energy considering planned profit - a sum of money that exceeds full planned prime cost and is directed to make the necessary investments, repayment of necessary loans and (or) for investing through equity capital in fixed tangible and intangible assets⁵.

Thus, formation of tariffs for heat energy in Ukraine is based on traditional method of "cost plus" when the prime cost of heat is added with the planned profit. Construction, reconstruction and modernization of heat supply objects may be realized due to a part of the planned profit with the approval of the relevant investment program, that is, through the so-called investment component of the tariff for heat energy.

To make payments for investment programs economic entities open special accounts on which daily transfer funds from current accounts to the extent provided in prescribed fees for the investment program.

Owners of the funds on special accounts are economic entities. However, they are obliged to use these accounts exclusively for the implementation of investment programs. Using of these funds in any

¹ Закон про внесення змін до деяких законів України щодо регулювання інвестиційної діяльності у сфері житлово-комунального господарства 2012 (Верховна Рада України). Офіційний сайт Верховної Ради України. <<http://zakon4.rada.gov.ua/laws/show/4434-17>> (2015, April, 25).

² Закон про теплопостачання 2005 (Верховна Рада України). Офіційний сайт Верховної Ради України. <<http://zakon4.rada.gov.ua/laws/show/2633-15>> (2015, April, 25).

³ Порядок розроблення, погодження та затвердження інвестиційних програм суб'єктів господарювання у сфері теплопостачання 2012 (Міністерство регіонального розвитку, будівництва та житлово-комунального господарства). Офіційний сайт Верховної Ради України. <<http://zakon4.rada.gov.ua/laws/show/z0097-13#n15>> (2015, April, 25).

⁴ Закон про теплопостачання 2005 (Верховна Рада України). Офіційний сайт Верховної Ради України. <<http://zakon4.rada.gov.ua/laws/show/2633-15>> (2015, April, 25).

⁵ Порядок формування тарифів на теплову енергію, її виробництво, транспортування та постачання, послуги з централізованого опалення і постачання гарячої води 2011 (Кабінет Міністрів України). Офіційний сайт Верховної Ради України. <<http://zakon4.rada.gov.ua/laws/show/869-2011-%D0%BF#n20>> (2015, April, 25).

other purposes is prohibited¹.

In April, 2014 the Law of Ukraine "On Heat Supply" was amended with norms connected with determination of payment procedure for heat energy, which production is based on the natural gas supplied by certified supplier².

Under the new order economic entities in the field of heat supply, which for heat production and (or) the provision of centralized heating, centralized hot water supply completely or partially use gas purchased from guaranteed supplier of natural gas, should open bank accounts with special use in authorized bank.

Consumers of heat energy of these entities make heat payments by transferring funds exclusively on these accounts. After receiving the funds are distributed between the guaranteed supplier and heat generating, heat supplying and heat transportation organization and transferred to their current accounts.

Thus, under the new order costs for heat energy, which are transferred to accounts with special use, after the distribution, in fact, get "returned" by authorized bank on current accounts of economic entities excluding the cost of natural gas. And these "returned" funds are used by entities to make daily transfers for an investment program to the extent provided in prescribed tariffs.

Despite the potential profitability of projects to modernize infrastructure in the field of municipal heat energy, investors do not hurry to invest in these sphere. This is primarily due to the fact that the mechanism of investment activity in the municipal heat energy, which now exists in Ukraine, does not guarantee to investors a refund of money and profit on invested capital.

In addition, the method of formation of tariffs for heat energy determined by Ukrainian legislation, which is closely linked to the mechanism of development and approval of investment programs, unfortunately, does not stimulate enterprises to reduce costs and increase efficiency.

Therefore, the need to introduce market regulation mechanisms in the heat supply sphere is of crucial importance now, in particular, by adjusting pricing and tariff policy in order to provide the industry with an opportunity to accumulate funds and implement measures for modernization of capital assets independently. This is possible due to the replacement of cost method for incentive method of tariffs formation.

Most of European countries have moved to incentive regulation method or the method of RAB-regulation (Regulatory Asset Base). The main reason for this transition was the need to modernize the infrastructure of heat supply enterprises.

The system of incentive tariffs formation, compared with the methodology of "cost plus", encourages long-term investments in network development by ensuring stable conditions of investment recoupment for the long term and stimulates companies in the energy sector to reduce costs. Consumers herewith receive more reliable and quality services³.

Key indicators in calculation of tariffs according to the method of incentive tariffs formation are Regulatory Asset Base (determined in accordance with the methodic approved by the national regulator) and profit on invested capital.

Under this method the national regulator approves tariff for 3-5 years by fixing its upper limit. Tariff may be adjusted depending on the economic indices (typically, the consumer price index) and the impact of certain factors, which are technological advances in the field or related fields, as well as price increase or reduction of input factors such as energy prices⁴.

In case of incentive tariffs formation funds that were saved by an enterprise during validity of the tariff remain in its possession. This encourages enterprises to reduce operating costs and to invest the profit

¹ *Порядок зарахування коштів на поточні рахунки із спеціальним режимом використання для проведення розрахунків за інвестиційними програмами, використання зазначених коштів і здійснення контролю за їх витрачанням у сфері теплопостачання 2013* (Кабінет Міністрів України). *Офіційний сайт Верховної Ради України*. <<http://zakon4.rada.gov.ua/laws/show/750-2013-%D0%BF#n11>> (2015, April, 25).

² *Закон про внесення змін до деяких законів України щодо удосконалення розрахунків за енергоносії 2014* (Верховна Рада України). *Офіційний сайт Верховної Ради України*. <<http://zakon4.rada.gov.ua/laws/show/1198-18>> (2015, April, 25).

³ Мукумов, Р. Метод доходности инвестированного капитала в теплоснабжении. *Ростепло*. <http://www.rosteplo.ru/Tech_stat/stat_shablon.php?id=2430> (2015, April, 25).

⁴ Левицька, І.О. (2012). Ефективність тарифоутворення енергопостачальних компаній. *Економічні науки. Серія: Облік і фінанси*, 9, 227-228.

into energy saving technologies¹.

In June, 2012 the Law of Ukraine "On natural monopolies" was amended with norms establishing the incentive regulation of prices (tariffs) for products of natural monopolies and economic entities on related markets in the combined production of electricity and heat energy².

The National Action Plan for 2013 on implementation of the Program of economic reforms for 2010 - 2014 "Prosperous society, competitive economy, effective state", approved by the Decree of the President of Ukraine from March 12, 2013 № 128/2013, provides a series of measures for implementation of incentive regulation methodology in the transportation of heat energy, centralized water supply and sanitation³.

In pursuance of this plan, the National Commission, which performs state regulation of public utilities, approved the Procedure to determine the regulatory asset base of natural monopolies subjects, State Property Fund of Ukraine approved the method to evaluate assets of natural monopolies, Ministry of Economic Development and Trade of Ukraine established threshold of regulatory income norm⁴.

Thus, during 2013 legal basis for formation of tariffs by the method of incentive regulation in transportation of heat energy, centralized water supply and sanitation was formed. However, unfortunately, the method of incentive tariffs formation is not widely used in these areas yet, and is applied only by individual enterprises as pilot projects.

Considering the advantages of this method compared to the cost method of tariffs formation, the need for its use in the heat supply sphere does not leave any doubts.

In this regard, we consider it necessary, firstly, to amend the provisions of the Law of Ukraine "On natural monopolies" about incentive regulation and to distribute its effect at related markets, which include the production and supply of heat energy, as well as the scope of centralized heating. Secondly, it is necessary to amend the Law of Ukraine "On Heat Supply" and to secure legislation provisions concerning common rules of tariffs formation for heat energy on the basis of incentive regulation.

However, we should consider that incentive regulation will be effective only if the tariffs provide not "politically declared", but the real compensation of all costs that are economically justified. A prerequisite for introduction of incentive regulation in the field of municipal heat energy system should become tariffs increase for heat energy for all consumers to the level that will cover actual cost of heat energy.

Tariffs increase should be preceded gradually and correlated with the growth of living standards and solvency of the population. After all, simple tariffs increase will only complicate the situation and worsen the payment discipline of consumers and will not affect the flow of investments into the sector.

Bringing tariffs to economically justified level should be carried out simultaneously with formation of social support for vulnerable groups of consumers. However, this system has only to reduce population's burden from tariffs increasing, and not turn into another mechanism, which will artificially constrain tariffs increasing. For this purpose, the government should clearly define vulnerable groups of consumers and to provide the use of financial and non-financial measures of protection.

Nevertheless, even with the increase of tariffs for heat energy to economically justified level and with the creation of necessary methodological and legal framework to implement the incentive regulation, we should not expect that consumers will immediately get quality services, and investors will get the income out of invested capital. Huge debts of heat supply enterprises for previously consumed energy will not allow the incentive regulation mechanism to justify assigned hopes quickly and to demonstrate its effectiveness, as it was in European countries.

In order to implement incentive regulation method properly, the main industry enterprises should

¹ Цатурян, М. Нова політика ЖКГ: «за» і «проти». Україна комунальна. <<http://jkg-portal.com.ua/ua/publication/one/novij-metod-dlja-tarifv-zhkg-za--proti-30257>> (2015, April, 25).

² Закон про природні монополії 2000 (Верховна Рада України). Офіційний сайт Верховної Ради України. <<http://zakon4.rada.gov.ua/laws/show/1682-14>> (2015, April, 25).

³ Указ про Національний план дій на 2013 рік щодо впровадження Програми економічних реформ на 2010 - 2014 рр. «Заможне суспільство, конкурентоспроможна економіка, ефективна держава 2013 (Президент України). Офіційний сайт Верховної Ради України. <<http://zakon4.rada.gov.ua/laws/show/128/2013>> (2015, April, 25).

⁴ Мінрегіон звітує щодо виконання Нацплану на 2013 рік за напрямом «Реформа ЖКГ». Офіційний сайт Міністерства регіонального розвитку, будівництва та житлово-комунального господарства України. <<http://www.minregion.gov.ua/news/minregion-zvitue-schodo-vikonannya-nacplanu-na-2013-rik-za-napryamom-reforma-zhkg-706507/>> (2015, April, 25).

initially reduce its payables. Therefore, there's a need on legislative level to define mechanisms that will allow to do that and to establish clear limits of the transition period.

Conclusions. Difficult situation in the field of municipal heat energy (significant payables for consumed energy, discrepancy of tariffs to economically justified level, lack of interest of companies to reduce costs and increase energy efficiency), growing economic and political crisis in Ukraine do not attract investments for construction and reconstruction of municipal heat energy system, which due to significant depreciation requires modernization and upgrade. The main way to increase investment attractiveness of enterprises in the field of municipal heat energy is transition to incentive regulation of tariffs, which, on the one hand, provides a stable environment for return on investments for long-term period, and on the other hand, stimulates enterprises to reduce costs and invest in energy saving technologies.

The transition to incentive regulation should be accompanied by establishment of foreseeable conditions for enterprises in the field of municipal heat energy, introduction of transparent and clear system of tariffs' formation for heat energy and centralized heating services, increasing of tariffs up to economically justified level with simultaneous application of protective measures for vulnerable groups of consumers, as well as taking into account the necessity to reduce debts of enterprises for consumed energy.

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