SPP Guiding Case No. 186: Administrative Public Interest Litigation Urging Implementation of Preferential Electricity Pricing Policies (Gongshu, Hangzhou)

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Keywords

Pre-litigation procedure of administrative public interest litigation; implementation of public policy; relay power supply; special supervision.

Holding

Where a relay power supply entity collects electricity fees in violation of regulations and fails to implement the national preferential electricity-fee settlement policy, thereby preventing the functions and objectives of the public policy from being realized and harming state interests and social public interests, the procuratorial organ may conduct public interest litigation and, through special supervision, promote long-term governance of the industry.

Basic Facts

Relay power supply refers to the situation in which a power grid enterprise does not directly supply power, read meters or collect fees, but rather its direct-supply customer relays the power to end users and reads meters and collects fees on its behalf. Beginning in 2018, the state repeatedly reduced the price of electricity for general industrial and commercial use. In early 2020, in order to reduce the burden on enterprises and boost the confidence of market entities, the state successively introduced a series of phased policies to reduce enterprise electricity costs and benefit the people and enterprises. The National Development and Reform Commission issued a notice requiring power grid enterprises, when calculating and collecting electricity fees from power users in the general industrial and commercial and other electricity price categories, to settle at 95% of the original delivered electricity price. Within Gongshu District, Hangzhou, Zhejiang Province, multiple industrial parks, commercial complexes and property management companies acting as relay power supply entities, in violation of the relevant provisions, failed to implement the electricity-fee reduction for end users and failed to implement the phased preferential electricity-fee policy when settling with power end users, involving a huge amount of money.

Procuratorate Performance of Duties

In April 2020, the People’s Procuratorate of Gongshu District, Hangzhou, Zhejiang Province (hereinafter the “Gongshu Procuratorate”) discovered the aforesaid case clues in the course of performing its duties and conducted a preliminary investigation, and in June of the same year filed the case for investigation. On the one hand, it retrieved from the market regulation and power supply departments basic information such as the number and distribution of relay power supply entities, the structure of end users and electricity consumption, so as to understand in detail the operational process and procedures of the relay power supply link. On the other hand, it investigated the relevant relay-power-supply end users and relay power supply enterprises, questioning key personnel such as company persons-in-charge and financial staff, and retrieving documentary evidence such as electricity-fee statements and invoices, house leasing contracts, and electricity-fee collection lists. It established that six relay power supply enterprises, in violation of the relevant provisions, had failed to implement the electricity-fee reduction for end users and had failed to implement the national preferential policy of settling at 95% on a phased basis.

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The Gongshu Procuratorate, upon examination, was of the view that the state's introduction of phased preferential policies to reduce enterprise electricity costs was a public policy benefiting enterprises and the people, implemented to help micro, small and medium-sized enterprises overcome difficulties and achieve steady and healthy economic development. The electricity-fee reduction preferential treatment derives from the operating property income of state-owned power grid enterprises; the state's formulation and introduction of electricity-fee reduction and electricity-fee preferential policies constitutes the exercise of its rights to use and dispose of the operating state-owned property of power grid enterprises. The failure of relay power supply entities to implement the electricity-fee reduction and electricity-fee preferential policies was tantamount to intercepting state policy preferential funds by taking advantage of their dominant position, causing the electricity-fee reduction dividends to fail to be fully transmitted to an unspecified number of end users, illegally encroaching upon state policy dividend subsidies, contravening the original intention of the policy of reducing enterprise electricity costs, and undermining the state's policy objective of reducing the burden on enterprises, thereby harming state interests and social public interests.

The failure of the relay power supply entities to implement the electricity-fee reduction and electricity-fee preferential policies violated Article 44, paragraph 1 of the Electric Power Law of the People's Republic of China and Article 12 of the Price Law of the People's Republic of China, among other relevant provisions. Under Articles 33 and 39 of the Price Law of the People's Republic of China and other provisions, the market regulation department, as the competent price department, is legally required to supervise and inspect price activities; moreover, the Notice of the National Development and Reform Commission on Phased Reduction of Enterprise Electricity Costs to Support the Resumption of Work and Production of Enterprises also required relevant departments to actively cooperate with the local market regulation departments, effectively strengthen supervision over fee-collection conduct in the relay power supply link, and ensure that electricity-fee reduction dividends are promptly and fully transmitted to end users. Accordingly, on August 21 of the same year, the Gongshu Procuratorate delivered a procuratorial recommendation to the Market Regulation Administration of Gongshu District (hereinafter the "Gongshu Market Regulation Administration"), suggesting that the illegal conduct of the six relay power supply enterprises involved be investigated and handled, and that a special screening be carried out over all relay power supply enterprises within the jurisdiction.

After receiving the procuratorial recommendation, the Gongshu Market Regulation Administration attached great importance to it and actively carried out a special rectification campaign. In view of the large number of end users, the high amount of electricity fees and the difficulty of refunds involved in this case, the Gongshu Procuratorate held joint meetings with the Gongshu Market Regulation Administration on multiple occasions to analyze the application of law, the handling methods and the enforcement standards in the course of investigating and handling the case, reaching a consensus. The Gongshu Market Regulation Administration formulated a work plan for clearing up the price increases in the relay power supply link, filed cases against the six relay power supply enterprises covered by the procuratorial recommendation for investigation, and lawfully carried out electricity-fee refund work; it collectively interviewed the operators of multiple industrial parks, commercial complexes and property management companies within the jurisdiction, guiding the relay power supply enterprises to refund fees on their own initiative; and it intensified policy publicity, adopting methods such as joint presentations, distribution of notices and on-site inspections to expand awareness of the policy and its preferential measures. As of June 2021, the six relay power supply enterprises covered by the procuratorial recommendation had refunded over-charged fees totaling more than 2.9 million yuan, with fines and confiscations totaling more than 2.4 million yuan. The Gongshu Market Regulation Administration carried out a special screening across its jurisdiction, inspecting 83 relay power supply enterprises, refunding over-charged fees totaling more than 44.64 million yuan, benefiting more than 14,000 end users, imposing administrative penalties in 28 cases, and imposing fines and confiscations totaling more than 8.07 million yuan, achieving notable results in the rectification work.

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On this basis, the Hangzhou Municipal People's Procuratorate carried out special supervision across the city in February 2021, comprehensively screening and rectifying the conduct of illegally collecting electricity fees in the relay power supply link, promoting the relevant functional departments to screen 276 relay power supply enterprises, imposing administrative fines of more than 11.22 million yuan, refunding over-charged fees of more than 86.53 million yuan, and benefiting more than 40,000 end users.

Guiding Significance

(1) Supervising and safeguarding the effective implementation of public policies benefiting the people falls within the scope of the public interest litigation duties of the procuratorial organs. Public policy is the means, tool and lever by which the state coordinates the distribution of social interests and coordinates economic and social activities; it is closely related to people's livelihood and economic and social development and requires the protection of the law. As judicial organs safeguarding the uniform and correct implementation of state laws, procuratorial organs should base themselves on their functional positioning of protecting state interests and social public interests, give full play to their legal supervision functions, and, in response to circumstances during the implementation of public policies in which various kinds of subsidies benefiting enterprises and the people are fraudulently obtained, fraudulently claimed, intercepted or misappropriated in violation of laws and regulations, thereby harming state interests or social public interests, perform their duties in accordance with the law and on their own initiative, urging the relevant administrative organs to strengthen supervision and ensure that the state's policies benefiting enterprises and the people are implemented and take effect.

(2) For problems of a certain degree of universality, the procuratorial organs may promote source-level governance through special supervision. In response to problems within a certain region that are numerous, widespread and universal in nature, the procuratorial organs may summarize and refine the replicable and promotable experience from case handling, carry out special supervision activities, achieve supervision of similar cases, and promote source-level governance. In special supervision activities, on the basis of the functional positioning of legal supervision, cooperation with administrative organs may be strengthened to form a combined force of law enforcement and judicial administration.

Relevant Legal Provisions

Administrative Procedure Law of the People's Republic of China (2017 Amendment), Article 25, paragraph 4.

Electric Power Law of the People's Republic of China (2018 Amendment), Article 44, paragraph 1.

Price Law of the People's Republic of China (effective in 1998), Articles 12, 33 and 39.

Regulations on Electric Power Supply and Use (2019 Revision), Article 20, paragraph 2.

Rules on the Handling of Public Interest Litigation Cases by the People's Procuratorates (effective in 2021), Article 75.

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