

Improvement of the Legal System for Social Adjustment of Energy Efficiency under the Carbon Neutral Target

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Abstract

Improving energy efficiency is one of the important ways to achieve the goal of carbon neutrality, and the legal system of social adjustment of energy efficiency is of great significance for promoting the improvement of energy efficiency, achieving the goal of carbon neutrality and effectively addressing climate change. By promoting the active participation of energy industry associations and the public, the legal system of social adjustment of energy efficiency promotes the energy industry associations, their member enterprises and the public to actively participate in the improvement of energy efficiency. Based on this, we should improve the legal system of energy efficiency social adjustment, such as the energy industry autonomy system and the public participation system.

Keywords

Carbon neutralization; Energy efficiency; Climate change response.

1. Definition of the Legal System of Social Adjustment of Energy Efficiency under the Carbon Neutral Target

The legal system for social adjustment of energy efficiency under the goal of carbon neutrality aims to improve energy efficiency, achieve carbon neutrality and effectively respond to climate change through public participation, raising public awareness and education on energy efficiency improvement, as well as energy conservation and self-discipline systems in the energy industry. The adjustment mechanism theory provides a strong theoretical support for the establishment of the legal system of social adjustment of energy efficiency under the carbon neutral target. Social adjustment, government regulation and market regulation are three mechanisms to deal with various social problems. The legal regulation of energy efficiency under the goal of carbon neutrality cannot be separated from the coordination and use of the three mechanisms. The three mechanisms have their own strengths, and only by cooperating with each other can they fully play their respective roles. The government mechanism can overcome the failure of the market mechanism in the field of improving energy efficiency to a certain extent. The market mechanism can make the government mechanism more cost effective, while the social adjustment mechanism provides guarantee for the rational and effective operation of the market mechanism and the government mechanism [1]. The legal system of social adjustment of energy efficiency is an important part of the social adjustment mechanism, which can effectively make up for the lack of market and government failure. It can play a role in communication and coordination between the government, enterprises and various social subjects, and to a large extent, it affects the realization of the goals pursued by the government and enterprises. Therefore, in the legal regulation of energy efficiency, it is essential to improve the social adjustment system. According to the different adjustment subjects, the legal system of social adjustment of energy efficiency can include the energy

industry association autonomy system and the public participation system, but in reality, the public participation system is the main one.

2. Energy Industry Autonomy System

2.1. Connotation of energy industry autonomy system

The industry association is a non-profit association voluntarily established by enterprises for independent management and self-service [2]. Autonomy of industry associations means that industry associations independently formulate articles of association, rules and regulations or regulate all members who enter the association through these articles of association, rules and regulations to safeguard the common interests of all members of the industry [3]. Based on this, the energy industry autonomy should at least include the following three meanings: first, the energy industry autonomy is the industry management of self management, self service and self-restraint through the energy industry association. Second, the energy industry association should be created and operated based on democratic procedures, with the purpose of safeguarding the interests of the industry. Third, the autonomy of the energy industry does not mean that it does not need to comply with the relevant national legislation, on the contrary, it should also comply with the relevant legislation of China's industry associations. Therefore, the energy industry autonomy system can be defined as a system in which the energy industry democratically elects an energy industry association, independently formulates the association's articles of association, regulates the behavior of all members in the industry, protects the common interests of all members in the industry, and accepts national legislative supervision.

2.2. Evaluation of China's energy industry autonomy system

At present, the establishment of energy industry associations plays an important role in enhancing the competitiveness of the industry. In accordance with the provisions of the association's articles of association, the energy industry association of China follows the policy of "self-management, self-service, self coordination, and self supervision", actively performs its functions of representing, self-discipline, service, supervision, and coordination in the energy industry, and plays a role in standardizing the behavior of the energy industry, safeguarding the legitimate rights and interests of enterprises, and assisting government departments in strengthening the management of energy enterprises. However, China's energy industry association system still has the following outstanding problems:

First, China's current legislation on energy industry associations has low effectiveness. At present, the legislation of relevant trade associations in China includes administrative regulations and departmental rules. Among them, the normative documents with the highest legal effect only include the Notice of the General Office of the State Council on the Establishment of the Joint Working Group of Industry Associations and Chambers of Commerce to Decoupling Administrative Organs issued by the General Office of the State Council in 2015, the Notice of the General Office of the State Council on Listening to the Opinions of Enterprises and Industry Associations and Chambers of Commerce in the Process of Formulating Administrative Normative Documents of Administrative Regulations and Rules issued by the General Office of the State Council in 2019 Five administrative regulations including the Notice of the General Office of the State Council on Further Regulating the Fees of Industry Associations and Chambers of Commerce issued in 2020. This lower level of legislation has seriously affected the exertion of the positive functions of the energy industry association and restricted the development of the industry association.

Second, the independence of energy industry associations is not strong. At present, China's energy industry associations can basically be divided into two categories: government led ones

established under the leadership of the government, and market driven ones established jointly by enterprises for common interests. In practice, most trade associations in China are established under the leadership of the government, and the competent department of this type of trade association is the government and its related departments, which actually becomes a decentralization of government administrative rights. This will lead to the phenomenon that the government may over intervene in the behavior of industry associations, thus affecting the independence of industry associations.

Third, the energy industry association is not self disciplined enough. The Energy Industry Association is a non-profit social organization established to safeguard the common interests of the whole industry. However, in practice, there will be industry associations, especially the market spontaneous industry associations jointly established by enterprises for the common interests, which will damage the social public interests in order to safeguard the common interests of enterprises. This kind of behavior is very beneficial to energy enterprises, but it is contrary to the maintenance of the public interest of the whole society.

2.3. Improvement of China's energy industry autonomy system

In order to enable China's energy industry associations to better play their functions of self-discipline, service, coordination and supervision, the energy industry association system should be improved from the following aspects:

First, strengthen the relevant legislation of the energy industry association. With the vigorous development of industry associations in China and the positive role of energy industry associations in coordinating the relationship between the government, the market and enterprises, China has accelerated the formulation process of the Industry Association Law, and clarified the legal status, scope of application, functions, self-discipline management and national and social supervision of industry associations in this law.

Second, strengthen the independent role of energy industry associations. Based on the characteristics of the industry associations in China, the government led industry associations established under the leadership of the government should, in accordance with the requirements of the Notice of the General Office of the State Council on the Joint Work of Industry Associations, Chambers of Commerce and Administrative Organs, decouple the energy industry associations from the government as soon as possible, so that the activities of the energy industry associations are not subject to undue interference by government departments, and can maintain their independence in various activities.

Third, strengthen self-discipline of energy industry associations and strengthen social supervision. On the one hand, strengthen the social responsibility of energy industry associations. The energy industry should recognize that while maintaining the common interests of the whole industry, it should also take into account the common interests of the whole society. It should not damage the public interests of the society just to safeguard the interests of the industry. On the other hand, strengthen the social supervision of the government and the public on industry associations. The government can regularly issue the comprehensive evaluation report of the energy industry association, including the credit of the industry association, social responsibility, professional service level and other aspects, and require the public to participate widely in the evaluation, so as to effectively supervise the energy industry association.

3. Public Participation System

3.1. Connotation of public participation system

In 2014, the Ministry of Environmental Protection's Guiding Opinions on Promoting Public Participation in Environmental Protection defined public participation as the voluntary

participation of citizens, legal persons and other organizations in environmental legislation, law enforcement, justice, compliance and other matters, as well as the development, utilization, protection and improvement related to the environment [4].

The realization of environmental protection objectives is not only related to the strengthening of public awareness of environmental protection, but also closely related to the active and effective participation of the public in environmental protection activities. Principle 10 of the 1992 Rio Declaration on Environment and Development stipulates that "environmental issues should preferably be dealt with at the relevant level with the participation of all concerned citizens. At the national level, everyone should have appropriate access to information on the environment held by public authorities. Countries should facilitate and encourage public awareness and participation by making relevant information widely available." [5] China's Agenda 21 emphasizes that the realization of sustainable development goals must rely on the support and participation of the public and social groups, and new participation mechanisms and methods are needed. Groups and the public need to participate in decision-making processes related to environment and development, especially those community decisions that may affect their lives and work, and also need to participate in the supervision of decision-making implementation [6]. Therefore, in order to effectively improve the environment and realize the sustainable development of human society, the public should actively participate in various environmental protection activities.

3.2. Evaluation of China's public participation system

The solution of environmental protection problems depends on the active participation of the public. The soundness of the public participation system is related to the success of China's ecological civilization construction and affects the sustainable development of China's economy and society. In recent years, China's relevant legislation reflects the importance of the public participation system. The Interim Measures for Public Participation in Environmental Impact Assessment issued in 2006 stipulates public participation. Article 5 of the Environmental Protection Law, revised in 2014, clearly stipulates the principle of public participation in environmental protection, and sets Chapter V of the Law as "information disclosure and public participation", stipulating the rights of the public to obtain environmental information, participate in and supervise environmental protection, report illegal acts, and file environmental public interest litigation. The Measures for Public Participation in Environmental Protection promulgated by the former Ministry of Environmental Protection in July 2015 stipulates the principles, methods, rights, obligations and responsibilities of public participation [7]. Article 3 of the Measures for Public Participation in Environmental Impact Assessment published by the Ministry of Ecology and Environment in July 2018 stipulates that the state encourages the public to participate in environmental impact assessment [8]. The promulgation of these normative legal documents plays an important role in promoting the improvement of the public participation system. However, as far as the legal regulation of energy efficiency is concerned, there are still many deficiencies in the public participation system, mainly as follows:

First, the role of public participation in environmental protection related legislation in practice is limited. First of all, the fifth chapter of the Environmental Protection Law, the basic law of environmental protection, stipulates that the public has the right to access environmental information, participate in and supervise environmental protection, which provides a legal basis for the public to participate in environmental protection. However, these provisions are too principled and lack operability in practice. Secondly, although the Measures for Public Participation in Environmental Protection issued by the Ministry of Environmental Protection stipulates the principles and methods of public participation, it is only a departmental rule and has limited effect in practice. Finally, although the relevant legislation of local public

participation has made progress, it reveals that the actual role of relevant legislation is difficult to play from local environmental group events.

Second, the information disclosure system in the process of public participation in the legal regulation of energy efficiency is not perfect. First of all, the relevant legislation does not involve the disclosure of energy efficiency information, which is difficult to create favorable conditions for the public to participate in the improvement of energy efficiency and the response to climate change. From the contents of the Environmental Protection Law, the Measures for Public Participation in Environmental Protection, and the Measures for Public Participation in Environmental Impact Assessment, the information disclosed by the construction unit through its website, the public media website of the place where the construction project is located, or the relevant government website of the place where the construction project is located, as well as the competent department of ecological environment, is not involved in the information related to energy efficiency. Secondly, the information disclosure of enterprises did not involve the implementation of relevant measures closely related to improving energy efficiency. In terms of the normative documents related to the disclosure of enterprise information, the disclosure of enterprise energy efficiency information is not involved, which is not conducive to the public understanding of the enterprise energy efficiency situation, thus making it difficult to take effective measures according to the energy efficiency situation. Finally, there is no specific provision on the query and access methods of public participation in energy efficiency related information, which is difficult to ensure that the public can obtain the required information in a timely manner [9].

Third, the scope of "public" in the legal regulation of public participation in energy efficiency needs to be clarified. At present, the most comprehensive provisions on public participation in environmental protection in China are the Measures for Public Participation in Environmental Protection and the Measures for Public Participation in Environmental Impact Assessment. Although the Measures for Public Participation in Environmental Protection stipulates that the competent environmental protection department solicits the opinions and suggestions of citizens, legal persons and other organizations on matters or activities related to environmental protection through soliciting opinions, questionnaires, organizing symposiums, expert argumentations, hearings, etc., it is not clear how to determine the public participating in symposiums, argumentations and hearings. The Measures for Public Participation in Environmental Impact Assessment stipulates that the construction unit should listen to the opinions of citizens, legal persons and other organizations within the scope of environmental impact assessment according to law, and encourage the construction unit to listen to the opinions of citizens, legal persons and other organizations outside the scope of environmental impact assessment. However, it is unclear how to determine the public within and outside the scope of environmental impact assessment.

3.3. Improvement of China's public participation system

In the field of environmental protection, which is still dominated by administration, improving the public participation system is obviously an important driving force and means to effectively alleviate and solve the problems of ecological environment deterioration and climate change in China. As far as the legal regulation of energy efficiency in the context of climate change is concerned, the public participation system should be improved from the following aspects:

First, strengthen the important role of public participation in relevant legislation in environmental protection. First of all, on the basis of Chapter V "Information Disclosure and Public Participation" of Environmental Protection Law, the public participation system is more operable by further defining the scope of "public" and refining the principles, methods and procedures of public participation. Secondly, in order to effectively respond to climate change and ensure the improvement of energy efficiency, Article 9 of the General Provisions of the

Energy Conservation Law should not only specify that any individual or unit should perform the obligation of energy conservation according to law, but also specify that the public has the obligation to use products with high energy efficiency, and actively participate in promoting the improvement of energy efficiency in response to climate change. Finally, China has relevant provisions on public participation in energy legislation such as the Mineral Resources Law, the Coal Law and the Oil and Gas Law, but these are relatively fragmented and mechanical, which is not conducive to the role of the public participation system in the energy field. Therefore, the role and content of public participation should be strengthened in the future energy basic law [10].

Second, improve the information disclosure system in the process of public participation in the legal regulation of energy efficiency. The improvement of information disclosure system is the premise to ensure the effective participation of the public in energy activities and promote the improvement of energy efficiency. Therefore, in order to ensure the effectiveness of public participation, the information disclosure system should be improved from three aspects. First, the government should take the initiative to disclose information. The government should not only improve the formulation of relevant laws and regulations in the energy field, as well as the reporting on the approval of planning and construction projects related to energy efficiency projects, but also actively promote the government's environmental quality announcement system, regularly release environmental quality assessment reports, and timely release energy efficiency information, so as to create favorable conditions for the public to participate in the improvement of energy efficiency and response to climate change. Secondly, enterprises should perform the obligation of information disclosure. The obligation of information disclosure of enterprises is mainly aimed at the implementation of relevant measures closely related to improving energy efficiency. Its purpose is to enable the government and the public to have a better understanding of the energy efficiency of enterprises and to take effective measures according to the energy efficiency. This is crucial for environmental protection in energy development and utilization activities, because the disclosure of relevant information in energy development and utilization activities can not only enable the government to effectively assess the affordability of the ecosystem and energy efficiency in energy activities, but also create conditions for public participation. Finally, clarify the way of information disclosure. In order to ensure that the public can obtain the required information in a timely manner, specific provisions should be made for the public's participation in the query and access methods of information related to energy efficiency, so that the public can obtain effective information and actively participate in the improvement of energy efficiency, so as to effectively respond to climate change.

Third, define the scope of "public" in the legal regulation of public participation in energy efficiency. Clarifying the scope of public participation is the key to determine the effectiveness of public participation. In practice, the public participation in environmental protection is basically under the organization of the competent environmental protection department. However, due to the unclear scope of the public participation, the public participation organized by the competent environmental protection department cannot be well connected with all aspects of economic development decision-making, which affects the actual effect of public participation in environmental protection. This paper believes that the scope of public participation can be determined according to the principle of "stakeholders", that is, if a certain environmental management affairs and activities will directly affect the personal and property rights and interests of the public and the comfort of the living environment, the affected public has the right to participate. This kind of "directly affected" or "interested" public participation in government environmental management is not only conducive to their full expression of interest demands, thus affecting government environmental administrative decision-making, but also conducive to stimulating the enthusiasm of public participation to ensure the

effectiveness of public participation. In addition, it is worth mentioning that in terms of major environmental management affairs and activities, due to the wide range of the public involved and the limitations of time, energy, resources and other conditions, it is impossible for all the public to participate in them. Therefore, in this case, the government should establish a public interest representative system, specifically including specifying the total number of representatives, the allocation of the number of representatives, the conditions for representatives and their generation methods. As far as the legal regulation of public participation in energy efficiency is concerned, improving the breadth and depth of decision-making participation, process participation and terminal participation in energy efficiency activities is the key to expanding public participation. Among them, important ways and means include: there should be some representative public participation in the relevant national environmental protection, energy development planning and relevant energy efficiency legislation, which can effectively express the public will, and timely feedback on public opinions and suggestions in relevant activities; For planning and construction projects related to climate change, especially energy efficiency, public participation should be advanced as early as possible in the whole environmental impact assessment process. Effective ways should be taken to enable the public to fully express their opinions and suggestions on planning and construction projects, timely and fully understand the requirements and suggestions of the public for energy efficiency decision-making, fully consider the public's opinions, and timely feedback the public's opinions.

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