



Mr. Jeremy Wates  
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Subject: Statement/evidence on some issues raised during public hearing in **Case ACCC/C/2009/41 concerning Slovak Republic and NPP Mochovce**

Vienna, 20 May 2010

Dear Mr. Wates,

In its letter dated 12. April 2010 the Compliance Committee requested the parties concerned to answer the following questions:

1. Please indicate the probable timing of a decision by the Bratislava Regional Court on the appeal made by Greenpeace Slovakia
2. Please mark out in the translation of the 2008 construction permit which parts reflect significant changes of the previous permits.

Furthermore we want to state in writing and provide evidence on some issues we argued during the public hearing in March 2010 regarding the Slovak legal position on nuclear permitting procedures, the relationship of the permitting procedures concerned and the impact and quality of the EIA procedure initiated after the permitting decisions were taken.

#### **Timing of Court Decision**

1. It is not predictable until when the Bratislava Regional Court will decide on the appeal made by Greenpeace Slovakia. It can be some months from now, but it could also be tow to three years.

#### **Significant changes of previous permits**

2. The three permits concerned all constituted significant changes to the original project permitted in 1986. This conclusion can be drawn from various perspectives such as the No of pages of the permits, the power extension and most crucially the content of the decisions.
3. In its letter to the Aarhus secretariat from 12. April 2010 the Slovak government enclosed (document No 3) among others a letter (letter no 1647/320/244/2004HI) signed by the general director of the department of safety evaluation and inspection activities (UJD) dated 8. July 2004 with the heading “Construction permission – change of condition”. The authority describes (giving an expert opinion) that the operator aims to change the time limit for completion of the NPP and that he does not object this if the operator follows new requirements set up in the same letter and in another document.
4. However, regarding the changes needed to obtain the permit the authority states as follows:<sup>1</sup> *“Due to the fact that since issue of original permit for above mentioned building (No. Vyst2010/86 dated Nov 12, 1986), which has changed in the part “time-limit of building completion” by the letter No. Sp.97/02276-004 dated May 5, 1997), more than 17 years has elapsed undoubtedly changes in circumstances important for nuclear safety as well as changes concerning requirements to nuclear safety occurred. It follows that also documentation based on which the original building permit was issued in 1986 cannot reflect, due to objective reasons, new requirements to nuclear safety, which have been during past 17 years **considerably modified** or **newly developed**”.*
5. In another document (No 4) submitted by the Slovak government on 12. April 2010 (UJD standpoint, enclosed document to letter no 1647/320/244/2004HI) the authority states that the level of safety for reactors 3 and 4 needs to be higher compared to reactors 1 and 2 and that is not realistic that completion of reactors 4 and 4 would<sup>2</sup> *“consider safety requirements , which are imposed to new units. Further increase of the nuclear safety of NPP Mochovce units 3 and 4 in comparison with a level achieved in case of NPP Mochovce 1 and 2 can be expected thanks to **use of state of the art technology with higher reliability** or by design corrections, targeted to the strengthening of unit in case of occurrence of severe accidents.”* After that the UJD lists new conditions for further permits.”
6. Furthermore UJD points states: *“According to data in tables of Enclosure 2 to the report on “Concpetion of completion of NPP mochovce, Units 3 and 4” EGP Prague, 2002, for so called “Variant EGP – versatile” it is considered to take over without*

<sup>1</sup> Text quoted literally from the document submitted by the Slovak government on 12. April; highlighted parts were added by the communicant.

<sup>2</sup> As above.

*changes only approximately 30 % of provisions realised at NPP Mochovce units 1 and 2 from the whole number of evaluated safety provisions of NPP Mochovce units 3 and 4; as to the remaining provisions the suggested solution **will differ**. ... Even if the changes of original design can be reviewed step by step through the supplements to the initial design, **the extent of changes is relatively very large** and in addition many of them affect each other.”<sup>3</sup>*

7. Already from the two official documents from 2004 can be derived that the changes in question are significant, otherwise it would be not possible to extend the time limit for constructions. The authority maintains that technology and nuclear safety standards had changed considerably or would be completely new due to the 17 years between 1986 and 2004. The more this counts for period 1986 and 2008, or 22 years.
8. Another comparison is the assessment of the (pure) size of the construction permits concerned. Whereas decision 246/2008 has 15 pages, the 1986 permit has only 5 pages. This and the fact that the original decision provides a list of the objects on one and half pages, the decision 246/2008 provides list of more than four pages with objects which shall be changed or which are new indicate that the changes must be significant, since the permitting conditions are far more complex and advanced.
9. Another issue we raised during public hearing relates to the envisaged increase of efficiency by 30 % compared to the original permit. In 2007 a power extension of 7 % of reactor 1 and 2 was subject to an Espoo procedure<sup>4</sup> including public participation since this was seen as a significant change in the design, whereas the 30 % efficiency change of reactors 3 and 4 are seen as not significant by the Slovak Republic even though this is only possible by major technological changes. The 30 % efficiency change indicates a significant change compared to the original permit.

### **Construction start in 2008 would have been impossible without significantly changed permits**

10. The Slovak delegation insisted at the public hearing that the current constructions regarding reactors 3 and 4 are continuation of constructions since 1986 and the constructions never stopped. As we argued in Geneva this position is not correct: Even the latest National Report of the Slovak Republic (compiled in terms of the Convention on Nuclear Safety, 2007<sup>5</sup>) states on page. 82: ”Unit 3 and 4 of NPP

<sup>3</sup> The translation is adopted from the document submitted by the Slovak government, however, the expression in bold is wrongly translated in that material – it states negative phrase “will not differ”.

<sup>4</sup> Documentation can be found on the Website of the Austrian Environmental Agency:

[http://www.umweltbundesamt.at/umweltschutz/uvpsupemas/espooverfahren/espoo\\_slowakei/kkwmochovce12/#](http://www.umweltbundesamt.at/umweltschutz/uvpsupemas/espooverfahren/espoo_slowakei/kkwmochovce12/#)

<sup>5</sup> UN Convention on Nuclear Safety. The National Report is compiled by each member state:

[http://www.ujd.gov.sk/files/dokumenty/NS\\_07\\_Ang.pdf](http://www.ujd.gov.sk/files/dokumenty/NS_07_Ang.pdf)

*Mochovce are in construction. Their construction was in die middle of 90ties terminated and their equipments were conservated.”*

11. *“The ongoing construction could have continued and the 2008 decision was not necessary”* - This is the opinion the Slovak government presented at the public hearing, however, this would raise the question, why this decision was requested by the applicant SE/ENEL at all. We believe it was necessary because the Nuclear Authority of Slovak Republic had made clear, that the VVER 440/213 would not receive an operational permit unless significant changes would be undertaken. The *“Odborný posudok k navhovanej činnosti”* confirms this interpretation: *Opening of completion started when UJD issued Permit for the changes before completion No. 246/2008* (Posudok, p.7).
- a. This decision allows for many construction changes of the buildings where technology and equipment of the new design of the NPP will be located.
  - b. After this *“Permit for the changes before completion No. 246/2008”* it was possible to restart construction work and many decisions and the relevant permit (by UJD) was issued: Permit No. 266/2008 *“Implementation of selected nuclear safety relevant changes at the nuclear installation NPP Mochovce units 3 and 4 during construction as listed in the following part of the documentation of the original project”* and decision No. 267/2008 *“Permit to implement changes in the ‘Preoperational Safety Report NPP Mochovce units 3 and 4’*. Further decisions are being issued during construction - again without any public participation. (e.g.: UJD decision No. 53/2010, which interrupted the permitting procedure for the *“quality plan of selected equipment – 2. stage – control rods drive – modernised”* – this is one of the documents showing that essential components of the reactor are being *modernised”*.
  - c. The **Chapter 1.2.1 Nuclear Safety and EIA** of the [Posudok 2010]<sup>6</sup> p.8, clearly holds this opinion: “[UJD]..as explained above, in its competence as building authority, issued the permit for changes before completion (Permit No. 246/2008) and as state authority for nuclear safety the permit for *“For the realisation of selected nuclear safety relevant changes at the nuclear installation NPP Mochovce units 3 and 4 during construction as listed in the following part of the documentation of the original project”* for 120 explicitly mentioned parts of the documentation of the original project (i.e. de facto permit for the update of the original project – with Permit No. 266/2008) and permit for the *“For the realisation of changes in the document ‘Preoperational Safety Report NPP Mochovce units 3 and 4’ in the presented scale”* (i.e. de facto permit for the update of the original project – with Permit No. 267/2008).

<sup>6</sup> [Posudok 2010]: Odborný posudok k navhovanej činnosti. This is the indepent final report completing the EIA according to Slovak EIA law. The copy which is quoted here, was obtained by Greenpeace Slovakia. It was not officially published to date (5 April 2010).

12. **UJD Permit 246/2008**: This Permit allowed **changes of construction before completion** to the old construction permit of 1986, which had been issued for the original VVER 440/230 reactors. Permit 246/2008 allows to perform changes to the buildings where technology and equipment of the new design of the 440/213 NPP will be located (See document as was handed out by the Slovak side during the meeting in English); e. g. page 3, **422/1-07** changes to the Common diesel generator station, **490/1-02 Turbine hall** including seismic improvements of the roof, many changes of foundations, channels of power cables etc.

13. **Permit No. 266/2008 “Implementation of selected nuclear safety relevant changes at the nuclear installation NPP Mochovce units 3 and 4 during construction as listed in the following part of the documentation of the original project”**

The first part of the Permit listed 120 items referring to the original project documentation, which are to be modified; e.g.:

No.	
3	Concept for safe operation of the NPP
21	Scheme of electricity supply of the NPP of unit 3
32	Technical report on the Instrumentation & Control System
41	Review and completing Instrumentation & Control System
42	Primary Circuit
55	Emergency systems
87	Severe accident mitigation systems

14. In short, all crucial parts of a nuclear power plant – primary circuit, emergency systems and the Instrumentation & Control System as the heart of the plant – were opened up for change. Moreover the following tasks were defined by this permit: 1. Prepare scenarios for the project NPP Mochovce for external events (e.g. small airplane crash). 6. Deliver independent proof of seismic resistance of components and building constructions.

15. This Permit includes another list of safety-relevant technological systems to be changed, some examples:

No 2: Emergency System

No 6: LBB for primary circuit

No 23: Feasibility study for the separation of high-energy pipeline for a postulated break

No 25: Electricity supply for Instrumentation & Control System

No 30 Primary circuit control system

16. In short, all key safety issues of the nuclear power plant are to be changed, including those known to be the worst deficits of the VVER, e.g. high energy lines which pose a special risk under accident conditions.

17. **Permit 267/2008: Permit to implement changes in the “Preliminary Safety Report NPP Mochovce units 3 and 4” in the presented scope:** *“POSAR, the pre operational safety report, ... precedes an application for authorization to operate. The POSAR should essentially justify the finalized detailed design of the plant and presents a demonstration of its safety... The POSAR should provide more up to date information on the licensing basis for the plant.”* [IAEA 2004].<sup>7</sup>

18. This report is not accessible to the public, however, of crucial importance. With the Permit 267/2008 the Nuclear Authority UJD authorizes changes to the POSAR and lists the documents which were handed over to the UJD, in total 15 chapters:

1. Introduction,
2. General characteristics of the nuclear installation and the project,
3. Safety control,
4. Siting,
5. Aspects of the project,
6. Description of the nuclear installation systems and the comparison to the project,
7. Safety Analyses,
8. Start-up of the nuclear installation,
9. Operational conditions,
10. Preliminary Limits and Conditions of safe operations,
11. Radiation control,
12. Emergency preparedness,
- 13. Environmental impacts of NPP MO34,**
14. Description of radioactive waste management,
15. Decommissioning of the nuclear installation.

19. The Permit also explains: *“Because the original Preliminary Safety Report for NPP Mochovce 34 was prepared in the years 1984 and 1986, the applicant based on changed legal requirements valid at the time of planned completion of MO 34, submitted an updated version of the complete Preliminary Safety Report.”* UJD compared the POSAR to legislation, which had come into force between 2006 and

<sup>7</sup> [IAEA 2004]: Format and Content of the Safety Analysis Report for Nuclear Power Plants, SAFETY GUIDE No. GS-G-4.1, 2004.

2008 and to the UJD decrees concerning Siting, physical protection etc. and recommendations by IAEA and WENRA currently valid. The Permit has an Annex, where UJD formulates additional requirements.

20. From what was said above we conclude that the permits of 2008 allowed building changes and technology changes of significance and they were necessary to re-start construction of NPP Mochovce 34. However, it is important to take note of two points:
- it would be **impossible** to finish construction and operate Nuclear power plant Mochovce 3rd and 4th blocks **without these construction changes**,
  - the allowed changes of the construction **are inevitable** for **changes of safety measures of the powerplant**.
21. Regarding the construction permit: the permission 246/2008 enables to finish construction and then to operate power plant in a safer way. Without permission 246/2008 the changes of the safety measures would not be possible, because the buildings which create power plant itself would not be designed for it.

#### **Clarification on the relationship of the three permits**

22. In the public hearing the Compliance Committee asked at several occasions questions about the **relationship between the three permits** we raised.
- permission 246/2008 (change of the construction before its finishing), it was issued according to the Construction Act 50/1976
  - permission 266/2008 (consent to implement changes in safety related equipment influencing nuclear safety in NPP Mochovce 3 and 4 during the construction), issued pursuant to the Nuclear Act 541/2004
  - permission 267/2008 (consent to implement changes in the document Preliminary Safety Report of NPP Mochovce 3 and 4), issued pursuant to the Nuclear Act 541/2004.
23. The above mentioned permissions stand next to each other, **however**, they are interrelated because they deal with the same constructions. The first one is a construction permit, the second and the third deal with safety measures. All of them deal with the same buildings and constructions, e.g. diesel-generator station, high-pressure compressor station, low-pressure compressor station, turbine hall, pumping stations (non-essential service water and fire water, essential service water), reactor hall, auxiliary nuclear building, liquid waste disposal...).
24. All of the decisions are necessary for further completion of the NPP construction. The first one deals with "construction" itself, the two others ("consents") project safety provisions of the Nuclear Act.

25. Generally, the procedure is regulated by the Administrative Procedure Act (71/1967), with certain differences. Construction permit (as well as permission on the change of the construction before its finishing) is issued in construction-permit procedure. Public participation is rather limited in cases where there was no EIA preceding the permission procedure. Pursuant to the Construction Act (Article 59) participants of the permission procedure are:
- constructor (developer),
  - persons with ownership rights or other rights to the properties and buildings, including neighbouring properties and buildings, if their ownership or other rights regarding those properties might be directly affected by the construction permit (according to Article 139 para. 1 of the Construction Act “other rights” are meant to be rights related to the property in question, such as rental rights),
  - other persons if it is prescribed by other laws,
  - construction supervisor or other qualified person,
  - planner (in questions dealing with construction plans).
26. NGOs or other public representatives have thus limited access to the proceedings and unless they have some ownership or related rights to the neighbouring properties, they are not considered to be parties to the proceedings (presuming there was no EIA procedure). If there is EIA preceding permission procedure, then NGOs and other public may be considered to be “other persons if it is prescribed by other laws”.
27. The procedure is different if consents issued by the nuclear authority are in question. The above mentioned procedures regarding consents were permission procedures about changes on nuclear device influencing nuclear safety during construction, during initiating the operation, during operation itself, as well as during activities connected to closing and putting out of operation of the nuclear device. According to the Nuclear Act an **applicant is the only party to the proceedings** (Article 8 para. 4 of Act 541/2004) and public has no right to participate in this procedure.

#### **Clarification on changes possible after the pending EIA procedure**

28. The Slovak Republic maintained that the project would still be open for significant changes in order to implement the outcome of the EIA procedures initiated last year. This view is not correct. The Slovak regulatory framework foresees different levels of permitting in the following chronological order:
- a. EIA
  - b. Siting permission
  - c. Construction permit
  - d. Various consents issued by the Nuclear Regulatory Authority and pursuant to the Nuclear Act
  - e. Inspection permit issued by the construction authority
  - f. Operational permit



g. Inspection permission

29. In the case of Mochovce 3 and 4 the order is different since the EIA was initiated only after construction permit and nuclear consents were given. The results of EIA would be relevant only for the operationen permit. This indicates that public participation in EIA would be neither early nor effective as indicated at different occasions in our communciation.
30. Before the NPP starts its operation, there are at least two permission needed:
1. permission to initiate operation
  2. inspection permission enabling to use the building for the determined purpose.
31. The first permission (to initiate operation) is issued by the Nuclear Authority pursuant to the Nuclear Act (541/2004). Operation of the nuclear device consists of two phases: probative operation and operation. The procedure begins with installation of the first nuclear fuel segment into the nuclear reactor and/or with initiation of handling with nuclear materials or nuclear waste. The permission for permanent operation is issued after evaluation of the report on probative operation.
32. The inspection permission enabling to use the building for the determined purpose is issued in accordance with the Construction Act. During proceedings the relevant authority shall examine whether the construction was completed in accordance with the construction permit and with the construction plan approved by the authority during construction permit procedure. The authority shall also evaluate whether a constructor was following conditions prescribed by the siting permission. Finally, it shall evaluate whether factual construction is not jeopardising public interest, especially in a view of protection of life and health of persons, environment, safety of work and technical devices. (Article 81 of the Construction Act). It is possible to approve small changes of the construction if the actual realisation is not substantially deflecting from the documentation (construction plans) approved in the construction permit procedure (Article 81 para. 4 of the Construction Act).
33. Parties to the proceedings of the inspection permission procedure consist of the constructor, and the owner of the construction and the owner of the property, if they are not identical with the constructor. If changes of the construction are supposed to be approved, then participants of the original construction proceedings, which might be affected by the intended changes, shall become parties to the inpection proceedings. In case of this case this would mean however that the public concerned has no standing an this procedure because it was not party to the original construction procedure.

34. To sum up, it is impossible for public to influence the inspection permission procedure. Moreover, during this stage of permission proceedings it is impossible to substantially affect the factual construction.

### **Information regarding recent changes in Slovak legislation**

35. The Slovak legislation changed and in procedures initiated after 1. May the public concerned has standing in permitting procedures following an EIA. The new legislation does not apply for pending procedures such as Mochovce 3 and 4.
36. However, other restrictions were introduced into legislation that might make public participation meaningless regarding nuclear power plants. The new regulation on access to information foresees keeping secret the complete documentation of licensing nuclear installations. For further details please **Annex A** to this submission.

### **Information regarding the EIA process**

37. Even though we are convinced that the EIA process can not cure the breach of the Convention's public participation provisions since 2008, the EIA was subject to permanent discussions at the public hearing. We want to clarify that we strongly disagree with the EIA process and its quality and claim that the public's arguments were not taken into account. We listed major shortcoming of the EIA procedure in **Annex A** to this submission.

### **Conclusions**

38. To sum up we are convinced that the three invoked permitting procedures from the year 2008 were in clear breach of the Aarhus Convention's public participation and access to justice provisions. The permits concerned had significantly changed almost any aspect of the 1986 permits apart from the location. It was not possible for the public to participate the procedures and to obtain effective access to justice. Even though one appeal is pending, it is unclear whether it is applicable and the decision will likely come not before the construction is almost done, what is a clear infringement of Article 9 par 4 of the Convention. Other appeals (regarding the nuclear permits) were not possible at all.
39. It is evident that the Slovak legal position regarding public participation was in non compliance with the Convention until 1. May 2010 and we allege it maintains in non compliance in particular due to the changes disclosure provisions. The legislative changes regarding standing do not apply for pending procedures and have thus no impact to this case.

40. Any outcome of EIA procedure is difficult if not impossible to implement due to far advanced construction process. It is highly unlikely that new permitting procedures significantly changing the 2008 permits would be initiated and if so any changes can not be significant due to the far advanced construction process. The public concerned has not right to legally enforce the consideration of the public participation procedure in the permitting decisions. As mentioned in our communication and during the discussions the Slovak Republic had not followed the legislative framework regarding EIA procedures that would provide for an EIA as the first and not at last step of a planning and permitting process.
41. Finally we want to stress once again that this communication was not only submitted on behalf of the communicant, but also on behalf of Slovak NGOs such as Greenpeace Slovakia, VIA IURIS and ZMZ.

Best wishes

A handwritten signature in black ink, appearing to read "Dr. Klaus Kastenhofer".

Vienna, 20. May 2010  
Dr. Klaus Kastenhofer  
Director GLOBAL 2000/Friends of the Earth Austria

#### Information on correspondent submitting the communication

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Annex A: Information on EIA process and legislative changes in Slovak Republic

Annex B: Translation of standing provisions after legislative changes

Annex A: Information on EIA process and legislative changes in Slovak Republic

**Details on EIA process for NPP Mochovce 3 and 4 as a supportive information for Communication to the Aarhus Convention Compliance Committee on the compliance of the Slovak Republic in the case of the NPP Mochovce 3,4 construction with the Aarhus Convention**

During Aarhus compliance committee hearing in Geneva on 16<sup>th</sup> March 2010, the Slovak state represented among others by Mrs. Žišková from Slovak Environmental Ministry stated, that the wider public had all possibilities of participation in the EIA process, and that this process was, as Mrs. Žišková stated, transparent and up to best possible standard.

We believe that this information was misleading, and therefore in this supportive submission we would like to point out several issues, that we think prove that the EIA process was not transparent, effective nor provided a fair, democratic access to all necessary information for the public.

**(i) The investor Slovenské elektrárne, a.s./ENEL tried to manipulate public hearings on the NPP Mochovce 3 and 4 project.**

In early September 2009, Greenpeace Slovakia received a letter (in Hungarian)<sup>1</sup> and a PowerPoint presentation<sup>2</sup> (from which we were able to find out a creator of the presentation, which is Mr. Holy, a Slovenské elektrárne, a.s. employee<sup>3</sup>) from Hungarian colleagues, that was sent to them by the Hungarian Ministry of Environment and Water, as official information about the public hearing in Bratislava. The Hungarian Ministry of Environment and Water had received this presentation from the Slovak Ministry of Environment, which is explained in a letter sent to Hungarian NGOs and municipalities interested in the EIA process.

We believed that the aim of public hearings is to provide the opportunity for public participation in which the public can raise questions and get answers directly from an investor or State, as well as submit information, viewpoints and concerns to the investor. However, according to the presentation, questions from public could be raised only after 2 hours of presentations, speeches and a press conference for media! Obviously this document was never meant for a public eye, because it contains worrying information, among others:

**Reach the lowest possible media & public attention**

**Prevent public hearing in Vienna** – Vienna City Council declared that a public hearing in Vienna can be expected in late September, with the EIA Public Consulting ending on October 6th !!!

Resolve Aircraft Crash topic (SE & UJD responsibility)

areas near to the Borik Hotel shall be booked for WONUC demonstration to avoid antinuc unrests (SE Comm. responsibility)

The Slovak Ministry of Environment was asked several times to explain how it is possible at all, that they even received such a document, and also sent it as official information to the responsible Hungarian Ministry.

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<sup>1</sup> A letter from Hungarian Ministry of Environment and Water

<sup>2</sup> A powerpoint presentation in .pdf document

<sup>3</sup> A Creator of the powerpoint presentation

We wrote an open letter to the Deputy Environmental Minister (Mr. Čaplovič at that time), asking him for an investigation and taking action. We provided the exact date and time when this document was sent from Slovak Environment Ministry, as well as the name of department from which it was sent. Until now, there was no reply and no action taken. We mentioned this issue during the public hearing in Bratislava, and we also submitted it in written form when making comments to the EIA report. A written reply from the Environmental Ministry stated that this comment is irrelevant, as it was not an official document from the investor. We believe that as soon as the Slovak Environmental Ministry sent this document to a relevant Hungarian Ministry, it became official. According to our information, no other information about this hearing was sent to Hungary as a correction.

We also would like to mention that the public hearing almost precisely followed the plan and took place in a very similar fashion.

**(ii) Not all questions were answered during the EIA hearings**

At all three public hearings in Bratislava, Vienna and Esztergom, the public asked very similar questions. The most discussed areas included the resistance of reactors to external impact, sufficiency of cooling water for the reactors, high-level radioactive waste disposal, finances, the construction permit from 1986, but also transparency and regularity of the EIA process.

None of these questions were properly answered, in spite of the fact that the investor and State representatives took over in terms of speaking time, by making presentation, showing videos etc.. No answers to these questions were provided until today.

**(iii) Submissions from the public were not taken into due account.**

During the public participation, Greenpeace Slovakia and Greenpeace International made written submissions, and Greenpeace Slovakia presented an oral submission during the public hearing in Bratislava. The investor did not react to the general part of the submission by Greenpeace International. From the numbered 99 detail submissions, 90% of the reactions from the investor were either diverting from the issue or no reaction was given at all. Only 3 submissions were acknowledged, two addressing problems with the translation of documentation into English, none considering the content of the EIA report. The 'independent' auditor (see our submission 4) from DECOM did not correct this situation. Even though Greenpeace acknowledges that it could be possible that the investor

has valid reasons not to take over certain submissions, however, in this case when all submissions were dismissed as not applicable, there is at least a suspicion that the public submissions were not taken into due account. Also, when the investor or the auditor does not accept public submissions, he is required to argue this, which as stated above did not happen in 90% of the detail submissions and not at all in the case of the general submission.

**(iv) The Ministry of Environment chose an expert to assess the project itself as well as the EIA report, which has a conflict of interest.**

Ministry of Environment chose for assessment of the EIA report and the project itself (as requested by Slovak EIA law) a company called DECOM, a.s., which is owned by VUJE, a.s.. However, VUJE a.s., one of the companies that have already signed contracts for the construction of Mochovce 3 and 4. With this, the chosen auditor has a direct conflict of interest. By choosing an auditor with a direct financial interest in the implementation of the project, the financial interest could overshadow the interest of the environment and human health in Slovakia and beyond.

We requested a new expert to be appointed and a new assessment to be prepared and construction halted for this period.

Greenpeace Slovakia filed a court complaint against Ministry of Environment for doing so and this complaint is under investigation at the highest court.

**(v) The EIA procedure took place when not all options were open any longer**

Before the start of the EIA procedure, the legal construction authority, which is the same as the nuclear regulator, UJD provided several permissions needed for the start of construction. During the EIA procedure construction was started and SE / ENEL continued to invest large sums into the project. These investments stem from the own reserves of SE (owned by ENEL and the Slovak State) and therefore are not recoverable in case the project would need to be adapted or when the environmental impact assessment would not provide justification for the project. Under these circumstances the Slovak State and ENEL actually would not any be able to choose an alternative option, or only at prohibitively high costs. Other options which could reduce the impact on the environment and public health were not open any more, while the public participation procedure was still ongoing.

**(vi) The Environmental Impact Assessment does not provide all the information necessary to use it for a proper justification for the impact the project will or may have on the environment and public health.**

In the submissions from Greenpeace, it was made clear to the investor and the Ministry of Environment as independent authority that crucial information was missing in the EIA report. The report lacks key issues like alternatives, the environmental impacts of the front-end (uranium mining, fuel production) and back-end (waste processing and decommissioning) of the project, the spreading of radioactive materials from a large scale

beyond design accident, basic epidemiological data, basic data and estimation of impacts on the natural environment. Without such data, the report cannot provide the information necessary to achieve better decisions.

**(vii) Change in information access law in Slovakia – no information on nuclear projects will be available for public from 1<sup>st</sup> May 2010**

The impression, that the Slovak state, in nuclear matters represented by the Nuclear Authority UJD, is rather avoiding transparency and involvement of citizens, be it via EIA or Aarhus or other options, is confirmed by the new EIA legislation, which enters into force on May 2010.

A coalition of municipalities around NPP Jaslovské Bohunice even sent a letter to the President of Slovakia, asking him to refuse his signature under this law, because they feel they do not have enough information with the current state already and are against the new legislation (a copy of this letter can be provided).

**A short introduction of the legislation change:**

While amending the EIA law No. 24/2006 Coll. for the third time to achieve compliance with EU EIA-directive, the Slovak parliament passed an amendment on changes to the law on access to information, spatial planning and building law and peaceful use of nuclear energy.

The Slovak NGO Via Iuris and Greenpeace sent a letter to the president asking him not to sign this amendment, however, he signed it and this law will enter into force on May 1 2010. The purpose of the amending the EIA law for the third time had been to give the public a possibility for effective participation concerning health and environmental matters. The result achieved the contrary, because the public will receive no information concerning nuclear installation licensing and this makes public participation loose sense altogether. This amendment is breaching EU law and the Slovak constitution.

**The new regulation foresees keeping secret the complete documentation on licensing nuclear installation as listed in Annex 1 and 2 of the Atomic law for reasons of national security.** This concerns the broader public as well as participants in licensing proceedings for nuclear installations and for activities connected to the operation of nuclear installations. The EU EIA directive and the law on free access to information, however, have the possibility to keep sensitive information classified and make the rest of the documents accessible.

The new law enables the Slovak authorities to issue blanket refusal on the access to information on the safety of nuclear installations and nuclear activities, on conceptual plans and information on financing. This might concern information on decommissioning

plans for nuclear installations, on the financial coverage of liabilities for nuclear damage arising from the final repository, the boundaries of a nuclear installation and similar information, which by being made public would not increase the risk for public security.

## **Translation from Slovak of Annex I and II of the Atomic Act - Act No. 541/2004 Coll. on Peaceful Use of Nuclear Energy (Atomic Act)**

[http://www.ujd.gov.sk/files/legislativa/novy\\_atomovy\\_zakon.pdf](http://www.ujd.gov.sk/files/legislativa/novy_atomovy_zakon.pdf)

### **Annex I**

#### **DOCUMENTATION OF NUCLEAR INSTALLATIONS REQUIRED FOR OBTAINING THE RELEVANT PERMITS**

##### **A. Documents to submit with a written request for a nuclear installation siting permit**

- a) terms of reference for the safety report,
- b) terms of reference for decommissioning,
- c) project intent for the technical design of the nuclear installation on the level of the projects terms of references,
- d) terms of reference report on the disposal of radioactive waste and spent fuel,
- e) requirements on the quality of the nuclear installation,
- f) draft estimate of the size of the area threatened by the nuclear installation,
- g) Environmental Impact Assessment, as foreseen by special laws, 8) as well as the assessment of potential impacts on the area surrounding the installation.

##### **B. Documents to submit with a written request for the construction permit of a nuclear installation**

- a) Pre-operational Safety Report to prove full compliance with the legal requirements for nuclear safety based on data, which are considered in the report,
- b) Project documentation, which is required for a building permit procedure,
- c) Preliminary plan for the nuclear waste and spent fuel management, including transport,
- d) Preliminary Conceptual Decommissioning Report,
- e) Categorization of selected components according to safety relevance,
- f) Preliminary Physical Protection Plan,
- g) Quality system documentation and quality requirements for a nuclear installation and their assessment in line with item A lit. e),
- h) Preliminary Internal Emergency Response Plan,
- i) Preliminary Operational Limits and Conditions,



- j) Preliminary Preoperational Control Programme for the nuclear installation,
- k) Preliminary delimitation of boundaries of the nuclear installation by specifying data of item A lit. f)
- l) Preliminary delimitation of the size of the area threatened by the nuclear installation by specifying data of item A lit. g)
- m) Documentation according to § 6 art. 2 lit. j).

C. Documents to submit with a written request for start –up permit and operational permit for a nuclear installation

- a) Limits and Conditions for safe operation,
- b) Register of selected installations with categorization of safety relevance,
- c) Test programmes for selected equipment as determined by the authority,
- d) Start-up programme for the nuclear installation, divided into steps,
- e) Operational Inspection Programme for selected equipment,
- f) System quality documentation and quality requirement of nuclear equipment and its assessment according to item B lit. g),
- g) Operational rules as determined by the authority,
- h) Internal Emergency Response Plan,
- i) Preoperational Safety Report, which gives further specifications as required by item B lit. a),
- j) For nuclear installations with a nuclear reactor a Probabilistic Assessment of safe operations for a shut down reactor and for low power level, as well as for full power operations,
- k) Physical Protection Plan including a contract with the police forces in accordance with § 26 art. 8, and a description of how air traffic is carried out 13) in the objects or nearby the nuclear installation,
- l) Plan for the radioactive waste and spent fuel management including transport,
- m) Conceptual Plan for the decommissioning of the nuclear installation,
- n) Proof of financial coverage of liability for nuclear damage except the nuclear repository,
- o) Skill training system for employees,
- p) Skill training system for selected employees,
- q) Programme for training of qualified personnel,
- r) Qualification certificates of selected personnel and qualified personnel,
- s) Documentation on the readiness for start-up of a nuclear installation, for trial operation the start-up assessment report and for commercial operation the trial operation assessment report,
- t) Emergency plan for the inhabitants of the Emergency Planning Zone,
- u) Delimitation of the boundaries of the nuclear installation by specifying the data in accordance to item B lit. k)
- v) Delimitation of the size of the Emergency Planning Zone by specifying the data as required under item B lit. 1),

w) Documentation in accordance with § 6 art. 2 lit. j).

D. Documents to submit with a written request for decommissioning permit

- a) Limits and Conditions for safe decommissioning,
- b) Quality management documentation and requirements for nuclear installation quality,
- c) Internal Emergency Response Plan,
- d) Decommissioning Plan,
- e) Decommissioning Concept for the period after the permitted stop of decommissioning,
- f) Physical Protection Plan including a contract with the Police forces in accordance with § 26 art. 8, and a description of how air traffic is carried out 13) in the objects or nearby the nuclear installation,
- g) Plan for management and transport of radioactive waste and plan for the management of conventional waste from decommissioning,
- h) Proof of financial coverage of liability for nuclear damage,
- i) Operational Inspection Programme for selected equipment,
- j) Operational rules as determined by the authority,
- k) Skill training system for employees,
- l) Skill training system for selected employees,
- m) Training programme for qualified personnel,
- n) Qualification certificates of selected personnel and qualified personnel,
- o) Emergency plan for the inhabitants of the Emergency Planning Zone,
- p) Changes of boundaries of the nuclear installation by specifying the data according to item C lit. u),
- q) Changes of the size of the Emergency Planning Zone by specifying the date according to item C lit. v),
- r) Categorization of selected components according to safety relevance.

E. Documents to submit with a written request for closing the repository and conducting institutional oversight

- a) overall assessment of the repository conditions and its operation including a list of changes and improvements undertaken and a safety assessment,
- b) total inventory of the stored radioactive waste,
- c) plan for closing the repository and for institutional oversight including safety analyses,
- d) monitoring programme including draft of possible remedy measures,
- e) skill training system for employees,
- f) training programme for qualified personnel,
- g) Qualification certificates of selected personnel and qualified personnel,
- h) Quality system documentation and quality requirements for a nuclear installation,
- i) Changes of boundaries of the nuclear installation by specifying the data according to item C lit. u),
- j) Changes of the size of the Emergency Planning Zone by specifying the date according to item C lit. v),

F. Documents to submit with a written request to exempt the nuclear installation from the competence of this law

- a) final copy of the nuclear installation area taken out of operation and the works undertaken during decommissioning,
- b) comprehensive data on the amount of activity of the radioactive waste stored and on the amount of the wastes and materials, released into the environment,
- c) list of data, which will be kept after decommissioning is completed, the time period it will be kept,
- d) results of the final control of the radioactive situation, confirmed by an independent certificate and an opinion of the Nuclear Safety Authority.

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A. Documents to submit with a written request for the transport of radioactive material

- a) identification data of the transporter,
- b) type and amount of radioactive waste to be transported,
- c) transportation route,
- d) assumed date of transport,
- e) safety documentation:
  - a) protection of health from negative impacts of ionizing radiation,
  - b) transport rules and accident transport rules,
  - c) documentation of the transport quality system,
  - d) physical protection plan
  - f) certificate of transport facility permit,
  - g) proof of financial coverage of liability for nuclear damage as required,
  - h) if the permit concerns the transit of nuclear material and spent fuel, the confirmation of the competent authority of the state sending the material, that taking back is secured, if the transit is not completed,
  - i) permit to transport nuclear material and spent fuel issued by the competent state authority of the receiving state or sending state and transit state for international transport,
  - j) statement of the competent state authority of the receiving state that the nuclear material or spent nuclear fuel will be used according to special provisions, 46)
  - k) permission for import or export of nuclear material,
  - l) valid trading contract with European Commission approval, in case of nuclear material or a draft contract or a contract between applicant or the partner with a clear specification of special material and equipment and its amount, the planned amount to be transported and the materials listed according to special provisions,
  - m) permit for handling nuclear material granted to a natural or a juridical person, who is exporting or importing the material.

B. Documents to submit with a written request for the permit to import of export nuclear material, export of special material or equipment according to § 14

- a) identification data of the applicant, for a natural person name und surname, date of birth, address of permanent residence, for a juridical person name, residence, identification number of the organization, name and surname and address of permanent residence of the authorized member,
- b) type and amount of nuclear material to be imported or exported, type and material of special material and equipment to be exported,
- c) name of the state, where the nuclear material, special material and equipment is to be exported to or from or where nuclear materials is to be imported from,
- d) assumed date of import or export,
- e) for import of nuclear material a certificate, that the applicant for permission has a licence for handling nuclear material or has contracted another physical or judicial person, which owns a licence for handling nuclear material and will handle the imported nuclear material,
- f) for the export of nuclear material, special material and equipment a guarantee of the receiving state, that the nuclear material or special material and equipment will not be handled in contradiction to requirements of the international treaties, which the Slovak Republic is bound by, 1)
- g) for import of nuclear material a statement of the applicant needs to confirm,
  - a. that the material or the equipment will not be used for purposes, which are in contradiction to requirements of the international treaties, which the Slovak Republic is bound by,1) and do not serve achieving any military goals,
  - b. securing physical protection of the listed material and equipment in accordance with § 26,
  - c. to not hand over the listed material or equipment to another physical or judicial person without consent of the authority.

Annex B: Translation of standing provisions after legislative changes

**Law No 50/1976 C.c. Construction Code**

**§ 59**

**Participants of construction proceedings**

(1) Participants of construction proceedings are:

- a) constructor
- b) **persons with ownership rights or other property rights to real estate property and buildings located on such property, if such rights may be directly effected by construction permit**
- c) **other persons, which have position of participants of proceedings implied by specific provisions**
- d) construction supervisor or other qualified person
- e) architect regarding project of the construction

(2) Tenants of flats and related areas shall not be considered participants of construction proceedings in accordance with the sec. 1 b)

**§ 139**

**Definition of terms**

(1) Term "**other property rights**" used in a phrase „ownership rights or other property rights to real estate property and buildings located on such property“ is used ad hoc in the following context:

- a) use of property plot or building based on tenant agreement or future agreement, which provide right to execute construction 13)
- b) right implied by easement tied with real estate plot or building at stake, 13a)
- c) right implied by other provisions 13b)

(2) If this law uses the term

- a) "building", it may also apply to part of the building,
- b) "owner", it may also apply to manager of public property, 14)
- c) "neighboring property and buildings", it applies to property plot, and buildings located on such plot, with a joint borderline with the property plot, which is the subject of administrative proceedings in accordance with this law,
- d) „neighboring building“, it applies also to a building located on a property plot, which does not have a joint borderline with the property plot, which is the subject of administrative proceedings in accordance with this law, but use of such building may be effected by the proposed construction.

\*

1b) § 4 of the law No 17/1992 C.c. Environmental Protection Law



- 13) Commercial Code, Civil Code
- 13a) § 151n - 151p of Civil Code
- 13b) for example 364/2004 C. c. Water Act, 656/2004 C. c. Law on Energetics
- 14) Law No 278/1993 C.c. on management of state property

**Law No. 71/1967 C.c. Administrative Proceedings Act**  
**Participant of administrative proceedings and participating person**

**§ 14**

(1) Participant of administrative proceedings shall be a person, whose rights, legally protected interests or duties are subject of decision making or whose rights, legally protected interests or duties may be directly affected by decision; participant of proceedings shall be also a person who claims that decision may directly affect his rights, legally protected interests or duties until such person is proven otherwise.

(2) Specific provisions may grant position of a participant of administrative proceedings to other persons.

**Law No 24/2006 C.c. Law on Environmental Impact Assessment**  
**Participation of public concerned**

**§ 24**

The public concerned means the public having an interest in or likely to have an interest in procedures of environmental decision-making. The public concerned means mainly:

- a) natural person in accordance with the § 24a,
- b) legal person
- c) citizen's initiative in accordance with the § 25
- b) civic association promoting environmental protection in accordance with the § 26
- c) organization promoting environmental protection established in accordance with specific provisions<sup>24</sup>), (hereinafter as „non-governmental organization promoting environmental protection”) in accordance with the § 27.

**§ 24a**

(1) Natural person over 18 years of age, which submits written statement in accordance with § 23, sec. 4, § 30, sec. 5 or § 35 sec. 3, displaying interest of such person on decision at stake, has a position of a party to proceedings<sup>25</sup> in consequent procedure for consent to projects in accordance with relevant provisions<sup>2)</sup>

(2) If at least 250 natural persons submit identical written statement in accordance with the sec. 1, such persons are considered citizen's initiative in accordance with the § 25; representative of the citizen's initiative shall be the natural person who has signed the petition as the first.

**§ 25**

(1) Citizen's initiative is formed by natural persons over 18 years of age, which sign a joint statement to the activity assessed in accordance with this law.

(2) Citizen's initiative demonstrates its existence by a petition containing name, surname, permanent residence address, year of birth and signature of all persons supporting joint statement. Citizen's initiative shall submit petition with the statement in accordance with the § 23 sec. 4, § 30 sec. 5 or § 35 sec. 3 to the competent authority. Such citizens' initiative participates in consequent procedure for consent to projects in accordance with relevant

provisions<sup>2)</sup> in a position of a party to proceedings<sup>25)</sup>. Citizen's initiative is considered to be a public concerned, whose right to favorable environment may be affected by decision.

(3) Representative of the citizen's initiative, authorized to act on its behalf and to have documents delivered, is a natural person appointed as such. If information on authorized representative is missing or not clear, representative of such citizen's initiative shall be the natural person who has signed the petition as the first. Authorized representative may assign other person to act on his/her behalf within the frame of the written authorization.

(4) Based on a written declaration submitted to the competent authority, assigned representative may be replaced by another natural person. Such declaration must be signed by majority of members of the citizen's initiative. Same requirements must be met in case of resignation of an authorized representative of citizen's initiative.

#### **§ 26**

If natural persons, for the purpose of further promotion of statement submitted by the citizen's initiative or directly for the purpose of promoting environmental protection, establish civic association in accordance with the law<sup>24)</sup>, which submits written statement in accordance with the § 23 sec. 4, § 30 sec. 5 or § 35 sec. 3, such civic association has a position of a party to consequent procedure<sup>25)</sup> for consent to projects in accordance with relevant provisions.<sup>2)</sup>

Such civic association shall submit to competent authority and decision-making authority petition containing name, surname, permanent residence address, date of birth and signature of persons supporting joint statement as well as declaration of registration of civic association no later than together with the written statement. For the purpose of this law, such association shall be deemed to be a subject whose right to a healthy environment may be affected by the decision.

#### **§ 27**

Non governmental organization promoting environmental protection, which submits written statement to the proposed activity in accordance with the § 23, sec. 4, § 30, sec. 5 or § 35, sec. 3 has a position of a party to consequent procedure<sup>25)</sup> for consent to projects in accordance with relevant provisions<sup>2)</sup>. Such a non-governmental organization shall be considered public concerned, whose right to favorable environment may be affected by decision. Non governmental organization promoting environmental protection submits the proof of registration to the decision making authority together with the written statement to the intent to proposed activity.

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24a) Act No 83/1990 C.c.