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Addressee:
Nuclear Regulatory Authority of the Slovak Republic
Bajkalská 27, P. O. Box 24,
820 07 Bratislava 27

For information to:
Ministry of Environment
Dpt. of Assessment and Appraisal
of Impacts to the Environment
Nám L. Stura 1
812 35 Bratislava

Bratislava, on Aug.13, 2008

Subject: Complement to the comment made in frame of licensing of building change before completion concerning construction of nuclear power plant Mochovce WWER 4x440 MW building 3

I.

On June 6, 2008 we submitted as participants of the process the Comment made in frame of licensing of building change before completion concerning construction of nuclear power plant Mochovce WWER 4x440 MW building 3 to the Nuclear Regulatory Authority of the Slovak Republic. We supplement this comment by following:

II.

On Nov. 12, 1986 a County National Committee in Levice town dpt. Of Building and Land Use Planning issued a building permit for a building of the "Nuclear Power Plant Mochovce WWER 4x440 MW building 3".

Construction works on facilities started on June. 13, 2006 and had been continuing up to year 1992 when they were stopped. Since that time conservation and protecting works were performed on constructions facilities and technology equipment.

By decision of the District Office in Nitra town dated May 05, 1997 time-limit for building completion was extended to Dec. 31, 2005. In frame of further licensing the District Building Office in Nitra issued in compliance with § 68 of building code - licensing procedure for building change before completion - on July 15, 2004 a decision, by which primary building permit was changed in such a way that point 5 of binding conditions of construction realization sounds: "*The time-limit for building completion is determined to be by Dec. 31, 2011.*" Standpoints of the Nuclear Regulatory Authority of the Slovak Republic (UJD) (dated June 30, 2004 and July.8, 2004) and National Inspectorate of Work (dated July 6, 2004) served as a base for decision of District Building Office.

Process of environment impact assessment (EIA) is regulated by the law No. 24/2006 and at the level of European Community by the Council Directive No. 85/337/EEC as amended by Council Directive No. 97/11/EC and Directive No. 2003/35/EC

In compliance with item 2 – Power industry, point 4, Enclosures 8 of the law No. 24/2006 nuclear power plants and other facilities with nuclear reactors are subjects of obligatory environment impact assessment. Similar provision is also introduced into the Enclosure I of Council Directive No. 85/338/EEC (thereinafter “Directive”) to point 2, and according to this point also nuclear power plants and other nuclear reactors are subjects of Directive article 4 par.1.

Process of environment impact assessment is an unavoidable working material for licensing concerning authorization of suggested activity and licensing authority should not issue the decision on authorization of activity without final standpoint enclosed (§ 38 par.1 and 2 of the law No. 24/2006)

Similar duty is set down by the Directive in articles 1 par. 2, in compliance with which, prior to the delivery of authorization for all projects that will have a substantial impact to the environment (projects which are defined in the Directive article 4), an assessment of impact of suggested activity to the environment has to be performed.

As to the given matter valid building permit exists, which was issued in 1986 in compliance with building code No. 50/1976. Licensing procedure, prior to which the process of environment impact assessment concerning licensed activity has to be performed, had been made yet before relevant law regulating process of environment impact assessment was enacted.

In compliance with jurisdiction of European Court which is binding also for the Slovak Republic, it is possible to require from the member states that the authorized activity would be reviewed in frame of the process of environment impact assessment also in case when the primary authorization was issued before entering of Directive in force. Such situation will occur then when it is necessary for activity realization to issue further complementing or changing decision, which **changes primary decision in matter root**. The matter is not “only” extension of time of validity of primary authorization but the matter is such a change, which impacts primary decision **and therefore without such a further decision the primary authorization loose validity and the activity should not be realized (decision in matter C-201/02)**.

Such a situation occurred also in case of construction of “Nuclear Power Plant Mochovce WWER 4x440 MW building 3”.

As early as in 2004 in frame of licensing procedure concerning building change before its completion in compliance with § 68 of building code, which was performed by County Building Office in Nitra, on base of which one of building binding condition was changed also Nuclear Regulatory Authority of the Slovak Republic submitted its standpoint (thereinafter “UJD”)

It results from available materials that UJD did not have objections against change of binding condition concerning date of building completion, UJD, however, conditioned its standpoint by fulfilling of requirements introduced in UJD standpoint and in standpoint to the Conception of Building Completion (enclosure to the UJD standpoint dated July 7, 2004). UJD justified this fact so that since issue of building permit elapsed more than 17 years (information from 2004) and during this period changes important from the point of view of nuclear safety as well as requirements to nuclear safety had occurred. In compliance with UJD standpoint “ *the documentation, on the base of which the primary building permit was issued in 1986, cannot without prejudice reflex new requirements for nuclear safety which were considerable modified during passing 17 years, or new ones were developed respectively*”. At the same time UJD specified that it is possible to continue in construction only based *on repeated review and approval of prescribed documentation* according to relevant provisions of the law No. 130/1998 and UJD warned that if it not the case UJD will not issue its approval for commissioning in compliance with regulations in force.

At the same time UJD recommended to the Building Office to condition the consent by the time-limit change of construction with an agreement between the applicant (investor) and UJD on time-table of documentation submission according to mentioned regulations.

A "Standpoint of UJD SR to the Conception of completion of NPP Mochovce units 3 and 4" (prepared by company EGP Prague, 2002), in which UJD formulated requirements to nuclear safety of the building being approved was also a part of UJD standpoint and at the same time UJD also stated that according to the report "Conception of Completion of NPP Mochovce units 3 and 4" **it is foreseen to take over without change 30% of arrangements realized on NPP units 1 and 2 only and as to the remaining provisions suggested solution would be a different one "Regarding the Atomic Act being in force the matter are changes on nuclear installation during the construction, which are subject of UJD review."** As early as in 2004 UJD stated that the matter is a relatively broad scope of changes and many of these changes affect mutually.

Changes in design documentation (which besides are also related to safety provisions) are just these that are subject of licensing of change of building before its completion, which is running at present and in frame of which UJD acts as a building office. Statement of UJD signalizes that these changes are really important.

In the primary building permit from 1986 binding conditions were determined for building realization, whereas the first condition sounds: *"Building will be finished according to the documentation verified during the building licensing procedure; it is a part of this building permit. Contingent changes must not be done without preceeding approval of building office"*.

It is clear from the above presented that any changes in the documentation, which was a working material for the primary building licensing procedure, have to be authorized again by the building office i.e. by the Nuclear Regulatory Authority. Regarding the statement of UJD to the Conception of Completion of NPP Mochovce, Units 3 and 4 and also taking in to account statement of UJD dated July 8, 2004, it is possible to state that the building of NPP Mochovce units 3 and 4 cannot be realized based on primary approved documentation and that documentation is necessary to change. Moreover it is clear that the primary building permit is to be changed not only as to the time-limit of building completion but, before all as to the facts in issue. After all in this connection a standpoint was expressed also by the European Commission, which conditions the completion of NPP Mochovce before all by changes in safety provisions.

Therefore it is clear regarding statements of European Commission as well as statements of building office itself (UJD) that the changes in the documentation, which is the base for building permit, are the subject of licensing procedure being under way and these changes are significant. Likewise it is without doubt that without permission of these changes building cannot be realized at all. It results from above presented that the assessment of impact of building NPP Mochovce units 3 and 4 to the environment is an imperative working material for the permission of building change before its completion. Omission of this assessment will signify a failure of conditions set down by the law at it means illegitimacy of the permission of building change before its completion as a whole.

III.

As to the process role of civil associations Greenpeace and The Mother Earth in the licensing we present following:

The comment dated June 25, 2008 we submitted as participants of the procedure in compliance with **§ 14 par.1 of the regulation order** (law No. 71/1967). The right to participate actively in decision making is warranted by the international **Convention on**

access to information, participation of public in decision making process and access to the justness concerning environmental matters. (thereinafter “Aarhus Convention”, which is declared in law collection under No. 43/2006) and also by **Directive of No. 85/337/EEC** (as amended by directive 2003/35/EC), which takes over and implements requirements of Aarhus Convention.

Aarhus Convention assures the right to so called concerned public to participate in licensing procedure on permission of activities which can have a significant impact to the environment and right to challenge real or procedure illegitimacy of such a decision or inactivity of an administrative authority at the court. In compliance with Convention provision it is understood under concerned public the public, which *“is or could be impacted by the decision procedure concerning environment or it is interested in this procedure; for needs of this definition non-governmental organizations supporting protection of environment and fulfilling all requirements of national law are considered to be interested in decision procedure”* (article 2 par 5 of Aarhus Convention)

Non-governmental organization having as an objective protection of environment has to have warranted rights in licensing, which are set down in articles 6 and 9 of Aarhus Convention.

It results from the Aarhus Convention and Directive No. 85/33/EEC that the administrative authority is obliged to present in the decision how they come to terms with our suggestions and objections and with our standpoints concerning working material for decisions and concerned public has therefore right for the relevant authority to settle appropriately their comments. According to the Aarhus Convention *“each side will assure that during the decision making the results of participation of public will be appropriately considered”*. According to the implementation guidance to the Aarhus Convention issued by UNO the relevant authority has to take into consideration all received comments and has to issue a decision which is based on all received pieces of information and comments. Administrative authority has to know to show why tangible comments or objections were refused. From this a duty results to explain in the decision how the authority handled suggestions and objections of public because otherwise a duty to show why the comments or objections were rejected would not be observed.

If the administrative authority will not come to terms with our suggestions and objections and with our standpoints to the working materials for decision the decision will be in contradiction with legal order of the Slovak Republic.

Moreover, in compliance with legal provisions being in force, the administrative authority is obliged immediately after issue and preparation of decision to publish **the whole decision reading** together with justification on the office board of administrative authority, which is non-stop accessible for public, **on web-sites** or by other suitable means.

According to § 3 par. 5 of the law No. 71/1967 on administrative procedures *“the administrative authorities are obliged to inform public in an understandable and timely manner on commencement, realization and ending of procedure concerning matters, which are subject of public interest or which are specified by particular law, by means of office board of administrative authority, on web site if they have access to it or eventually also by other appropriate means. At the same time they are obliged to protect rights and by right protected interests of participants of procedure and other persons. The office board of the administrative authority has to be non-stop accessible to public”*. Cited provision has to be applied in a such a way **that the administrative authority should immediately publish the whole decision reading concerning authorization of activity (including justification) after its preparation on the office board of administrative authority, which is non-stop (it means also out of working hours) accessible to public.** Different practice would signify

a violation of legal order and also Aarhus Convention, by which administrative authorities are committed.

This duty is warranted by the article 6 par. 9 of Aarhus Convention: *“Each side should assure that after taking decision by the public authority that the public will **be immediately informed in compliance with relevant procedures. Each side will make accessible for the public decision reading together with justifications and considerations, which the decision is based on.**”*

Similarly, in compliance with the article 9 par.1 of Directive No. 85/33/EEC (as amended by Directive 2003/35/EC) *“if a decision on delivery of authorization or on its rejection, relevant authority or authorities should **inform the public** about it in compliance with relevant procedures and should publish following pieces of information: decision contents and any conditions which are linked with it... ”.*

IV.

Regarding above mentioned we required to be informed on further progress in licensing procedure as well as on further standpoints submitted by participants of procedure or by state authorities in such a way as it is warranted by relevant regulations (administrative order, building code, Aarhus convention, directives EU)

Settling of the comment send please to following addresses:

For Mother Earth
P.O.Box 93
814 99 Bratislava

Greenpeace Slovakia
P.O.Box 58
814 99 Bratislava

Best Regards

Karel Polanecky – Greenpeace Slovakia

(signature)
Pavel Siroky – For Mother Earth

Stamp:
For Mother Earth
P.O.Box 93, 814 99 Bratislava
IDcode: 31750231

In Bratislava, on Aug. 13, 2008