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Your letter No./dated	Our ref. No.	Contact/☎	Bratislava
	4700/2015	JUDr.Pospíšil/58221117	22.7.2015

Re:

Notice of initiation of a new appellate procedure on disclosure of the Preliminary Safety Report of MO 3&4 – after the effect of the judgement by the Supreme Court of the Slovak Republic No. 3SŽi/22/2014

Nuclear Regulatory Authority of the Slovak Republic (hereinafter only as „ÚJD SR“) pursuant to Section 18 par. 2 second sentence of the Act No. 71/1967 Coll. on administrative procedure (Administrative Procedure) as amended and concurrence with Section 19 par. 2 and Section 22 par. 1 of the Act No. 211/2000 Coll. l. on free access to information and on amendments to certain laws (Freedom of Information Act) as amended, herewith **initiates a new appellate procedure on disclosure of the Preliminary Safety Report of NPP MO 3&4 (hereinafter only as “PSR MO 3&4“).**

On 06 July 2015 the judgement of the Supreme Court of the Slovak Republic No. 3SŽi/22/2014 dated 09 June 2015 entered into force. This judgement finally confirmed the judgement of the Regional Court in Bratislava No. 3S 142/2010-212 dated 14 May 2013 (hereinafter only as “confirmed judgement of the Regional Court“).

Confirmed judgement of the Regional Court in its operative part explicitly cancelled the ÚJD SR Decision No. 39/2010 rejecting the appeal against the Decision No. 325/2009 rejecting the request of Greenpeace Slovakia for disclosure of PSR MO 3&4. At the same time the confirmed judgement of the Regional Court returned the case to ÚJD SR for further proceeding.

For this reason ÚJD SR is obliged to initiate a new appellate procedure and in the new appellate proceeding to respect the opinion of the court regarding the procedure of ÚJD SR in the case for further proceeding.

From 14 May 2013 (the date of the original judgement of the Regional Court in Bratislava) until the entry into force of the judgement of the Supreme Court of the Slovak Republic on **06 July 2015** (confirmed judgement of the regional court) more than two years have lapsed, and according

to the opinion of ÚJD SR the situation is **both legally and factually completely different** from the situation on **01 February 2010** (date of the original Decision No. 39/2010 on remonstrations that has been challenged by action, finally closed as at 06 July 2015).

Among the important facts, the following need to be included:

- a) Amendment to the Act No. 211/2000 Coll. 1. executed in **particular by the Act No. 145/2010 Coll. 1.**, which explicitly excluded from disclosure of information, the disclosure of which could be used to plan and execute activities with the aim of causing disruption or destruction of a nuclear installation or buildings of special importance and other important structures under special regulations,
- b) Amendment to the Act No. 541/2004 Coll. 1. (Atomic Act) executed in **particular by the Act No. 350/2011 Coll. 1.**, which introduced a legal definition of sensitive information in nuclear safety and explicitly defined which documentation, under the Atomic Act, contains sensitive information,
- c) **Adjudication of the Constitutional Court of SR No. k. III.ÚS 304/2014-88** issued in closely related procedure of judicial review of the Decision on permitting changes in construction before completion of MO 3&4, which found a violation of constitutional rights of SE, a. s. in the proceeding and decision-making of the NS SR **and only due to inefficiencies it did not annul the judgement of NS SR since there has been a new appellate procedure and the ÚJD SR Decision No. 291/2014 was issued**
- d) And finally the second appellate procedure in the case of permitting change in construction before completion of MO 3&4 **completed with the ÚJD SR Decision No. 291/2014** based on the judgement of NS SR No. 5Sžp/21/2012 dated 27 June 2013, which was weakened by the adjudication of the Constitutional Court mentioned in the previous point.

All the above facts the Regional Court in Bratislava could not have taken into account when deciding about the case on 14 May 2013.

Despite these objective factors, ÚJD SR is bound by the legal opinion of the court and is ready to meet the requirements in great detail in the new procedure, which the Court stated in the operative part of its judgement, as well as the instructions for its fulfilment stated in the justification of judgements. **At the same time, ÚJD SR must comply with the current legislation and legal situation as of the date of initiating a new appellate procedure described in the previous paragraph.**

ÚJD SR notes that in the initial proceedings Greenpeace Slovakia requested disclosure of the **entire PSR of MO 3&4.**

In the new proceedings ÚJD SR must deal both **with the original request of the party to the proceeding, and with the reasons for the confirmed judgement of the Regional Court, as well as with the reasons for the judgement of the Supreme Court of the Slovak Republic.** In the same way in the new proceeding ÚJD SR is obliged to take account of the **new legal situation valid and effective as of the date of initiating the new proceeding, pending and completed other litigations in case of NPP MO 3&4, and the outcomes of these lawsuits and administrative proceedings that have taken place in the period from 01 February 2010 until 06 July 2015.**

We point out to the fact that PSR of MO 3&4 has a total of over 7,000 pages of dense text of technical documentation. ÚJD SR in the new proceeding will have to **moreover very rigorously follow the reasoning of both above mentioned judgements** and eliminate from such extensive documentation the sensitive information that is necessary to exclude from the documentation

provided according to enabling provisions of the Act No. 541/2004 Coll. 1. as amended, according to Directive 2003/4/EC, and according to the Aarhus Convention. Such detailed examination of the documentation and eliminating sensitive information would require personnel, technically and time consuming work, which objectively cannot be handled within the time periods according to the Act No. 211/2000 Coll.1. as amended.

For these reasons we urge you to send your written statement on the following questions:

1. Do you continue to insist on your initial request to disclose the entire PSR MO 3&4 after the exclusion of sensitive information according to the Court instructions contained in the grounds of the judgement?
2. Given the extent of the documentation it will be necessary to reimburse the material expenses of copying of the approx. 7,000 pages. The ÚJD SR is forced to request these costs to be covered by you, since they exceed the costs of normal copying and technical and administrative works. Are you willing to bear these costs?
3. Do you propose to disclose a reduced content of PSR MO 3&4 (after respecting exclusion of sensitive information) for example, only some chapters? If yes, please specify.

Due to the administrative, technical and legal demands of such process, non-standard extent of the required documentation in respect of the time periods pursuant to the Act No. 211/2000 Coll. 1., we ask you to send your position on the above questions **by 05 August 2015**.

Also due to the fact that PSR MO 3&4 was a core document for permitting change in construction before completion, which was finally closed based on the second remonstration procedure on ÚJD SR Decision No. 291/2014, as well as due to the **adjudication of the Constitutional Court of SR No. k. III.ÚS 304/2014-88 issued in another (but factually related) proceeding and due to the authorship of PSR MO 3&4 by SE, a. s.**, ÚJD SR is convinced that Slovenské elektrárne, a. s. should be considered a party to the proceedings, as they meet the conditions for being a party to the proceeding according to Section 14 par. 1 of the Administrative Code. A decision in this proceeding (by disclosure of PSR MO 3&4) **may directly affect its rights, legally protected interests or obligations**. For this reason ÚJD SR includes Slovenské elektrárne, a. s. into this procedure as a party to the proceeding and at the same time invites it to send its position on initiating a new appellate procedure within the same deadline, by **05 August 2015**.

Yours truly,

Marta Žiaková
Chairperson of ÚJD SR

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