Dear Mr Attorney General,
JUDr. Jaromír Čižnár
General Prosecutor's Office of the Slovak Republic
Štúrova 2
812 85 Bratislava

PETITION for filing a protest of the Attorney General of the Slovak Republic against the decision of the Nuclear Regulatory Authority of the Slovak Republic No. 761/2013 dated 21.08.2013, which excludes the suspensory effect of the appeal filed.

Under the provisions of section 31 et seq. in conjunction with the provisions of section 22 et seq. and the provisions of section 48 par. 1 of the Act No. 153/2001 Coll. on Prosecution, we file this petition for filing the Attorney General's protest against the decision of the Nuclear Regulatory Authority of the Slovak Republic.

On 21.08.2013 the Nuclear Regulatory Authority of the Slovak Republic (hereinafter referred to as the "NRA") issued its Decision No. 761/2013, which under the sect. 55 par. 2 of the Act No. 71/1967 Coll. on Administrative Procedure (Administrative Procedure Code) **excluded the suspensory effect** of the appeal filed by the association Greenpeace Slovakia dated 14.11.2008 against the Decision of the NRA No. 246/2008 dated 14.08.2008. This decision was issued by the NRA in response to the Judgement of the Supreme Court of the Slovak Republic File No. 5Sžp/21/2012 dated 27.06.2013. This judgement made by the SC SR upheld the action of the association Greenpeace Slovakia so that it changed the judgement made by the Regional Court in Bratislava No. 4S/125/2009 dated 11.05.2012, **annulled** the Decision of the NRA No. 79/2009 dated 28.04.2009 and **returned the case** to the NRA for further proceedings. It was the judgement of the NRA refusing the appeal filed by the association Greenpeace Slovakia dated 14.11.2008 against the first instance decision of the NRA No. 246/2008 dated 14.08.2008.

The SC SR in this judgement ordered the NRA to rehear the case (i.e. the appeal of the association Greenpeace Slovakia dated 14.11.2008) and adjudicate on the case in attendance of the plaintiff, and the NRA is required to consider all relevant objections of the parties involved in the administrative proceedings. The NRA shall adjudicate so that its proceeding and decision comply with the provisions of sect.s 3, 4 and 47 of the Administrative Procedure Code, and shall in details justify its opinion on the objections raised (p. 14 of the SC SR judgement).

The NRA responded as follows:

- on 21.08.2013 it announced recommencement of the appeal proceeding against the decision on permission to change construction before completion,
- on 21.08.2013 it issued the objected Decision No. 761/2013 on exclusion of suspensory effect of the appeal filed by the association Greenpeace Slovakia dated 14.11.2008.

By this petition we object the NRA Decision No. 761/2013 excluding the suspensory effect of the appeal filed by the association Greenpeace Slovakia, because this decision is in contradiction with statutory provisions of sect. 55 par. 2 of the Administrative Procedure Code.

I.

Under the provision of sect. 55 par. 1 of the Administrative Procedure Code, a timely filed appeal (remonstrance) has suspensory effect, unless a particular act stipulates otherwise. In the case no

particular act (Construction Act No. 50/1976 Coll., or Atomic Energy Act No. 541/2001 Coll.) contains a provision which would exclude suspensory effect of the remonstrance filed against the NRA decision.

Under the provision of sect. 55 par. 2 of the Administrative Procedure Code „*if an **urgent public interest** requires so or if there is a **risk** that by means of suspended decision execution a party to the case or anyone else will suffer an **irreplaceable harm**, the administrative body **may** exclude suspensory effect, the urgency must be duly justified*".

The abovementioned provision implies that exclusion of suspensory effect of a timely filed appeal / remonstrance is permitted by the legislature only in exceptional cases, while at least one of the following conditions explicitly mentioned must be met:

- **an urgent public interest requires so** or
- **there is a risk** that by means of suspended decision execution a party to the case or anyone else will **suffer** an **irreplaceable harm**.

The NRA justified the objected decision by an alleged fulfilment of both the conditions. We believe that in the case none of the conditions was met.

At first we note that we filed the remonstrance on 14.11.2008, and the NRA president rejected this remonstrance and confirmed the NRA first instance decision No. 246/2008 dated 14.08.2008. Thus it is evident that at the time the NRA president proceeded and adjudicated on the remonstrance (by the decision dated 28.04.2009), while – although she adjudicated more than 5 months later – she did not make a decision to exclude suspensory effect of the remonstrance filed by the association Greenpeace Slovakia. In other words – according to the NRA, in the 2008 - 2009 proceedings, **there were no grounds** to exclude the remonstrance suspensory effect.

Nevertheless – almost **five years** after filing the remonstrance by the association Greenpeace Slovakia, the NRA finds that there is a particular fact that requires exclusion of the remonstrance filed by the association Greenpeace. The fact that the NRA decides on the necessity to exclude suspensory effect of the remonstrance filed by the association Greenpeace Slovakia 5 years later questions the relevance of the reasons mentioned in the objected decision. Moreover, in this relation, another important fact is that the association Greenpeace Slovakia in no way caused the need to take such a step, but on the contrary it was caused by the NRA itself since in 2009 it issued an **unlawful decision**, which had to be cancelled by the Supreme Court of the Slovak Republic.

II. Urgent public interest

II.1

The objected NRA decision reads: "*By the Slovak government resolution No. 29/2006 dated 11.01.2006 the Government approved the document Draft Energy Policy of the Slovak Republic. By the Slovak government resolution No. 738/2008 dated 15.10.2008 the Government approved the document Draft Energy Security Strategy of the Slovak Republic. Section 6 par. 6.7.8 (Production Base Development) of the Draft Energy Security Strategy of the Slovak Republic reads that "a prerequisite for ensuring sufficient electricity in the long-term prospects is the completion of units 3 and 4 of the nuclear power plant in Mochovce*"..."

We state as follows:

Both documents approved by the Government, that the NRA decision referred to, mention the completion of units 3 and 4 of the Mochovce NPP, but - as the NRA itself states in quotation, this statement relates to the "***long-term perspective***" of the Slovak energy development (development plan for a period of 20 - 25 years). The phrase "long-term perspective" definitely does not express such a degree of urgent intensity which was assumed by the legislature under the term "urgent public interest". On the contrary, it is an expression of prospective solutions in an unspecified future.

The document "Energy Policy of the Slovak Republic" (this material is published in full on the website of the Ministry of Economy SR) states: "The e*nergy policy is a strategic document which defines the* ***basic the objectives and frameworks*** *of energy development in the long-term perspective... The energy policy is developed in accordance with the Act No. 656/2004 Coll. on Energy and amendment, to the certain acts for a period of 25 years. The Ministry of Economy SR shall* ***update*** *the energy policy* ***at least every five years****, taking into account changes in factors with a direct or indirect impact on energy policy.*"

The NRA's argumentation in the context of "urgent public interest" is also misleading with regard to reference to the Energy Security Strategy of the Slovak Republic approved by the Slovak government. Par. 3.2. of the document, which specifies the "objectives and priorities of the Energy security strategy of the Slovak Republic" does not mention the completion of units 3 and 4 in Mochovce NPP at all. The NRA probably realized this fact and therefore it argues in the decision using a quotation of par. 6.7.8 (Production base development). However, here again the NRA's argumentation is wrong, since this section expressly reads that "*a prerequisite for ensuring sufficient electricity in the long-term prospects is the completion of units 3 and 4 of the nuclear power plant in Mochovce*". Again, it is a "long-term perspective" – not an urgent public interest.

Generally, we consider the argumentation of the Slovak NRA with "long-term perspective" of the Draft Energy Policy of the Slovak Republic (2006) and the Draft Energy Security Strategy (2008) in the context of an "urgent public interest" **misleading and contrary to the real situation**. Both documents represent a broader framework of the planned development of Slovak energy, not a fixed, immovable and fully workable plan. The past proves that several projects mentioned in these documents are not implemented at all, or implemented otherwise than described in these government-approved documents. Finally, this fact is also confirmed by the current Energy Policy of the Slovak Republic stating that the MoE shall **update** the energy policy **at least every five years**, taking into account changes in factors with a direct or indirect impact on energy policy.

II.2

The objected NRA decision further reads: "*After the early* decommissioning *of the V1 units of the JB NPP, the strategic priorities of the Slovak energy development should include provision of at least 50 % share of electric power produced by NPPs, if the principles of electric power production at the lowest costs and in the long-term creation of sustainable development conditions are to be observed*..."

We state as follows:

The Slovak Republic has undertaken to decommission the V1 units in Jaslovské Bohunice NPP under the EU accession agreements. The Slovak government decided on decommissioning the two units in the Government Resolution No. 801/1999 dated 14.09.1999. The first unit was shut down by the end of 2006, the second by the end of 2008.

The argumentation using the Slovak energy development strategic priority in the field of provision of at least 50 % share of electric power produced by NPPs is misleading in the case of the objected NRA decision No. 761/2013. The **NRA concealed the fact that this strategic priority of energy development in Slovakia had already been achieved, even without the completion of units 3 and 4 of the Mochovce NPP**.

According to official data published by SEPS a.s. (Slovak Electricity Transmission System, SEPS a.s. is an independent legal entity, which fulfils the role of a transmission system operator in Slovakia) in its Annual Report 2012, in **2012** the territory of the Slovak Republic produced exactly 28.393 GWh of electric power. More than a half was provided by the NPPs producing nearly **54 %**.
In addition, these data are confirmed by the "Report on Results of Electricity Supply Security Monitoring" published by the Ministry of Economy of the Slovak Republic in July 2013. The report concludes that the 2012 share of NPPs in production of electric power in Slovakia was even at the level of 54.6 %.

With reference to the above mentioned, the NRA states in the objected decision: *"According to the Draft Energy Security Strategy passage quoted, as well as other parts of the mentioned documents, it is clear that continuation in completion of units 3 and 4 in Mochovce NPP is in the public interest."*

This NRA's statement is an unacceptable, misleading and wanton interpretation of both documents approved by the Government. In no way the quoted documents imply what the NRA says, that completion of units 3 and 4 in Mochovce NPP is an urgent public interest. Therefore this NRA argument does not meet the statutory condition necessary to exclude the suspensory effect of the appeal.

II.3

The NRA further states: **"***The completion of units 3 and 4 of Mochovce NPP will result in restoration of self-sufficiency of the Slovak Republic in the field of electric power production, the SR will become an exporter of electric power and it is reasonable to assume a positive impact on electric power prices – lower costs for end consumers*."

We state as follows:

The NRA mentions just wanton and unsubstantiated assumptions; moreover, this is implied by the used phrase "*a reasonable assumption"*. It is only an NRA presumption which is not confirmed by any relevant documents. Identification of an urgent public interest must be based on clear and incontestable facts, not on an authority's "assumption".

In this context we point out that the NRA is not a competent national authority to review the issue of self-sufficiency of the Slovak Republic in the field of electric power production, export or pricing in the field of electricity prices for end consumers. We believe that in this part of the reasoning (no relevant national document was quoted) the NRA far exceeded its statutory responsibilities in particular under the Act No. 575/2001 Coll. on the organization of governmental activities and central state administration (§ 29) , or under the Act No. 541/2004 Coll. the Atomic Act (§ 4).

In addition, this NRA statement does not reflect the valid facts, on the contrary – it is in direct contradiction with them.

According to official data published by SEPS a.s. in its Annual Report 2012, in 2012 the total share of electric power import to Slovakia reached the level of 1.4%. Even without the completion of the

Mochovce NPP the overall balance of electricity imports from abroad has a long-term downward trend – while in 2011 we had to import 727 GWh of electricity, in 2012 it reduced to 393 GWh of electricity, which is a negligible figure with regard to the common cross-border flows of electric power and which also has to be seen in the context:

a) of reduction of total electricity consumption in the Slovak Republic (in 2012 electricity consumption in Slovakia decreased by 76 GWh)
b) and in the context of creation of other non-nuclear energy sources.

This trend is confirmed by the figures of the first half of 2013. **In the first 6 months of 2013 Slovakia's export of electric power exceeded its import by 449 GWh**. That means we have become exporters, with exports reaching the level of approximately 3.11% (Source: SEPS, daily and monthly indicators of operation).

We believe that the NRA argumentation in this part of the decision is misleading and in no way respects the reality of Slovak energy. As the SEPS data prove, currently the completion of Mochovce NPP is no more necessary for a balanced production and consumption of electricity in Slovakia.

The Slovak Republic is not in any way confronted with a lack of capacities to produce electric power, or with a lack of electric power as such. For this reason, we believe that there is no relevant reason to argue in the case of completion of units 3 and 4 in Mochovce NPS using "urgency" of continuation in completion with an emphasis on ensuring energy security in the field of electricity production.

In this context we also note that proper decision-making in the present case on the filed appeal without exclusion of its suspensory effect does not compromise the overal construction and completion of Mochovce NPP. It is only a temporary suspension of works utnil the NRA finally decides on the filed appeal. Such concerns expressed by the NRA would only be reasonable provided that for the final decision it would be significant what level of completion the construction is at. However, this would also mean that the NRA unreasonably, discriminatorily and contrary to the constitution favours the interests of one party over the rights and interests of other parties.

II.4

The NRA also notes that *"The stability of the electricity transmission system is also not negligible, since it is of vital importance for the economy of the Slovak Republic."*

We state as follows:

The NRA is not a competent national authority to assess the impact of the Mochovce NPP completion on the stability of the electricity transmission system in Slovakia. Again, it is just another unsubstantiated assumption expressed by the NRA, as it did not support this assumption with any relevant document or other evidence (e.g. documents issued by SEPS a.s.). Neither did this NRA statement in any way prove the existence of urgent public interest in exclusion of the suspensory effect of the appeal filed.

Commenting on this NRA statement, we only note that based on the current documents issued by SEPS a.s. it cannot be concluded that the stability of the electricity transmission system in Slovakia is related to the completion of units 3 and 4 in Mochovce NPP. The 2012 Annual Report issued by SEPS a.s. implies that:

- during 2012 the operation of the transmission system was fluent and reliable;
- in 2012, the electricity system in Slovakia operated as a part of the interconnected European system ENTSO-E. All crucial criteria and recommendations of ENTSO-E in

primary and secondary regulations, in voltage control and balance regulation of cross-border transmissions were met;

even without the completion of units 3 and 4 in Mochovce NPP.

II.5

The NRA states that **"***The Government in its Resolution No. 8/2008 dated 21.01.2008 approved the document Strategy of the back-end of nuclear energy in the Slovak Republic. Among other issues, the document deals with funding the decommissioning of NPPs, their removal and safe disposal of radioactive waste including spent nuclear fuel. The strategy envisages funding the mentioned activities including contributions to the National Nuclear Fund from operations of units 3 and 4 in Mochovce NPP. Undoubtedly it is a public interest to ensure a safe removal of nuclear devices at the end of their working life, as well as a safe disposal of all radioactive waste. Without proper completion and operation of units 3 and 4 in Mochovce NPP the Strategy of the back-end of nuclear energy (especially with emphasis on funding) would not be duly observed and thus the public interest would be jeopardized."*

We state as follows:

The NRA argumentation in this section of substantiation is intentional and misleading.

The quoted resolution of the Slovak government is dated January 2008. The same year the NRA decided by means of the first-instance Decision No. 246/2008 on a change of construction of units 3 and 4 of the Mochovce NPP before completion (i.e. the decision objected by the complaint filed by the association Greenpeace Slovakia and which is to be held). One of the **mandatory requirements** of the mentioned decision is the term of construction completion:
"6. ***The construction shall be completed by 31.12.2013***"

However, the objected NRA decision implies that this mandatory requirement will not be observed now, since according to the current statement of the party SE, a.s. the completion of unit 3 is developed in total up to **69 % (!!)** and of unit 4 only up to **53 % (!!)**. In other words, the construction is already significantly delayed and according to SE, a.s. the completion of unit 3 is assumed in 2014 and of unit 4 in 2015. However, such a significant delay was not foreseen by the Government resolution dated January 2008, thus it is clear that this resolution is either again only "prospective" or simply inapplicable with regard to **completely different current facts**.

Thus also at this point the NRA did not submit an argument which would prove an urgent public interest in the NRA decision on the filed appeal for exclusion of its suspensory effect.

Commenting on the mentioned NRA argument, we further note that the National Nuclear Fund of the Slovak Republic was established by Act No. 238/2006 Coll. Resources of the National Nuclear Fund of the Slovak Republic are legally the funds paid as:

a. +contributions from holders of licenses to operate nuclear facilities that produce electricity, for every megawatt of installed electrical capacity and the selling price of the electricity produced in nuclear facilities (hereinafter referred to as "mandatory contributions")
b. a levy collected by the transmission and distribution system operators, intended to cover the debt incurred in the development of resources to cover the back-end costs of nuclear energy, incurred during the previous operation of nuclear facilities to produce electricity , in the amount of debt generated to the effective date of this Act (hereinafter referred to

as the "levy"); this levy is included in the price of electricity delivered to end consumers of electricity,

c. fines imposed by the authority pursuant to a special regulation,
d. interests (income) from deposits to the nuclear fund accounts,
e. voluntary contributions from natural persons and legal entities,
f. grants and contributions from EU funds and other international organizations, financial institutions and funds to cover the back-end costs of nuclear energy,
g. subsidies from the state budget intended to cover the costs of treatment of nuclear materials or radioactive waste whose originator is unknown; these subsidies are provided in full unavoidable cost of treatment and disposal of nuclear materials and radioactive waste whose originator is unknown, these subsidies from the state budget are provided under the State Budget Act; if subsequently an originator of these materials and wastes is found, special legislation shall be followed,
h. subsidies from the state budget for other reasons than those mentioned in g) based on a decision of the Government to provide them; subsidies from the state budget are provided under the State Budget Act,
i. income from financial operations under section 9 par. 2 subpar. b),
j. other resources, if so stipulated by a special regulation or an international agreement.

Based on the above it is clear that funding the decommissioning of NPPs, their removal and safe disposal of radioactive waste including spent fuel is **multi-source** by operation of law and does not depend on completion of units 3 and 4 in Mochovce NPP. The subparagraph (a) clearly defines that fees are only collected from operators of existing NPPs, specifically for „*every megawatt of installed electric capacity and from the selling price of electricity produced by the nuclear facility*". The Act also treated funding the historical debt of the Slovak NNF, specifically in the subparagraph (b).

The system of collection of fees to the Slovak NNF cannot be and is not dependent on future nuclear sources, but, on the contrary, it must be and it is adjusted so that every source „saves" sources for future decommissioning already during its working life on its own sub-account of the Slovak NNF. If it were true what the NRA says, and funding the back-end of the fuel cycle would depend on the completion of units 3 and 4 in Mochovce NPP, it would mean that SE a.s. currently as the only operator of reactors in Slovakia, transfers insufficient amounts of financial resources to the Slovak NNF, and thus jeopardize the decommissioning of NPPs in Slovakia.

II.6

The NRA further says: "*Currently the construction of units 3 and 4 in Mochovce NPP creates 3 650 direct jobs, 4 000 subcontracting jobs and 1 750 jobs induced by the need of employees directly or indirectly employed in the project. Suspension or interruption of construction works would have an extremely negative impact on the social situation in the close region as well as, with regard to the type of jobs within the NPP construction, on employment in some professional fields at national level in Slovakia. Contractors would immediately have to dismiss employees and terminate contracts with subcontractors – free-lancers; the existing multiplier effect would stop*."

We state as follows:

This NRA statement is intentional and misleading. The NRA is not a competent authority to assess the impact of Mochovce NPP completion on employment, has no competence to assess possible social impacts of potential suspension or termination of works. We point out that the NRA decision on the

appeal filed by the association Greenpeace Slovakia does not mean a complete termination of works, but it is just a suspension of construction works during NRA decision-making. Therefore it is just the NRA and not anyone else who can influence the duration of proceeding and decision-making on the appeal filed. Moreover, the NRA did not base its statements on any relevant arguments; again these are just subjective NRA assumptions and ideas. The used statements may be applied to any industrial activity implemented in Slovakia.

In this context we remind that the potential termination of completion works would be an indirect consequence of NRA unlawful conduct, found by the Supreme Court of the Slovak Republic in the above quoted judgement.

Similarly, in the context of this NRA argument we remind the recently published information that the problems with completion of Mochovce NPP threaten employment due to possible problems with inability to pay orders. This information leaked to the public before the Supreme Court pronounced its judgement in this case, so it can not be excluded that jobs would also be lost without the SC judgment pronouncement and the subsequent NRA decision (on exclusion of the suspensory effect)

II.7

The NRA further says that: **„***The completion and commissioning of unit 3 is now assessed in 2014 and of unit 4 in 2015. These dates are already in delay compared to the previous plan and have a negative impact on public finance. In case of further delays in the construction completion the Slovak Republic would*

a) *as a minority owner of the company SE a.s. lose dividends in amount of several tens of millions of Euros a year,*
b) *lose the tax on corporate income, contributions to Social Insurance and income to the National Nuclear Fund for purposes of completion of permanent storage of burned nuclear fuel and future decommissioning of nuclear units - in the stage of construction (until 2015) in amount of approx EUR 68.5 million a year and after commissioning in amount of approx EUR 109 million a years; projected income from taxes was reduced mainly by the outage of planned production*."

We state as follows:

In this context again the NRA provides unsubstantiated subjective considerations which are, in addition, misleading and thus intentional. First and foremost, it is not clear by means of what and how the Slovak Republic should lose the income mentioned above if the NRA duly proceeded on the appeal filed by the association Greenpeace Slovakia.

Payment of dividends as well as income to the state budget resulting from operations of units 3 and 4 in Mochovce NPP are influenced by so many interdependent factors that the NRA statement of their loss by means of non-exclusion of the suspensory effect of the appeal filed is at the level of a weather forecast for a period of several months in advance. In addition – the company SE a.s. itself states that currently the construction implementation is in a significant delay and the current deadlines (2014, respectively 2015 – without specifying a relevant date) are only ***assumed***.

To get the things clearer, below is the construction chronology of units 3 and 4 in Mochovce NPP, which is from the beginning marked by extending the term of completion and commissioning of the mentioned units:

1980 - Landscape planning (the original plan envisaged the completion at the end of the 1980s)
1986 - Building permit - actual start of construction (expected completion date set for April 1996)
1992 - Halting of construction and assembly works
1993 - Beginning of conservation works
1997 - Communication of the Regional Office in Nitra, environmental dep. on the building permit (expected completion date set for December 2005)
2004 - Decision of the Regional Office in Nitra – change of completion date (expected completion date set for December 2011).
2007 - Communication of the decision on completion (expected unit 3 and unit 4 completion dates set for 2012, respectively 2013).
2008 - The NRA decision under the construction and atomic acts (expected completion date set in the mandatory requirement for 31.12.2013).
2013 - according to the company SE a.s., the completion date is **assumed** in 2014, respectively 2015 (without a defined date)

All historical changes of construction, extensions of completion and commissioning dates were successfully managed by the investor, which is proved by the on-going completion works in Mochovce NPP. If the historical changes of dates and even a complete suspension of works in the early 1990s did not pose a threat to the urgent public interest of the Slovak Republic or of an irreparable damage to the investor, we do not understand why now the NRA, when it comes to a possible temporary suspension of works for a period of max several months, argues with the urgency of completion and the risk of irreparable damage occurrence.

In relation to the NRA argument that "*in case of further delays in the construction completion the Slovak Republic as a minority owner of the company SE a.s. would lose dividends in amount of several tens of millions of Euros a year",* we conclude that this is a grossly misleading argument. Based on the statement by the Slovak Minister of Economy Tomáš Malatinský, dated 31.01.2013, the State, as a 34-percent shareholder may now expect payments of SE a.s. dividends no earlier than in 2018 (originally the SE a.s. shareholders agreed to non-payment of dividends "only" by the end of 2015).

In this situation (several years of existing non-payment of dividends to the State) argumentation based on a potential loss resulting from non-payment of dividends to the State is intentional and misleading.

III. Other possible negative impacts

III.1

The NRA mentions other negative impacts such as "*a) serious negative impact on the reputation of the Slovak Republic: in particular on the business environment and its international evaluation*,"

We state as follows:

This argument is more than absurd. It is not clear what negative impact on reputation of the SR, on the business environment and its international evaluation the proper proceedings on an appeal filed by one of the parties may have.

On the contrary, the NRA is obliged to finally start respecting the law, because its unlawful conduct and decision-making and a gross disregard of national legislation as well as international

commitments of the Slovak Republic under international conventions have long been detrimental to the reputation of Slovakia as the rule of law. In terms of Article 2 Sect. 2 Constitution of the Slovak Republic the state authorities may only act on the basis of the Constitution, within its limits and **to the extent and in the way stipulated by law**. The NRA systematically breaches the basic principle of operation of state bodies. The fact that the NRA acted and decided unlawfully and in contradiction with international conventions was also confirmed by the decision of the Supreme Court of the Slovak Republic (as mentioned above). The SC SR held that the NRA violated the rights of the party guaranteed by law and the Aarhus Convention and decided that as a consequence of the unlawful conduct and decision by the NRA it is necessary to reiterate the legal proceedings that ended more than four years ago.

Commenting on this, we point out that under the provision of sect. 55 par. 2 of the Administrative Procedure Code pr under any other legal provision no "other possible negative impacts" may justify exclusion of suspension of the filed appeal enforceability. In other words, existence of "other possible negative impacts" may not justify exclusion of the suspensory effect of a filed appeal.

In this context we further point out that concerning the NRA conduct in the case of permitting units 3 and 4 in Mochovce NPP in the past also the international Aarhus Convention Compliance Committee the UN concluded that the Slovak Republic through the NRA failed to fulfill its international obligations relating to public participation in the permitting procedures arising from the so-called Aarhus Convention. In spite of the fact that the findings of the Aarhus Committee have been confirmed by all the member states that have signed the Aarhus Convention (including the EU and all its member states), the Slovak Republic through the NRA still disregards these findings and does not respect what among other things raised criticism at the level of meeting of all the member states that accessed to the Aarhus Convention. This ignorant attitude of the NRA has resulted in further action of the Aarhus Committee against the Slovak Republic which again will harm the reputation of the Slovak Republic with regard to the rule of law concerning respect for human rights, including the right of public participation in permitting procedures and access to information.

III.2

The NRA in relation to "other possible negative impacts" mentions *"b) a serious negative impact on attracting foreign investments to Slovakia,"*

We state as follows:

Again we say that "other possible negative impacts" are not a lawful reason to exclude the suspensory effect of an appeal.

In addition, these are again subjective and unsubstantiated assumptions of the NRA which, moreover, do not relate to the action in the case in any way. The NRA is not a competent authority to assess severity of potential impacts in case of temporary suspension of Mochovce NPP completion on attracting other foreign investments and the way in which the NRA mentions this statement is made without any proof for their assumptions.

Again we point out that respecting the compliance with current legislation and independent court decisions by the public authorities cannot have a negative impact on attracting foreign investment, on the contrary - it can testify that the Slovak Republic adheres to the rule of law.

III.3

In relation to other possible negative impacts the NRA finally mentions: "*c) a negative impact on the nuclear industry and on the EU support of nuclear energy*""

We state as follows:

This argument is absolutely intentional, unsubstantiated and in the context of the case completely irrelevant.

Here again the NRA far exceedes its competences in an unacceptable way. The NRA has to be an independent state body and no law or competences imply that it has to or even may express itself so clearly in favour of the nuclear industry and, moreover, politically speculate of a possible support of nuclear energy by the EU.

This NRA argument clearly deviates from the European legislation which prescribes that national regulatory authorities, which the NRA is, have to be independent. Euratom Nuclear Safety Directive 71/2009/Euratom art. 5(2) reads: "Member States shall ensure that the competent regulatory authority (NRA SR in this case) is functionally separate from any other body or organization concerned with the promotion or utilization of nuclear energy, including electricity production, to ensure effective independence from undue influencing its regulatory decision-making."

According to all information available by the EU, the EU and its individual bodies and organizations have no relevant and binding pro-nuclear or anti-nuclear attitude. The EU does not promote nuclear energy because in this field it respects "national sovereignty" of the EU member states and their right to independently decide in the matter of the so-called energy mix.

IV. Irreparable damage to the participant, or third parties

IV.1

The NRA states: „*The party – SE a.s. expresses its potential financial and non-financial losses which can be summarized as follows:*

a) reduction of book and market values of the company which could also result in deterioration of borrowing options,
b) possible rating downgrade, pre-maturity of payments of certain loans,
c) *contractual fines and/or compensations for loss of profit which the company will have to pay to contractors in case of suspension or termination of the construction*."

We state as follows:

In the context of the provision of section 55 par. 2 of the Administrative Procedure Code it is necessary to clearly specify and justify a potential irreparable damage to the participant. The mentioned statement misses a sufficient justification.

In particular, the NRA uncritically assumed the vague, unspecified and unsubstantiated assumptions of the company SE a.s., including that the investor "could suffer" unspecified financial and non-financial losses. The wording itself "***could suffer***" is in contradiction with the legally presumed term "***will suffer***" (section 55 paragraph 2 of the Administrative Code). The law does not associate consequences (exclusion of the suspensory effect of an appeal) with the potential development of an irreparable damage, but with the actual irreparable damage. However, the company SE a.s. only indicated a risk of *a certain* damage.

The above mentioned general calculation of a potential damage does not indicate such a damage which could be indicated as „***irreparable***“. However, for meeting the condition of a decision to exclude the suspensory effect of an appeal, the Administrative Code requires not just any damage, but a qualified damage and up to the level of highest intensity – thus it must be an **irreparable damage**.

The general and vague statements by the NRA, in addition, are not such that they could actually be incurred just as a result of non-exclusion of the suspensory effect of the appeal filed. Again we point out – a potential suspension due to the action and valid decision by the NRA in this case should not take longer **than several months**. Speaking in this relation of an irreparable damage is absurd, even comic. The investor, too, admits that currently he is already in a delay of several years (instead of 2013, the completion is assumed by 2015), while this delay is probably not final yet (the completion date is currently “**assumed**”). Any negative changes for the investor or for the Slovak Republic thus may have and have its origin in the consequences of NRA´s unlawful conduct and decision-making and in consequence of deficiencies related to the construction itself. **However, lawful conducts and decision-making of NRA would in no way result in any of the above stated negative impacts.**

The NRA has not specified in detail how and why the book and market values of the company should be reduced, how and why the rating would be downgraded, how and why SE a.s. would have to pay contractual fines or compensations of loss of profit. **This is speculation by SE a.s. and it is astonishing that the NRA accepts such speculations and includes then in a substantiation of its decision**.

IV.2

The NRA further states: “*In case of suspension of the construction the party (SE a.s.) would incur the following additional costs of:*

a) demobilization,
b) protection of delivered and installed facilities,
c) conservation of selected facilities (in terms of the Atomic Act) and regular evaluation of conditions of selected facilities,
d) increased costs of conservation works and regular evaluation of conditions (in case of selected facilities in terms of the Atomic Act it is an amount of EUR 250,000 per month),
e) mobilization of contractors, specifically the activities related to the recommencement of construction works in case of continuation,
f) costs of dismantling and decommissioning of an uncompleted power plant, demolition and removal of construction parts and restoration of the original state of the land,
g) financial costs related to contractual obligations of contractors, including extended warranties.

The above mentioned additional costs would, according to the assessment by the party – SE a.s., present more than EUR 12.5 million per month.”

We state as follows:

Again, these are absurd, vague, unsubstantiated, general assumptions by SE a.s., uncritically adopted by the NRA.

These unspecified and made up statements are in no way included in the condition „***the party or anyone else will suffer an irreparable damage***“. E.g., „b) b) protection of delivered and installed facilities“ is no irreparable damage incurred by the party, but a standard protection of one’s property, carried out by SE a.s. under any conditions, on weekdays as well as weekends or holidays, whether the construction develops according to the plan or the completion is in delay.

Similarly absurd is the argumentation in f) (by mistake indicated as a second "e" in the NRA decision, it should be "f" instead) "costs of dismantling and decommissioning of an uncompleted power plant, demolition and removal of construction parts and restoration of the original state of the land". In case of temporary suspension of construction, there is no reason to consider demolition of buildings and restoration of land into its original state and calculate costs of such activities.

In this context, the statement of additional costs of more than EUR 12.5 million per months is absurd and obviously it is a made-up and unsubstantiated value.

IV.3

The NRA further states that the „*most important risks and irreparable damages in terms of recommencement of construction works are*":

A. *A high risk of partial or total decomposition of the supply chain*
B. *A risk of losing employees with special qualifications and skills*

We state as follows:

Again we point out the wording of section 55 par. 2 of the Administrative Procedure Code, which does not presuppose a "risk", but actual occurrence of an irreparable damage, which has not been proved by the NRA in this statement. Moreover – in the context of the above mentioned current delay of several years in construction of units 3 and 4 in Mochovce NPP compared to the maximally several months delay of works until a valid decision by the NRA, these statements are absurd and even comic. Suspension of works does not mean an irreparable damage in relation to the supply chain or in relation to the employees with relevant professional qualifications. Again these are such general, vague and made-up statements, that we can only conclude they are not included in the term "irreparable damage" actually suffered by a person. And again we say – suspension may take maximally several months. In relation to the construction of Mochovce NPP which in the past recorded an interruption of more than 15 years during its implementation and currently is in delay of several years, this statement is ridiculous.

V.

The above mentioned clearly suggest that the NRA has not proven any actual existence of an urgent public interest which would substantiate the necessity of a decision on exclusion of the suspensory effect of an appeal. Similarly, the NRA has not proven any actual irreparable damage to be **suffered** by the party or anyone else. The investor SE a.s. says in its statement that currently the construction of units 3 and 4 of Mochovce NPP has already been in a delay (of several years), while currently the completion date has also been only assumed, and thus the negative time delay will probably extend. Moreover, SE a.s. in its statement, adopted by the NRA as substantiation, mentions only general, unsubstantiated and unspecified assumptions of potential damage. No actual *certain* damage to be suffered has been stated and none of the alleged damages has been specified in detail in order to be able to conclude that it is actually a specified irreparable damage. In other words – the NRA decision only mentions a calculation of alleged damages, however, these are just very general assumptions and could be applied for any other construction without any difference noticed by the reader.

Given the uniqueness of the institute of exclusion of the suspensory effect of appeals, it is necessary, however, to substantiate and clearly express the urgent public interest as well as the irreparable damage. The law defines the conditions for such decisions by indeterminate legal

terms, and since this is a clear infringement of the rights of the other parties, it is imperative that these legal concepts are in each case provided with specified, actual content and adequately and convincingly justified. Subjective, unsubstantiated statements of urgent public interest or irreparable damage do not meet the conditions stipulated by law. Exclusion of the suspensory effect of appeal in this relation would be unlawful and would form an unjustified advantage of one party against other parties (the public). Such discriminatory conduct against the parties would be in breach of the legal obligations of administrative bodies (according to Art. 2 Sect. 2 Constitution of the Slovak Republic, but also to the provisions of sections 3. 1, 46 and 47 of the Administrative Code). It would mean an irreparable damage to the party - the association Greenpeace Slovakia - which again would be unable to fully perform its rights as a party.

In this relation the SC SR has noted that the NRA should consider the association Greenpeace Slovakia a party to the administrative procedure and proceed with the association as a party. The Supreme Court, in addition, has bound the NRA to proceed again in the case and consider all relevant objections of the parties, while the final decision has to be dully justified.

The NRA has already affected the rights of the association Greenpeace Slovakia as a party by means of unlawful conduct and decision. Now, by means of an unlawful decision on exclusion of the suspensory effect of the filed appeal, the NRA again proceeds restrictively and in a strictly formalistic way. However, by means of that the NRA does not meet the requirements resulting from the Administrative Procedure Code (Sections 3, 46 and 47, and including 14 – participation in procedure), from the Aarhus Convention (to which the Slovak Republic is bound), and from the Constitution of the Slovak Republic (Art. 2 par. 2). Thus the NRA again unreasonably deprives the party of its right to timely and effectively intervene in a pending procedure (this obligation for the NRA results from the Aarhus Convention, Art. 6 – also noted by the Slovak Supreme Court in its judgement). The fact itself that the NRA starts to proceed with the association Greenpeace Slovakia no earlier than in the stage when more than a half of the construction is completed, is a clear violation of the rights of the association as a party. By means of the unlawful and unjustified exclusion of the suspensory effect of appeal the NRA wants, in this grossly irrelevant way, to limit the actual performance of the rights of the association Greenpeace Slovakia as a party and to prevent the association from performing its right to intervene with the procedure in a stage and manner, when it is actually possible to affect the result. These rights are guaranteed by the Aarhus Convention in Art. 6:

"(*3) The public participation procedures shall include reasonable time-frames for the different phases, allowing sufficient time for informing the public in accordance with paragraph 2 and for the public to prepare and participate effectively in decision-making on the environment.*
*(4**) **Each Party shall provide for early public participation, when all options are still open and public participation can take place effectively.***
...
(6) Each Party shall require the competent public authorities for the purposes of review by the interested public on request, if required by national law, free of charge and as soon as possible, with access to all information relating to the decision-making process outlined in this article, which is available for public participation...
...
*(8) **Each Party shall ensure that the decision-making process takes the results of public participation into due account***."

Exclusion of the suspensory effect of appeal means that the construction is being breached and each day the party the association Greenpeace Slovakia loses its possibilities to perform its rights guaranteed by the Administrative Code and Aarhus Convention.

VI.

Moreover, in view of the above mentioned judgement by the Supreme Court of the Slovak Republic (File No. 5Sžp/21/2012 dated 27.06.2013), the NRA may not further proceed without diregarding this judgement.

The Supreme Court, on page 15 of the judgement, has bound the NRA to carry out an environmental impact assessment of the construction in accordance with the Act No. 24/2006 Coll. on environmental impact assessment (hereinafter also the "EIA Act").

According to section 38 of the EIA Act, decision-making on the proposed activity permission must take into account the contents of the final opinion. "***The authorizing authority shall not, without annexing the final statement to the activity, make a decision in accordance with special regulations on authorization of proposed activity which is under consideration."*** (Section 38 par. 2 EIA Act)

In the context of the judgement by the Supreme Court of the Slovak Republic and in terms of the quoted legal provisions, it is thus necessary to precede the continuation of proceedings on change of construction before completion with an environmental impact assessment. Only after issuance of a final opinion, which is a prerequisite for the authorization procedure itself, the NRA may further proceed with the appeal. Any other action taken by the NRA would mean both the repeated breach of law and gross disregard of the judgement made by the Supreme Court.

For the period of the EIA execution, however, it is necessary to suspend all the construction works. Any other action would be unlawful.

VII.

In view of the above mentioned, we believe that the objected decision made by the Nuclear Regulatory Authority of the Slovak Republic No. 761/2013 dated 21.08.2013 on exclusion of the suspensory effect of the appeal filed by the association Greenpeace Slovakia is unlawful because:

- **it is in contradiction with the provisions of section 55 par. 2 of the Administrative Procedure Code,**
- **it is in contradiction with the provisions of sections 3, 46 and 47 of the Administrative Procedure Code,**
- **in relation to its unlawfulness, it is also in contradiction with the provisions of Art. 2 par. 2 of the Constitution of the Slovak Republic.**

Therefore, we ask the Attorney General of the Slovak Republic to file a protest against the mentioned decision made by the Nuclear Regulatory Authority of the Slovak Republic.

Juraj Rizman
Director and Legal Representative of the civic association Greenpeace Slovakia

Bratislava, 09.09.2013

Attachments:

- Nuclear Regulatory Authority of the Slovak Republic decision No. 761/2013 dated 21.08.2013,
- Supreme Court of the Slovak Republic Judgement File No. 5Sžp/21/2012 dated 27.06.2013.