

**Czech Republic's statement to the matter referred to in the communication
to the Aarhus Convention Compliance Committee concerning compliance
regarding public participation and access to justice
in connection with the extension of operation¹ of Dukovany Nuclear Power
Plant (ACCC/C/2016/143)**

4 July 2017

The communication alleges non-compliance of the issuance of the operating license (or more precisely translated as “operational permit”) for the unit 1 of the Dukovany NPP with article 3 para 1, article 6 paras 2-9 and article 9 para 2 of the Convention. Furthermore, the communication alleges systemic non-compliance resulting from the Czech legislation.

Firstly, it is necessary to determine whether the operating permit falls under the scope of the article 6 of the Convention.

Article 6 para 1(a) states that each Party shall apply the provisions of article 6 with respect to decisions on whether to permit proposed activities listed in annex I. While there is no disputing that nuclear power plants fall under this provision as they are listed in the **annex I para 1**, Dukovany NPP case cannot be considered an activity permit that falls under article 6 para 1(a). This is based on the fact that article 6 para 1(a) covers decisions on whether to permit *proposed* activities. The word “proposed” indicates that the activity has not yet been permitted, constructed and its operation has not yet commenced. **Dukovany NPP has been in operation for over 30 years and therefore cannot be considered a proposed activity, as the activity has been continuously performed since the 1980s.**

Regarding **annex I para 22** which covers changes and extensions of activities listed in the annex I, we believe that the issued operating permit does not fall under this provision either. For this, it is necessary to briefly elaborate on its nature.

As has been stated above, Dukovany NPP has been in operation since 1980s based on previously issued operating permits. The operating permit in question has been issued by the State Office for Nuclear Safety (SONS) in 2016 and has (from material perspective) a character of a decision on renewal of the previous operating permit issued in 2006 and the original operating permit issued in 1986. Even though the permit is formally issued as an independent decision, it is based on previous operating activities and the SONS utilizes information gathered during previous operation and administrative activities. This renewal of the operating permit is analogous to a periodic safety review performed during the lifetime of an NPP, when no changes and alterations of the NPP are made. All the general conditions for the activity remain unchanged – the installation continues to operate for the same purpose and no changes generating possible environmental impact are involved. **This renewal therefore cannot be considered a change or extension of the activity.**

We would also like to clarify the term “reactor's lifetime” used in the communication. The manufacturer's original estimate of all four reactors' 30-year lifetimes was based on the current scientific and technological knowledge at the time (the 1980s) and as such quite

¹ The issue of the case ACCC/C/2016/143 is not *lifetime extension*, as mentioned in ACCC determination of admissibility and the letter from the ACCC Secretariat of 7 of February 2017; the case in question concerns *extension of nuclear power plant's operation*; therefore, we kindly ask ACCC to use this term.

conservative. The current state of the reactor - which is subject to continuous observation of its lifetime - clearly shows that the device can be safely operated beyond the 30-year mark. The factual state of the reactor shall be continuously monitored as required by the legislation². The reactor's lifetime is not affected by the operating permit.

Since article 6 para 1(a) does not apply, it is now necessary to determine whether the operating permit falls under **article 6 para 10** and qualifies as a reconsideration or update of the operating conditions. We do not believe it is so, for the following reasons.

While the decision in question is labelled an operating permit, its nature is closer to a periodic safety review. Dukovany NPP has been in full operation since the 1980s based on operating permit issued every ten years. The main purpose of these operating permits is to perform a complex check of the NPP's operation tied to the periodic safety review of the NPP.

Based on the current legislation the SONS has no other option but to issue the operating permit if all the legal requirements are met. This approach reflects basic principles for administrative decision making (i.e. principle of legality) as enacted by the Czech constitutional law and by the Act No. 500/2004 Coll., Administrative Code. The main purpose of the periodic issuance of the operating permit is for the operator to summarize the information from the performed periodic safety review and from the previous operation of the NPP and to present these to the SONS in a complex way.

It follows that the periodic issuance of the operating permit is a rather formal act. **Whether to use this regulatory technique at all is up to the SONS, because under the Act No. 18/1997 Coll., On Peaceful Utilisation Of Nuclear Energy And Ionizing Radiation (Atomic Act) And On Changes And Amendments Of Other Acts, it is possible to issue the operating permit for an indefinite period** and use other legal tools to achieve the same effect as the issuance of the operating permit, e. g. to require to perform a periodic safety review and to summarize its results by a special decision (not permit) or through inspection mechanism. It is also possible to renew the operating permit (i. e. to change its period of validity) instead of issuing a new one. Moreover, the operator may choose between applying for issuance of the new operation permit or renewal of the existing one and the SONS is bound by the application. However, issuing a new operating permit has been considered a good practice, because it allows to react to the changes in legislation (e. g. referencing new legislation or dealing with new requirements for the decision's reasoning), and also because it has been considered a suitable tool to ensure the transparency towards the operator and the operator's legal certainty.

As for the content of the operating permit, no physical works, reconstructions etc. are included (for this, different permits would be necessary, i. e. permits for reconstructions and changes of nuclear facility in conjunction with permits for changes of the construction as regulated by the Act No. 183/2006 Coll., Building Code). It also does not affect the reactor's lifetime, as has been explained above. All the general conditions for the activity remain unchanged – the installation continues to operate for the same purpose and no changes generating possible environmental impact are involved. **Conditions are set out in the operating permit and they relate to the operation of the NPP, however the purpose of these conditions is to specify the requirements of the nuclear legislation to fit the specific operation they relate to and to clarify them for the operator.** These conditions oblige the operator to perform administrative and formal tasks (e. g. to make changes to the documentation) in order to allow already established processes to continue while ensuring the safety is maintained. Another purpose is to provide the SONS with all relevant information. **We need to stress that these conditions do not necessarily have to be set**

² § 48 and 49 of the Act No. 263/2016 Coll., Atomic Act

out in the operating permit, because the legislation provides other legal tools to achieve the same effect (e. g. continuous inspection performed by a competent authority, agreements with the operator on the exchange of the information, obligatory changes of the documentation in case of any changes in performed activity etc.). As has been already stated, the operating permit and its conditions have been (under the Act No. 18/1997 Coll.) considered a suitable tool to ensure transparency toward the operator and the operator's legal certainty. It is for these reasons that the operating permit from 2016 contains more conditions than the previous one - **these conditions provide an interpretation and specification of the more general legal requirements, basically providing instructions for the operator on how to proceed regarding these requirements.**

It is clear that the operating permit's purpose is not to permit changes in the NPP's operation but to maintain the status quo. If the legal requirements are met, the legislation does not allow the authority issuing the permit discretion when it comes to deciding whether to grant the permit or not. The conditions set out by the permit serve as a specification of legal requirements (dealing with safety review and providing the necessary information to the SONS), a specification not necessary but considered suitable.

Reflecting on the relative redundancy of the operating permit as described above, the **new nuclear legislation of the Czech Republic, Act No. 263/2016 Coll., Atomic Act (which replaced the Act No. 18/1997 Coll. on 1 January 2017), in accordance with internationally applied practices, abandons concept of periodic issuance of operating permits (the operating permits issued under this act shall be issued for an indefinite period) and replaces it with strict requirements on periodic safety reviews, performed every 10 years.** Within these periodic safety reviews, the operator must demonstrate full compliance with legal safety requirements for further operation.

Based on what has been stated above, **we believe that it is clear, that the operating permit in question cannot be considered a reconsideration or an update of the operating conditions and therefore does not fall under article 6 para 10 of the Convention.** It follows that article 6 of the Convention is not applicable to the operating permit in question (since neither para 1 nor para 10 applies) and therefore provisions of article 3 para 1, article 6 paras 2-9 and article 9 para 2 are not applicable either.