

## THE STATE OFFICE FOR NUCLEAR SAFETY

The State Office for Nuclear Safety Senovážné nám. 9, 110 00 Prague 1 Department of Nuclear Safety Ratings

Prague: 2. 2. 2017

č. j.: SÚJB/OSKŘaE/2243/2017

Spis. značka: SÚJB/POD/30/2017/1

Handling department: OHJB

Authorizing official: Milos Nekuža Tel .: 221624273

### DECREE

The State Office for Nuclear Safety (hereinafter "SONS") in the administrative procedure for granting authorization to operate a nuclear facility pursuant to § 9. 1 point. f) of the Act no. 263/2016 Coll., Atomic Act, specifically the second production unit of the nuclear power plant Dukovany, and on the approval documentation for the licensed activity according to § 24 par. 3 of the Atomic Act, specifically the "limits and conditions of safe operation of the A004, Revision no. 4 for the second Dukovany ", initiated pursuant to an application filed by:

company	CEZ
seat	Prague 4, Dukova 2/1444, PSC 14053,
identification number	45274649
registration number SONS	108618

(Hereinafter the "party")

according to § 44 para. 1 of Law no. 500/2004 Coll., Administrative Procedure (hereinafter "spr. R."), Which SONS received on 2. 1. 2017 decided on the basis of § 28 para. 1 spr. r. and in accordance with § 19 para. 1 and § 24 par. 3 of the Atomic Act:

The association South Bohemian Mothers, Z.S.,  
Resident: Kubatova 1240/6, 370 04 Czech Budejovice, ID: 45019703,  
in that case is  
not a party to the administrative proceedings

### REASON:

Party to the proceedings lodged on 2. 1. 2017 under no. j. SONS / POD / 30/2017 for a permit to operate the second production unit of Dukovany and approval of documentation "limits and conditions of safe operation of the A004, Revision no. 4 for the second Dukovany NPP ". The existing permit to operate the same nuclear facility no. j. 55714/2006, dated 8. 12. 2006 according to § 9 par. 1 point. d) of the Act no. 18/1997 Coll., On peaceful utilization of nuclear energy and ionizing radiation (Atomic Act) and amending and supplementing certain acts, as in

force before 1 1st 2017 ends on 10 7th 2017. On the basis of this request was therefore in accordance with § 44 para. 1 spr. r. an administrative procedure for granting this authorization in accordance with § 9. 1 point. f) of the Atomic Act and the approval documentation for the licensed activity within the meaning of § 24 para. 3 of the Atomic Act.

The association South Bohemian Mothers, Z.S., headquartered Kubatova 1240/6, 37004, 370 04 Czech Budejovice, ID: 45019703, (hereinafter the "Association") filed its letter of September 1, 2016, adopted under no. j. SONS / POD / 17881/2016, an application pursuant to § 70 para. 2 of Law no. 114/1990 Coll., On nature and landscape protection to be informed of "all proceedings relating to the construction and extension of nuclear facilities". Locally, this request was limited to the Dukovany nuclear power plant and the territory of any new nuclear facilities. SONS published information about instituted administrative proceedings on its website (<http://www.sujb.cz/aktualne/detail/clanek/zahajeno-rizeni-ohledne-dalsiho-provozu-2-bloku-Dukovany/>) and the information sent and association letter no. j. SONS / PRO / 78/2017 dated 2. 1. 2017 (received on 15. 1. 2017).  
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The association subsequently by letter dated 5. 1. 2017, adopted under no. j. SONS / POD / 417/2017 of 6 first in 2017, asked to participate in the above administrative proceedings, and in his own words "under § 70 par. 2 of Law no. 114/1992 Coll., On nature and landscape protection, as amended by Act no. 218/2004 Coll. ".

SONS first on the basis of an application to participate in the proceedings considered the question whether the application has been made by a person gifted necessary attributes. Consultation of the public register found that the association is validly registered as a legal entity form "association" from 1 1st 2014 under File No. L 555 led by the Regional Court in Czech Budejovice. Under Article. 8 paragraph. 1 statutes of the association are entitled to on behalf of the association outwardly acting "President, Vice President and any other persons authorized by them in writing." As the application to intervene was signed by the chairwoman of the association, Ing. Monica Mach Wittingerova, it can be assumed that the administration was carried out administrative entity personality and its authorized representatives. In terms of content submissions were also fulfilled the requirements of § 37 para. 2 spr. r., since the application was obvious who it is that matter it concerns and what is proposed.

The Association, in its submission seeks to intervene in the proceedings pursuant to paragraph 9. 1 point. f) and § 24 par. 3 of the Atomic Act, on the basis of § 70 para. 2 of Law no. 114/1992 Coll., On nature and landscape protection, as amended by Act no. 218/2004 Coll. This law not only in the wording of Act No. 218/2004 Coll., But in the version of later changes in the provision grants to civic associations (ie. In the Law no. 89/2012 Coll., The Civil Code and related regulations "Society") or its organizational unit, whose main mission according to the statutes is to protect nature and landscape, if it has legal personality, the right to require the competent state authorities to be informed in advance of all planned interventions and commenced administrative proceedings, all of which may affect the interests of nature conservation and landscape protection under this Act; except for proceedings related to the assessment of the environmental impact according to § 3. g) of the Act on the assessment of environmental impacts. This request is valid for one

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year from the date of filing, it can be administered repeatedly. Must be substantively and locally specified. As noted above, such a request to the association SONS handed.

The right to participate in such associations initiated administrative proceedings, however, adjusts to follow the provisions of paragraph 3 of § 70 Act no. 114/1992 Coll. This states that the civic association is authorized under the conditions and in the cases provided for in paragraph 2 to participate in the administrative procedure, provided that they notify their participation in writing within eight days from the day when he was a competent administrative authority announced initiation of proceedings; In this case, the status of a party. Despite the apparent mistake in the provision cited, quote the law is unclear what legislation to intervene in the proceedings, the association relies. As mentioned above, the association announced its participation in the management letter delivered on 6 SONS 1st 2017, ie within eight days from the initiation of administrative proceedings.

Legislation Act no. 114/1992 Coll. You cannot be interpreted and applied in isolation. In addition to the general rules of participation in administrative procedures as set forth in § 27 spr. r., at paragraph 3 of which moreover legislation in Act no. 114/1992 Coll. It continues, it is necessary to take into account also the specific rules of participation in the Atomic Act. This law, although it took effect on 1 1st 2017 is based on legal continuity with the existing legislation, not only in substantive but also with procedural provisions. Its § 19 para. 1, similarly to the first 1st 2017 § 14 par. 1 of Law no. 18/1997 Coll., Explicitly states that "the applicant (a permit) is the only party to the proceedings". Above it is this principle applied in the Atomic Act under § 24 par. 3 and in the procedures for approving the documentation for the licensed activities that are complementary to the authorization procedure, respectively. run under joint management.

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The intention of the legislature was the case with license procedures and documentation for approval by the Atomic Act to establish the exclusive participation in procedures for permit applicants and approval of documentation in a way that is consistent with established practice, but also to existing case law no. 18/1997. Insight into the explanatory report to the relevant provisions of the Atomic Act, that interpretation can be supported, for at pp. 221 and 222 of the report states, among other things. "Paragraph 1 enshrines a fundamental exception compared to the general legislation in the direction of limiting participation in the proceedings solely on the applicant for a permit. Narrowly specific subject of administrative proceedings in the case of activities in the peaceful uses of nuclear energy and ionizing radiation, the technical and professional demands of the operations performed by definition excludes encroachment into the sphere of rights and obligations of persons other than the applicant for a permit. .... Possible effects on the rights and obligations of other entities takes place at the level of the related proceedings, for instance. proceedings under the Building Act, the Water Act, Act no. 114/1992 Coll., On Nature and Landscape Protection Act or the upper Assessment Act impacts on the environment in which the participation of entities concerned so completely in place and is well accepted and welcomed. "And" Special treatment of complicity in the area of administrative law is also a traditional institute and in the past has been repeated court rulings general courts, but the

Constitutional court that such a procedure legislators legitimate and legally and constitutionally conformal (see eg. 2 as 9/2011 - 154 IV. US 1791 / 07). ". The Atomic Act thus regulates intervene in these proceedings so that explicitly defines who is a party to the proceedings, and, conversely, that excludes everyone else according to other treatments. It is therefore excluded associations also intervene on the basis of § 70 par. 3 of Law no. 114/1992 Coll.

In interpreting the relationship between editing Atomic Act and Act no. 114/1992 Coll. Needless come only from the report, but rather a constant jurisprudence identical to respect regulations of the law no. 18/1997. and Act no. 114/1992 Coll. Leaving aside the different developmental steps leading to the aforementioned and already the usual way of interpreting the relationship of the two adjustments to intervene, it is possible to cite the judgment of the Supreme Administrative Court dated 19. 5. 2011, no. j. 2 As 9 / 2011-154. This decision, moreover, expressed a similar factual situation to which it is

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guided by current administrative proceedings - proceedings for permission to operate a nuclear facility, which is already operated under the prior authorization, which ends with a time-limited validity. The Supreme Administrative Court decision clearly stated, with reference to their own and other prejudikaturu that assertion second sentence of § 14 para. 1 of Law no. 18/1997 Coll., The sole party to proceedings for permission to carry out activities under § 9 of the applicant itself, not broken or § 70 of Act No. 114/1992 Coll. The arguments of the absence of other procedures, which would enable interested parties to put forward their interests, which was according to the petitioner allegedly typical for repeat permitting the operation of a nuclear facility, the court responded judgment, it is not a new concept, a new device that could potentially aggravate the condition environmental protection than the current level. However, this type of procedure an authorization procedure for the operation of nuclear facilities, in fact, this is only an extension of authorization for the operation of nuclear facilities, in other words, an extension of the current situation. Such proceedings on the extension of the current situation, however, the court can not constitute an intervention or administrative proceedings, at which "may affect the interests of nature and landscape protection" protected under § 70 of Act No. 114/1992 Coll. The Supreme Administrative Court concurred with the view that the interests of nature and landscape can be really affected only new focus or intervention, or qualitative change of the project; but generally not be affected by the maintenance of the status quo. This view of the Supreme Administrative Court considered that even in relation to the requirements called. Aarhus Convention (no. 124/2004 Coll. M. S.), And the Charter of Fundamental Rights and Freedoms. Similarly held even earlier courts and even the Constitutional Court (Resolution dated 21. 11. 2007, Ref. No.. IV. US 1791-1707), who considered such an adjustment to be constitutional. We can conclude that, according to settled case-based § 14 para. 1 of Law no. 18/1997 Coll., As in force before 1 1st 2017 the exclusive participation of the applicant for a permit, and also due to § 70 par. 3 of Law no. 114/1997 Coll.

Due to the identical wording, legal continuity and generally similar purpose, scope and content modifications to the Atomic Act and no. 18/1997 Coll., As in force before 1 1st 2017 SONS

considers it necessary to relate the conclusions of existing practice and case law on recent legislation and applying § 19 para. 1 and § 24 par. 3 of the Atomic Act in a manner which was not yet applied § 14 para. 1 of Law no. 18/1997. A reverse procedure alluded, among others. On the predictability of the state administration and the principle of legitimate expectations (see § 2 para. 4 spr. R.) And founded the inequality in access to subjects in identical factual circumstances.

V aktuálním administrativním řízení o vydání souhlasu s pokračováním provozu existující jaderné instalace, předchozí autorizaci k provozu č. j. 55714/2006, datované 8. 12. 2006 podle § 9 par. 1 bod d) zákona č. 18/1997 Sb., ve znění před 1. 1. 2017 a k aktualizaci dokumentace pro licenci činnosti, bez jakýchkoli změn, které by mohly ovlivnit zájmy ochrany přírody a krajiny. Proto není v tomto případě možné aplikovat § 70 par. 3 zákona č. 114/1992 Sb., jak je již sama účastnice řízení aplikovala, protože ustanovení obsažená v § 70 par. 2 zákona č. 114/1992 Sb. musí být uplatněna zvláštním uspořádáním podle § 19 par. 1 a § 24 par. 3 zákona o atomové energii.

Pro tyto důvody nelze přiznat účastnický status straně podle § 70 par. 3 zákona č. 114/1992 Sb. a postup při udělení a schválení dokumentace v souladu s atomovým zákonem.

## LEGAL REMEDIES

Proti tomuto rozhodnutí lze podat odvolání u SONS, Úřadu pro bezpečnost jaderné energie, Senovážné náměstí 9, 110 00 Praha 1, do 15 dnů od doručení tohoto rozhodnutí. Odvolání proti tomuto rozhodnutí nemá odkladný účinek.

Official stamp

Distribution:

1. Ing. Monika Machová Wittingerová South Bohemian Mothers Association, Z.S., Kubatova 1240/6,

370 04 Czech Budejovice

second file

For State Office for Nuclear Safety

Signed electronically Milos Nekuža

Authorizing official