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NUCLEAR LIABILITY AND INSURANCE OF NUCLEAR DAMAGE IN THE CZECH REPUBLIC

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ABSTRACT

The paper gives a short introduction to the past and present situation of operation and construction of nuclear power plants in the Czech Republic, including some basic technical data and background information.

It then continues in providing up to date information on the Czech nuclear legislation and consideration of various questions and problems in the light of the respective legal clauses (e.g. minimum insurance requirements, treatment of small reactors and small quantities of nuclear material, state guarantees etc.).

The paper gives more detailed information about practical application of the insurance clauses of the Atomic Act, including some time related questions.

A considerable part of the paper is dedicated to the past history and present functions and activities of the Czech Nuclear Insurance Pool which was officially founded in 1995 and is without doubt one of the most active and successful national nuclear insurance pools of the former East European countries.

1. NUCLEAR ENERGY AND NUCLEAR POWER STATIONS

When speaking about nuclear energy in the Czech Republic we have to really start many years ago when the Czech Republic was still part of Czechoslovakia. At that time not only did Czechoslovakia decide to become one of the countries generating electric power with the use of nuclear power plants but also started construction of the first two (one in the Czech Republic - at Dukovany and one in the Slovak Republic - at Jaslovské Bohunice) and planned and eventually started construction of further two nuclear power plants, out of which one (at Temelín) is situated in the Czech Republic. Due to this development, after 1st January 1993 when Czechoslovakia ceased to exist and independent Czech and Slovak Republics were founded, each country had one nuclear power plant in operation and one under construction.

In the Czech Republic the nuclear power plant in operation is situated at Dukovany (South Moravia) and it was put into operation in the years 1985 - 1987. The construction of this nuclear power plant began in 1978 and its four reactors VVER 440 (2nd generation) type V213 have a total installed power of 1760 MWe and thermal power of 1375 MWt (each reactor). The operating power plant generated around 20% of all electric power in the Czech Republic in 1997 and represents a permanent and reliable source of electric power for the country.

The power plant under construction is situated at Temelín (South Bohemia). Its construction was started in 1986 and is expected to be put into operation during the years 1999 - 2000. This second nuclear power plant will have two reactors VVER 1000, total installed power of 1962 MWe and thermal power of 3000 MWt (each reactor). When finished and put into full operation it is anticipated that the two nuclear power plants together will be generating nearly 31% of all electric power in the Czech Republic.

There are many discussions in the country (and also especially in Austria) on the subject of nuclear energy, nuclear safety and future sources of generating electric power to meet the increasing demand of the industry and general public. A relatively large part of the population in the Czech Republic was against completion of the Temelín nuclear power plant but without suggesting any realistic alternative source of energy. The increasing demand for electric power in the country (1993 - 48000 GWh, 1996 - 54000 GWh) has led to a government decision to finish the second nuclear power plant in the Czech Republic but at the same time to even more concentrate on safety features and other related questions. A recent public inquiry into this

rather delicate matter showed a nearly 65% support of the population for completing the Temelín project.

2. THE CZECH ATOMIC ACT

Nuclear related legislation and special acts on nuclear safety and other connected subjects were first introduced in the Czech legal system in 1976 (shortly before NPP Dukovany started to be built) and over the years represent a complex group of legal documents.

The Czech Republic signed and ratified the Vienna Convention in 1993 together with the Joint Protocol to the Vienna and Paris Conventions. Immediately after that new legislation was being prepared.

The new Czech nuclear law entered into force on 1st July 1997. The Atomic Act (No. 18/1997) refers to the Vienna Convention when dealing with nuclear liability (Part 5 of the Act) but also covers many other nuclear related subjects such as licencing, storage of nuclear material and waste and State supervision. The Act became a new basis for nuclear related legislation in the Czech Republic and is being followed by a number of detailed legal provisions covering the main scope of the Atomic Act. The basic principles established by the new Act fully correspond with the Vienna Convention. It should be mentioned, however, that in accordance with a special provision of the Act, Part 5 (liability for nuclear damage) entered into force already on 26th February 1997 (i.e. on the date of official publication of the Atomic Act).

The Atomic Act has not given an independent and specific definition of nuclear damage and refers in this respect to various general provisions and definitions in e.g. the Czech Civil Code. In its § 34 it also states that costs connected with preventive measures and aimed at minimizing the final loss are considered as part of the total nuclear damage. On the other hand the Act counts with a more detailed definition of certain activities and quantities of nuclear material which will not be governed by the Act. These detailed definitions and rules have not yet been published and as far as we are informed work on this subject has only started.

In view of the above it may be said that in the present state of the Czech legislation even small reactors and small quantities of nuclear material are included in the scope and application of the Atomic Act but this may be changed with the additional rules and definitions as called for by the Act. The same question arises when considering liability and insurance related matters of various small operators (e.g. University research reactors, hospital X-rays etc.). When trying to

find answers to these practical questions we usually have to be satisfied with an ad hoc decision of the Czech Nuclear Safety Supervisory Authority (SÚJB) which is given in respect of individual licence applications.

The nuclear liability provisions of the Atomic Act can be found in Part 5 (§ 32 - § 38). The total limit of liability of the operator is CZK 6.000.000.000 (approx. USD 176.000.000) any one nuclear event in case of nuclear installations for energy generating purposes, spent fuel storage facilities and nuclear material storage facilities (originating from spent fuel) and CZK 1.500.000.000 (approx. USD 44.000.000) for all other nuclear installations and transportation of nuclear material. These limits of liability include State liability which is then only above the obligatory minimum limits of insurance coverage (or other financial guarantee of the operator as defined by the Ministry of Finance). The State liability in the form of a guarantee together with the minimum insured amount arranged (and paid) for by the operator make up the total liability of the operator as mentioned above. There are no specific or additional exclusion clauses in the Atomic Act which would exclude operators liability other than standard exclusions already set by the Vienna Convention.

3. LEGAL LIABILITY INSURANCE REQUIREMENTS

Specific provisions concerning insurance coverage and other financial guarantees can be found in § 36 of the Atomic Act. There are basically two categories of nuclear installations to which correspond two minimum amounts of insurance coverage or other financial guarantees.

The first category includes nuclear installations generating electric power and all storage facilities of these installations for spent fuel and/or nuclear material originating from spent fuel (as defined in § 35, para a). There is a minimum limit of CZK 1.500.000.000 (approx. USD 44.000.000) set for insurance coverage or other financial guarantee in the Act (§ 36, para 3).

The second category includes all other nuclear installations and transportation of nuclear material (as defined in § 35, para b). There is a lower minimum limit of CZK 200.000.000 (approx. USD 6.000.000) prescribed for insurance coverage or other financial guarantee (see also § 36, para 3).

The obligation to insure applies to all licenceholders as defined by the Atomic Act (Part 2, 3 and 4 respectively) and the minimum insurance requirements have to be fulfilled unless the licenceholder has either other financial guarantees (as defined by the Ministry of Finance) or had applied for and has been granted an exception from the legal obligations (this possibility is

given by § 36, para 2). It has to be underlined, however, that this exception is generally intended only for state owned operators (licenceholders) to ensure economical management of state money.

Compensation of nuclear damage is generally regulated by the same clauses as compensation of any other general liability claim. The Czech Civil Code fully applies with the exception of § 38, para 1 of the Atomic Act, which defines the subjective (three years from the date when the victim finds out, or should have found out, who is liable for the loss/damage) and objective period (ten years from the date of the nuclear event) for claims presentation. In case of the insurance period being longer than the ten years objective period then the end of the insurance period is the end of the ten year period. The same rules apply to both personal and property losses. The channelling of liability to the operator of the nuclear installation (or licenceholder) as a basic principle of the Vienna Convention is fully transformed into the Czech Atomic Act (with only such possibilities of recourse as are assumed by the Vienna Convention).

4. INSURANCE OF NUCLEAR RISKS

First discussions about the foundation of a Czech (Czechoslovak) nuclear insurance pool started in the early 1990's under the organisational umbrella of the Czechoslovak Insurance Association. These discussions continued after the foundation of the Czech Republic in 1993 within the Czech Insurance Association. During this time the organisers received extensive help and support from many national nuclear insurance pools, but mainly from the British and German pools. Nearly fifteen non-life insurance companies with an operational licence in the Czech Republic took part in the preparatory discussions during the pre-foundation period.

Early in 1995 a decision to create the Czech Nuclear Insurance Pool was taken by twelve non-life insurance companies and on 20th July 1995 a coinsurance cooperation agreement to cover liability risks was signed. The twelve member companies (founding members) represented the top insurance companies of the Czech insurance market with a total market share of over 90%. A year later a coinsurance cooperation agreement to cover material damage (and business interruption) was signed. At the same time one of the original founding members ceased to operate in the Czech Republic and, therefore, also terminated participation in the nuclear insurance pool.

Today the Czech Nuclear Insurance Pool has thirteen member companies. The pool is organised as an insurance pool with Česká pojišťovna a.s. Prague being the leading insurer in

the pool (at the same time Česká pojišťovna a.s. is the leading insurer in the Czech Republic with a market share of over 60%). The total insurance capacity of the Czech Nuclear Insurance Pool is CZK 390.000.000 (approx. USD 11.500.000) for domestic liability risks and nearly CZK 900.000.000 (approx. USD 26.000.000) for domestic material damage and business interruption risks.

On the reinsurance side the Czech Nuclear Insurance Pool can offer approx. 50% of the above mentioned figures to its friends - other national insurance pools. The pool is managed by the Office of the Czech Nuclear Insurance Pool which has three experts handling all business of the pool. The year 1998 is only the third full business year of the pool but already it has achieved some successes both at home and abroad.

The most important insurance cover offered by the Czech Nuclear Insurance Pool to its clients is a nuclear liability policy based on the minimum requirements described in more detail above in connection with the provisions of the Atomic Act. The liability policy is now based on special general insurance conditions which had to be approved by the Ministry of Finance (this is a legal requirement). The presently valid general insurance conditions have been approved by the Ministry of Finance on the 26th January, 1998.

The Czech Atomic Act, when setting down the insurance requirements, had also given the existing operators (licenceholders) a one year „waiting“ period to comply with the legal insurance obligations. Due to the fact that Part 5 of the Act came into force already on 26th February 1997 it is generally thought that all liability insurances had to be in place on the same day in 1998 at the latest. Some lawyers, however, have interpreted the Act in such a way that the one year „waiting“ period will end only on 1st July, 1998 (i.e. one year after the date when the whole Act came into force).

In this connection it should be also underlined that new licenceholders (including all renewed licences and licences for transportation of nuclear material) have to have a valid insurance cover from the very first day of their operation or from the date of commencement of transit of nuclear material (and very often already from the date of applying for a licence).

The Czech Nuclear Insurance Pool also offers nuclear material damage insurance policies (with an option for business interruption) which are not required by law. The general insurance conditions for these types of risks also had to be approved by the Ministry of Finance (the present version has been approved on 26th January, 1998). They are not covering all risks but could easily be endorsed or extended to cover not only named perils.

In addition to the two main insurance covers potential clients of the Czech Nuclear Insurance Pool can receive coverage of liability risks in connection with transportation of nuclear material and also special risks (e.g. in connection with the construction of nuclear power plants and/or other nuclear installations).

The Czech Nuclear Insurance Pool has till now issued 8 domestic liability insurance policies. Domestic material damage policies have as yet not been concluded even that discussions with potential clients are well under way. On the reinsurance side the Czech pool is participating on foreign risks (both liability and material damage risks) from ten national pools around the world.

The Czech Nuclear Insurance Pool has offered its experience and specific know-how to other national insurance pools or to countries where national nuclear insurance pools have not yet been established. Such assistance and support led to foundation of national pools in Hungary and the Slovak Republic and also the Czech pool took part in a special seminar organised in the Russian Federation with an aim to form a national nuclear insurance pool in Russia.

We may say that it is a traditional custom among the members of the international family of national nuclear insurance pools to pass on experience and knowledge received during foundation and period of growth and, therefore, contribute to further development of the nuclear pooling system in the world. The Czech Nuclear Insurance Pool is proud to be part of this family and is always prepared to offer assistance to those who are just starting. It is one way of returning what has in the past been given to the Czech pool.