

## Legal Case Study on the Lawsuit against Life-extension License of the Wolsong Unit 1 (Seoul Administrative Court Case No. 2015 구합 5856)

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### 1. Introduction

Since the Fukushima nuclear accident, public concern to the safety of the nuclear industry including nuclear power plants has increased, and the current government has initiated a non-nuclear energy based energy policy.

This social atmosphere has led to a conservative attitude toward a nuclear safety licensing process in the nuclear industry, and it has also led to various checks and surveillance systems toward various past pro-nuclear administrative decisions under the previous nuclear-friendly atmosphere. One of the new checks and surveillance is administrative lawsuits raised by civil and environmental organizations. As a representative example, there is a nullification lawsuit which filed against the Nuclear Safety & security Commission (hereafter referred to as the "NSSC")'s life-extension license (hereinafter refer to as "the License") endowed to Wolsong Unit 1 nuclear power plant operated by Korea Hydro & Nuclear Power Corporation (hereinafter referred to as "KHNP") on February 27, 2015.

The following is a legal analysis of the major issues of the above invalidation lawsuits and the judgments of the courts, and the implications of the ruling in the future for the development of the nuclear industry.

### 2. Main subject

#### 2. Issues

##### 2.1. Plaintiff's eligibility

The License is about a permission to continuing operation of Wolsong Unit 1 nuclear plant, for more 10 years, then whether the legal status of the plaintiffs has been changed due to the license or not and whether the plaintiffs has a legal interest to pursue invalidation of the license. Those eligibility issues are one of the key points in this case.

#### 2.2. Main issues

##### 2.2.1. Plaintiff's Claims

Ⓐ When KHNP submits a change permission application for the extension, it is illegal to deliberate or vote on the decision commission because it has missed some of the required documents prescribed by law.

Ⓑ It is illegal to deliberate or vote on the application because the corresponding commission, which corresponds to the reason for disqualification of Article 10 of NSSC Law, was present at the commission.

Ⓒ It is illegal to deliberate or vote on this application, which was made without a thorough review because the important document, "Final Safety Analysis Report" was not submitted in advance.

Ⓓ The safety evaluation procedure for continuous operation should be based on the latest technology available at the time of reevaluation, not the level of technology originally used at the time of initial design and construction. The licensing procedure is illegal because it was not judged based on the latest technology.

Ⓔ Since the procedure of collecting opinions of residents is omitted when preparing the 'Radiation Environmental Impact Assessment Report', which is one of the necessary documents when submitting the application for change permission, the deliberation and resolution of this case commission is illegal.

Ⓕ Even if the court invalidates the license, there is no problem with domestic electricity supply.

##### 2.2.2. Judgment of First Trial Court

Ⓐ In the case of a third party filing an administrative lawsuit, it is necessary to prove that plaintiff has an individual, direct, or specific protection interests recognized by the relevant laws or, if not, there is a possibility that their own environmental interests may actually be violated or infringed. Resident plaintiffs who lives within 80km radius of the site of nuclear power plant are eligible as a plaintiff, but other plaintiffs are not entitled to plaintiffs because they have no interest in infringement or direct infringement of the plaintiffs' rights.

Ⓑ Documents for the examination of the license had required 'comparison table' that, however, was not actually submitted to the Commission. This failure is an important illegal procedure for the commission to be deliberated and voted on.

Ⓒ Commission members such as Mr. Lee and Mrs. Jo which falls under the reason for disqualification

prescribed in Article 10 of the NSSC Law, was present in the deliberation and resolution of the case, although the commission had to be retired from the commission, which is illegal. The illegality is not be able to solved only by the fact that it is possible to satisfy voting requirement by the approval of the other members except the member who has the reason for disqualification.

④ The final safety analysis report, which Plaintiff insisted that the report should have submitted in advance under the reasonable time frame for detailed reviewing, but court ruled that there is no illegality because it was anyway provided to the commission before decision.

⑤ Korea Institute of Nuclear Safety (hereinafter referred to as "KINS"), which has supported practical examination based on the previous technology rather than the latest one at the safety evaluation stage, the technology application failure caused that the licensing decision is illegal.

⑥ Article 103, Paragraph 1 of the Nuclear Safety Act (revised on January 20, 2015), which requires the procedure of collecting opinions of the residents when preparing the 'Radiation Environmental Impact Assessment Report' in accordance with the Article 3, there are no procedural deficiencies, as this case does not apply to the 'Radiation Environmental Impact Assessment' which was prepared before December 30, 2009.

⑦ The issue of domestic electricity supply and the efficiency of operation is not a matter for NSSC's decision.

⑧ The license has a cause of revocation, not invalidation, because the reasons are satisfied with license cancelling conditions only.

From the above reasons, the First Trial Court overruled the validity of the License and Plaintiff won the lawsuit. The Court reviewed the whole procedures of the license process and concluded that the Plaintiff's argument was strong enough to cancel the license. A licensing procedure of nuclear power plant shall strictly comply with all elements of administrative laws because of its huge influence to the public. Above reasons the Court accepted will be clear guide-lines to all nuclear licensing procedure. The Defendant, NSSC and KHNP, has appealed to the second trial court and the Case is on trial now.

The First Trial Court overruled the validation of NSSC license under the reasons of procedure failure, not technical or engineering standards. Thus, after correcting the procedural failure, an issuing of newly same license may have chance to be legalized.

Currently NSSC, and KHNP (as a 3rd interest party) appealed and Appellate Court is reviewing the case. The Appellate Court's ruling will be a historic legal judgement in the field of the Korea nuclear law.

## REFERENCES

- [1]Chulhoon Ham, Atomic Energy Law, Bubyoungsa, 2009.
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## 3. Conclusion