**Before the Central Information Commission**

**Club Building, Old JNU Campus, New Delhi- 110 017**

**In the matter of**

***Dr. S P Udaya Kumar***

***vs.***

***Public Information Officer, Nuclear Power Corporation of India Ltd.***

**File No. CIC/SG/A/2012/000544**

**Additional pleadings submitted at the hearing held on 23rd April, 2012**

The following examples of international best practices with regard to disclosure of site evaluation reports and safety evaluation reports relating to nuclear reactors and nuclear power generation facilities are being submitted for the consideration of the Hon’ble Central Information Commission. The documents referred to in this submission are voluminous and have not been printed in view of the policy of the Hon’ble Central Information Commission to reduce the use of paper. The documents mentioned in this submission are furnished on a compact disc (CD) for easy reference.

The PIO, Nuclear Power Corporation of India Ltd. (NPCIL) has rejected the appellant’s request for: i) Safety Analysis Report and ii) Site Evaluation Study Report for Koodankulam Nuclear Plants I and II (KKNP I & II) by mechanically invoking clauses (a) and (d) of sub-section (1) of Section 8. The First Appellate Authority (FAA), NPCIL has upheld this rejection without any detailed reasoning or justification.

In order for the Hon’ble Central Information Commission to appreciate the true nature of the contents of the reports sought by the appellant examples of best practices are given below:

1. The International Atomic Energy Agency (IAEA) – a specialised body of the United Nations is the global focal point for nuclear cooperation. The IAEA develops nuclear safety standards and based on these standards, promotes the achievement and maintenance of high levels of safety in applications of nuclear energy, as well as the protection of human health and the environment against ionizing radiation. Any State wishing to enter into an agreement with the IAEA for its assistance in connection with the siting, design, construction, commissioning, operation or decommissioning of a nuclear facility or any other activities will be required to follow those parts of the safety standards that pertain to the activities to be covered by the agreement. India is a member of the IAEA and entered into the Application of Safeguards to Civilian Nuclear Facilities Agreement with IAEA in 2009. KKNP I & II are included in the list of nuclear power facilities and installations annexed to the agreement for application of these safeguards. (Document 1 on the CD).
2. The IAEA has in its Safety Standards Series issued a set of standards to be adhered to while undertaking a site evaluation for nuclear installations. The report of such evaluations is submitted in the form of a site evaluation study by the person(s) agency(ies) conducting such a study. According to the IAEA the objective of a site evaluation for nuclear installations in terms of nuclear safety is to protect the public and the environment from the radiological consequences of radioactive releases due to accidents (Document 2 on the CD). According to the IAEA in the evaluation of the suitability of a site for a nuclear installation, the following aspects are required to be considered:

*“(a) The effects of external events occurring in the region of the particular site (these events could be of natural origin or human induced);*

*(b) The characteristics of the site and its environment that could influence the transfer to persons and the environment of radioactive material that has been released;*

*(c) The population density and population distribution and other characteristics of the external zone in so far as they may affect the possibility of implementing emergency measures and the need to evaluate the risks to individuals and the population.”*

According to the IAEA the site evaluation report in addition to providing the technical basis for the safety analysis report to be submitted to the nuclear regulatory body, “the technical information obtained for use in complying with these safety requirements will also be useful in fulfilling the requirements for the environmental impact assessment for radiological hazards.” In other words, the site evaluation study forms an important basis for the environmental impact assessment report. In order to understand and appreciate the conclusions reached in the environment impact assessment report, a reader must have access to the site evaluation study as well. Document 2 on the CD provides an outline view of the parameters that must be taken into consideration while doing a site evaluation. By denying access to the site evaluation study report NPCIL has prevented the appellant and the general public from acquiring a comprehensive understanding of the likely environmental impact of KKNP I & II. *In view of the direct relationship between public health and safety and the site evaluation study report and in the absence of any justification for invoking any and all of the grounds under Section 8(1)(a) of the RTI Act there is a very high degree of public interest favouring disclosure of this study report. Therefore the appellant prays for the disclosure of the site evaluation study report.*

1. Safety evaluation studies of a nuclear power plant include safety issues linked to internal (design) factors and external (natural or human induced) factors. The IAEA has issued standards for the safety of nuclear power plants in relation to their design (Document 3 on the CD). The standards include design requirements for structures, systems and components important to safety that must be met for safe operation of a nuclear power plant, and for preventing or mitigating the consequences of events that could jeopardize safety. It also establishes requirements for a comprehensive safety assessment, which is carried out in order to identify the potential hazards that may arise from the operation of the plant, under the various plant states (operational states and accident conditions). The safety assessment process includes the complementary techniques of deterministic safety analysis and probabilistic safety analysis. These analyses necessitate consideration of postulated initiating events (PIEs), which include many factors that, singly or in combination, may affect safety and which may:

—originate in the operation of the nuclear power plant itself;

—be caused by human action;

—be directly related to the nuclear power plant and its environment.

The IAEA standards also address events that are very unlikely to occur, such as severe accidents that may result in major radioactive releases, and for which it may be appropriate and practicable to provide preventive or mitigatory features in the design. Examples of such safety evaluation studies undertaken in relation to nuclear reactors in other parts of the world demonstrate how external natural factors such as earthquakes, volcanoes, tornadoes, cyclonic storms and hurricanes (Document 4 on the CD) and external human induced factors such as aircraft crash and shipwreck incidents, may impact on the safety of nuclear reactors (Document 5 on the CD). An article discussing the volcanic activity that occurred in the Kudankulam area as recently as in 2001 is enclosed (Document 10 on the CD). The people living not only in the Kudankulam area but also elsewhere in the Tamil Nadu have the right to know what assessment has been made about volcanic activity in the safety evaluation study of KKNP I&II. *Given these serious implications of the internal and external safety factors relating to nuclear reactors there is an overbearingly heavy public interest in disclosing the safety evaluation report of KKNP I&II. Therefore the appellant prays for the disclosure of the site evaluation study report.*

1. It is further submitted that in several countries which are dependent upon nuclear power for meeting the energy requirements of the people and the economy site evaluation and safety evaluation reports are often prepared as a series of reports based on technical inputs from various subject specialists such as geologists, marine biologists, meteorologists, vulcanologists, soil and materials study experts, demographers (impact on present and future populations) etc. The final report is based on the studies conducted and reports submitted by these experts (Document 7 on the CD provides a list of multiple reports relating to 2 nuclear reactors being developed in the UK). No single expert can capably undertake such a multi-disciplinary exercise. As every aspect of nuclear power plant safety relates to the health and well being of people, it is common practice for the site evaluation and safety evaluation reports to be publicly disclosed. Both the company responsible for constructing and maintaining the nuclear power plant and the nuclear safety regulatory agency display these reports on websites inviting public feedback and submissions. After the completion of this process, the final safety evaluation report (SER) is uploaded on websites for people to access free of charge. A sample of such websites displaying SERs is given below:

a) **Darlington Nuclear Power Plant owned by the Ontario Power Generation Company, Canada:**

[http://www.ceaa-acee.gc.ca/050/documents\_staticpost/cearref\_29525/0105/ sd-nu.pdf](http://www.ceaa-acee.gc.ca/050/documents_staticpost/cearref_29525/0105/%20sd-nu.pdf) (Document 5 on the CD)

b) **Diablo Canyon, Nuclear Power Plant owned by the Pacific Gas and Electric Company (SER for license renewal), USA :**

<http://pbadupws.nrc.gov/docs/ML1115/ML11153A103.pdf> (Document 4 on the CD)

c) **UK EPR Reactor owned by EDF and AREVA, United Kingdom:** <http://www.hse.gov.uk/newreactors/reports/step-four/technical-assessment/ukepr-psa-onr-gda-ar-11-019-r-rev-0.pdf> (Document 6 on the CD. Also see Documents 8 and 9 for more information and cross section view on this nuclear reactor)

1. It is further submitted, that the international best practice of disclosing information that has a bearing on public safety, health and the environment is reflected in a generic manner in Section 4(1)(c) of the RTI Act. NPCIL and the Department of Atomic Energy have a duty to disclose all facts while formulating important policies and announcing decisions that affect the public. According to the Supreme Court of India this is a mandatory requirement and the Central Information Commission is empowered to ensure that public authorities comply with this obligation. In the matter of *Central Board of Education and Anr. vs. Aditya Bandopadhyaya and Ors.* (Civil Appeal # 6454 of 2011, decision dated 09/08/2011)

*“The power under section 19(8) of the Act is intended to be used by the Commissions to ensure compliance with the Act, in particular ensure that every public authority maintains its records duly catalogued and indexed in the manner and in the form which facilitates the right to information and ensure that the records are computerized, as required under clause (a) of section 4(1) of the Act; and to ensure that the information enumerated in clauses (b) and (c) of sections 4(1) of the Act are published and disseminated, and are periodically updated as provided in sub-sections (3) and (4) of section 4 of the Act. If the ‘information’ enumerated in clause (b) of section 4(1) of the Act are effectively disseminated (by publications in print and on websites and other effective means), apart from providing transparency and accountability, citizens will be able to access relevant information and avoid unnecessary applications for information under the Act.”*

1. NPCIL has failed to appreciate the deep connection between the people’s right to a safe and healthy environment, their right to life and liberty and their right to know. In the matter of *Essar Oil Ltd. vs, Halar Utkarsh Samiti*, [(2004) 2SCC 392] The Apex Court stated as follows:

*“34. It cannot therefore be said, as the High Court seems to have held, that the invariable consequence of laying pipelines through ecologically sensitive areas has been the destruction or removal of the wild life. It would ultimately be a question of fact to be determined by experts in each case. We will have the occasion to consider the opinion of the expert bodies on this when we take up the facts of the appellant's case. Suffice it to say at this stage that there is no a priori presumption of destruction of wild life in the laying of pipelines. Cases of oil spills have undoubtedly been ecologically disastrous and have drawn the attention of the world but our attention was not drawn to any instance of leakage resulting from the laying of pipelines.*

*35. These observations however are not meant and should not be read as a general licence to lay a net work of pipelines across sanctuaries and natural parks. Every application must be dealt with on its own merits keeping in view the need to sustain the environment. Before according its approval to the grant of any permit under Sections 29 or 35, the State Government should consider whether the damage in respect of the proposed activity is reversible or not. If it is irreversible it amounts to destruction and no permission may be granted unless there is positive proof of the betterment of the lot of the wild life. Where activities are covered by '(a)', mitigation of damages would not do. There must be betterment of the wildlife by the proposed activity. Mitigation of damages would be relevant to proposed projects under '(b) and (c)'.*

*36. For this purpose the State Government must ask for and obtain an environmental impact report from expert bodies. The applicant must also come forward with an environmental management plan which must be cleared by the experts. To prevent possible future damage, the State Government must also be satisfied that the damage which may be caused is not irreversible and the applicant should be prepared and must sufficiently secure the cost of reversing any damage which might be caused. The State Government should also have in place the necessary infrastructure to maintain periodical surveys and enforce the stipulations subject to which the permit may be granted. In future the State Government should, before granting the approval, also call upon the applicant to publish its proposal so that public, particularly those who are likely to be affected, are made aware of the proposed action through the sanctuary or natural park. This will ensure transparency in the process and at least safeguard against a decision of the State Government based solely upon narrow political objectives. Besides the citizens who have been made responsible to protect the environment have a right to know. There is also a strong link between Article 21 and the right to know particularly where "secret Government decisions may affect health, life and livelihood". The role of voluntary organisations as protective watch-dogs to see that there is no unrestrained and unregulated development, cannot be over-emphasized. Voluntary organisations may of course be a front for competitive interests but they cannot alt be tarred with the same brush.”*[emphasis supplied]

In view of the above arguments, it is respectfully submitted that the two reports sought for by the appellant are fit for disclosure in public interest. *Therefore the appellant prays for the disclosure of the safety analysis and the site evaluation study report.*