

Province of Groningen

to: Van den Biesen Boesveld, attorneys-at-law
attn. Ms B. Kloostra
Rhijnspoorplein 22
1018 TX Amsterdam

Date : 15 August 2012
Letter number : 2012-35.523/32, LGW
Case number : 413082
Dealt with by : N. Lobbezoo-Vermaak
Telephone number : (050) 3164057
Answer to : Letter of 29 August 2011, file no. 20110027
Enclosures : 7
Re : WOB request relating to the granting of a permit under the Nature
Conservancy Act, Eemshaven

Dear Ms Kloostra,

We hereby notify you of our decision on the objections of Stichting Greenpeace Nederland (referred to below as Greenpeace), RWE Eemshaven Holding B.V. (referred to below as RWE) and Nuon Power Projects 1 B.V. (referred to below as Nuon)

to:

our decision of 19 July 2011, reference 2011-32.305/29/A.35, LGW, to partially reject Greenpeace's request for disclosure of documents under the Government Information (Public Access) Act (referred to below by its Dutch acronym WOB).

Introduction

Greenpeace, RWE and Nuon lodged their objections to the decision of 19 July 2011 in time on 31 August 2011, 29 August 2011 and 30 August 2011 respectively. As the decision of 19 July 2011 relates to the same WOB request by Greenpeace, we have decided to deal with the objections lodged by each of the applicants in a single decision. This objection decision therefore contains the decisions on the notices of objection that have been lodged.

Greenpeace's WOB request relates to the following administrative matters:

- the granting of the permit for RWE's coal-fired power plant in Eemshaven;

- the granting of the permit for Nuon's multi-fuel power plant in Eemshaven;
- the deepening of the fairway through the Waddenzee to Eemshaven;
- the enlargement of Eemshaven to accommodate larger vessels.

The request relates in particular to:

- all correspondence between the Province (or its employees) and the relevant energy companies, Groningen Seaports (GSP) and other private parties concerned;
- all correspondence between the Province (or its employees) and the Ministry of Economic Affairs (or its employees), the Directorate-General for Public Works and Water Management (or its employees) and/or other government bodies concerned;
- minutes of meetings and other memorandums relating to communication between relevant members or officials of the Provincial Executive and the energy companies, Groningen Seaports and other companies concerned;
- minutes of meetings and other memorandums relating to communication between the Province of Groningen and relevant ministries.

In our initial decision of 19 July 2011 we partially rejected Greenpeace's WOB request. Owing to the sheer quantity of documents, we confined ourselves in the decision itself to providing a general statement of reasons for not disclosing some of the documents. In an attached table listing the 1,724 documents designated as covered by the request, we indicated in respect of each document whether or not we considered it eligible for disclosure. In the objection stage of this procedure, we indicated, in a second assessment round, on what ground disclosure of each document had been refused.

On 8 May 2012 the independent advisory committee on objections and appeals – Chamber 1 of the Legal Protection Committee (referred to below as the Advisory Committee) – published its advisory report on the objections lodged by Greenpeace, RWE and Nuon. On the subject of Greenpeace's notice of objection the Advisory Committee gave our Executive the following advice:

The Chamber would state at the outset that it has been unable to make a full assessment since it lacks information about the actual course of events, about the (technical) content of the documents and their background and about what has already been made public. For this reason and in view of the volume of work it entails, the Chamber has felt it necessary to confine its assessment to a random sample of documents. The results of this work are set out in the annexe to this advisory report. The Chamber recommends that your Provincial Executive make a decision based on these findings and, taking into account what it has held in section 6.2, amplify the reasons for refusal by using a coding and reference system for the

remaining documents. In so far as application of the general advice results in revocation of previous decisions relating to the documents, the Chamber recommends that you uphold the objection or, if you do not wish to do so, declare that the objection is partially well founded and provide sufficient reasons for the decision on the objection. In other respects, the Chamber considers that the objection is partially well founded as insufficient reasons were given in the initial decision.

Following the additional objection made by Greenpeace in response to the provision of the documents previously designated as public, you acknowledged that no decision had been made on whether to disclose certain annexes. The Chamber recommends that you include the decisions on the requested disclosure of these documents in your decision on the objection, but only after you have in any event given RWE and Nuon the opportunity to be heard on this matter.

Finally, in view of the data collection obligation under the WOB and the relevant case law, the Chamber recommends that the system for compiling and filing dossiers should be organised in such a way as to enable future WOB requests to be met, preferably allowing easy access to documents and parts of documents eligible for disclosure.

(...)

In its notice of objection of 29 August 2011 Greenpeace sought reimbursement of its legal costs in the action. In view of the above (the requirements of section 7:15, subsection 2 of the General Administrative Law Act have been fulfilled since parts of the decision should be revoked on the grounds of an unlawful act imputable to your Provincial Executive), the Chamber believes that there are grounds for awarding costs. Under the Legal Costs (Administrative Law) Decree, the Chamber directs that these costs for professional legal assistance provided by a third party should be set at €1,311 (one point for lodging the notice of objection and one point for attending the hearing, with a value of €437 per point and a weighting factor of 1.5). The Chamber considers that the objection procedure should be given a heavy weighting factor on account of its importance. It therefore advises payment of the requested legal costs.

On the subject of RWE's notice of objection the Advisory Committee gave our Executive the following advice:

As no indication was given in the initial decision of the grounds for refusing or not refusing disclosure of each document, let alone parts of each document, the Chamber finds at the outset that the objection based on this lack of reasons is partially well founded. It recommends that your Executive should decide on the basis of its assessment as shown in

Table 1 and should refer for its statement of reasons to the general assessment policy proposed by it, as described in section 6.2, and the assessments at document level in the annexe to this advisory report.

Following the additional objection made by Greenpeace in response to the provision of the documents previously designated as public, you acknowledged that no decision had been made on whether to disclose certain annexes. The Chamber recommends that you include the decisions on the requested disclosure of these documents in your decision on the objection, but only after you have given RWE the opportunity to be heard on this matter.

Finally, in view of the data collection obligation under the WOB and the case law on it, the Chamber emphatically recommends that the system for compiling and filing dossiers should be organised in such a way as to enable future WOB requests to be met, preferably allowing easy access to documents and parts of documents eligible for disclosure.

(...)

As RWE has not sought an order for reimbursement of its legal costs pending the objection procedure, the Chamber sees no reason to express a view on this matter.

On the subject of Nuon's notice of objection, the Advisory Committee gave our Executive the following advice:

As no indication was given in the initial decision of the grounds for refusing or not refusing disclosure of each document, let alone parts of each document, the Chamber finds at the outset that the objection based on this lack of reasons is partially well founded. It recommends that your Executive should decide on the basis of its assessment as shown in Table 1 and should refer for its statement of reasons to the general assessment policy proposed by it, as described in section 6.2, and the assessments at document level in the annexe to this advisory report.

Following the additional objection made by Greenpeace, you acknowledged that no decision had been made on whether to disclose certain annexes. The Chamber recommends that you include the decisions on the requested disclosure of these documents in your decision on the objection, but only after you have given Nuon the opportunity to be heard on this matter.

Finally, in view of the data collection obligation under the WOB and the case law on it, the Chamber emphatically recommends that the system for compiling and filing dossiers should be organised in such a way as to enable future WOB requests to be met, preferably allowing easy access to documents and parts of documents eligible for disclosure.

(...)

As Nuon has not sought an order for reimbursement of its legal costs pending the objection procedure, the Chamber sees no reason to express a view on this matter.

We adopt the advice of the Advisory Committee in respect of the documents, with only a few exceptions (see the reconsideration in response to RWE's objection) and decide as follows on this matter.

Reference should be made to the Advisory Committee's report for a description of the course of the proceedings, a concise statement of the grounds of objection by the applicants, the position taken by RWE and Nuon on Greenpeace's objection, the position taken by Greenpeace on the objections of RWE and Nuon and the position taken by the Provincial Executive, as well as a description of the statutory framework.

Reconsideration of the decision of 19 July 2011 in response to Greenpeace's notice of objection

We would note at the outset that the starting point for assessing Greenpeace's WOB request is that, in principle, all documents should be made public. Where documents are not eligible for disclosure on account of one of the exceptions provided for in the WOB, we have refused to provide access to them. The general reason we have given for refusal is prompted by the volume of documents to which the WOB request relates (1,724 documents). As the Advisory Committee pointed out, it can be inferred from the case law of the Administrative Jurisdiction Division of the Council of State (referred to below by its Dutch acronym of ABRvS) that a more general assessment is sufficient in special cases of this kind and that the duty to give reasons for the decision can be assumed to be correspondingly less onerous.¹ However, as the Advisory Committee noted, it is essential in such cases for the grounds of refusal to be explained in the reasons for the decision.

It is evident from the random sample taken by the Advisory Committee for each ground of refusal that our conclusions were not always consistent or sufficiently reasoned. We will therefore reassess all documents to which the WOB request relates and which, according to Greenpeace, were wrongly not disclosed in full or in part in the context of the overall reconsideration. We will also reassess whether the documents contain personal data and, where necessary, blank them out.

In doing so, we will apply the general procedure recommended by the Advisory Committee for dealing with Greenpeace's WOB request.² In keeping with this procedure, where

¹ See p. 24 of the Advisory Committee's advisory report in relation to Greenpeace (referred to below as the Advisory Committee's report) and ABRvS, 3 February 1988, LJN: AM9976 or AB 1988/373 and ABRvS 16 February 2011, LJN: BP4737.

² See p. 25 of the Advisory Committee's report.

disclosure of documents (or parts of documents) is refused, we will merely give general reasons below for invoking the grounds of refusal concerned. As this creates a very large workload, we have decided to split up the documents into batches and (i) to reassess in our objection decisions whether the relevant document (or parts of the document) can be disclosed and (ii) if we once again conclude that disclosure is not possible, to indicate the applicable ground or grounds of refusal on the list of documents whose disclosure has been refused. Another reason for adopting this course of action is to ensure that the applicants are kept waiting for no longer than strictly necessary due to the very heavy workload and are given as much certainty as possible at the outset about the position taken by our Executive. We will therefore take decisions on batches of 200 documents at a time. As these decisions can be deemed to supplement this decision on the objection, they can therefore be treated as decisions within the meaning of section 6:18 of the General Administrative Law Act.

The procedure can therefore be summarised as follows:

- the existing list of documents and particulars is taken as the starting point;
- whether a document or part of a document can be disclosed or partially disclosed will be examined;
- the reasons for refusing disclosure of a document or part of a document will be given in a decision on a batch of documents;
- this will be done by applying a coding and reference system: reference to a general reason for refusal to disclose can be given in the decision on a batch by means of a code assigned to each document or, where necessary, part of a document.³

Below is the general statement of reasons, to which reference will be made in the objection decisions on batches of documents where disclosure of a document or part of a document is refused (or partially refused) even after reconsideration.

Data relating to companies and manufacturing processes (section 10, subsection 1, opening words and (c) of the WOB)

Section 10, subsection 1, opening words and (c) of the WOB is an absolute ground of exception. Where data relating to companies and manufacturing processes are confidential, disclosure of the documents concerned should be refused. In such cases there is no need to weigh competing interests. Data are deemed to relate to companies and manufacturing processes if and in so far as information can be obtained or inferred from them about

³ This is in keeping with the judgment of the ABRvS of 11 February 2009, LJN: BH2566 and AB 2009/102.

technical operations or the production process or about sales of the product or the identity of customers and suppliers.

As the Advisory Committee noted, we were right to take the position that certain data obtained during the preparatory process for granting a permit could possibly be classified as data relating to companies and manufacturing processes and that it was not realistic to expect the companies concerned to make a considered decision in respect of each and every contact on the basis that a WOB request might be submitted at some later date. According to the Advisory Committee, it was therefore reasonable for us to proceed on the basis that such data had been communicated to us confidentially and that this confidentiality should, in principle, be respected.⁴

Where documents contain environmental information, the reason we will give for refusing disclosure, in keeping with the Advisory Committee's recommendation, is that the specific interest of the company concerned outweighs the public interest that would be served by disclosure, as follows from section 10, subsection 4, second sentence of the WOB. We will demonstrate in each case that the data are commercially sensitive and that their disclosure could affect the competitive position of the company or companies concerned. We will also demonstrate that disclosure would result in concrete loss or damage, in accordance with the provisions of the judgment of the Administrative Jurisdiction Division of 15 December 2010, LJN: B07333 and AB 2011/33.⁵

Internal consultation (section 11, subsection 1 in conjunction with subsections 2 and 4 of the WOB)

We are guided by the Advisory Committee's interpretation of section 11 of the WOB.⁶ As the Advisory Committee correctly notes, whether a document is for internal consultation is determined by the purpose for which it has been drawn up. Even documents obtained from third parties who do not belong to the government sector may be designated as documents drawn up for the purpose of internal consultation.⁷ The Advisory Committee finds that consultation between an administrative authority and external parties for the purpose of formulating policy or taking decisions on the implementation of such policy cannot be regarded as internal if the consultation must be deemed to have the character of (general) advice or structured consultation (Parliamentary Papers, House of Representatives, 1986/1987, 19 859, no. 3, p. 13). However, the Advisory Committee notes, with reference to the judgment of the Administrative Jurisdiction Division of 19 January 2011 (LJN: BP1315 or

⁴ See p. 26 of the Advisory Committee's report.

⁵ See p. 26 of the Advisory Committee's report.

⁶ See pp. 26 and 27 of the Advisory Committee's report.

⁷ Cf. ABRvS, 26 November 2003, LJN: AN8855.

AB 2011/148), that although some of the consultations held in the present context have some features of this, they cannot be said to constitute advice or structured consultation in the above-mentioned sense, since this is a project that specifically relates to a limited period. The Advisory Committee therefore holds that these consultations, too, constitute internal consultation. We adopt these findings.

This also applies to the findings of the Advisory Committee in respect of advice provided by lawyers to administrative authorities. As the Advisory Committee held, such advice too is generally intended for the purposes of internal consultation, as is apparent from the judgment of the Administrative Jurisdiction Division of 18 August 2010 (LJN: BN4268 and AB 2010/289). This also applies to drafts of advice provided by lawyers.

In assessing whether the correspondence with the companies concerned constitutes internal consultation, we have distinguished between the permit-granting stage and the stage in which the permits are defended before the courts. A matter raised at the hearing was that the objection procedure also comes within the first of these two stages. Only in the second stage can this correspondence be said to constitute internal consultation. The Advisory Committee has said it can endorse this approach.⁸

Internal consultation – personal opinions on policy

We adopt in full the Advisory Committee's findings on the concept of personal opinions on policy.⁹ The Advisory Committee considers that in view of the large number of documents in this matter it would be unreasonable to require reasons to be given in respect of individual documents pursuant to section 11, subsection 2 of the WOB.¹⁰ It finds that we acted perfectly reasonably in providing only a general statement of reasons. The Advisory Committee also took into account here that where the documents concerned are of importance to internal decision-making, for example official memorandums or advisory reports and reports of internal meetings, it can safely be assumed that they need not be disclosed (even in anonymised form). The Advisory Committee notes that disclosure can often be refused on the grounds that it must be possible for ideas to be exchanged safely within an administrative authority, without the official concerned being held accountable for this at a later stage. To this extent the Advisory Committee holds that the duty to provide reasons is less onerous in these circumstances. We adopt these findings of the Advisory Committee.

The Advisory Committee next considers whether the information should nonetheless be disclosed in a form that cannot be traced back to any individual, as provided for in section 11,

⁸ See p. 28 of the Advisory Committee's report.

⁹ See pp. 28 and 29 of the Advisory Committee's report.

¹⁰ See p. 29 of the Advisory Committee's report.

subsection 2 of the WOB. As it has seen no evidence that those who expressed the personal opinions on policy have agreed to disclosure, it has not given any further consideration to this point. Nor does it see any reason to advise that an obligation to this effect must be assumed in this case. We adopt these findings in full and will proceed on the assumption that there is no reason to disclose documents containing personal opinions on policy in a form that cannot be traced back to any individual.¹¹ As so few people were involved, the identity of the persons to whom these personal opinions on policy are attributable could in any event be easily traced.

Internal consultation – factual information

Factual information contained in documents intended for internal consultation need not be disclosed if it is closely interwoven with personal opinions on policy. The Advisory Committee holds that, in view of the large number of documents, it would be unreasonable to assume that this assessment should also apply to the presence of factual information in individual passages. In this connection the Advisory Committee refers to the judgment of the Administrative Jurisdiction Division of 3 February 1988 referred to above (LJN: AN9976 or AB 1988/373).¹² We adopt in full these findings of the Advisory Committee and, in determining whether documents contain factual information so closely interwoven with personal opinions on policy that disclosure must be refused, will apply this test solely on a document-by-document basis.

Internal consultation – environmental information

We adopt the general findings of the Advisory Committee in respect of the term environmental information within the meaning of section 1, opening words and (g) of the WOB.¹³ The Advisory Committee held in this connection that it is precisely because the WOB expressly includes a special provision for disclosure of environmental information that each part of the relevant documents must be examined for the presence of such information and that the reasons currently given are insufficient. In accordance with the Advisory Committee's findings, we will determine what passages in parts of the documents qualify as environmental information and, where applicable, indicate generally (whether or not on the basis of a coding system) where and how the information has already been made public. If it is necessary to weigh competing interests, the objection decisions will provide information about this and about the outcomes. Use will also be made of a coding system, reference system and statements of reasons of a more general nature.

¹¹ See p. 30 of the Advisory Committee's report.

¹² See p. 30 of the Advisory Committee's report

¹³ See pp. 30 and 31 of the Advisory Committee's report.

Internal consultation – Aarhus Convention and Implementation Guide

We adopt the Advisory Committee's findings in so far as it held that environmental information must be interpreted in accordance with the Directive, but that this does not mean that consultation with a third party cannot by definition be treated as internal consultation.¹⁴

Disproportionate advantage or disadvantage (section 10, subsection 2, opening words and (g) of the WOB)

General

We adopt the general findings of the Advisory Committee regarding the ground of exception set out in section 10, subsection 2, opening words and (g) of the WOB concerning the prevention of disproportionate advantage or disadvantage to the natural or legal persons concerned or to third parties.¹⁵ The Advisory Committee held in this connection that safeguarding the Province's procedural position is itself a protected interest under section 10, subsection 2, opening words and (g) of the WOB. However, the Advisory Committee also pointed out that any refusal to disclose documents or parts of documents on this ground must be justified by the assessment of competing interests at the level of individual documents.

We also adopt the Advisory Committee's findings on possible reputational damage.¹⁶

Where environmental information also qualifies as data relating to companies or manufacturing processes, disclosure of which may be refused under section 10, subsection 1, opening words and (c) of the WOB, the Advisory Committee decided that commercial considerations too may be a reason for refusing disclosure of such information on the grounds of disproportionate advantage or disadvantage.¹⁷ In so far this reasoning is used, it will have to be shown that there is a real risk of disadvantage, and an indication must be given of the extent of the disadvantage with a view to assessing competing interests. We will adopt these findings of the Advisory Committee.

Finally, the Advisory Committee finds that the confidentiality of consultations may be a reason for successfully invoking this subsection. This applies, for example, to the period during the first of the two stages, in so far as the consultations do not qualify as internal. In such cases, section 10, subsection 2, opening words and (g) of the WOB can nonetheless be

¹⁴ See pp. 31 and 32 of the Advisory Committee's report.

¹⁵ See pp. 32, 33 and 34 of the Advisory Committee's report.

¹⁶ See p. 34 of the Advisory Committee's report.

¹⁷ See p. 34 of the Advisory Committee's report.

invoked to protect the confidentiality of the consultations during that first stage. We adopt these findings as well.

As the case law of the Administrative Jurisdiction Division clearly shows that it applies a stricter test and, above all, higher standards in relation to proof of disproportionate disadvantage as referred to in the above-mentioned subsection, the Advisory Committee found that it is not sufficient to provide a general reason for a refusal to disclose on this ground. More detailed reasons for its applicability will have to be given for each document or part of a document, whether or not by means of a code. A distinction can be made in this connection by reference to the reasons treated as decisive (e.g. procedural position, reputational damage/distorted image and confidentiality of consultations). We will adopt this approach.

Disproportionate advantage/disadvantage in relation to environmental information

The Advisory Committee takes as its starting point that the ground of refusal in section 10, subsection 2 (g) of the WOB does not apply to environmental information by virtue of section 10, subsection 4 of the WOB. In the Advisory Committee's opinion, this means that where documents contain environmental information we have a duty to indicate what constitutes such information in the individual parts of those documents and, where this occurs, to give a general indication of where and how public access has been given to this information (whether or not by means of a coding system). We will adopt this approach.

Economic and financial interests of the state and other administrative authorities (section 10, subsection 2, opening words and (b) of the WOB)

As the objection does not relate to this ground of refusal, the Advisory Committee excludes it from further consideration. We will therefore do the same.

General line of reasoning

The grounds on which disclosure of documents or parts of documents will be refused in the objection decisions on batches of documents can be inferred from this general statement of reasons. In keeping with the Advisory Committee's report, and as explained above, we take the following factors into account in this connection.

Owing to the unprecedentedly large number of documents, we can simply make an overall assessment and provide less detailed reasons, using standard grounds in combination with a list and a coding and reference system. Certain aspects will be assessed at the level of parts or passages of documents. The assessment need not relate to the presence of factual

information in particular passages where the documents are intended for internal consultation and contain personal opinions on policy.

In the case of environmental information the reasons will relate to particular passages. In so far as environmental information is already in the public domain, the relevant source of disclosure will be indicated. In view of the scope of the request, we will not provide access to environmental information consisting solely of a few sentences or figures.

For the purposes of the term 'internal consultation' in relation to the correspondence with RWE and Nuon, we distinguish between the stage up to the point where the decision is made on the objection and the stage in which the permits are defended before the courts. In the first stage, there cannot be said to be internal consultation within the meaning of section 11, opening words and subsection 1 of the WOB, in any event in the case of the correspondence with RWE and Nuon. By contrast, internal consultation may take place in the second stage, at the time of the defence before the courts. We have merely provided a general statement of reasons for not applying section 11, subsection 2 of the WOB.

Where we refuse disclosure on account of disproportionate advantage or disadvantage, as provided for in section 10, subsection 2, opening words and (g) of the WOB, we will explain our reasons per document and, if necessary, per passage.

A separate objection decision will be taken on documents hitherto mistakenly omitted from the decision-making process, but only after RWE, Nuon and GSP have been given the opportunity to present their views on disclosure of these documents.

Assessment at document level

We will apply the general procedure set out above to the documents included by the Advisory Committee in its random sample, and, if disclosure is once again refused, provide a more detailed statement of reasons for our refusal to disclose the relevant document.

Reconsideration of the decision of 19 July 2011 following RWE's notice of objection

RWE's objections relate specifically to 182 documents designated for disclosure in our decision of 19 July 2011. Unlike in its advice on Greenpeace's notice of objection, the Advisory Committee assessed each document and included this assessment in an annexe to its report. The assessment is summarised in table 1.¹⁸ The Committee recommended that full or partial disclosure of the documents numbered 042, 084, 103, 269, 401, 540, 542, 559, 576, 701, 874, 954, 969, 984, 1035, 1045, 1100, 1136, 1436 and 1625 should be refused after all. We adopt this recommendation and the reasoning on which it is based, as apparent

¹⁸ Advisory Committee's advisory report in relation to RWE, pp. 39-42.

from the Advisory Committee's report. The Committee also recommended that RWE's objections to the disclosure of the other documents listed in its notice of objection should be declared unfounded. We also adopt this recommendation and the reasoning on which it is based, except in relation to the following documents.

After reconsideration we will not disclose document no. 1629 in full. The Advisory Committee recommended that RWE's objection to full disclosure of this document should be declared to be unfounded. However, it is our view that the first paragraph of this document contains a personal opinion on policy, which is not eligible for disclosure by virtue of section 11, subsection 1 of the WOB. To this extent, we uphold RWE's objection and decide, upon reconsideration, to refuse disclosure of the first paragraph of this document.

We have also noted that the pairs of documents numbered 401 and 868, 571 and 576, and 559 and 587 are identical, but that the Advisory Committee made conflicting recommendations about the objections to the disclosure of these identical documents. We adopt the Committee's advice in so far as it recommends that the objections to disclosure of the documents be upheld and will accordingly not order disclosure of these documents. For a statement of our reasoning, reference should be made to the Committee's advice on documents 401, 576 and 559, in particular its conclusion that these documents are not eligible for disclosure and that RWE's objections are therefore well founded.

We have anonymised any personal data contained in the documents.

Reconsideration of the decision of 19 July 2011 following Nuon's notice of objection

Nuon's objections relate specifically to 27 documents designated for disclosure in our decision of 19 July 2011. Unlike in its advice on Greenpeace's notice of objection, the Advisory Committee assessed each document and included this assessment in an annexe to its report. The assessment is summarised in table 1.¹⁹ The Committee has recommended that full or partial disclosure of the documents numbered 0874, 0969 and 1395 should be refused after all. We adopt this recommendation and the reasoning on which it is based, as apparent from the Advisory Committee's report. The Committee has also recommended that Nuon's objections to the disclosure of the other documents listed in its notice of objection should be declared unfounded. We adopt this recommendation as well. For the reasoning on which it is based, reference should be made to the Committee's advice in relation to Nuon.

¹⁹ Advisory Committee's advisory report in relation to Nuon, pp. 39-41.

Decisions

I. Greenpeace's objection of 29 August 2011 to the decision of 19 July 2011, reference 2011-32.305/29/A.35, LGW is upheld owing to the absence of a sufficient statement of reasons. A fresh assessment of whether the relevant documents should be fully or partly disclosed will be made in various objection decisions, and where disclosure is refused, the reasons for this will be amplified. Greenpeace is awarded costs of €1,311 for the professional legal assistance it has received.

II. RWE's objection of 31 August 2011 to the decision of 19 July 2011, reference 2011-32.305/29/A.35, LGW is upheld in so far as it relates to the full or partial disclosure of the documents numbered 042, 084, 103, 269, 401, 540, 542, 559, 571, 576, 587, 701, 874, 868, 954, 969, 984, 1035, 1045, 1100, 1136, 1436, 1625 and 1629 and is declared to be unfounded in other respects. In so far as the decision of 19 July 2011 relates to the documents numbered 042, 084, 103, 269, 401, 540, 542, 559, 571, 576, 587, 701, 874, 868, 954, 969, 984, 1035, 1045, 1100, 1136, 1436, 1625 and 1629, it is revoked and disclosure of all or part of these documents is once again refused.

III. Nuon's objection of 30 August 2011 to the decision of 19 July 2011, reference 2011-32.305/29/A.35, LGW is upheld in so far as it relates to the full or partial disclosure of the documents numbered 0874, 0969 and 1395 and is declared to be unfounded in other respects. In so far as the decision of 19 July 2011 relates to documents numbered 0874, 0969 and 1395, it is revoked and disclosure of all or part of these documents is once again refused.

Provision of the documents

Pursuant to the provisions of section 6, subsection 5 of the WOB, we will not provide the documents disclosed as a result of this decision until three weeks after this decision has been made known.

Notwithstanding the above, we will provide the documents numbered 393, 428, 777, 785, 1621, 1632 and 1633 together with the notification of this decision since RWE retracted its earlier objections to disclosure of these documents during the hearing.

Judicial review

Under the General Administrative Law Act you may lodge an application for judicial review of this decision within six weeks of the date of its dispatch with:

Groningen District Court, Administrative Law Sector, Postbus 150, 9700 AT Groningen.

Yours sincerely,

(signature), chair

(signature), secretary

Provincial Executive of Groningen