

## **Translation of a letter of 29 April 2005 from Pieter van Geel, State Secretary for Housing, Spatial Planning and the Environment, to the President of the House of Representatives of the States General concerning Borssele Nuclear Power Plant**

Further to my letter of 21 February 2005 (House of Representatives 2004-2005, 30 000, no. 1) and the discussion with the House of Representatives concerning the Borssele Nuclear Power Plant on 24 February 2005 (House of Representatives 2004-2005, Proceedings 52, pp. 3404-28), I enclose additional information on the subject.

### **Context**

The subject of this letter is mainly the future of the Borssele Nuclear Power Plant (NPP). It is not a first move towards a general discussion of the position of nuclear energy in the Netherlands: that subject is not on the agenda at present.

### **Introduction and history**

In 1973 a licence for an indefinite period under the Nuclear Energy Act was granted for the operation of the nuclear power plant in Borssele. At the end of 1994 the House of Representatives passed a motion by Member of Parliament (MP) Vos that called for the swift closure of the Borssele NPP, in 2004 at the latest.

In response to this, the then Minister of Economic Affairs, when approving the Electricity Plan 1995-2004, decided not to agree to extending the plant's operating time to 2007.

The Minister of Economic Affairs communicated this to the House in a letter of 16 December 1994, stating that, in connection with bringing forward the closure, agreements had been reached with the SEP [the electricity producers' cooperative] on the cost of the modification programme for the plant, which would not have been completely amortised by 2004. In order to make up some of the shortfall, it was agreed to pay out a sum of 31.5 million euros (70 million guilders) once the plant was closed in 2004.

For the sake of maximum clarity, given the interests involved in bringing forward the closure, the Minister of Economic Affairs also announced that he intended to amend the Nuclear Energy Act licence to the effect that the operation of the NPP should be terminated de facto by 1 January 2004 at the latest. This restriction was added to the licence in 1997, but the Administrative Jurisdiction Division of the Council of State quashed the decision on formal grounds in 2000. A procedure to reinstate the decision was not possible, as the basis for the electricity plans whose existence was at the heart of the motivation for restricting operating time had been removed by the entry into force of the Electricity Act 1998.

In 2001 Greenpeace asked the Minister of Housing, Spatial Planning and the Environment to restrict the term of the licence, citing renewed justification based on a change in social attitudes. This request was finally rejected by the Administrative Jurisdiction Division of the Council of State in an appeal procedure in 2003. The reason given was that any such renewed justification could only be based on new, objective information showing that economic, social and other benefits of the procedure were now outweighed by the damage to health that it could cause.

As an agreement to close the plant had been reached between the SEP and the Minister of Economic Affairs in 1994, EPZ (the owner/operator of the NPP) was then asked to abide by the closure agreement on that basis. When EPZ responded that it did not feel bound by the agreement, the State instituted civil proceedings with 's-Hertogenbosch District Court to

compel EPZ to abide by it. The court, however, ruled in September 2002 that this was not a legally enforceable agreement, hence there was no coercive measure available to implement the termination of operating time at the end of 2003.

Meanwhile the first Balkenende government had taken office in July 2002 and the Coalition Agreement had laid down that it did not make sense, given the Kyoto commitments, to bring forward the closure of the plant (in relation to its economic and safe operating time).

This also meant that there was no reason for the government to appeal against the district court's decision. A motion put forward on 25 November 2002 by MP Duyvendak (House of Representatives, Proceedings 28 600 XI, no. 61) calling for this was rejected.

The second Balkenende government's Coalition Agreement laid down that "*the NPP will be closed when its technical design lifetime has come to an end (at the end of 2013)*".

As I reported in my letter of 21 February 2005 (House of Representatives 2004-2005, 30 000, no. 1), it emerged in mid-2004 that EPZ is not willing to cooperate voluntarily with the Coalition Agreement to terminate the operation of the NPP at the end of 2013.

If the plant were to be compelled to close in some other way, EPZ considers that full compensation would have to be paid. I did not regard such a large amount of compensation as negotiable at that time and I therefore took certain steps.

In order to implement the Coalition Agreement, I carried out a number of fact-finding studies into the possibility of closing the Borssele nuclear power plant at the end of 2013. Legal advice was obtained and an estimate of the bandwidth of the cost of closure was made.

I also carried out a general fact-finding study of important aspects of the closure, such as nuclear safety and operating lifetime, environmental aspects, proliferation and terrorism.

The enclosed memorandum on *The Operating Lifetime of Borssele Nuclear Power Plant*<sup>1</sup> sets out the results of these studies and discusses the situation regarding the implementation of the motion put forward by MP Spies on 1 July 2004.

The main conclusions that emerge from these studies are as follows:

- Technically it is possible to continue operating the NPP safely after 2013. This would of course require necessary efforts to maintain the systems so that all the safety requirements continue to be met.
- If operation continues after 2013, it will contribute to reducing greenhouse gas emissions and also to security of supply: the energy mix will be less diversified if the NPP does not continue to operate. Ideas differ, however, as to the significance of this contribution to reducing greenhouse gas emissions and to security of supply.
- Continuing to operate after 2013 would of course mean that the production of radioactive waste (that may or may not be able to be reprocessed), the accident risk and the risk of proliferation and terrorism would continue. Here again, opinions differ as to the importance that should be attached to these problems.

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<sup>1</sup> Deposited for inspection at the House of Representatives Central Information Desk.

- Based on the legal analysis I conclude that it would only be possible to compel closure by law if the commercial production of electricity from nuclear energy were to be banned in general, which would be going beyond the provisions of the Coalition Agreement.
- If the plant is forced to close, substantial compensation would be involved in any event. The actual amount of compensation can only be determined in legal proceedings. It is expected to be between a few hundred million and over one billion euros.
- Research into the situation in other European countries where nuclear power plants are being or have been forced to close has not produced any new insights that could offer other possibilities in the Dutch situation or result in less or no compensation.

### **The transition to sustainability**

It is and remains very important to make our energy management more sustainable. The problems of keeping the Borssele NPP open need to be seen in this broader perspective. The Energy Council and the Council for Housing, Spatial Planning and the Environment published a report in December 2004 (Energy Transition: Climate for New Opportunities), which concluded among other things that the political urgency of the transition to a more sustainable energy management is not being sufficiently acknowledged. I have taken note of this, and in the present context of closing the NPP, in the discussion about nuclear energy that developed in February in response to the statements by the Minister of Foreign Affairs among other things, I have considered whether it would make sense to invest a lot of money in its closure, or whether the money would be better employed in giving an added boost to the transition to more sustainable energy management. For that reason I have commissioned a fact-finding study into the possibilities of an innovative energy policy, looking in particular at the effects of closing the Borssele NPP. I would also refer you to the answers to the questions posed by MP Duyvendak on 18 March 2005. The results of this study (*Closing 'Borssele' in the light of the Transition to More Sustainable Energy Management – The Core of the Discussion*) are appended to this letter.<sup>2</sup>

The study places the question of whether to close the Borssele NPP at the end of 2013 in a broader context. It reveals that a number of trends have occurred in the past ten years that could warrant reconsideration of this subject. The main conclusions from the study are as follows:

1. As regards the motion by MP Vos (1994) to close the NPP, various changes have taken place, some of which warrant closure more and some less than was the case at the time.
  - a. As regards the Borssele NPP itself (first-order effects): the problems of radioactive waste and the possibilities of proliferation have not changed, generally speaking. Investment has been made in the safety of the NPP (in 1997). The risk of a severe accident has been reduced by a factor of 30, and additional accident-mitigating measures have also been taken that make the plant safer. The threat of terrorism has increased since 11 September 2001.
  - b. As regards the context (second-order effects): we now have a liberalized electricity market that in practice covers North West Europe. A decision to close the plant would affect investment decisions by actors on that market, which would result in the NPP's capacity being substituted with additional imports, mainly of nuclear power, or new coal or gas power, for example. These substitutes are also not without problems from the environmental point of view.

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<sup>2</sup> Deposited for inspection at the House of Representatives Central Information Desk.

2. Because of this mix of changes it is not immediately clear whether a decision to close the NPP at the end of 2013 would produce net positive or negative effects in terms of accident risk, radioactive waste, the possibilities of proliferation, CO<sub>2</sub> and other emissions, costs, benefits, and the distribution of costs and benefits among various actors. We need to gain a clearer picture on these points. Questions that remain open need to be quantified as far as possible, or answered better in qualitative terms. A study of this kind will provide an important basis for a final decision in due course. This approach is in line with the notion of sustainable development: showing what shifts and deferrals would take place, and not taking deliberate decisions until those are clear.

### **A complex matter**

The trends and de facto situations as outlined above and in the memorandum on “The Operating Lifetime of Borssele Nuclear Power Plant” and the results of the analysis of the dilemmas give a good idea of the complexity. All in all, the various elements needed to gain a balanced overall picture are known, but not all of them have been studied in sufficient detail and related to one another to enable a final judgment to be made.

It is possible, in line with the Coalition Agreement, to implement the proposed closure of the Borssele NPP by passing an amendment to this effect to the Nuclear Energy Act. This would involve banning the commercial production of electricity from nuclear energy in the Netherlands across the board in that amendment. That in itself would be going beyond the agreements in the Coalition Agreement, and it would be inconsistent, as we would not be banning imports of electricity generated from nuclear energy. Lastly, it would also have the consequence that nuclear energy could no longer make a contribution to energy policy and potential measures to reduce greenhouse gas emissions. In that case we should also have to be willing to pay the necessary compensation and accept the legal consequences.

The need to transition to sustainability, however, requires substantial steps to be taken towards sustainable energy management (sustainable energy and energy saving). Increasing knowledge, developing technologies, encouraging innovation and additional investment could form part of this. A transition of this kind will require more resources and efforts on the part of all the parties involved, both government and industry, than currently envisaged.

I have been exploring to what extent N.V. EPZ and Delta N.V. and the Board of Directors of Essent N.V. are willing to give an added boost to energy efficiency and the production of sustainable energy in connection with the closure date of the plant. These discussions are promising but not yet complete.

### **The next steps**

This is a complex matter in several respects, then. There are dilemmas but possibly new opportunities as well.

Based on the dilemmas and the willingness of EPZ and its shareholders to make an extra effort, I should like to propose the following process to the House of Representatives, which is expected to be completed in autumn 2005.

a. The consequences of shutting down the Borssele NPP at the end of 2013 or of keeping it open will be analysed. What are the social costs and benefits, what on balance are the effects in terms of accident risk, radioactive waste, proliferation and terrorism, CO<sub>2</sub> and other environmental impacts?

b. The discussions with EPZ, Delta and Essent on a package of additional efforts towards sustainable energy management that they are willing to undertake will be continued. This is in line with the suggestions put forward by some members of the House during the debate on 24 February.

c. The government will carry out a broader fact-finding study of the steps required towards sustainable energy management. In this context I would refer to the Energy Report that will be published shortly.

d. This includes such things as:

- additional investment in energy research and innovative concepts;
- creating new economic activities in the field of energy as a spin-off of R&D work;
- special efforts to implement existing technologies so as to provide low-carbon electricity earlier;
- additional agreements on reactor safety, the prevention of proliferation and terrorism, and waste;
- also possibly examining whether, how and when the NPP's capacity could be replaced with a production unit that qualifies as a sustainable energy producer.

Once we have got to the bottom of these complexities and explored the possibilities, the government proposes making a decision before the end of 2005 on this process towards sustainable energy management. The future of the Borssele NPP is an independent part of this. This means that I propose not making a final decision on the operating lifetime of the Borssele NPP until the steps above have been taken.

Postponing the decision on the Borssele NPP must not be allowed to affect the progress of the revision of the Nuclear Energy Act, which is currently in preparation. I therefore intend to abide by the intention to complete the bill to amend the Nuclear Energy Act as described in 7a of the enclosed memorandum and present the bill to the Council of State for its advice this summer. If it is decided to abide by closure at the end of 2013 without qualification, this point will have to be added to the bill.<sup>3</sup>

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<sup>3</sup> The NRG report Development concerning the Final Disposal of Spent Fuel has been deposited for inspection at the House of Representatives Central Information Desk.