

The Aarhus Convention Compliance Committee

Attn. Ms Fiona Marshall
Secretary to the Aarhus Convention
Compliance Committee

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Conc.: Communication ACCC/C/2014/104
Borssele nuclear power plant

Amsterdam, 11 April 2017

Dear Aarhus Convention Compliance Committee,

We thank you for the opportunity to react on the answer of the Netherlands on your question about the alleged need for payment of compensation.

We would like to point out that there was no legal obligation for the Netherlands to pay any compensation to EPZ. The reactor was build and initially operated by the state utility PZEM with a expected technical lifetime of 40 years. PZEM received in 1973 for the operation of the nuclear power plant an operation license for an indefinite period of time, based on a compulsory safety report that limited the exploitation to a period of 40 years. When Borssele was privatised in 1990 to the new owner EPZ, this technical lifetime expectation did not change and the time-limit in the safety report remained unchanged. The Dutch government confirmed in 1994 that the power plant would close after the expiration its technical lifetime of 40 years. On the basis of this decision EPZ faced a clear situation, which was in line with the initial planning, the license and underlying safety report and therefore with the business case of the power station at the date of privatisation.

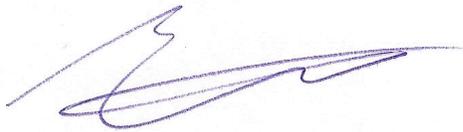
When EPZ, as described in the Memorandum submitted by the Netherlands, opposed the closing of the power plant based on its unlimited operation license and threatened with a potential damage claim, the Dutch government accepted – under the threat of such a damage claim – to make a deal with EPZ, laid down in the 2006 Covenant. It actively accepted a request of EPZ for a change of the permit and prolongation of the operation time in the underlying safety report. It furthermore did not take the case to Court to see if the Netherlands, as EPZ argued, would be obliged to compensate EPZ in case the Dutch

authorities would not allow a change of the operation permission by a change of the plant lifetime as laid down in the safety report.

The Dutch government's suggestion that compensation would be due to EPZ in case the power plant would have been closed, is thus a completely theoretical one. As the lifetime extension of the power plant increases the safety risks, as we have argued in our submission, the Dutch public authorities could have refused to prolong the lifetime in the Borssele safety report. Instead, the Netherlands chose to sign the 2006 Covenant with EPZ.

We believe that the decision to give in to the threat of the *de facto* bluff from the side of EPZ to announce a potential compensation claim with the gentlemen's agreement to accept a 60 year operation time, is one of the decisions in the tiered decision making process that led to the *de facto* lifetime extension of the Borssele nuclear power plant. For this, permission was granted to EPZ for a lifetime extension in 2013 (the LTO-vergunning), changing the operation license, basing it on a safety report extending the lifetime of the power plant to 60 years. It goes without saying that on the basis of the Aarhus Convention, also the 2006 decision to accept a gentlemen's agreement in the form of a Covenant with EPZ should have been taken based on public participation with regard to the environmental implications of a prolonged operation of the power plant.

Sincerely,



Jan Haverkamp

Stichting Greenpeace Nederland

Bondine Kloostra

Van den Biesen – Kloostra advocaten

Council