

Ms Lucy Reed
252 7th Avenue,
#15J, New York, NY 10001,
United States of America

July 19, 2021

By email: ICSIDsecretariat@worldbank.org

Re: *RWE AG and RWE Eemshaven Holding II BV v. Kingdom of the Netherlands (ICSID Case No. ARB/21/4)*
Expression of interest in exploring *amicus curiae* participation

Dear President Ms Lucy Reed,

First of all, the undersigned organisations would like to congratulate you on your appointment as President of the Tribunal in the *RWE AG and RWE Eemshaven Holding II BV v. Kingdom of the Netherlands (ICSID Case No. ARB/21/4)* arbitration.

The undersigned organisations hereby express their interest in exploring *amicus curiae* participation in *ICSID Case No. ARB/21/4*. The signing organisations are a group of non-profit organisations collectively engaged in promoting the development and protection of human rights and the environment. Moreover, we are specifically engaged in application and enforcement of international, EU and national environmental and human rights laws.

With this expression of interest, the undersigned organisations kindly request the Tribunal to indicate the opportune time to request leave for *amicus curiae* intervention, in order to avoid disruption of the proceedings.

In addition, the undersigned organisations kindly request the Tribunal to grant us unrestricted access to documents produced during the course of the arbitration proceedings, in order to evaluate whether to request the Tribunal's leave to intervene, and to improve transparency for civil society as a whole.

The undersigned organisations respectfully highlight the applicable arbitration rules in support of Tribunal's authority to respond positively to our request. Cognizant of the conditions laid down in the Article 37 of the ICSID Arbitration Rules, should leave for an *amicus curiae* submission be requested and granted, the undersigned organisations would submit arguments that assist the Tribunal in the determination of a factual or legal issue related to the proceedings by bringing a perspective, particular knowledge or insights that is different from that of the disputing parties.

This ICSID arbitration concerning the Dutch coal phase-out law warrants effective *amicus curiae* participation, because it implicates special public interests far beyond those raised in other investment arbitrations. The Dutch coal phase-out law is indeed a central part of the Dutch government's plans to reduce its emissions in line with its human rights obligations to prevent the dangerous consequences of climate change. The outcome of this arbitration proceeding will have a direct impact on Dutch society as a whole.

The undersigned organisations could offer their particular expertise and research to assist the tribunal in better understanding the factual circumstances and local perspectives as well as the relevant legal intersections of investment law, human rights and environmental law, including a particular focus on recent jurisprudential and international law developments in relation to climate change, and their implications for the case at hand. More particularly, some of the undersigned organisations brought successful litigation in which the Dutch courts confirmed the human rights obligations of the Dutch State, as well as corporations, to take appropriate measures to reduce the emissions of greenhouse gasses in order to prevent dangerous climate change.

For the above reasons, the undersigned organisations kindly request an indication of the timeline for their participation as *amicus curiae* in the proceedings. In order to gain the level of knowledge required to explore *amicus curiae* participation and adequately prepare their *amicus curiae* petition and brief, sufficiently comprehensive information on the content of the arbitration proceedings between *RWE AG and RWE Eemshaven Holding II BV* and the Netherlands should also be publicly available, or at least available to the undersigned organisations.

The undersigned organisations respectfully argue that ensuring transparency is a necessary step for the Tribunal to achieve a timely and effective resolution of the dispute in line with the ICSID Arbitration Rules.

Respectfully yours,

Amy Rose
Director of Litigation
ClientEarth

Wolfgang Kaleck
General Secretary
ECCHR

Faiza Oulahsen
Program Director Climate & Energy
Greenpeace Netherlands

Donald Pols
Director
Milieudefensie

Irene Keizer
Manager Economic Justice
SOMO

Marjan Minnesma
Director
Urgenda

Description of the undersigned organisations

ClientEarth is an independent, non-profit organisation providing dedicated public interest legal capacity for the environment since 2007. ClientEarth's goal is to use the power of the law to develop legal strategies and tools to address environmental issues. It aims to protect the environment notably by increasing citizens' access to information and justice, advocating for effective environmental legislation, and empowering non-governmental organisations.

The **European Center for Constitutional and Human Rights (ECCHR)** is an independent, non-profit legal and educational organization dedicated to enforcing human rights worldwide since 2007. Together with those affected and partners worldwide, ECCHR uses legal means to end impunity for those responsible for international crimes, persecution and corporate exploitation. The organization aims to address structural causes of recurring human rights violations in the globalized economic system.

Greenpeace Netherlands is an independent campaigning organisation, which uses peaceful, creative confrontation to expose global environmental problems, and develop solutions for a green and peaceful future. The mission of the foundation is to foster and protect life on earth in all its diversity. In the past decades, the organization has put the damage of coal power plants on people, nature and climate on the agenda and campaigned for closure of the Dutch coal power plants.

Milieudefensie (Friends of the Earth Netherlands) is an association based in the Netherlands with about 100.000 members and donors. We work towards a fair and sustainable world. We bring people together to urge governments and companies to make better choices with advocacy campaigns, mass mobilizations and court cases. In May this year we won a court case in which we argue that Shell will create an unlawful danger to Dutch residents by not acting in accordance with the Paris Climate Agreement. The order that Shell reduces its global emissions with 45% in 2030 follows from the conclusion of the court that contributing to climate change endangers human rights, and that companies have a duty of care to respect human rights.

The **Centre for Research on Multinational Corporations (SOMO)** is an independent, not-for-profit knowledge centre on multinationals based in the Netherlands. SOMO examines a wide variety of trade and investment mechanisms, analysing their impact on society and sustainable development goals. SOMO advocates for modern trade and investment policies that contribute simultaneously to social justice, sustainability and just economic development. SOMO also supports workers, communities, individuals, and civil society organizations in their complaints to various non-judicial grievance mechanisms.

Urgenda is a foundation based in the Netherlands which aims for a fast transition towards a sustainable society, with a focus on the transition towards a circular economy using only renewable energy. It works on solutions for this transition, including for example the introduction and realization of 'energy neutral' houses and the acceleration of electric mobility. Urgenda views climate change as one of the biggest challenges of our times and looks for solutions to ensure that the earth will continue to be a safe place to live for future generations. In 2015, the Urgenda Foundation, won a historic climate change case against the Dutch Government. It was the first case in the world in which a court, based on human rights obligations, ordered a government to reduce a country's greenhouse gas emissions by an absolute minimum amount. The court's decision was upheld on appeal by the Court of Appeal in 2018 and ultimately the Supreme Court of the Netherlands in 2019.