



## **GENERAL DIRECTOR OF ENVIRONMENTAL PROTECTION**

DOOŚ-OAI.4202.3.2013.AŁ.7

### **DECISION**

Based on Article. 138 § 1 points 1 and 2 of the Act of June 14, 1960 of the Code of Administrative Procedure (OJ of 2013, item 267), further CAP, after examining appeals of: [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED], represented by a legal adviser [REDACTED] and the Association "Partnerstwo Dzikie Mazury" (Wild Masuria Partnership) from the decision of the Regional Director of Environmental Protection in Białystok of July 4, 2013 sign: WOOŚ-II.4202.1.2012.AS,

#### **1. I repeal point 1.2.3 as follows:**

"The structural elements of the pylons shall be delivered to the place of their foundation using existing access roads and forest ducts. Use gravel, crushed rock aggregate or similar material for hardening of unpaved access roads. Temporary roads shall be dismantled after completion of works, and the occupied area underneath shall be leaded to the state closest to the original one."

#### **In this respect, I adjudicate:**

"The structural elements of the pylons shall be delivered to the place of their foundation, using existing access roads and forest ducts. Use gravel, crushed rock aggregate or similar material for hardening of unpaved access roads. If necessary, additional access roads shall be made of concrete slabs or JOMB boards. Remove concrete slabs or JOMB boards after completion of construction works. Preserve temporary roads from existing ducts to posts of pylons in forest areas, while in non-forested areas, lead areas occupied by temporary roads to the state closest to the original one."

#### **2. I repeal point 1.2.4 as follows:**

"When planning access routes, use existing roads and forest ducts to the maximum, and if it is necessary to build temporary roads, avoid as much as possible forest and hydrogenic areas and meadows as well as identified valuable natural sites or possible new ones, indicated by nature conservation authorities."

#### **In this respect, I adjudicate:**

"When planning access routes, use existing roads and forest ducts to the maximum, and if it is necessary to build temporary roads, avoid as much as possible forest and hydrogenic areas and meadows as well as identified valuable natural sites or possible new ones, indicated by nature conservation authorities. Temporary roads shall be delimited as far as possible within the technological strip of the line. "

**3. I repeal point 1.2.7 as follows:**

"Position pylons so that their placement influences the water levels of a given habitat as little as possible. Position pylons in places as far away as possible from the waterlogged habitats and reduce to a minimum the time of ground works in the construction of pylons."

**In this respect, I adjudicate:**

"Position pylons so that their placement influences the water levels of a given habitat as little as possible. Position pylons in places as far away as possible from the waterlogged habitats and reduce to a minimum the time of ground works in the construction of pylons. When making foundations on the Eł - 12, Eł - 49 and Eł - 51 pylon positions, use airtight walls (e.g. Larsen type) to protect against the inflow of water to the excavations."

**4. I repeal point 1.2.19 as follows:**

"Limit felling of trees and shrubs to the necessary minimum."

**In this respect, I adjudicate:**

"The maximum area of trees covered by the felling cannot be greater than 5.3 ha, with the trees and shrubs being cut down to the necessary minimum."

**5. I repeal point 1.2.21 as follows:**

"Make substitute plantings in the same number of trees that have been cut."

**In this respect, I adjudicate:**

"Make substitute plantings in the same number of trees that have been cut. Ensure consistency of species planted with existing ones in a given area, and in addition these plantings should be carried out using native species. Species composition and form of mixing should correspond to the given habitat. Plantings should be conducted outside of natural habitats, for which the expansion of trees and shrubs is seen as a threat. Replacement plantings, including the selection of planting locations and species composition of trees, should be carried out after consultation with the nature conservation authorities."

**6. I repeal point 1.2.26 as follows:**

"If the nature conservation authorities conclude, that during the construction works, beyond the period of migration of amphibians, increased activity of amphibians took place, and thus the possibility of negative, direct impact on these animals, apply measures to minimize this effect, in the form of fences."

**In this respect, I adjudicate:**

"If the nature conservation authorities conclude, that during the construction works, beyond the period of migration of amphibians, increased activity of amphibians took place, and thus the possibility of negative, direct impact on these animals, apply measures to minimize this effect, in the form of fences with the parameters indicated in point 1.2.38."

**7. I repeal point 1.2.27 as follows:**

"In the course of construction works, in case of necessity to locate the excavations near the place intensively penetrated by amphibians, guard them using protective fences."

**In this respect, I adjudicate:**

"Felling of trees and shrubs shall be carried out outside the birds' breeding season, i.e. outside a period from March 1 to August 31."

**8. I repeal point 1.2.31 as follows:**

"In the Podlasie Voivodship, pylons, access roads, construction facilities and material bases, locate, after consultation with the natural conservation authorities, except for the identified patches of protected natural habitats and the sites of the large copper (*lycaena dispar*), violet copper (*lycaena helle*), and green snaketail (*ophiogomphus cecilia*), i.e. outside the sections:

section	beginning of section		end of section	
	x	y	x	y
1	720260,6411	662406,2428	720382,7051	662419,1205
2	720500,6135	662486,7298	720545,164	662583,9425
3	721456,9124	663486,3416	721575,9192	663500,4631
4	722070,4458	663559,1442	722276,1046	663583,5480
5	723594,9639	665113,6755	723560,367	665299,5714
6	726204,5504	672036,9966	726188,971	672103,6091
7	726071,4654	672606,0252	726028,5423	672789,5505
8	738351,1513	699407,0084	738420,2928	699426,5017
9	749493,6755	703375,8745	749558,9713	703441,0805
10	753402,5449	703180,9023	753481,6692	703179,9587
11	756212,8803	706896,6366	756264,7671	707058,4938
12	756362,5685	707167,8389	756452,8758	707259,3383
13	759164,6243	708422,5184	759185,9795	708428,0379

and, as far as possible, outside the other places of protected species' occurrence."

**In this respect, I adjudicate:**

Pylons, access roads, construction facilities and material bases, locate, after consultation with the natural conservation authorities, except for the identified patches of protected natural habitats and the sites of the large copper (*lycaena dispar*), violet copper (*lycaena helle*), and green snaketail (*ophiogomphus cecilia*), i.e. outside the sections:

section	beginning of section		end of section	
	x	y	x	y
1	720260,6411	662406,2428	720382,7051	662419,1205
2	720500,6135	662486,7298	720545,164	662583,9425
3	721456,9124	663486,3416	721575,9192	663500,4631
4	722070,4458	663559,1442	722276,1046	663583,5480
5	723594,9639	665113,6755	723560,367	665299,5714
6	726204,5504	672036,9966	726188,971	672103,6091
7	726071,4654	672606,0252	726028,5423	672789,5505
8	738351,1513	699407,0084	738420,2928	699426,5017
9	749493,6755	703375,8745	749558,9713	703441,0805
10	753402,5449	703180,9023	753481,6692	703179,9587
11	756212,8803	706896,6366	756264,7671	707058,4938
12	756362,5685	707167,8389	756452,8758	707259,3383
13	759164,6243	708422,5184	759185,9795	708428,0379

and, as far as possible, outside the other places of protected species' occurrence."

**9. I repeal point 1.2.33 as follows:**

"In the Warmian-Masurian Voivodship, do not locate pylons, access roads and technical bases related to the construction phase of the 400-kV power line within the identified positions of the large copper (*lycaena dispar*) and green snaketail (*ophiogomphus cecilia*), i.e. outside the sections:

section	beginning of section		end of section	
	x	y	x	y
1	720260,6411	662406,2428	720382,7051	662419,1205
2	720500,6135	662486,7298	720545,164	662583,9425
3	721456,9124	663486,3416	721575,9192	663500,4631
4	722070,4458	663559,1442	722276,1046	663583,5480
5	723594,9639	665113,6755	723560,367	665299,5714
6	726204,5504	672036,9966	726188,971	672103,6091
7	726071,4654	672606,0252	726028,5423	672789,5505
8	738351,1513	699407,0084	738420,2928	699426,5017

9	749493,6755	703375,8745	749558,9713	703441,0805
10	753402,5449	703180,9023	753481,6692	703179,9587
11	756212,8803	706896,6366	756264,7671	707058,4938
12	756362,5685	707167,8389	756452,8758	707259,3383
13	759164,6243	708422,5184	759185,9795	708428,0379

**In this respect, I am discontinuing the proceedings of the first instance authority.**

**10. I repeal point 1.2.34 as follows:**

"In the Warmian-Masurian Voivodship, do not locate pylons, access roads and technical bases within identified patches of protected natural habitats, i.e. outside sections:

section	beginning of section		end of section	
	x	y	x	y
1	720260,6411	662406,2428	720382,7051	662419,1205
2	720500,6135	662486,7298	720545,164	662583,9425
3	721456,9124	663486,3416	721575,9192	663500,4631
4	722070,4458	663559,1442	722276,1046	663583,5480
5	723594,9639	665113,6755	723560,367	665299,5714
6	726204,5504	672036,9966	726188,971	672103,6091
7	726071,4654	672606,0252	726028,5423	672789,5505
8	738351,1513	699407,0084	738420,2928	699426,5017
9	749493,6755	703375,8745	749558,9713	703441,0805
10	753402,5449	703180,9023	753481,6692	703179,9587
11	756212,8803	706896,6366	756264,7671	707058,4938
12	756362,5685	707167,8389	756452,8758	707259,3383
13	759164,6243	708422,5184	759185,9795	708428,0379

**In this respect, I am discontinuing the proceedings of the first instance authority.**

**11. I repeal point 1.2.35 as follows:**

"In the Podlasie Voivodship, in case of forest natural habitats, including priority ones, if they cannot be omitted, the 400-kV power line shall be conducted over the tree tops, with exclusion of felling in sections:

Sections of 400-kV power to be led over the tree tops				
section	beginning of section		end of section	
	x	y	x	y

1	719246,3138	662246,6559	725748,3906	673987,3886
2	738351,1755	699407,0154	738420,0932	699426,4455
3	744055,8646	699772,6019	744282,4891	699758,6711
4	753401,7053	703180,8529	753483,2844	703179,8657

**In this respect, I adjudicate:**

"In case of forest natural habitats, including habitats of priority importance for the Community, such as \*91E0 and \*91D0, if they cannot be avoided, conduct the power line over the tree tops, with exclusion of felling in sections:

<b>Sections of 400-kV power to be led over the tree tops</b>				
<b>section</b>	<b>beginning of section</b>		<b>end of section</b>	
	<b>x</b>	<b>y</b>	<b>x</b>	<b>y</b>
1	719246,3138	662246,6559	725748,3906	673987,3886
2	738351,1755	699407,0154	738420,0932	699426,4455
3	744055,8646	699772,6019	744282,4891	699758,6711
4	753401,7053	703180,8529	753483,2844	703179,8657
5	749325,25	703207,68	749600,52	703482,58

**12. I repeal point 1.2.33 as follows:**

"In Warmian-Masurian Voivodship, in case of forest natural habitats, including priority ones like \*91E0 and \*91D0, if they cannot be avoided, felling shall be excluded, and the power line shall be conducted over the tree tops.

<b>Sections of 400-kV power to be led over the tree tops</b>				
<b>section</b>	<b>beginning of section</b>		<b>end of section</b>	
	<b>x</b>	<b>y</b>	<b>x</b>	<b>y</b>
1	719246,3138	662246,6559	725748,3906	673987,3886
2	738351,1755	699407,0154	738420,0932	699426,4455
3	744055,8646	699772,6019	744282,4891	699758,6711
4	753401,7053	703180,8529	753483,2844	703179,8657
5	749325,25	703207,68	749600,52	703482,58

**In this respect, I am discontinuing the proceedings of the first instance authority.**

**13. I repeal point 1.2.37 as follows:**

"Fill in excavations as soon as possible to prevent the trapping of ground beetles (carabidae)."

**In this respect, I adjudicate:**

"Excavations should be used and liquidated in the shortest possible time, filled up after the release of ground beetles (carabidae)."

**14. I repeal point 1.2.43 as follows:**

"Because of a breeding season of birds, in the Podlasie Voivodship, not to carry out construction and assembly works from 01 March to 31 August in the following sections:

section	beginning of section		end of section	
	x	y	x	y
1	718642,2227	662064,7073	719235,2030	662239,3870
3	725750,2800	674400,7346	725848,8071	674703,2809
4	725917,9395	675761,4933	726228,9544	676198,6797
5	725917,9395	683364,7434	733806,9525	683393,8721
6	737953,2968	694667,0730	737334,2736	695451,1074
7	737353,6031	696065,1901	737049,7407	696930,6843
8	745507,8694	700275,9277	746208,0840	700895,8732
9	752159,6233	703417,9272	752789,4167	703188,2141
10	757088,1632	707903,1724	758035,5538	708137,1182
11	761590,2387	708047,3310	762059,8739	707873,6563
12	762940,5260	708511,0014	764312,7397	709345,6734
13	764353,1593	709373,1250	765175,7622	709931,8096
14	777746,0563	715626,7824	778072,4230	715417,0878

**In this respect, I adjudicate:**

"All construction and assembly work in the following sections of the power line shall be carried out outside the breeding season of birds, i.e. outside the period 1 March - 31 August:

section	beginning of section		end of section	
	x	y	x	y
1	718642,2227	662064,7073	719235,2030	662239,3870
3	725750,2800	674400,7346	725848,8071	674703,2809
4	725917,9395	675761,4933	726228,9544	676198,6797
5	725917,9395	683364,7434	733806,9525	683393,8721
6	737953,2968	694667,0730	737334,2736	695451,1074
7	737353,6031	696065,1901	737049,7407	696930,6843
8	745507,8694	700275,9277	746208,0840	700895,8732

9	752159,6233	703417,9272	752789,4167	703188,2141
10	757088,1632	707903,1724	758035,5538	708137,1182
11	761590,2387	708047,3310	762059,8739	707873,6563
12	762940,5260	708511,0014	764312,7397	709345,6734
13	764353,1593	709373,1250	765175,7622	709931,8096
14	777746,0563	715626,7824	778072,4230	715417,0878

**15. I repeal point 1.2.44 as follows:**

"Because of the breeding season of white-tailed eagle (*haliaeetus albicilla*), in the Podlasie Voivodship, not to carry out construction and assembly works in the period from January 1 - August 31 in the following sections:

section	beginning of section		end of section	
	x	y	x	y
2	725740,4959	669858,1946	725779,7572	670289,7799

**In this respect, I adjudicate:**

"Because of the breeding season of white-tailed eagle (*haliaeetus albicilla*), not to carry out construction and assembly works in the period from January 1 - August 31 in the following sections:

section	beginning of section		end of section	
	x	y	x	y
2	725740,4959	669858,1946	725779,7572	670289,7799

**16. I repeal point 1.2.45 as follows:**

"In the Podlasie Voivodship, because of breeding season of bats, construction and assembly works in the following sections shall be carried out outside the period May 1 - August 31:

section	beginning of section		end of section	
	x	y	x	y
1	719246,3138	662246,6559	725748,3906	673987,3886
2	738351,1755	699407,0154	738420,0932	699426,4455
3	744055,8646	699772,6019	744282,4891	699758,6711
4	753401,7053	703180,8529	753483,2844	703179,8657

**In this respect, I adjudicate:**

"Because of breeding season of bats, construction and assembly works in the following sections shall be carried out outside the period May 1 - August 31:

section	beginning of section		end of section	
	x	y	x	y
1	719246,3138	662246,6559	725748,3906	673987,3886
2	738351,1755	699407,0154	738420,0932	699426,4455
3	744055,8646	699772,6019	744282,4891	699758,6711
4	753401,7053	703180,8529	753483,2844	703179,8657

**17. I repeal point 1.2.46 as follows:**

"In the Warmian -Masurian Voivodship, all construction and assembly works, as well as related to felling of the trees, in the vicinity of localised nests of protected species shall be carried out outside the period 15 March - 31 July, and in case of lesser spotted eagles (*clanga pomarina*) outside the period 15 March - 15 August, and in case of white-tailed eagle (*haliaeetus albicilla*) outside the period 1 January - 31 July, in the following sections:

section	beginning of section		end of section	
	x	y	x	y
1	718642,2227	662064,7073	719235,2030	662239,3870
2	725740,4959	669858,1946	725779,7572	670289,7799
3	725750,2800	674400,7346	725848,8071	674703,2809
4	725917,9395	675761,4933	726228,9544	676198,6797
5	733603,0102	683364,7434	733806,9525	683393,8721
6	737953,2968	694667,0730	737334,2736	695451,1074
7	737353,6031	696065,1901	737049,7407	696930,6843
8	745507,8694	700275,9277	746208,0840	700895,8732
9	752159,6233	703417,9272	752789,4167	703188,2141
10	757088,1632	707903,1724	758035,5538	708137,1182
11	761590,2387	708047,3310	762059,8739	707873,6563
12	762940,5260	708511,0014	764312,7397	709345,6734
13	764353,1593	709373,1250	765175,7622	709931,8096
14	777746,0563	715626,7824	778072,4230	715417,0878

**In this respect, I am discontinuing the proceedings of the first instance authority.**

**18. I repeal point 1.2.47 as follows:**

"In the Warmian-Masurian Voivodship, construction and assembly works near forest areas and in places where felling of the trees will take place, as a rule, shall be carried out outside the period May 1 - August 31. If it is necessary to conduct works during the breeding season of birds, they must be carried out under the supervision of an ornithologist, who will determine the scope of permissible works at a specific place and time:

section	beginning of section		end of section	
	x	y	x	y
1	719246,3138	662246,6559	725748,3906	673987,3886
2	738351,1755	699407,0154	738420,0932	699426,4455
3	744055,8646	699772,6019	744282,4891	699758,6711
4	753401,7053	703180,8529	753483,2844	703179,8657

**In this respect, I am discontinuing the proceedings of the first instance authority.**

**19. I repeal point 1.2.48 as follows:**

"In the Podlasie Voivodship, due to the existence of bats and crossing river valleys, apply a wider pylon spacing (450-550 m) in sections:

section	beginning of section		end of section	
	x	y	x	y
1	733453,4260	683343,3785	733592,2869	683363,2118
2	738279,3259	699386,7586	738441,0303	699432,3484
3	753399,8947	703180,8749	753496,1691	703179,7098

**In this respect, I adjudicate:**

Due to the existence of bats and crossing river valleys, apply a wider pylon spacing (450-550 m) in sections:

section	beginning of section		end of section	
	x	y	x	y
1	733453,4260	683343,3785	733592,2869	683363,2118
2	738279,3259	699386,7586	738441,0303	699432,3484
3	753399,8947	703180,8749	753496,1691	703179,7098

**20. I repeal point 1.2.49 as follows:**

"In the Warmian-Masurian Voivodship, due to the existence of important habitats of bats, use a wider pylon spacing in sections:

section	beginning of section		end of section	
	x	y	x	y
1	733453,4260	683343,3785	733592,2869	683363,2118
2	738279,3259	699386,7586	738441,0303	699432,3484
3	753399,8947	703180,8749	753496,1691	703179,7098

**In this respect, I am discontinuing the proceedings of the first instance authority.**

**21. I repeal point 1.3.1 as follows:**

"In the Podlasie Voivodship, to reduce the cases of bird collisions with power lines mark them, e.g. in the form of red, orange or yellow balls, mounted on both lightning conductors every 60 m in sections:

section	beginning of section		end of section	
	x	y	x	y
1	725669,7374	669080,3735	725888,9843	671108,9007
2	725739,6993	674024,5498	726185,7385	676151,8804
3	728974,1909	679081,6126	733555,4498	683357,9503
4	736915,2275	686355,7658	740025,2791	689823,3642
5	760289,0774	708750,3129	769430,4250	715872,3355

The installation, type of markers and their arrangement on the lightning conductors of the power line shall be agreed with the supervising ornithologist."

**In this respect, I adjudicate:**

"In order to reduce the cases of bird collisions with power lines, mark them in the form of red, orange or yellow balls with a diameter of 60 cm, mounted on both lightning conductors, in sections:

section	beginning of section		end of section	
	x	y	x	y
1	725669,7374	669080,3735	725888,9843	671108,9007
2	725739,6993	674024,5498	726185,7385	676151,8804
3	728974,1909	679081,6126	733555,4498	683357,9503
4	736915,2275	686355,7658	740025,2791	689823,3642
5	760289,0774	708750,3129	769430,4250	715872,3355

The balls shall be assembled alternately every 60 m, which will create an effect of their installation every 30 m. The assembly of the balls should be carried out under the supervision of an ornithologist."

**22. I repeal point 1.3.2 as follows:**

"In the Warmian-Masurian Voivodship, in order to reduce the number of bird collisions with power lines, in places potentially most vulnerable to collisions with key bird species (white-tailed eagle (*haliaeetus albicilla*) areas, black stork (*ciconia nigra*) areas, lesser spotted eagle (*clanga pomarina*) territory and areas of high density of white stork (*ciconia ciconia*) nests), perform marking of lines in the form of coloured balls (e.g. red, orange, yellow) on lightning conductors. For technical reasons the balls shall be assembled alternately every 60 m, which will create an effect of their installation every 30 m. Finally, the installation, type of markers and their arrangement on the lightning conductors of the power line shall be agreed with the supervising ornithologist."

section	beginning of section		end of section	
	x	y	x	y
1	725669,7374	669080,3735	725888,9843	671108,9007
2	725739,6993	674024,5498	726185,7385	676151,8804
3	728974,1909	679081,6126	733555,4498	683357,9503
4	736915,2275	686355,7658	740025,2791	689823,3642
5	760289,0774	708750,3129	769430,4250	715872,3355

**In this respect, I am discontinuing the proceedings of the first instance authority.**

**23. I repeal point II.3 as follows:**

"Ornithological monitoring should be performed by specialists in the field of ornithology, and chiropterological - by specialists in the field of chiropterology. The post-implementation monitoring results should be submitted each time to the Regional Director of Environmental Protection in Bialystok."

**In this respect, I adjudicate:**

"Ornithological monitoring should be performed by specialists in the field of ornithology, and chiropterological - by specialists in the field of chiropterology. The naturalist (forester, gardener, biologist or landscape architect) should carry out monitoring, including annual health checks of plantings for a period of 5 years from the date of their creation. In case of dying or falling out trees or shrubs' seedlings, supplemental planting should be used in these places. The post-implementation monitoring results should be submitted each time to the Regional Director of Environmental Protection in Bialystok."

**24. In the remaining part I maintain the above-mentioned decision.**

## Justification

According to the decision, the Regional Director of Environmental Protection in Bialystok, hereinafter RDEP in Bialystok, defined the environmental conditions for the project entitled "Construction of a double-track overhead power line 400 kV Elk – the border of the Republic of Poland". Taking the deadline provided for in the Code of Administrative Procedure (CAP), the appeal against the above decision was made by:

- by a letter of July 31, 2013 by [REDACTED], [REDACTED], [REDACTED] represented by a legal adviser [REDACTED] and

- by a letter of August 3, 2013 by "Partnerstwo Dzikie Mazury" (Wild Masuria Partnership) Association.

The parties have requested to repeal contested decision in its entirety and refer the case back to the first instance authority. A request was made to order the authority to take expert evidence from medicine specialists to identify possible threats to health and life of people staying near the line and to determine if there is a need to create a limited use area. The appellants have presented the following allegations:

1. violation of art. 7 of the Code of Administrative Procedure (hereinafter CAP) because the impact of investment on human health and life has not been analysed;
2. violation of art. 8 of CAP, because the authority issued a decision based on flawed documentation, in which the impact of investments on the health of people being under or near the line was marginalised;
3. violation of art. 10, 79 of CAP by failing to provide the parties an active participation in the proceedings and unequal treatment of the parties regarding the delivery of letters and decisions;
4. violation of art. 75, 77 and 78 of the CAP due to issuing a decision based on incomplete evidence, without the request for an expert opinion on the impact of electromagnetic fields on humans;
5. violation of art. 80 of CAP due to the superficial evaluation of the documentation of the case "omitting important documents confirming the circumstances raised by the parties";
6. violation of art. 107 § 3 of CAP because of:
  - a) incorrect and incomplete justification of the decision, which does not indicate the facts which the authority considered to be proven, the evidence on which it based itself, and the reasons for which, for other reasons, refused credibility and probative value;
  - b) the use by the authority of the word "authority has not met", "authority does not know", "should have no influence on", which are unreliable and the explanation that "competent institutions have given opinion", which are insufficient;

- c) statement in the justification of the decision that there are no studies which results would confirm the negative impact of the power line on human health, "undefined safe buildings", un-explain whether it would be possible to stay and work under the power line;
- d) absence of any indication whether the line in question will not breach Occupational Health and Safety (OSH) rules of Directive 2004/40/EC of the European Parliament and of the Council of April 29, 2004 *on the minimum health and safety requirements regarding the exposure of workers to the risks arising from physical agents (electromagnetic fields) (18<sup>th</sup> individual Directive within the meaning of Article 16 (1) of the Directive 89/391/EEC)* and Directive 2008/46/EC of the European Parliament and of the Council of April 23, 2008 *amending Directive 2004/40/EC on the minimum health and safety requirements regarding the exposure of workers to the risks arising from physical agents (electromagnetic fields) (18<sup>th</sup> individual Directive within the meaning of Article 16 (1) of Directive 89/391/EEC)*, especially since these provisions have not been transposed to the regulation of the Minister of Labour and Social Policy of November 29, 2002 *on the maximum permissible concentrations and intensities of factors harmful to health in the work environment* (OJ of 2002 No. 217, item 1833);
- e) justification in the decision that the implementation of the cable (underground) power line would have a greater negative impact than the overhead line without reference to any research that would confirm it;
- f) abandoning the analysis of the variant consisting of the implementation of the cable line;
7. the authority indicated in his decision that he is not able to check whether the provisions based on which the decision is issued comply with European law, whereas "this competence is not reserved only for the court";
8. a non-exhaustive and misleading answer to note no 12 regarding the corona discharge;
9. an obligation to measure the intensity of the electric and magnetic fields and noise after the investment has been completed and based on the determination of the merits of the investment fence and prohibition of people to stay under power line is in contradiction with the authority's assurances that the project has no negative impact on human health. By imposing an obligation to perform a post-implementation analysis, the authority did not indicate when the analysis should be carried out and when and to whom the results should be submitted;
10. on page 23 of the contested decision RDEP in Bialystok pointed out that during the proceedings he analysed the impact of the project on the environment, but did not consider the impact on people in the mentioned criteria;
11. the justification for the variant chosen for implementation is the absence of a collision with housing development, however, the analysis in this respect regarding the number of displacements or demolitions does not consider the impact on human health in the case of a power line close to the

buildings. The contested decision does not indicate what is the safe distance of the line from the housing development, as well as the number and location of buildings that are within 35-100 m from the line;

12. RDEP in Białystok did not indicate in his decision what is the preferred distance of the line relative to the habitats of birds and bats;

13. the statement contained in the decision on environmental conditions that "an acceptable level of 50 Hz electromagnetic field should not exceed the limits in places available to people" indicates that the authority is uncertain about this;

14. declaration of the authority that "corona discharge is located at a distance of 20 m from the line axis" raises doubts in the context of the condition imposed in point IV.1, regarding the need to measure the intensity of electric and magnetic fields and noise in the zone 35-100 m from the line;

15. violation of § 2 sec. 1 point 6 of the Council of Ministers' ordinance of November 9, 2004 *on determining the types of projects that may significantly affect the environment and detailed conditions related to the project's eligibility for preparation of the environmental impact report* (OJ No. 257, item No. 2573, as amended) in connection with § 4 of the Council of Ministers' regulation of November 9, 2010 *on projects that may significantly affect the environment* (OJ No 213, item 1397) due to erroneous recognition that the planned power line is not an investment that poses a threat of a serious industrial accident;

16. the authority did not impose an obligation to monitor the impact of investments on human health and increase their mortality;

17. RDEP in Białystok, considering that there is no need to establish an area of restricted use, did not take into account that the line will run through agricultural areas, where people will be working for many hours.

Association "Partnerstwo Dzikie Mazury" (Wild Masuria Partnership, hereinafter the Association), appealed to repeal the contested decision in its entirety and referral of a case to the first instance authority to reassess the impact of the investment on the environment, human health and landscape, raising the following allegations:

18. breach of the precautionary principle, because the decision was issued without considering the latest research and technological solutions. The authority has not attempted to find solutions that would allow compliance with "health and environmental standards";

19. failure to analyse an option of carrying out an investment in a cable method, which is less emergency in relation to the overhead line, generates lower operating costs, does not affect the landscape values, does not cause collisions with birds, does not pose a threat to human health;

20. an authority did not consider proposed by the Association minimising measures used in Sweden, i.e.: increasing the distance of the investment location to the places of human presence, implementation of cable networks instead of overhead and change of legal regulations regarding the interaction of electric and magnetic field components;
21. an authority in a laconic and non-exhaustive manner referred to the Association's comments regarding the threat of overvoltage to which personnel working on high agricultural machineries under the line is exposed. The report does not consider legal regulations concerning the work safety of farmers under the power lines, there is also no mention that according to the guidelines of the Central Institute for Labour Protection, it is forbidden for farmers to work and animals to stay under the transmission lines;
22. in the case concerned, all the principles and legal basis of Sustainable Development which "enable reconciliation of the pursuit of a satisfactory economic result with a deep concern for the social environment and the natural environment" were omitted;
23. there is no scientific research or independent expert opinion in the documentation of the case concerned;
24. an investor's plenipotentiary has formulated responses to comments and requests made during the public participation in an irregular manner, and omitted some of the comments altogether;
25. an authority should apply to the Ministry of Health and the Institute of Occupational Medicine for opinions that would verify the currently established standards on the acceptable levels of electromagnetic fields.

The Association, together with the appeal, submitted also a letter dated June 5, 2013 containing remarks made in the proceedings involving the public, asking for reconsideration. The letter stated that:

26. the subject matter should be discontinued, as it does not include alternative options in the form of cable lines. Adopt an a priori only solution in the form of an overhead line is inconsistent with the principle of analysing the latest available technical solutions and the precautionary principle;
27. a comparative analysis of the overhead line with the cable line included in the report (part I, chapter 2.3 of "Variant solutions analysed") was created without the current global knowledge and without considering the need to ensure appropriate standards in the environment. For this investment, the designated technological strip is 70 m, it means 2 x 35 m from the axis of the line, while guidelines for Swedish high voltage lines indicate that the desired level of electromagnetic field is achieved at least at 130 m from the line axis, so the minimum corridor should be 260 m wide;
28. world research indicates a very large negative influence of electromagnetic radiation on human health, particularly on children. Suggested minimum distance of the 400-kV line from human places of residence should be 300 m;

29. a planned investment will have a significant impact on the landscape and natural environment, therefore the most advantageous variant is the zero variant or the underground cable line. Social protests in the municipalities through which the line is supposed to run clearly demonstrate the necessity to change the priority of ensuring the country's energy security.
30. a statement that the noise-related impact cannot be eliminated indicates that the investor does not seek to reduce the acoustic impact to acceptable levels;
31. it is necessary to establish a restricted use zone within the planned investment;
32. contracts for easement of transmission and lease of land are unclear and imprecise;
33. responsibility for "future property and compensation claims is transferred to local governments, and they are not clearly informed";
34. power lines are the biggest threat to avifauna, especially for predatory and migration birds. Marking of the line itself is a seeming activity with little practical effectiveness, and the only effective solution in this matter would be to replace the overhead line with the underground one;
35. a line operating temperature of 80°C testifies a significant shortage of the proposed technical solution, which will cause huge energy losses on transfers;
36. worrying is the determination of the route of the line for the expected locations of wind farms. Society of Masuria and Suwałki Regions is opposed to the development of wind energy in these regions.

After analysing the evidence, the following was observed.

Having regard to the principle of two-instance administrative proceedings, the essence of which is to provide the parties with the right to twice examine and resolve a case, the authority analysed the collected evidence in the appeal proceedings, including the application for issuing the environmental decision, the environmental impact report, comments and conclusions submitted by the parties and the public during the proceedings, and the contested decision. During the appeal proceedings, the second-instance authority considered the matter to the full extent as to the factual and legal circumstances. Acting according to art. 136 of CAP, the General Director of Environmental Protection carried out also an additional investigation, under which the investor was called by a letter of October 21, 2013, marked: DOOS-OAI.4202.3.2013.AŁ.3, to clarify the doubts contained in the report on the project's environmental impact. Doubts concerned, among others, planned felling of trees and shrubs, replacement plantings, calculations of the intensity of the electric and magnetic fields, minimizing measures, cumulative impacts of the planned investment with other projects. In addition, a local authority asked the entity undertaking the implementation of the project to supplement the documentation on local spatial development plans for the municipalities: Ełk, Olecko, Wieliczka, Jeleniewo, Szypliszki, and Puńsk.

The relevant supplements were forwarded by a letter of Polskie Sieci Elektroenergetyczne S.A. (PSE), represented by [REDACTED], dated October 25, 2013 and marked: TLI/11658/2013.

A possessed evidence allowed the local authority to correct the conditions set out in sections 1.2.3, L2.4, 1.2.7, 1.2.19, 1.2.21, 1.2.26, L2.27, 12.31, 1.2.35, 1.2.37, 1.2.43, 1.2.44, 1.2.45, i.2.48, 1.3.1, 11.3 of the contested decision. The General Director of Environmental Protection repealed the conditions proposed in points 1.2.33, 1.2.34, 1.2.36, 1.2.46, 1.2.47, 1.2.49, 1.3.2 of the RDEP in Białystok decision and discontinued in this respect the proceedings of the first instance authority.

In case of necessity to use concrete slabs or JOMB boards for access roads, which results from the investor's clarifications sent in a letter dated October 25, 2013, the authority of the second instance modified point 1.2.3 of the decisions on environmental conditions, by adding such a record after the second sentence. According to the wording of the fourth and fifth sentences of amended point 1.2.3, the plates used to harden the access roads will be dismantled after completion of construction works, and the area occupied for temporary roads restored to the state closest to the original one. Only in forest areas, temporary access drawn from existing forest roads to the pylons' positions will remain so that there is a possibility of get to the pylons for maintenance purposes.

An investigation procedure conducted at the stage of the second instance authority confirmed the lack of possibility at this stage of the investment to determine the exact course of temporary access roads to the pylons. Therefore, in point 1.2.4 of present decision, the appeal body corrected the wording given by the first instance authority by specifying the rules for delimiting temporary roads, bearing in mind the need to maximize the network of existing roads, including roads and forest paths, and minimise the extent of felling the trees and shrubs.

In materials provided by the investor at the appeal stage, in a letter of October 25, 2013, the types of foundations to be applied and issues related to the necessary drainage of excavations for these foundations were discussed more widely than in the proceedings in RDEP in Białystok. Methods of conducting these drainages were presented. Additional analyses have shown that in the case of three pylons fundaments (Eł - 12, Eł - 49 and Eł - 51), the radius of the depression crater will include patches of natural habitats with codes 91D0 and 91E0. Since these habitats are sensitive to a change in water relations, the local authority modified point 1.2.7 of the contested decision. Use of airtight walls will limit the inflow of water into the excavations and will make the range of necessary drainage not as large as in the case of lack of the above solution. This will allow to minimise the impact on these natural habitats by avoiding the dehydration of part of the patches of these habitats.

Information obtained during the supplementary investigation allowed clarification of the maximum area of trees that can be felled, which in turn led to the need to change of point 1.2.19. It is worth to note that the conditions determining the obligation to use pylons allowing to conduct a power

line over the tree tops reduced the scope of the necessary felling, allowing its area to be reduced over twenty times (from 112 ha to 5.3 ha). Regardless of the above, it was decided to keep the recommendation to limit the felling of trees and shrubs to the minimum necessary to motivate the investor to arrange temporary access roads and pylons' positions outside the wooded areas.

Point 1.2.21 was formulated in too general way, so it was necessary to clarify its content, to determine a manner of the compensation plantings, as well as to guarantee, by a nature supervision, proper fulfilment of this obligation. Supplementary investigation confirmed lack of the possibility at this stage of investment to determine the exact location of all replacement plantings. Although the investor forwarded decisions of the Mayor of Elk Municipality of August 12, 2013 and August 22, 2013, and the decision of Mayor of Olecko of August 12, 2013, allowing tree felling and obliging the investor to perform substitute plantings in specific areas, but these are not all decisions for tree felling that an investor should get.

Point 1.2.26 of the contested decision, considering minimising, at the construction stage, the impact of investments on amphibians, required clarification regarding the characteristics of the fences to be used. If the said recommendation had remained in the wording given to it by RDEP in Białystok, the investor could use the fences of any given parameters, which would not guarantee the effectiveness of their function.

Considering that in the point 1.2.38 the investor was obliged to secure excavations located near the places where amphibians occur and the detailed parameters, and characteristics of protective fencing were determined, it was not necessary to reproduce provisions of the point 1.2.27 regarding the use of minimising measures in respect of amphibians. The General Director of Environmental Protection changed the condition specified in point 1.2.27 by introducing in it a restriction that excludes the possibility of felling trees and shrubs during breeding season of birds. Mentioned record will additionally minimise the impact on avifauna.

Repeal of points 1.2.33 and 1.2.34 and change of point 1.2.31 is aimed at unification of the provisions of decisions aimed at limiting the impact of the planned project on inventoried natural habitats and the areas of large copper (*lycaena dispar*), violet copper (*lycaena helle*) and green snaketail (*ophiogomphus cecilia*). It should be noted that the content of points 1.2.33 and 1.2.34 in principle is repeating the condition set out in point 1.2.31. In the opinion of a local authority, there is no need to formulate conditions with almost identical wording for the Podlaskie Voivodship and the Warmian-Masurian Voivodship separately. It must be stressed that the same sections had been given at the above-mentioned points, regardless of the voivodship in which they are located.

Repeal of point 1.2.36 and amendment of point 1.2.35 are necessary to harmonize the provisions of decisions aimed at minimising the extent of tree felling and protecting the valuable forest natural habitats listed in Annex I of Council Directive 92/43/EEC of May 21, 1992 on the conservation of

natural habitats and wild fauna and flora (the so-called Habitats Directive or FFHD). In the opinion of the appeal body, there is no need to formulate conditions for this for the Podlaskie Voivodship and the Warmian-Masurian Voivodship separately. In addition, due to the fact that at the stage of the supplementary investigation procedure, information on the possibility of minimising the impact of said power line on the habitats of the 'Galio Sylvatici-Carpinetum' and 'Tilio-Carpinetum Scamoni et Pass' types of forest, inventoried on the route of said power line near Kukowo Village was obtained, it was reasonable to supplement the table contained in the condition specified in point 1.2.35 for an additional section in which the investor was obliged to lead the power line over the tree tops (between the SU-06 and SU-07 positions of pylons). This will allow to avoid felling of the trees within the boundaries of the above-mentioned habitat. This is not a priority habitat for the Community, but it is so valuable that it has also been included in Annex 1 to the Habitats Directive. The above section was marked on the map constituting Appendix No. 6 to the letter of the investor of October 25, 2013.

The wording of point 1.2.37 required an editorial correction, while its general meaning was preserved. The condition will allow to avoid the negative impact of the investment at the stage of ongoing works related to excavations for beetles (coleoptera) species from the ground beetles (carabidae) family.

Repeal of point 1.2.46 and change of point L2.43 is aimed at unification of entries in decisions limiting the impact of the project's construction phase on bird species whose occurrence was found near the sections listed in the table. Through the record defined in the modified point 1.2.43, the risk of losses in breeding of these species because of disturbing or physical destruction of nests will be minimised. There is no need to formulate conditions in this respect separately for the Podlaskie Voivodship and the Warmian-Masurian Voivodship, the more so as the first instance authority in point 1.2.46 and in point 1.2.43 set other deadlines in which conducting the above-mentioned works is not allowed, even though these conditions concerned the same sections of the power line. In addition, it was decided to change point 1.2.44 of the decision, because the indicated section of power line is not located in the Podlaskie Voivodeship.

Repeal of point 1.2.47 and change of point 1.2.45 is dictated by the need to harmonise the provisions of decisions on environmental conditions limiting the impact on bats during the construction of an investment. From the content of point 1.2.45, the name of the Podlaskie Voivodship was removed, so as not to suggest that the mentioned sections indicating the location of restrictions applicable to bats are located only in this voivodship. Point 1.2.47 has been repealed because from the supplement to the report submitted with the note dated 25 January 2013 (pp. 34-35), it follows that the sections indicated in the table of this point should refer to bats, whereas RDEP in Białystok, most likely by a mistake, mentioned the breeding period of birds and the supervision of an ornithologist. It is also worth to note that additional restrictions regarding the minimalization of

impact on bats are introduced in point 1.2.20 of the decision, excluding the period from 1 January to 31 July from conducting works consisting of cutting trees and shrubs and ordering that such the activities will be carried out under the supervision of a chiropterologist.

Repealing of point 1.2.49 and changing of point 1.2.48 is justified by a necessity to unification of the provisions of the contested decision, limiting the impact on bats, as well as on ecosystems of river valleys, that route of the planned investment is crossing. From the content of point 1.2.48, the name of the Podlasie Voivodship was removed, so as not to suggest that the mentioned sections are located only in this voivodship.

Point I.3.2 of the decision has been repealed to avoid repeating the obligation set out in the preceding point. Point 1.3.1 has been changed due to the need to specify the type and arrangement of markers in the most effective way. The General Director of Environmental Protection asked the investor for clarification. The information obtained has made it possible to clarify the minimising conditions in this respect. It was decided that the markers are to be balls with a certain diameter, which according to the local authority will allow to eliminate the risk of freedom in the implementation of this condition. This modification will also guarantee its greater effectiveness and will make it possible to verify the correctness of the implementation of this condition. Markers will be mounted to minimise the risk of bird collisions with the power line. The obligation to hang markers in places potentially the most vulnerable to collisions with birds has been introduced (white-tailed eagle (*haliaeetus albicilla*) areas, black stork (*ciconia nigra*) areas, lesser spotted eagle (*clanga pomarina*) territory and areas of high density of white stork (*ciconia ciconia*) nests). These places were selected based on the conducted environmental inventory.

In the opinion of the second instance authority, the change of point II.3 is necessary since no solution was proposed in the decision of RDEP in Bialystok, which would allow to assess the implementation and effectiveness of measures to compensate felling of the trees due to construction of the pylons and in technological strip of the line.

Applies to 1), 2), 28)

Referring to the allegation of infringement of Article 7 CAP, it should be clarified that this provision refers to the principle of the rule of law and a detailed explanation of the facts of the case, considering public interest and the legitimate interest of citizens. Provision specified in art. 8 of CAP imposes on public administration an obligation to conduct proceedings in a way that ensures that citizens' trust in State bodies is deepened and that citizens' awareness and legal culture are increased.

The implementation of this project may involve negative impacts on individual components of the environment, including human health. Therefore, overhead power lines have been by the will of the legislator included in projects that may significantly affect the environment and the

implementation of which is permissible only on condition of obtaining a decision on environmental circumstances, and in the case of lines with rated voltage not less than 220 kV and length of not less than 15 km, obligatory assessment of environmental impact. The essence of an environmental impact assessment is the diagnosis of all potential influences that may occur at the construction, operation and liquidation stage of a given investment and the application of appropriate minimising measures, indicated in the operative part of the decision in the form of project of implementation conditions. Applying by the entity undertaking the implementation of the project to specific conditions allows to reduce or eliminate the impact of a given investment on the environment, including due to the wording of art. 3 par. 2 of the Act of 3 October 2008 *on the provision of information about the environment and its protection, public participation in environmental protection and environmental impact assessments* (OJ of 2013, item 1235), hereinafter called EIA Act, also for people's health. The assessment of the environmental impact of the project concerned included impact of investments on environmental components indicated in the appeals, i.e. human health in relation to the emission of electromagnetic radiation and noise. This authority does not share the complainants' position that the first-instance body issued the contested decision based of flawed documentation. In the opinion of GDEP, the environmental impact assessment report together with attachments and annexes is in line with the requirements set out in Article 66 of the EIA Act, thus providing the basement for adjudication in the present case. Although some issues required additional investigation, these doubts did not affect the substance of the decision and were supplemented by the second-instance authority at the appeal stage.

The issue of the impact of the planned investment on health and human life was addressed in chapter 5.12 of the environmental report "Impact on health and life", which included analysis of the impact of the various investment options in both the construction and operation phases.

The permissible values of electromagnetic radiation for places accessible to the public were established in the ordinance of the Minister of the Environment of October 30, 2003 *on acceptable levels of electromagnetic fields in the environment and ways to check compliance with these levels* (OJ of 2003 No. 192, item 1883): 10 kV/m for an electrical component and 60 A/m for the magnetic component at the frequency of fields emitted by power lines 50 Hz. However, for residential areas, the electric field strength of 50 Hz cannot exceed value - 1 kV/m, and the magnetic field - 60 A/m.

The information included in the report shows that both during the construction and operation of the line, the intensity of the electrical and magnetic components outside the designated technological strip with a width of 70 m (35 m each side from the line axis) will not exceed the admissible values. In the strip, however, it is not allowed to locate residential buildings, as the intensity of the electric field may exceed the value of 1 kV/m.

The width of the technological strip designated for the investment in question was determined based on the calculations presented in the environmental impact assessment report. It should be noted that the area of the technological strip is not identical to the area of exceedance of environmental quality standards in the field of electromagnetic field emission and noise, because in many places these values may be lower than the permissible ones, and the technological strip is also an area needed for construction and maintenance works and in emergency situations.

As it appears from the content of the report (p. 164 of part II of the report) *"the exemplary calculations carried out demonstrated that at the shortest distance of the span from the ground (13,4 m) strength of the electrical component in planned to build power line at the maximum permissible operating voltage (420 kV) will not exceed 4.77 kV/m at the desired location. This value may occur only at the largest overhang of the line and in the most unfavourable working conditions"*.

In addition, as indicated on page 166 part II of the report, field work related to the use of agricultural machinery cannot be carried out in an area where the electric field strength exceeds 10 kV/m, and the magnetic field - 60 A/m. The average level of electromagnetic field in which people working in field works are present, due to, among others, the movement of agricultural machinery in relation to the line, is very small, much smaller than the above-mentioned limit values.

Contrary to the Association "Partnerstwo Dzikie Mazury" (Wild Masuria Partnership) suggestions, in the absence of exceedances of environmental quality standards outside the designated area of 70 m (2 x 35m), there are no legal grounds, as well as no economic justification for determining the technological corridor 260 m wide (2 x 130 m).

Bearing in mind the letter posted on the website [www.electricfields.bris.ac.uk/Sageletter.pdf](http://www.electricfields.bris.ac.uk/Sageletter.pdf) to which Association referred in a letter dated 5 June 2013, it should be pointed out that according to available literature *"there are not enough of current testimonies allowing to conclude that long-term staying in magnetic and electric fields at levels that can occur in places accessible to people or workplaces is unfavourable or can cause disease, including cancer diseases"* (Stefan Różycki, "Protection against electromagnetic fields. Manual for local government administration ", Warsaw 2011).

A similar view is presented by the World Health Organization (WHO) (2007): *"although a causal relationship between a long-term staying in 50 Hz magnetic fields and the incidence of leukaemia of children is significant, there are a number of methodological errors committed in research performed for the determination of the probability of such a relationship"* ("Power lines and installations in the human environment" textbook. Collective work edited by M. Szuba, PSE-Operator SA, Edition 4, Warsaw 2008 with 2009 updates).

The permissible electromagnetic radiation limits were set *by regulation of the Minister of the Environment of 30 October 2003* in agreement with the minister competent for health, according to

statutory delegation referred to in Article 122 par. 1 of the Act of 27 April 2001 on *Environmental Protection Law* (OJ of 2008 No. 25, item 150, as amended), hereinafter referred to as EPL. Thus, these levels consider the medical aspects of the interaction of electromagnetic fields on the human body and are also applicable to high risk groups, including children. Permissible levels of electromagnetic fields that may occur in the environment in places accessible to people have been established assuming that the continuous presence of people of any age and state of health - in areas with lower levels - cannot have negative health effects for them.

Permitted levels of electromagnetic radiation in the environment co-create (under art. 83 par. 2 of EPL) environmental quality standards, in accordance with art 82 of EPL, one of the basic tools to implement the protection of environmental resources. Public administration authorities dealing in the proceedings regarding the issue of a decision on environmental conditions are obligatorily related to the environmental quality standards set out in the applicable provisions of national law.

The implementation of the project in question, maintaining the established technological strip of the site and thus acceptable levels of electromagnetic radiation in the environment, will not significantly affect human health, therefore the applicants' concerns should be considered unjustified.

As for the noise impact of the line, the acoustic noise level related to the operation of 400 kV power lines during good weather is comparable to the acoustic background level. Most often it is within 32-38 dB at 15 m from the line. These values are lower than the values referred to in the regulation of Minister of the Environment of June 14, 2007 *regarding permissible average noise levels in the environment* (OJ of 2007 No. 120, item 826, as amended). In case of power lines, the acceptable noise levels expressed as indexes  $L_{AeqD}$  and  $L_{AeqN}$  for land intended for single- and multi-family housing development, as well as farmstead and collective housing are respectively  $L_{AeqD} = 50$  dB and  $L_{AeqN} = 45$  dB. In case of built-up areas associated with permanent or temporary stay of children and youth, areas of hospitals, social welfare houses and the protection zone "A" of the spa, these values are  $L_{AeqD} = 45$  dB and  $L_{AeqN} = 40$  dB.

Locally, most often in bad weather conditions, it is expected that the noise level generated by the power line may periodically reach up to 46 dB (page 166, part II of the report). Appropriate technical solutions in the form of e.g. multiple conductors, will reduce the level of sound produced by the line.

According to the provisions of EPL, protection of the environment against the impact of physical factors, such as noise and electromagnetic fields, consists in maintaining the level of these factors below the permissible level defined in the regulations, or at least at this level.

It should also be stressed that during proceedings aimed at issuing a decision on environmental conditions, the first instance authority requested, based on principles specified in art. 77 paragraph 1 point 2 of EPL, the State Sanitary Inspector in Białystok and the State Sanitary Inspector in Olsztyn

to express an opinion on the scope under their jurisdiction. Because according to art. 3 point 2 of the Act of 14 March 1985 on the State Sanitary Inspection (OJ of 2011 No. 212, item 1263, as amended), the duties of the state sanitary inspection in the field of preventive sanitary supervision covers checking of the design documentation in terms of hygiene and health requirements. Sanitary authorities by letters of 29 May 2013 (NZ.9027.8.2.2013), and of 16 May 2013 (ZNS.9082.3.5.2013.W), positively opined the conditions for the implementation of the project. Thus, it should be stated that the conditions for the implementation of the project have been assessed by public administration authorities specialized in the will of the legislator in terms of sanitary, hygienic and health conditions, and these authorities gave a positive opinion on the implementation of the project.

The implementation of the project in question while maintaining the technological strip will not have a negative impact on the environment, including human health, and therefore the complainants' allegations should not be considered.

Applies to 3)

Referring to the allegation of infringement of Article 10 and 79 of CAP, due to not providing all parties to actively participate in the proceedings and unequal treatment of the parties, it should be clarified that according to art. 10 § 1 of CAP, the authority is obliged to ensure that all parties are actively involved at each stage of the proceeding, and before the decision is issued to allow them to express their views on the evidence and materials collected as well as notified requests. The consequence of the above-mentioned principle of active participation of the party in the proceedings is, resulting from Art. 79 of CAP, the obligation to notify the party at least 7 days before the date of taking of evidence in which it can participate. In the light of art. 79 of CAP party can actively participate in these activities, it means ask questions and provide explanations.

The principle is the delivery of correspondence of the proceedings under the rules set out in Article 38-48 of CAP, therefore the applicant in the present case was informed by direct delivery about the activities of the authority and the decision issued.

The extraordinary mode, exceptional in relation to traditional notification, indicated in art. 38-48 of CAP, is the mode of delivery contained in art. 49 of CAP. According to the wording of this provision, the parties are notified of the decision and other activities by means of a public announcement or another manner of public notice in a given place, if a special rule so provides. The expiry of fourteen days during which the announcement was publicly available means that the act of delivery is considered to have been made with legal effect. Its essence consists in ensuring a quick result of the notification of all parties of the proceeding in the situation of their multitude. Since this form of notification protects interests of people who may be potentially interested in the case to a much lesser extent than the traditional method, it is possible only in special situations, indicated in

the law on the rank of the Act. Due to the specificity of proceedings regarding the issue of a decision on environmental conditions, characterised by many authorised entities, the legislator in art. 74 par. 3 of the EPL Act included a regulation allowing the application of art. 49 of CAP. This right is, however, conditioned by the number of parties to the proceedings exceeding 20. According to the wording of art. 74 par. 3 of EPL Act, the provision of art. 49 of CAP is applicable if the number of parties to proceedings exceeds 20. The construction of art. 49 of CAP indicates that the notification is made by means of a public announcement or another manner of public notice adopted in a given locality.

Acting according to art. 10 of CAP RDEP in Białystok informed the parties to the proceedings about the actions taken at every stage, and before issuing the contested decision, it enabled the parties to express their views on the materials collected and to report possible requests. As the collected case files show, the notices issued by RDEP in Białystok during the proceedings were posted on the bulletin board at his office and posted on the Public Information Bulletin website, which is consistent with the usual practice of this authority applied uniformly to all administrative proceedings. In addition, the first-instance authority each time approached the municipal authorities, competent locally due to the location of the investment and Regional Director of Environmental Protection in Olsztyn, with a request for public announcement of the attached notice, according to art. 49 of CAP.

The parties to the proceedings were enabled to participate actively on each stage of the analysed proceeding, by means of notifications provided in art. 49 of CAP. The obligation of public administration authorities to guard the public interest and the legitimate interest of citizens, imposed by art. 7 of CAP, does not deprive the parties of the rights to participate actively in the proceedings expressed in CAP. The above argumentation is confirmed by well-established case law of administrative courts in this respect, including decision of the Supreme Administrative Court of January 26, 2009 Ref. file: II OSK 51/08, in which is stated that *"(...) in a situation where the law provides for notification of the proceedings by way of the announcement, it is up to the entities interested in these proceeding, and not to the public administration authority, to take activities ensuring their active participation in the proceedings (...)"*.

Leaving aside the above, it should be stressed that a professional attorney should know that the parties have the right to speak and submit comments at any stage of the proceeding, irrespective of the dates set, which are only information for parties about the phase of the procedure.

After a thorough analysis of the proceeding of the first-instance body, the local authority did not identify any deficiencies in the manner of implementing the principle of active participation of the parties.

Applies to 4), 5), 23)

The articles of the CAP, quoted by the complainants, oblige the public administration authority to accept as proof of everything that may contribute to clarifying the case, and it is not: contrary to the law (...) (Article 75 § 1), collecting and considering comprehensive evidence ( Article 77 § 1), considering the request of the party regarding the taking of evidence, if the object of the evidence is the relevant circumstance (Article 78 § 1), and then assessing, based all the evidence, whether the given circumstance has been proved (Article 80 ). Subsequently, the authority decides, and its argumentation gives expression in the factual and legal justification of the decision (Article 107 of CAP).

With regards to the allegation that the authority of the first instance did not collect the entirety of evidence, the appeal authority addressed the applicant with a letter dated October 21, 2013, sign: DOOŚ-OAI.4202.3.2013.AŁ.3, a call to supplement and clarify doubts about content of the report to the extent necessary to consider the matter. The relevant supplements were transferred to the local authority in the investor's letter of October 25, 2013, mark: TLI/11658/2013.

Referring to the allegation concerning the failure by RDEP in Białystok to consider the request of the parties to take evidence from the specialist in the study of the effects of electromagnetic fields on humans, it should be stressed that the first instance authority referred, in the contested decision, to the comments and requests made during the procedure with public participation, justifying each time the position taken.

According to art. 37 point 1 of the EIA Act, the administrative authority examines the comments and conclusions submitted during the proceedings. In the light of point 2 of the above-mentioned provision, a reference to comments and motions should be included in the justification of the decision closing the proceedings by indicating which comments and to what extent were considered. Not all of them will be justified, therefore the administrative authority does not necessarily have to take them into account (Krzysztof Gruszecki, Commentary to Article 37 of the EIA Act, legal status as of 31.01.2013). In view of the above, the first instance authority was not obliged, according to the request of the parties, to appoint experts to prepare documentation on the impact of electromagnetic fields on humans. In addition, the authority did not have to recognize this in the light of art. 78 § 1 of the EIA Act, since the evidence did not indicate a threat to human health (electromagnetic field below the standards), and the sanitary inspection authorities expressed a positive opinion about the investment in question.

During the proceedings, both RDEP in Białystok and RDEP in Olsztyn, have taken steps and efforts to clarify the matter. After analysing the entire file, the first instance authority concluded that the report, together with the attachments and supplements, contains enough information on the impact of the planned investment on the environment, both at the stage of its implementation and operation, and defines the required measures to minimise this impact.

The report, commissioned by the investor, was prepared by the contractor who hired experts with relevant knowledge and experience in the field of environmental impact assessments. In the opinion of the local authority, the authors of the report on the impact of the project on the environment retained objectivity. The evaluation of the document took place when issuing the environmental decision, however, the authority did not do it automatically, but assessed the evidence.

Both RDEP in Bialystok (letter dated September 11, 2012, sign: WOOS-11.4202.1.2012.AS), as well as the cooperating RDEP in Olsztyn (letter dated November 6, 2012, sign: WOOS-II.4242.105 / 2012. MH.3) called on the applicant to complete the submitted report, considering it necessary to determine the environmental conditions.

In addition, RDEP in Bialystok, by letter of September 24, 2012, sign: WOOS-11.4202.1.2012.AS, called the applicant to supplement the extracts and drawings from the applicable local zoning plans along the route of the project.

The above testifies that the authorities adjudicating in the case have made all efforts to gather comprehensive evidence.

Authorities, specialised in the legislator's will in environmental impact assessments, analysed the evidence collected in the case, respecting current scientific knowledge on the given topic and using wisdom and experience. The report on the impact of the project on the environment has been thoroughly verified in terms of compliance with the requirements of art. 66 of the EIA Act. Therefore, one cannot deprive it of full evidential credibility only since it was drawn up at the request of the investor. It should also be borne in mind that the proceedings concerning environmental conditions are pending regarding planned and not implemented activities. Thus, detailed technical specifications of the planned project can come only from the applicant.

The report submitted by the investor together with the annexes contains all the elements specified in art. 66 of the EIA Act and enables a full assessment of the results of the evidentiary proceedings. This provision does not impose on the authority conducting the proceedings the obligation to enforce the investor to perform additional scientific research or additional expert opinion.

In addition, the parties did not indicate, exactly which "important documents" were not included in the issued by the RDEP in Bialystok decision. In the light of the above, it must be held that the applicants' complaint should not be upheld.

Applies to 6)

With regard to the alleged violation of art. 107 § 3 of the CAP, it should be pointed out that according to the said provision, the factual justification of the decision should in particular indicate the facts that the authority considered to be evidenced, the evidence on which it was based, the reasons

why other evidence of credibility and probative value were denied, and also a legal justification - explanation of the legal base of the decision, with reference to provisions of law.

Applies to 6a)

The complainants did not substantiate on what grounds they put forward the conclusions regarding, in their opinion, incorrect and incomplete justification of the decision. Having read the content of the contested decision, the appeal authority considered that it contained all the elements listed in art. 107 § 3 of the CAP. The authority conducting the proceeding when issuing the decision discussed the reasons for its issuing, motivated the assessment of the facts and explained the connection between this assessment and the content of the decision. The authority also explained the legal basis and cited the law for the issued decision. RDEP in Białystok took a position on the evidence collected and justified in a clear and understandable manner what criteria he followed, recognizing certain facts as true. In the opinion of the appeal authority, the first-instance body made a comprehensive analysis and assessment of the files collected, while the justification of the contested decision is enough.

Applies to 6b)

The phrases cited by the complainants, used by the authority in justifying the environmental decision, were taken out of the context of the sentence and it is difficult for the authority to refer to their correctness. Nevertheless, when analysing, for example, the sentence "competent institutions have given an opinion", it can be presumed that the appellants had on mind the response to note No. 30 on page 42 of the decision: *"the competent authorities of the sanitary inspection gave a positive opinion on the project, without identifying a threat to life and human health"*. Considering the content of the contested decision, where on pages 18-19 RDEP in Białystok indicated that acting based of art. 77 para. 1 point 2 and art. 78 par. 1 point 1a and in connection with art. 75 para. 5 of the EIA Act, *appealed to the State Sanitary Inspector in Olsztyn and the State Sanitary Inspector in Białystok for an opinion before issuing decision on environmental conditions*, and then briefly referred to the positions of these authorities. The wording describing the opinion-giving bodies used in response to Note 30 is enough.

Applies to 6c)

Referring to the accusation allegedly wrongly statement of the first instance authority that there are no tests whose results would confirm the negative impact of the power line on human health, it should be pointed out that *"experimental tests in the electric and magnetic fields of the highest intensity that can occur in surrounded by overhead lines areas never managed to cause any permanent changes in living organisms, let alone any deterioration of health, even in the case of prolonged exposure to the electromagnetic field"*. (...) *The issue of an increased risk of developing some rare cancers, in the conditions of prolonged stay of children in magnetic fields with a frequency*

*of 50 Hz, has not been clarified. It was not possible to prove that there is a causal relationship between staying in 50 Hz electromagnetic fields and an increased risk of cancer. This view is fully confirmed by the published in June 2007 by the World Health Organization (WHO) a comprehensive monograph from the series Environmental Health Criteria (...) devoted to the issue of the impact of electromagnetic fields on human health ("Power lines and electromagnetic stations in the human environment" the collective work edited by M. Szuby, PSE-Operator S.A., Edition 5, Warsaw 2008).*

Bearing in mind the above, it should be recognized that the local authority did not notice any deficiencies in the explanations provided by RDEP in Bialystok.

As for the allegation of "unspecified safe development", the Polish regulations do not regulate the issue of the minimum, safe distance of the power line from buildings, because the basic impacts, i.e. noise and electromagnetic field, have boundary norms in the generally applicable law. As explained on page 19 of the contested decision, *"the technological strip has been designated in such a way that all impacts of the power line are within its borders, therefore the location of buildings is not possible in this area"*. Thus, apart from the designated zone of 35 m on both sides of the line axis, there are no restrictions and the location of buildings is allowed. It doesn't deserve to consider an allegation of the lack of explanation regarding the possibility of staying and working on the land under the line, because as indicated on p. 24 of the decision *"the distance between the phase line and the ground will not be less than 13.4 m at any place, so it will be possible to work under the line even using larger agricultural machinery"* and on page 34 of the decision *"being in the range of impact of such fields is completely safe and in line with regulations"*.

Applies to 6d)

The issues related to Occupational Safety and Health (OSH) regulations and the transposition of EU directives into national law go beyond the scope of the case and the authority's competence in the field of environmental impact assessment, as set out in the provisions of the EIA Act.

In connection with the above, the allegation raised by the parties was considered unfounded.  
Applies to 6e), 6f), 19) and 29)

Bearing in mind the allegations regarding the reasons for the withdrawal from the analysis of the variant consisting in the implementation of the underground cable line, it should be clarified that the task of competent authority to issue a decision on environmental conditions is to determine the conditions for the implementation of the project to the extent proposed by the investor. In the case at hand, this was done based of the conducted environmental impact assessment. The scope of the project and all its conceptual changes depends on the investor, and the role of environmental protection authorities is their assessment in terms of environmental conditions and requirements.

Regardless of the above, the report on environmental impact, as well as the decision on environmental conditions, consider the analysis of options in the scope required by the provisions of

the EIA Act. The EIA ACT imposes on the applicant the obligation to determine options but does not oblige him to be technological variants. According to art. 66 par. 1 point 5 of this Act, the report should include a description of the options analysed, including the option proposed by the applicant and a rational alternative variant (point a), the most favourable variant for the environment (...) (point b). In the opinion of the appeal body, this obligation was fulfilled. The investor considered the implementation of 6 variants of the location of the line, as well as presented the characteristics of the zero variant, consisting in abandoning the construction of the 400-kV line, and the cable variant (ground-based). As indicated on page 43 of part 1 of the report *"after the completion of the first stage works, because of the discussions and decisions of the contracting authority, it was decided that four options will remain for further analysis, including field studies: option 4 - preferred by the investor and options 2, 3, and 5 - as alternative variants "*.

In relation to the above, the report analysed enough variants that provided the opportunity for a substantive assessment of individual options for the implementation of the investment and there was no need to supplement the report with further variants. The option preferred by the investor gives the opportunity to implement the investment without a significant negative impact on the environment, therefore the first instance authority has rightly determined the conditions for the implementation of the project.

To the issue of the implementation of the underground cable variant, it has been referred on pages 37, 42, 43, 47 of the contested decision. The authority is not obliged to rely on any research that would confirm the legitimacy of the position held on a given issue. While providing answers to the comments and requests submitted during the proceedings, RDEP in Bialystok was based on the information provided in the report on the project's environmental impact and its annexes, that is on the documentation that was the basis for the assessment of the project's environmental impact and determining the environmental conditions for the investment. The detailed characteristics of the underground cable variant has been included on pages 38-42 of part 1 of the report.

Authors of the report explained that the use of the underground cable method would require taking up a strip of land at least 30 m wide, necessary to lay a cable route consisting of 12 cables. The construction of a cable line would involve direct destruction (in the strip of excavations carried out) of natural habitats and habitats of plants and animals. On the surface under which the cabling runs, it is forbidden to implement cubature objects, planting plants or conducting roads. Therefore, often large areas are excluded from use: in agricultural areas, this causes specific losses in cultivation, in urban areas - the need to rebuild underground infrastructure.

Although underground cable lines do not emit an electric field, they emit a significant magnetic field and heat that has a detrimental effect on the ecosystem (e.g. soil drying). The magnetic field produced by underground cable lines is larger than in the case of overhead lines and the value of this

field may exceed the limits set by Minister of the Environment. These overruns cannot be avoided when the priority is to reduce the heat emitted and limiting of the space of cable laying.

In addition to the destruction of the environment within the strip of the cable line, there is interference in the ecosystem because of the use of heavy equipment for the construction of the line along its entire length, whereas for overhead lines only within the foundation of the pylons. Thus, the range of impacts on water ratios, vegetation cover, including tree stands, as well as animals may be significantly larger. Since trees and shrubs cannot grow over the cable, these are irreversible changes in relation to forest and shrubland habitats.

It should also be mentioned about economic and organizational difficulties, i.e. 25 times higher financial cost than in the case of the construction of an overhead line, additional infrastructure at the ends of the underground section, in the form of intermediary (compensating) stations connecting the underground cable line with an overhead line e.g. with communication and supervision system. High costs mean that underground power lines are built almost exclusively as relatively short sections in large urban agglomerations.

For the above reasons, the implementation of the project by underground cable method would involve a much larger scale of negative impacts on the environment than the overhead line, which was the basis for the selection of the implementation of the project in the form of an overhead power line. As indicated on page 43 of part I of the report, *"technical and economic aspects and doubtful environmental benefits necessitate the rejection of underground cable line's alternative by the investor. The investor decided to recommend a technological variant - overhead line as the most beneficial technical and economic and environmental solutions"*.

The carrying out of the environmental impact assessment made it possible to develop an analysis of the impact of investment on areas of natural value and based on this evidence RDEP in Białystok included several conditions in the contested decision, the fulfilment of which will ensure that the implementation of the project will not have a significant impact on the environment.

The information contained in the report contradicts the applicants' claims that the cable line was more economical and more beneficial in terms of environmental impact, including human health. On the one hand - as the applicants rightly pointed - does not cause a collision with birds, but on the other hand - as the app have not already paid attention - it has a negative impact on soil and water relations, natural habitats and necessitates to exclude a large area of land from use, including agricultural crops.

Referring to the applicants' comments regarding the significant impact of the overhead line on the landscape, the 400-kV line will affect the landscape of the areas through which it runs. This impact will be direct, long-lasting, mainly related to interference in the landscape and the fragmentation of open areas. Interference with the landscape results from the presence of pylons, which, although they are arranged point by point and occupy a small area, reach high above the level of the land, towering

and dominating over the other elements of space. In addition, regular distribution of pylons at similar intervals (approximately 350-500m on average) and the interconnection of power cables between them causes in the landscape the effect of a barrier of some sort that cuts the space and focuses the view along its direction (page 150 part II of the report). As the report's authors pointed out, the high voltage line has the strongest influence on the landscape in its immediate surroundings. As you move away from the line, its impact on the perception of the landscape becomes smaller, however, even from several hundred meters, depending on the location and terrain conditions, it is potentially a dominant in space (page 151 part II of the report).

However, the scale of this impact will change over time. According to the definition of landscape in the European Landscape Convention of 20 October 2000, adopted by Poland and published in OJ of 2006 No. 14, item 98, it is an area perceived by people which character is the result of the action and interaction of natural and/or human factors. Landscape values are understood, according to art. 5 point 23 of the Act of April 16, 2004 on Nature Conservation (OJ of 2009 No. 151, item 12, 20 as amended), as ecological, aesthetic or cultural values of the area and the associated relief, creations and elements of nature, shaped by the forces of nature or human activity. Therefore, for the perception of observers the dominant meaning is the period of functioning of a given element in the landscape. The shorter the element functions in the landscape, and thus in the consciousness of its recipients, the more negative its reception. The above means that the impact of the planned line on the landscape will gradually decrease with the time of the project exploitation.

On the other hand, it is not possible to agree with the allegation that the cable line does not violate landscape values. This method of investment implementation leaves a clear ecological footprint (change in soil structure) along the entire length of the transmission system route (significant excavations for the cable line) and visible connection points of the cable sections (for transport and assembly reasons not longer than 600 - 800 m) - cable wells, or possible places for introducing cooling air into tunnels, end stations with overhead elements (table 2-1, page 41 part I of the report).

It cannot be clearly stated that the overhead line is more emergency in relation to the cable. Nevertheless, in the case of a cable line failure, repairing the damage requires a long-term and expensive location of the damage, and each time carrying out earthworks. Removal of the failure in this case involves: repeated devastation of the area within the cable line to repair the damage, devastation of the surrounding area to transport the necessary equipment and materials to remove the damage to the line (page 41 part I of the report). In the situation of removing the failure of overhead lines, there is no significant interference in the environment.

Regarding the signalled by an Association "Partnerstwo Dzikie Mazury" (Wild Masuria Partnership) solution consisting in choosing the zero option, it is impossible to deny that in terms of environmental implications this is the most advantageous option, however, *its adoption would mean*

*leaving a large region of Poland without sufficient security in the electricity supply (which consequences, also in terms of impact on the environment are difficult to predict) and failure to implement one of the key projects with the rank of a trans-European connection (page 38 part I of the report).*

Referred to the raised issue of residents' opposition to the implementation of the 400-kV overhead power line, it should be stated that the authority competent to issue a decision on environmental conditions conducts proceedings and issues a resolution in the scope which was specified by the investor in the application. If the result of the conducted procedure indicates the possibility of realizing the investment (which means the lack of a specific negative impact on the environment), this body is obliged to issue a decision on the environmental conditions for it.

Applies to 7)

The allegation referred to in point 7 should not be considered, since RDEP in Bialystok clearly stated that issues concerning the correct transposition of provisions of EU directives into national law go beyond the scope of the case and the power of the authority regarding environmental impact assessments set out in the provisions of EIA Act.

Applies to 8)

Misunderstanding by RDEP in Bialystok of the remark made during the participation of the society probably results from the fact that in the literature of the subject does not appear definition of "ionic wind". One can only assume that - as the investor's proxy in the explanations sent in the letter of 25 October 2013 indicated, the sign: TLI / 11658/2013 - the note concerns the impact of ions generated by high voltage overhead lines on the environment (humans and animals). This issue is the subject of research and analysis, but only in the case of DC overhead lines, which are not built in Poland. The only known reports on the potential environmental impact of ions produced by AC overhead lines are by Denis Henshaw (from Bristol University). A qualitative and quantitative analysis of the phenomenon of ion formation in the environment of high voltage power line cables is described in Transmission Line Reference book, 345 kV and above (Electric Power Research Institute, Palo Alto, 1982, pp. 169-203). This analysis indicates that the concentration of ions generated at the surface of high voltage conductors is so small that it cannot affect the environment in any way, including living organisms. This is fully confirmed by the reports contained in the most comprehensive monograph devoted to the issues of the impact of overhead lines on human health and the health condition of animals. In this 700-pages publication, "Extremely Low Frequency Fields. Environmental Health Criteria No. 238" published in 2007 by the WHO (link to the electronic version of the publication: <http://www.who.int/pch-emf/publications/elf-ehe/en/>) have not been mentioned any studies indicating that increased ion concentration at the surface of live conductor cables under voltage may adversely affect human health or the condition of animals, including livestock.

By the way, although the provisions of the CAP clearly indicate the necessity of presenting premises considered by the authority when making decisions, it is not a role of the authority to present in the content of the decision, full expertise on the phenomena occurring during the operation of the power line. Thus, the authority is not obliged to explain to the applicants how it understands the "ion wind phenomenon". The scope of the justification of the decision in the scope of technical data of the line should be limited only to the parameters used in the qualification of the project, since this circumstance determines the resolution in the case in question.

Applies to 9) and 14)

One of the long-term interactions that may arise in connection with the operation of the power line, along with electromagnetic radiation, is the emission of noise from conductive elements of live lines, from working conductors (corona discharge) and elements of an electro-insulating system and discharges on their surface.

The applicants challenging the provisions of the decision regarding the authority's assurances as to the absence of a negative impact of noise and electromagnetic fields emitted by the power line, in the context of the obligation to perform post-implementation analysis. Referring to the above, it should be clarified that according to art. 83 par. 1 of the EIA Act, in the post-implementation analysis referred to in art. 82 par. 1 point 5, it shall be compared the arrangements contained in the report on the impact of the project on the environment and in the decision on environmental conditions, in particular arrangements regarding the anticipated nature and extent of the project's impact on the environment and planned preventive actions with the project's environmental impact and measures taken to limit it. Post-implementation analyse is a form of control and verification of whether the environmental protection solutions adopted in the decision fulfil their function and are enough to prevent the negative impact of investments on the environment. In the case of irregularities, it is the basis for acting to eliminate them.

For the report, calculations have been made regarding the predicted noise propagation and electromagnetic field, which show that the over-standard range of these emissions during the operation phase will fit inside the designated technological strip, covering areas of 35 m in each direction from the axis of the line. Implementation of the project with the maintenance of a fixed technological strip will not result in exceeding the regulations of the Minister of the Environment of 14 June 2007 *regarding permissible noise levels in the environment*, noise intensity in areas covered by acoustic protection and established in the ordinance of the Minister of Environment of 30 October 2003 *on the permissible average level of electromagnetic fields in the environment and methods of checking compliance with these levels* on places accessible to people. In addition, under conditions of 1.3.3, 1.3.4 RDEP in Białystok indicated technical solutions, which are requirements in the field of environmental protection necessary to be included in the construction project, the use of which

will reduce the noise and electromagnetic field emitted during the operation of the power line: the use of phase multiple conductors and implementation of the project in the form of a double-track line, when the distance between the phase conductor and the ground in any place will not be less than 13.4 m.

The construction of power line is also associated with the noise emission at the stage of its construction and decommissioning. However, this effect is short-term, limited to the time necessary to make foundations and assembly of supporting structures. Regarding the acoustic impact at the stage of the construction of the power line, RDEP in Białystok specified in point 1.2.50 of the contested decision conditions concerning the implementation of the investment in a way that would not exceed the admissible values of the electric and magnetic fields and noise. Guided by the precautionary principle, as well as partly considering the condition proposed by the State Sanitary Inspector in Białystok in opinion no 358/NZ/2013 of May 29, 2013, mark: NZ.9027.8.2.2013, in point IV of the contested decision RDEP in Białystok imposed the obligation to perform a post-implementation analysis in the field of electromagnetic field and noise in order to *verify the adopted assumptions and determine the real effectiveness of the solutions used to protect the environment* (p. 48 of the decision).

In contradiction to the applicants' claims, the first-instance authority indicated in point IV.1 time limit for electromagnetic field and noise measurements: immediately after the first start-up of the installation. Point IV.3 specifies that the results of the post-implementation analysis should be submitted to the Regional Director of Environmental Protection in Białystok within 1 year from the day the investment is put into use.

Regarding the issue of the legitimacy of the investment fence and the ban on staying under the line raised in the appeal, reference should be made to the content of the environmental decision, where on page 19 authority indicated that *it is not possible to prohibit the stay of the population under the cables, let alone hedge the fence, for example, along the entire length*. As it results from the proceedings on the environmental impact assessment, it is also not advisable due to the lack of exceeding the standards.

For the reasons described above, the allegations of the parties cannot be effectively raised.  
Applies to 10)

Contrary to the applicants' claims, during the proceedings, the first instance authority analysed the impact of the planned project on health and living conditions of people, as evidenced by the statement contained on page 23 of the contested decision: "the authority stated that the optimal option for implementation is option 4 recommended by an investor. He pointed out that it is the most beneficial for health and life of people (...)".

Questioned by the appellants lack of literal specification of the impact of investments on people, among the environmental components listed on page 23 of the Decision, which RDEP in Białystok analysed at the stage of proceedings for the issue of the contested decision, does not mean that this element was omitted. The authority indicated that *"it analysed the impact of the planned project on the environment considering all the criteria"*. The phrase used in the further part of the sentence "in particular" means that the catalogue of the cited criteria is not closed. In addition, it is worth to mention that in the light of art. 3 par. 2 of the EIA Act by impact on the environment should also be understood an impact on human health, including the assessment of the impact of electromagnetic fields and noise.

In connection with the above, the allegation raised by the parties must be considered as unfounded.

Applies to 11)

In the present proceedings, the number of collisions with residential buildings located in the technological strip of lines was considered as one of criteria for selecting the variant accepted for implementation. On page 23 of the contested decision it was indicated that no residential buildings exist up to 35 m from the line axis. This information is crucial due to the mentioned technological strip designated at 35 m from the line axis. It is true that the first instance authority did not specify in a decision the number of buildings, which occurs in the distance of 35 - 100 m from the line axis, however, explained that at this distance *"in the analysed variant there is the smallest number of buildings, both residential and economic in relation to other variants"*. The table 5-19 on page 164 of Part II of the report shows that in the distance of 35-100 m from the line axis in option 4 there are 13 residential buildings, while in the case of other options, there are: in the case of option 2 - 16 buildings, in the case of option 3 - 23 buildings, in the case of option 5 - 27 buildings. Therefore, the findings of RDEP in Białystok made in the decision remain valid and it does not matter that the exact number or location of buildings within the range of 35-100 m is not indicated.

However, it should be stressed that the criterion of the number of collisions with buildings in the delimited area up to 35 m and 35-100 m from the axis of the lines in each direction was not the only one considered. Under the option of recognizing variant 4 as the one adopted for implementation were also other issues, indicated in the justification of the decision of the first instance body, such as interference in legally protected natural areas, including the Natura 2000 sites, presence in the vicinity of cultural heritage and technical infrastructure facilities that limit the possibility of establishing power line poles or conductors, occurrence of non-cohesive soils on the planned route, preventing or hindering the construction of foundations for supporting constructions, social considerations, economic aspect, the need to minimize the impact of the line on the landscape.

Therefore, the allegation should not be upheld.

The authority referred to the issue concerning "unspecified safe development" by responding to the allegation mentioned in item 6c).

Applies to 12)

Referred to an allegation of indication in the decision preferred line's distance from habitats of birds and bats, it should be stressed that in the present proceedings regarding the environmental impact assessment the influence of the power line having a specific, established route was analysed. During this procedure, issues related to the impact of the proposed line on birds and bats were also considered. The basis for establishing the facts of the case and the starting point for analyses in the scope of assessing the impact of the subject power line on individual elements of the natural environment were reliable data collected during the inventory and monitoring. They provided information on the distribution of natural habitats, animals and plant species, as well as on the use of the analysed space by the fauna. It should be stressed that there is no obligation to specify in the decision on environmental conditions the preferred line distance relative to the habitats of birds and bats. The term "habitat of the species" refers not only to breeding grounds, but also feeding grounds, lodging places, wintering grounds, etc., as part of this habitat. The impact of a given investment can be mitigated in a variety of ways. In contested decision several conditions were imposed to minimize the impact of the project on birds and bats, some of them were clarified at the stage of appeal proceedings. They concerned both the deadlines for investment implementation and project solutions. For example, an investor was obliged to lead the line on certain sections over the tree tops, which allowed a significant reduction in the extent of tree felling in forest areas (which will also minimize the impact on birds and bats), and, among others. due to the bats it was ordered to use wider poles spacing on sections of lines passing through river valleys. In the assessment of the appeal body, the conditions set out in the decision allow effective limitation of the line's impact on avifauna and chiropterofauna, therefore the above allegation is unfounded.

Applies to 13)

The allegation in which the parties question the wording on page 27 of the decision indicates that the content of the decision in this respect is misunderstood. In the sentence quoted by the appellants an authority did not express its subjective feelings, but only, acting within the law, referred to the environmental quality standards in force for electromagnetic fields. The values of permissible electromagnetic field levels quoted by RDEP in Bialystok result from Table 1 in Annex 1 to the Regulation of the Minister of the Environment of October 30, 2003 *regarding the permissible levels of electromagnetic fields in the environment and ways to check compliance with these levels.*

Applies to 15)

The applicants call into question the first-instance authority's findings that the planned electricity line is not an investment that poses a threat of a serious industrial accident.\

Referring to the above, it should be stressed that according to the wording of art. 66 par. 1 point 6 of the EIA Act, the report on the impact of the project on the environment should include the determination of the expected environmental impact of the analysed variants, also in the event of a serious industrial accident. An industrial failure is understood, according to the definition set out in art. 3 p. 23 of EPL, as an event, emission, fire or explosion, arising during an industrial process, storage or transport, in which one or more hazardous substances occur, leading to an immediate hazard to life or health of people or the environment, or the emergence of such a threat with delay. Therefore, the qualification of the project in terms of threat of occurrence serious failures should be based on the provisions of the Ordinance of the Minister of Economy of April 9, 2002 *on the types and quantities of hazardous substances that are in an establishment which decides about include it as the establishment with an increased risk or an establishment with a high risk of a serious industrial accident* (OJ of 2002, No. 58, item 535, as amended). Using the criteria specified in the above-mentioned regulation, the project in question cannot be identified with a project posing a threat of a serious industrial accident.

Applies to 16)

Referring to the complaint that in the decision on environmental conditions, the authority did not impose an obligation to monitor the impact of investments on human health and increase of human mortality, it should be pointed out that according to art. 82 par. 1 point 2b of the EIA Act in the decision on environmental conditions, issued after the assessment of the project's environmental impact, the competent authority, if the environmental impact results in the need to prevent, limit and monitor the environmental impact of the project, imposes an obligation to do so.

Therefore, the obligation to conduct monitoring is imposed in justified cases, resulting from the findings of the assessment of the project's environmental impact.

In the case at hand, the impact of the planned project on particular components of the environment was examined, including examining whether the construction of the planned 400 kV power line Ełk – the border of the Republic of Poland will be the reason for exceeding of the levels of electromagnetic fields specified in the ordinance *on permissible levels of electromagnetic fields in the environment and ways to check compliance with these levels*.

However, in this type of procedure, it is not expected to examine human health in terms of the impact of electromagnetic fields on the human body. In support of the position presented above, it is legitimate to refer to the judgment of the Supreme Administrative Court of May 15, 2009, Ref. file: II OSK 788/08, in which the Court stated that *"public administration authorities examining cases in administrative proceedings and administrative courts controlling the activity of public administration in terms of compliance with law are not entitled and do not have the opportunity to assess whether a*

*given project emitting an electromagnetic field, is harmful to health and human life, despite the fact that it meets the conditions provided for in the applicable law".*

Considering the above, the appeal authority does not see any grounds to consider the demands set out in this item during the proceedings by the applicants.

Nevertheless, to allay fears of residents about their own health and striving to act to limit the presence of people in the range of electromagnetic fields of over-normative levels, applying the precautionary principle, the authority imposed an obligation to perform post-implementation analysis in the field of noise and electromagnetic field (point IV of the decision). The proposed post-implementation analysis will include measurements of the most important impacts resulting from the operation of the enterprise.

Applies to 17) and 31)

Referred to the objections regarding the necessity to create a limited use area, it should be clarified that according to art. 135 para. 1 of the EPL, if from the proceedings regarding the environmental impact assessment, post-implementation analysis or ecological review it follows that, despite the use of available technical, technological and organizational solutions, environmental quality standards cannot be met outside the premises of the plant or other facility a limited use area is created for the power line. Thus, the obligation to create a limited use area applies to off-site areas. The definition of the plant is set out in art. 3 point 48 of this Act, which stipulates that a plant is understood as one or more installations together with the land to which the owner has a legal title and devices located on it. In turn, the legal title, according to point 41 of the cited article, is the right of ownership, perpetual usufruct, permanent management, limited property rights or an obligatory relationship. The environmental impact assessment carried out shows that the environmental quality standards will not be exceeded beyond the technological strip of the line for which they were or will be established in favour of PSE SA (Power Grid) land easements and easements of transmission, it means a limited property right. It means that the area to which the investor will have a legal title is the plant site, within which it is permissible to exceed the environmental standards, without the obligation to create an area of limited use. There are also no grounds for determining the obligation to create a zone of limited use in the area to which the investor will not have a legal title.

Notwithstanding the above, the first-instance authority, considering that the assessment of the environmental impact of the project before its implementation is for obvious reasons always based on the expected impact of the investment on the environment, by contested decision, imposed on the investor an obligation to monitor the project's environmental impact and carry out post-implementation analysis. Both tools are designed to control the effectiveness of measures to minimize the impact of the line on the environment, imposed in the environmental decision.

Applies to 18)

There is no confirmation in the case files of the alleged breach of the precautionary principle and the failure of the authority to find solutions to comply with environmental standards. These issues were discussed by the local authority in reply to the allegations listed in points 1, 2, 9, 14, 16. The information contained in the report that *"there is no scientific literature on the impact of power lines on the studied plant and animal species"* (page 79 part IV of the report) is not a testimony to the failure to include the latest research and technological solutions in the present case, but only to indicate the difficulties resulting from technical shortcomings or gaps in modern knowledge that were encountered in the preparation of the report. For the above reasons, as the authors of the report point out, *"the conclusions were mainly based on the experience and knowledge of the authors and consultations with other specialists"* (page 79 part IV of the report).

Applies to 20) and 25)

In the next allegation, the Association "Partnerstwo Dzikie Mazury" (Wild Masuria Partnership) claims that the authority did not consider at the stage of proceedings the minimization measures applied in Sweden, such as increasing the location of the investment relative to places of residence, implementation of cable networks instead of overhead and changes in regulations in the field of interaction of electromagnetic and magnetic field components.

Referring to the above, it should be stressed out that the quality standard defined as the permissible level of electric component of the 50 Hz electromagnetic circuit for land intended for residential development is 1 kV/m, while the magnetic component is 60 A/m. For places accessible to the public, acceptable levels of electric and magnetic components for electromagnetic fields with a frequency of 50 Hz are 10 kV/m and 60 A/m, respectively. At this point it is worth to mention that the requirements of national regulations regarding permissible levels of electromagnetic fields are much stricter than European regulations in this area, e.g. *in the Council Recommendation of 12 July 1999 on the limitation of public to electromagnetic fields (0 Hz to 300 GHz) (1999/519/EC)* or the recommendations of the ICNIRP- International Commission on Nonionizing Radiation Protection. The reference levels for the field frequency equal to 50 Hz indicated in the Recommendation are as follows:

- the electric field strength level is 5 kV/m,
- the magnetic field strength level is 80 A/m,
- magnetic induction - 100  $\mu$ T.

The admissible levels specified in the ICNIRP requirements coincide with the levels indicated in the Recommendation.

In the context of the data presented above, despite the absence of an indication in the Regulation *on acceptable levels of electromagnetic fields in the environment and ways to check compliance with*

these levels of magnetic induction corresponding to a magnetic field strength level of 60 A/m at 50 Hz, its value is possible to calculate:

(value of the magnetic component defined in the ordinance of 2003 ([A/m])/(value of the magnetic component specified in the Recommendation of 1999 [A/m]) x value of the magnetic induction specified in the Recommendation from 1999 for frequency 50 Hz [ $\mu$ T] = value of the magnetic induction corresponding to the magnetic component for the 50 Hz frequency specified in the regulation *on the acceptable levels of electromagnetic fields in the environment and ways to check compliance with these levels*.

$$\text{So : } (60 \text{ [A/m]}) / (80 \text{ [A/m]}) \times 100 \text{ } \mu\text{T} = 75 \text{ } \mu\text{T}$$

The above dependence therefore shows that the environmental quality standard for magnetic induction, considering the magnetic field strength at 50 Hz of 60 A/m, is 75  $\mu$ T.

In conclusion, it should be pointed that the restrictions applied in Poland are more rigorous than recommended by the European Parliament. It is also worth to mention that Polish regulations were considered by the WHO to be enough.

According to the judgment of the Voivodship Administrative Court in Warsaw of April 3, 2007 reference number file: IV SA/Wa 2063/06: *"In view of the adoption of statutory (by implementing regulations to the Act) standards for the impact of specific environmental hazards, determining the boundaries in this respect, the role of the relevant authority boils down to determining whether the intended impact is in the limits set by the regulations, or exceed them. In the first case, the authority should consider that the intended emission does not exceed the set standards, does not lead to a threat to the environment, in particular - health and life of people, and consequently should approve the intended project, while in the other it should refuse approval. In both cases the approving authority does not act based of an act of knowledge, but based of a legal provision, and thus an act of power, regardless of its scientific foundation. (...) The authority's role boils down in such matters to control the observance of standards set by applicable legal regulations. It is essentially a connected appreciation."*

For this reason, when considering the case, the authority is obliged to consider the case based on the generally applicable provisions of law and issue a decision on this basis.

As for Swedish regulations (recommendations of Swedish radiological protection services) in the case of electric field strength (E), the limit value is 10 kV/m, while the limit value of the magnetic field is equal to 80 A/m. In case of construction of new power lines in Sweden, it is recommended to use the so-called "precautionary approach", aimed at maintaining natural levels of the magnetic field, if it does not entail excessive costs of the project ("Power lines and power stations in the human environment", Handbook. Collective work edited by M. Szuby, PSE-Operator SA, Edition 5, Warsaw 2008).

From the information provided on the website

<http://www.svk.se/Start/English/Environment/Electrical-and-magnetic-ftelds/>

on which the applicant association relies, it appears that the Swedish company Kraftnat, dealing also with transporting of electricity, considering the government's recommendations, developed its own strategy for reducing the magnetic field around the power lines, setting the threshold values of 4  $\mu\text{T}$  at 50 m from the line and 0.4 at 130 m from the line.

Sweden's policy in the field of radiation safety rules for the construction of new power lines is not based on specific limits of the electromagnetic field, and the indicated values of 4 and 0.4  $\mu\text{T}$  are only ones adopted by the Swedish company responsible for the supply of electricity.

It is also worth to mention that in Sweden, electricity transmission investments can be more easily located due to the lower density of population (20 persons/km<sup>2</sup> in Sweden) – source: <http://www.szwecja.modos.pl/> ; in Poland 123 persons/km<sup>2</sup> source: [http://polska.pl/polska/1,125331,11433832,Ludnosc\\_Polski.html/](http://polska.pl/polska/1,125331,11433832,Ludnosc_Polski.html/) .

Since the over-normative impact of the subject power line will fit within the limits of its technological strip, there is no justification for increasing the distance of the investment location in relation to the places of human presence.

As to the implementation of the underground cable network, the local authority responded to it in the complaints 6e), 6f), 19, 29.

As already indicated, in the respond to allegations 1, 2, 28, an ordinance of the Minister of the Environment regarding *the admissible levels of electromagnetic fields in the environment and methods of checking compliance with these levels* has been issued according to the authorization contained in art. 122 of EPL, in agreement with the minister competent for health matters. The purpose of the legislator's imposition on the authority empowered to issue a regulation, i.e. the minister responsible for environmental affairs, to obtain an agreement with the minister competent for health matters was to ensure such a state of the environment that would not have adverse effects on the health of the population. Therefore, there is no need for the Ministry of Health and the Institute of Occupational Medicine to verify the applicable legal provisions regarding protection against electromagnetic waves.

Regardless of the above, the issues related to changes in legal regulations about the electric and magnetic field components go beyond the scope of the case and the authority's competence in the scope of environmental impact assessments specified in the EIA Act. Therefore, the objections of the parties are unfounded.

Applies to 21)

Referred to the laconic accusation and the non-exhaustive reply to the note about the threat of power surges, it should be stated that the authority of the first instance responded to the comments

and proposals made during public participation concisely and succinctly. The authority would fail to fulfil its obligations only in case of a complete lack of response to the interested parties' claims.

When it comes to the risk of power surges, as rightly stated in the contested decision, lightning cables will provide effective protection against atmospheric discharge.

Power lines do not limit the possibility of people or animals being under them and carrying out various types of field works. As authority pointed there are no guidelines of the Central Institute for Labour Protection, according to which farmers are not allowed to work under the line. The guidelines cited by the applicants were not presented to the General Director for Environmental Protection by them, so they cannot be addressed. The authority, when examining the evidence, cannot assess evidence that is not in the case files. The assessment of any evidence in out-of-process mode is inadmissible. In addition, the party to the proceedings is not exempt from the obligation to actively participate in the process of gathering evidence, i.e. submitting documents to confirm and authenticate his theses, and should not stop at presenting general information.

Regardless of the above, it should be stressed that the guidelines do not constitute universally binding law and the authority does not have to be guided by them when issuing decisions.

Applies to 22)

Having regard to the United Nations Conference in Rio de Janeiro on 3-14 June 1992 referred to in by the applicants, during which the concept of sustainable development was developed, and a document called Agenda 21 was adopted, it should be explained that the principle of sustainable development was introduced into national law by adoption of the Constitution of the Republic of Poland. This principle has been entered in art. 5 of the Constitution of the Republic of Poland, and the definition of sustainable development was included in the provisions of EPL.

According to art. 3 point 50 of EPL a sustainable development should be understood as a socio-economic development in which the process of integrating political, economic and social activities takes place, preserving the natural balance and durability of basic natural processes, to guarantee the ability to satisfy the basic needs of individual communities or citizens both present generation as well as future generations.

Acting according to the principle of sustainable development, the first-instance authority determined the environmental conditions for the project, considering both the natural conditions and those related to socio-economic development.

A construction of the power transmission line is aimed at strengthening the energy security of Poland, neighbouring countries and in the future creating the Baltic Electricity Ring. The planned project will ensure greater operational reliability of the National Transmission System and stable operation of the 400-kV transmission network in the central and north-eastern part of Poland. The

cross-border connection between Poland and Lithuania is one of the strategic projects of Poland and the European Union.

Impacts that may occur both at the stage of implementation and operation of the 400-kV line have been diagnosed in the report and analysed as part of the environmental impact assessment. In contested decision several actions have been defined aimed at preventing and minimizing the potential negative impact of investments on the environment as well as health and life of people.

Imposing on the investor obligations resulting from environmental quality standards has not been introduced in a discretionary manner but considering the principle of proportionality of measures for purposes, and indication of legal norms that form the basis for issuing a decision aimed at limiting the negative impact on the environment.

As indicated by the Supreme Administrative Court in the judgment of October 26, 2011, reference number file: II OSK 1820/11: *"The sustainable development principle includes not only nature protection, but also concern for social and civilization development related to the necessity of building appropriate infrastructure."*

In the opinion of the appeals authority the RDEP in Białystok, with regards to the objective pursuing the planned investment, followed all necessary general principles resulting from the law, including the principle of sustainable development, and issued a decision on environmental conditions, including the need to provide appropriate measures to minimise or prevent negative impacts on individual components of the environment.

In view of the above, the Association's allegation is not justified.

Applies to 24)

It should be clarified to the complainant Association "Partnerstwo Dzikie Mazury" (Wild Masuria Partnership) that according to art. 37 point 1 of the EIA Act all comments and motions are considered by the authority conducting the proceedings. As stated in point 2 of the above-mentioned provision, the authority conducting the proceedings provides information in the justification of the decision on the public participation in the proceedings and on how they were considered and to what extent the comments and requests submitted in relation to public participation were taken into account. In view of the above, it is irrelevant in the present case what position had been taken by the investor in respect of the submitted comments and requests, because the RDEP in Białystok was responsible for investigating of the proceedings and thus for its consideration also.

Applies to 26)

In terms of the need to discontinue the proceedings due to the lack of analysis of the cable (underground) variant, it should be clarified that according to art. 105 §1 of CAP, a public administration body discontinues proceedings if the proceedings for any reason become pointless in whole or in part. In the light of § 2 of the above the authority may discontinue the proceedings by

request of the party on whom demand the proceeding was initiated, and no other parties are against it, and when this is not contrary to the public interest.

According to the view established in the case-law, *the pointlessness of administrative proceedings means the absence of any element of substantive law resulting in the fact that it is impossible to settle the matter by resolving it beings. A dismissal of administrative proceedings is a formal decision terminating it, without its substantive decision. The provision of art. 105 §1 of CAP is applicable only in those situations where, in the light of substantive law and established factual status, there is no administrative case that may be the subject of proceedings* (judgment of the Supreme Administrative Court of March 25, 2010, file reference: I OSK 789/09).

It should be stated, in this situation, as the fact that the variant of the implementation of the project using the cable method is not analysed does not constitute a reason to dismissal the proceedings.

In addition, as to the implementation of the underground cable network, the local authority responded to it in the complaints 6e), 6f), 19, 29.

Applies to 27)

It is not worth to consider the allegations concerning the defective comparative analysis of the overhead line with the underground cable line and the insufficient width of the designated technological strip of the 400-kV power line. Text quoted by the complaining Association in a letter dated June 5, 2013 is only a summary of the information contained in Table 2-1 on pages 41-42 part I of the report, which refer to aspects related to landscape, ecology, archaeology, agriculture, noise emission and water pollution, and (contrary to the claims raised above/in writing) does not indicate a lack of factual analysis of possible solutions.

Valid legal provisions, including those specifying the elements to be included in the report (Article 66 of the EIA Act) do not impose an obligation to include in the documentation the comparison of Polish legal regulations with guidelines for investors in Sweden in the case of new investments. It should be noted that, as indicated in the quoted text on electric and magnetic fields and the policy applied in this area in Sweden, *"The condition is that costs and effects are usually reasonable"*. Therefore, the recommended precautions are only used for investments that do not involve excessive costs, as indicated on page 40 part I of the report *"the price of the underground cable line is about 25 times higher than the overhead line. High costs mean that underground power lines are built almost exclusively as relatively short sections in large urban agglomerations, and only the richest countries in the world can afford to build and operate them. However, even in the richest countries, overhead lines dominate, and underground cable systems are used extremely rarely and practically only for voltages not exceeding 110 kV."*

Referring to the Swedish guidelines by the Association is an attempt to prove that the underground cable option is the most beneficial for the environment, however, for reasons referred to in the reply to claims 6e), 6f), 19, 29, this option was not considered.

The issue of the width of the designated technology strip was discussed in response to allegations 1, 2 and 28.

Applies to 30)

The observation by the Association of June 5, 2013, that the investor does not seek to reduce the acoustic impacts generated by the investment in question is unfounded.

According to the information indicated in the report, the source of noise produced by the highest voltage power lines are: a corona discharge from the conductive elements of the working lines (mainly from the working conductors) and surface discharges on the elements of the electro-insulating system (insulators).

As the authority in the contested decision rightly pointed out, (p. 44), the acoustic impact of the power line occurs only in unfavourable weather conditions (high humidity, low intense rainfall, hoar-frost), when a high risk of the corona discharge arises. Over-normative noise occurs only in areas located at distances less than 20 m from the axis of the line (strip under the line about 40 m wide) near the centre of the span and cannot be eliminated in any way.

Since there is no housing development in the 20 m strip from the line axis in the variant chosen for implementation, the functioning of the proposed 400 kV line will not cause any inconvenience to the existing housing development.

During good weather conditions, power lines do not create a significant noise burden and in most cases the noise level produced by the lines is comparable to the background of the environment.

As a minimizing measure, a technological strip with a width of 70 m (2 x 35 m) was adopted, outside which the standards set out in the Ordinance of the Minister of Environment of June 14, 2007 on the admissible noise levels in the environment will be met.

Applies to 32) and 33)

The decision on environmental conditions does not give the rights to the land. This means that the entity undertaking the implementation of the project does not have to hold a legal title to the real estate or part thereof, intended for the technological strip of the power lines, and legal claims of property owners cannot be effectively raised during the proceedings preceding its issuance. Thus, the allegations referred to in points 32 and 33 regarding easements of transmission and easements of compensation claims are incorrectly submitted.

Applies to 34)

It is not worth to consider the allegation of the Association concerning the danger of power lines for avifauna and that the marking of the line is an apparent activity of low practical effectiveness.

Referring to the above issues, the local authority points out that power lines, like other types of projects, may pose a threat to avifauna. However, the scale of this impact varies and depends on many factors. First, whether the route of this type of investment runs through areas particularly valuable for birds (migration tracts, essential feeding grounds, areas of high concentration, special bird protection areas Natura 2000). Data on the occurrence of birds in the area were collected during the year-round monitoring. The research was carried out during the autumn and spring migration, during the breeding season, the dispersion of the hatchery and during wintering. Based on the results of these studies, it is possible to assess whether the area through which the project runs is valuable for birds. During the monitoring no sites of relevance for avifauna, important breeding grounds, feeding grounds or places of rest during migration were recorded. However, it was found, that on several sections the line runs through areas that are important for the lesser spotted eagle, white-tailed eagle and white stork. Due to the increased use of airspace by birds belonging to these species to minimize the risk of collision with the line in question, the decision obligated the investor to mark the above-mentioned sections. They are also guidelines on the size, colour and method of balls mounting to ensure proper marking of both lightning conductors, which, due to smaller diameter than power lines, pose a greater risk of collision.

Referred to the questioned effectiveness of the above-mentioned markers, it should be stressed that these solutions are applied not only in Poland, but also in the world. The applicant association did not invoke any test results that would confirm its statement. By contrast, there are several studies confirming the effectiveness of this type of solutions (Morkill, A.E., and S.H. Anderson., 1991. Effectiveness of marking power lines to reduce sandhill crane collisions. *Wildlife Soc. B.* 19: 442-449, Savareno, A.J., L.A. Savareno, R. Boettcher, and S.M. Haig 1996. Avian behaviour and mortality at power lines in coastal South Carolina, *Wildlife Soc. B.* 24: 636-648). Contrary to the Association's claims, in the opinion of the General Director of Environmental Protection, the marking of lines is a tool to reduce bird mortality.

It is also not possible to agree with the statement that the only effective solution to minimize the impact of the power line on avifauna would be to replace the overhead line with an underground one. The local authority indicates that the report analysed one of the investment variants, where some of line sections will be implemented in underground technology. Chapter 2.3 of part I of the report considers the advantages and disadvantages of such a solution. The information provided leads to the conclusion that this is not only more expensive and very difficult to implement option from the technical point of view, but also causing much greater interference in the natural environment. In the technological strip of 30 – 40 m wide, destruction of natural habitats as well as habitats of plants and animals would occur. The entire length of the section led below the surface of the earth would require felling of trees and bushes, which would have negative consequences also for avifauna. It would be

irreversible losses, because the area in the technological strip would be excluded from the possibility of reforestation. An important issue from the hydrogenic habitats' point of view are also changes in the water relations of this area, caused by the need for drainage. The appeal body draws attention to the fact that during the environmental impact assessment, the analysis not only influences the impact of the undertaking, but also the impact of mitigation measures related to its implementation, proposed in relation to the diagnosed negative impacts. The influence on all elements of the natural environment should be considered. The authority may impose specific mitigating measures in the form of investment implementation conditions in the form of, for example, construction or design solutions, etc. if it is certain that they do not adversely affect other environmental components. In the case of the solution proposed by the complainant, the effects of its implementation may cause a negative impact of a much greater scope and scale, given that the line runs through an area of Community Dolina Górnej Rospudy (Upper Rospuda Valley) (PLH200022) which is one of the most valuable natural terrain along its route. The implementation of the subject power line on this section with underground cable would entail the necessity of cutting out a significant area of the riparian forest creating a natural habitat of priority importance for the Community (willow, poplar, alder and ash gallery forests - code 91E0), found during the inventory in the Rospuda river. The overhead line will enable the habitat to be preserved using longer spans and pylons.

Applies to 35)

Issues related to the technical aspects of investments go beyond the scope of decisions on environmental conditions, therefore the allegation of Association is devoid of procedural importance.

Applies to 36)

The subject of the present proceedings is a project, i.e. construction of an overhead power line 400 kV Ełk - the border of the Republic of Poland, and because of that during the proceedings in question other projects, including the construction of the wind farms referred to in by the Association, are not assessed. Objections about the lack of public consent for the implementation of wind farms, since they are outside the scope of this proceeding, are unfounded.

During the appeal proceedings, by letter of October 21, 2013 no. 193/13, Ecological Association "Ojczyzna", sent "as a supplement to the appeal of the Association No. EK-132/13 of July 15, 2013 - implementation of the 400-kV power line, relations: Ełk - Łomża and Ełk – the border of the Republic of Poland":

- a copy of the letter from the Ecological Association "Ojczyzna" of October 7, 2013, no. EK-186/13, regarding "ordering information on the environment related to the implementation of the 400-kV power line: Ełk - Łomża";

- a copy of the complaint of October 10, 2013, No. EK-188/13, to the decision of the District Prosecutor's Office in Białystok on refusal to initiate an investigation, together with a copy of the acknowledgment of receipt by the District Court in Białystok, the Ministry of Health, the Ministry of Justice, the Prosecutor General's Office;

- a copy of the decision of the District Prosecutor's Office of Białystok - South of September 23, 2013 on refusal to initiate an investigation into the failure to fulfil a duty and to certify untruth by a public official;

- a copy of the "criteria for MPR and TCO standards";

- a copy of the geobiological expertise from 2001 on the subject of "Research on the spatial distribution of low-frequency magnetic fields in the residential area, in the vicinity of the ERA-GSM mobile telephony base station in Świdnica, Prądyński Street" author [REDACTED]

- a copy of a fragment of the study by Ryszard Matusiak "Theory of the Electromagnetic Field", Warsaw 1976;

- a copy of a fragment of the "Mechanic's Guide. Mathematical-physical and general-technical sciences" collective work, 1976.

In this letter of October 21, the Ecological Association "Ojczyzna" referred to the calculation of the distribution of magnetic flux density  $B$  [nT] in the attached complaint of October 10, 2013, No. EK-188/13, depending on the distance  $L$  [m] from the axis of the 400 kV power line: Łomża - Ełk - the border of the Republic of Poland, which "give an idea of the extent and area of extermination of the Polish population by induction of  $B \gg B_s = 200$  [nT] according to TCO 1999". Acting based on the art. 84 § 1 of the CAP the "Ojczyzna" Association renewed the claim for an engagement the independent scientific institution to carry out accurate research of the 200 nT magnetic flux density distribution for human health.

Referring to the above, it should be pointed out at first that the Ecological Association "Ojczyzna" did not appeal against the decision of the Regional Director of Environmental Protection in Białystok of July 4, 2013, sign: WOOS-II.4202.1.2012.AS, about environmental conditions for the project named "Construction of 400 kV double-track overhead power line Ełk - the border of the Republic of Poland ". Appeal No. EK-132/13, mentioned by the Association, concerned the decision of the Regional Director of Environmental Protection in Białystok of July 4, 2013 about environmental conditions for the project named "Construction of a 400-kV double-track overhead power line Ełk - Łomża", hence it is considered as part of a separate procedure.

About the request to take evidence from an expert opinion, it should be clarified that according to the wording of art. 84 § 1 of the CAP, a public administration authority may ask an expert or experts to issue the opinion when special information is required in the case.

*An expert in the colloquial meaning is a person with specialist knowledge in a given field (expert, surveyor, specialist). However, a qualified person in the procedural meaning is a person appointed as an expert by the adjudicating authority (Andrzej Wróbel, Commentary to Article 84 of the Code of Administrative Proceedings, legal status of July 18, 2013, Lex No. 151111, quoted in: E. Iserzon, J. Starościan, CAP. Commentary, texts, formulas and forms, 4th edition, Warsaw 1970, p. 176).*

*In settled case-law, it is assumed that the purpose of expert evidence is not to determine facts relevant to the resolution of the case, but only to provide the public administration body with explanations in the field of specialist knowledge. The expert's opinion is aimed at facilitating the court's due assessment of the material collected when special information is needed. On the other hand, it cannot itself be the source of the material of the case, nor will it be the basis for determining the circumstances that are the subject of the expert opinion (judgment of the Supreme Administrative Court of June 12, 2013, file reference: II OSK 380/12).*

The appointment of an expert should therefore relate to circumstances in which it is impossible to determine the actual state by means of guidance, knowledge, life experience and principles of logical reasoning, available to administrative authorities. In the case at hand, both the first and second instance authorities, based on evidence collected in the case, could assess the environmental impact of the investment in the field of electromagnetic field emissions.

For this reason, it is not deliberate to draft an opinion to the extent to which the Association expects that.

However, to dispel the doubts of the Ecological Association "Ojczyzna", it is necessary to indicate that in replying to the allegations listed in points 20 and 25, the authority presented the dependence based of which it calculated the permissible level of magnetic induction, considering the magnetic field strength at 50 Hz of 60 A/m, 75  $\mu$ T. Bearing in mind that the value of the magnetic induction 200 nT, indicated by the above-mentioned Association as level for the degradation of human health, is 0.2  $\mu$ T, it should be emphasized that this is a small value compared to the environmental quality standard of 75  $\mu$ T. To the issue of researching human health in terms of impact on the man body of electromagnetic fields, the General Director of Environmental Protection answered in the respond to the allegation 16.

By completing the delegation of art. 10 of CAP, the General Director of Environmental Protection prior to the issuance of this decision, by the notification of October 29, 2013, mark: DOOŚ-OAI.4202.3.2013.AŁ.4, enabled the parties to express their views on the materials collected and to report possible requests. The notification was posted for a period of 14 days in the Public Information Bulletin of the General Directorate of Environmental Protection and announced in a manner customarily adopted at the headquarters of the General Directorate of Environmental Protection,

Regional Directorate of Environmental Protection in Białystok, Regional Directorate of Environmental Protection in Olsztyn, Municipality of Elk Office, Municipality of Kalinowo Office, Municipality of Olecko Office, Municipality of Wieliczka Office, Municipality of Raczki Office, Municipality of Bakalarzewo, Municipality of Suwałki Office, Urban Municipality of Suwałki Office, Municipality of Jeleniewo Office, Municipality of Szypliszki, Municipality of Puńsk Office, Municipality of Sejny Office.

From the notice indicated above have benefited: [REDACTED], [REDACTED], [REDACTED], [REDACTED], represented by a legal adviser [REDACTED], who, by letter of November 21, 2013 requested:

- annulment of the immediate enforceability of the RDEP in Białystok decision of July 4, 2013 sign: WOOS-II.4202.1.2012.AS;

- taking the evidence from the letter from the Deputy Voivode of Podlasie of October 9, 2013, sign: WKV.742.2.2.2013.AM, and its attachments;

- a thorough analysis of the Resolution No. XXXI/384/13 of the Podlaskie Regional Council of September 9, 2013 regarding the accession to the amendment of the Spatial Development Plan of the Podlasie Voivodship and the protocol No. XXXI/13 from the session of the Podlaskie Regional Council of September 9, 2013;

- inclusion of a letter from the residents of the Bakalarzewo municipality of November 11, 2013.

The complainants alleged that the first instance authority did not analyse the variants of alternative investments and agreed on the option preferred by the investor - the most unfavourable for the residents of Bakalarzewo. The parties indicated that the investor cooperates with the Voivode of Podlasie on issues related to the planning process in the municipality of Bakalarzewo. The appellants claimed that the investment is inconsistent with the valid Spatial Development Plan of the Podlasie Voivodship, and that the Resolution No. XXXI/384/13 of the Podlaskie Regional Council of September 9, 2013 regarding the accession to the amendment of the Spatial Development Plan of the Podlasie Voivodship is inconsistent with the protocol No. XXXI/13 of the session of the Podlasie Regional Council of September 9, 2013. According to the parties, the proximity of the power line to the buildings poses a threat to the residents due to the risk of failure and the operation of electromagnetic fields. Residents of Bakalarzewo announced their intervention in the European Commission, at the same time asking the General Director of Environmental Protection to verify the files of the case in terms of choosing the alternative variant least harmful to the local community.

The General Director of Environmental Protection explains that according to the provision contained in art. 108 § 1 of the CAP, the decision from which the appeal can be made, may be immediately enforceable if it is necessary due to the recovery of human health or life, or to protect

the national farm from heavy losses, or because of other social interest or exceptionally important interest of the party.

RDEP in Białystok gave by the letter of 4 July 2013 an order of immediate enforceability of the decision based on the investor's request, submitted by the letter of April 19, 2013 sign: TLI/3801/2013, due to important social interest.

On pages 18 and 48 of the contested decision, the authority indicated the reasons which led it, giving the contested decision the order of immediate enforceability. RDEP in Białystok explained that the construction of the power line will increase the guarantee of electricity transmission and create new opportunities for economic development, as well as increase the investment attractiveness of the north-eastern part of Poland. In addition, the construction of the power line will contribute to the creation of an electricity transit route between east and west of Europe.

The 400-kV power line from the Ełk station to the Polish-Lithuanian border is one of the stages of the development of the transmission network in the north-eastern part of Poland. The primary goal of the project is to connect the electricity markets of the Baltic countries with the continental Europe market. The current level of cross-border connections does not ensure the effective functioning of the electricity market. The development of the transmission network will increase the guarantee of electricity transmission and will create new opportunities for the economic development of these regions and increase their investment attractiveness. The implementation of the cross-border power line, including the extension of the National Transmission System, will enable the improvement of the power conditions in the region and will contribute to the creation of an electricity transit route between east and west of Europe.

In addition, as explained by RDEP in Białystok in the justification of the contested decision, the project is co-financed by the European Union and is included in the list of individual projects of the Infrastructure and Environment Operational Programme Priority X "Energy security including diversification of energy sources", Measure 10.1 "Development of energy transmission systems electricity, natural gas and crude oil as well as construction and reconstruction of natural gas storage facilities." By Decision 1364/2006/EC, the European Union has given the project a priority status and participates in its costs. The construction project of the section Ełk - the border of the Republic of Poland with Lithuania will be implemented in the financing perspective 2007 -2013 (which means that its implementation will not end later than in 2015). In addition, the investment, by decision of the European Commission, received co-financing from the TEN - E fund.

In addition, the local authority determined that the project is in line with the second priority of the National Development Strategy 2007-2015, i.e.: "Improvement of the technical and social infrastructure", the sixth horizontal objective in the strategic area "Competitive Economy" of the National Development Strategy 2020, i.e.: "Energy security and environment" and the third horizontal

objective of the National Strategic Reference Framework, i.e.: "Construction and modernisation of technical and social infrastructure of key importance for the growth of Poland's competitiveness".

Bearing in mind that the investment is strategic in terms of socio-economic development of the region and the country, and due to the existing possibility of untimely project implementation, there may be a loss of significant financial resources from public sources intended for the implementation of the intended project, in the light of the premises listed in art. 108 § 1 of CAP, giving the planned investment the rigor of immediate enforceability should be considered justified. In view of the above, the authority has no grounds to waive the immediate enforceability of the decision on environmental conditions.

Taking into consideration the request for taking evidence from the letter from Deputy Voivode of Podlasie of October 9, 2013, sign: WI-V.742.2.2.2013.AM, and its annexes, its validity should be considered, in the context of art. 78 of CAP. § 2 of the said provision provides that the public administration authority may not consider the request (§ 1) which was not made during the evidence or at the hearing if the request relates to circumstances already evidenced by other evidence, unless they are relevant to the case.

In the light of the above, the request for the taking of evidence *"is subject to certain limitations for practical reasons, i.e. because of the expediency and speed of the proceedings; Therefore, following are not subject to consideration: a) evidence submitted by the party to circumstances not relevant to the case, and b) the evidence submitted by the party, provided that it has already been sufficiently cleared by other evidence, if the party has notified it after the end of the evidence stage"* (Andrzej Wróbel, Commentary to Article 78 of the Code of Administrative Proceedings, legal status of September 15, 2013, Lex No. 157075, quoted in: E. Iserzon, J. Starościk, CAP. Commentary, texts, formulas and forms, 4th edition, Warsaw 1970).

According to art. 80 sec. 2 sentence 1 of the EIA Act, the competent authority shall issue a decision on environmental conditions after confirming the compliance of the project location with the provisions of the local spatial development plan, if the plan has been adopted. In the Bakalarzewo commune, the subject power line runs through an area not covered by the valid local spatial development plan.

The document, which is a study of the conditions and directions of spatial development of the commune, in contrast to the local spatial development plan, is not an act of local law, and the arrangements contained therein, according to art. 9 par. 4 of the Act of March 27, 2003 *on Spatial Planning and Development* (OJ of 2012, item 647, as amended), constitute only binding guidelines under the procedure of preparing a spatial development plan. The study of the conditions and directions of spatial development of the commune, without being an act of local law, cannot be the basis for deriving any rights and obligations in individual decisions.

Issues related to the procedure described in art. 12 para. 3 of the Act of March 27, 2003 on Spatial Planning and Development (OJ of 2012, item 647, as amended) and adoption of an amendment to the study of conditions and directions of spatial development of the commune go beyond the scope of the case and competences of the General Director of Environmental Protection in the field of environmental impact assessment.

Referring to the allegation of incompatibility of the location of the investment with the voivodship spatial development plan, it should be clarified that the spatial development plan of the voivodship is an internal act and is a tool primarily to coordinate organizational, social, economic and other objectives that are of interest to the voivodship self-government. The voivodship spatial development plan is not an act of local law.

According to art. 44 sec. 1 of the spatial development plan, arrangements of voivodship spatial development plan are introduced into the local plan after prior appointment of the public investment deadline of supralocal importance and the conditions for their introduction to the local plan, therefore the plans are consistent with each other and if the investment is implemented that only its compliance with the local spatial development plan is checked.

Issues described by the complainants in a letter dated November 21, 2013 regarding inconsistency of Resolution No. XXXI/384/13 of the Podlaskie Regional Council of September 9, 2013 regarding the accession to the amendment of the Spatial Development Plan of the Podlasie Voivodship with the protocol No. XXXI/13 of the session of the Podlasie Regional Council of September 9, 2013 goes beyond the scope of the case and the competences of the General Director of Environmental Protection in the field of environmental impact assessments.

As for the variations and impact of investments on human health, the authority referred to them, responding to the allegations raised in the appeal. Taking into consideration the analysis of alternative options, the local authority shares the position of RDEP in Białystok, contained in responses to Notes 10 and 24 on pages 32-33 and 41 of the contested decision.

In the report on the environmental impact of the planned 400 kV power line Ełk - the border of the Republic of Poland, 6 investment location variants were presented, however, two of them, the least favourable and posing a high threat to the natural environment, were rejected. These variants - running through the municipality of Bakalarzewo - would cross the Natura 2000 area of Upper Rospuda Valley PLH200022 on a section of approx. 2.3 km.

As can be seen from the case documentation, the selection of the recommended option 4 was preceded by a detailed multicriteria analysis, which enabled the selection of the optimal variant, considering different criteria having a significant impact on the implementation and functioning of the chosen solution. This option is the most beneficial in terms of environmental, economic and social impacts, including consequences for human health and life. Route of the planned line according to

option W4 between point B - H marked on the graphical annex to the report, including a section that runs, among others, by the municipality of B., is based on the route developed in 1997-2000, partly introduced into the planning documents of municipalities and voivodships. A local community was made aware of the route of the 400-kV power line since 1997.

As for the risk of failure, it should be stated that it occurs in each of the presented variants to the same extent. However, bearing in mind, that in the case of the variant chosen for implementation, in the strip of 35 m from the line axis there is no housing development, the operation of the proposed 400 kV line will not cause a nuisance to the existing housing.

Considering that the jurisdictional powers of the appeal authority are not limited only to checking the legitimacy of the allegations raised against the decision of the first instance authority, but also to a comprehensive analysis of the case files and substantive control of the decision of the first instance authority, the appeal authority stated that the decision of the first instance authority require reformation in respect of imposed conditions for the implementation of the project. After analysing the evidence, the local authority shares the view of RDEP in Białystok regarding the establishment of environmental conditions for the implementation of the project. However, bearing in mind, that the essence of the decision on environmental conditions is to establish in its viewpoint a specific, enforceable conditions and requirements that will have a real impact on the implementation of the planned investment, due to excessive vagueness, imprecision or repeating the conditions of project implementation specified by the first instance authority the appeal body, based on art. 138 par. 1 point 1 and 2 of CAP, overturned in part the decision under review and in this respect ruled on the merits of the case or dismissed the proceedings of the first instance authority.

In the contested decision of the first instance authority and the preceding decision proceedings, there are no violations of procedural or substantive law that may affect the nature of the decision and thus result in the decision being waived by the appeal authority and the matter being referred to RDEP in Białystok.

The appellants should be clarified that their request for a cassation decision, i.e. repealing the decision and referring the case back to the first-instance authority cannot be accepted. The cassation decision is an exception among potential decisions of the appeal authority referred to in art. 138 of the CAP and thus cannot be subject to an extensive interpretation. According to § 2 art. 138 of the CAP, a cassation decision may be taken only when the proceedings of the first instance have been violated, and the scope of the case necessary to explain has a significant impact on the resolution. In addition, the authority hearing the appeal is obliged to prove the inability to apply additional complementary proceedings on the principle specified in art. 136 of CAP. It is the duty of the appeal authority, as a matter of principle, to substantive consider the matter.

During appeal proceedings, the second instance authority undertook an additional explanatory procedure, according to art. 136 of the CAP, an explanation of circumstances justifying a decision insufficiently proved by the first instance authority. Based on the evidence thus supplemented, it was possible to clearly determine the factual and legal status, authorizing the second instance authority to adjudicate on the merits.

The appeal body shared the findings of the first instance authority as to the absence of a significant negative impact of the project on the environment, including the protection of Natura 2000 sites.

After analysing the entire evidence, the second-instance authority found no grounds to revoke the decision of the Regional Director of Environmental Protection in Białystok of July 4, 2013 on environmental conditions of the project and refer the case for reconsideration.

In connection with the above, it was adjudicated as in the operative part.

This decision is final.

A complaint against this decision can be filed to the Voivodship Administrative Court in Warsaw, through the General Director of Environmental Protection, Wawelska 52/54, 00-922 Warsaw, within 30 days of receiving the decision.

Copy to:

1. Proxy of the Polskie Sieci Elektroenergetyczne S.A.
2. Proxy of the applicants [REDACTED] - legal advisor of Kancelaria Radcy Prawnego "AGRA", Kościuszki 7/1, 11-700 Mrągowo;
3. Association "Partnerstwo Dzikie Mazury" (Wild Masuria Partnership), Raczki Wielkie 20, 19-400 Olecko.
4. Other parties to the proceedings notified by the announcement in the mode of art. 49 of CAP;
5. Ad acta

For the record:

1. Regional Director of Environmental Protection in Białystok, Dojlidy Fabryczne 23, 15-554 Białystok;
2. Regional Director of Environmental Protection in Olsztyn, Dworcowa 60, 10-437 Olsztyn.