



**ALYTUS REGIONAL ENVIRONMENTAL PROTECTION DEPARTMENT
OF THE MINISTRY OF ENVIRONMENT OF THE REPUBLIC OF LITHUANIA**

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Attn: **Kaunas Regional Administrative Court**

A. Mickevičiaus g. 8A, LT-44312 Kaunas

Judge Janina Vitunskienė

Administrative case No I-613-422/2011

CLAIMANT: 1. ASSOCIATION RUDAMINOS BENDRUOMENĖ
Legal entity code 300109643
Address: Rudamina, Lazdijų seniūnija, Lazdijų rajonas

**CLAIMANT'S
REPRESENTATIVE:** 2. Attorney-at-Law RAMUNĖ DULEVIČIENĖ
Office at Tilto g. 8 / Ž. Liauksmo g. 3, 01101 Vilnius

DEFENDANT: ALYTUS REGIONAL ENVIRONMENTAL PROTECTION
DEPARTMENT
Legal entity code 190742671
Office at Kauno g. 69, 62107 Alytus

**THIRD PARTIES
CONCERNED:** 1. AB LIETUVOS ENERGIJA
Legal entity code 220551550
Office at Žvejų g. 14, 09310 Vilnius

2. UAB SWECO LIETUVA
Legal entity code 301135783
Office at Gerulaičio g. 1, 08200 Vilnius

3. ALYTUS DISTRICT MUNICIPAL AUTHORITY
Legal entity code 188718528
Office at Pulko g. 21, 62133 Alytus

4. LAZDIJAI DISTRICT MUNICIPAL AUTHORITY
Legal entity code 188714992
Office at Vilniaus g. 1, 67106 Lazdijai

5. ALYTUS PUBLIC HEALTH CENTRE
Legal entity code 191344670
Office at Savanorių g. 4, 62151 Alytus

6. THE STATE SERVICE FOR PROTECTED AREAS REPORTING

TO THE MINISTRY OF ENVIRONMENT OF THE REPUBLIC OF LITHUANIA

Office at A. Juozapavičiaus g. 9, Vilnius

7. ALYTUS LOCAL OFFICE OF THE CULTURAL HERITAGE DEPARTMENT REPORTING TO THE MINISTRY OF CULTURE OF THE REPUBLIC OF LITHUANIA

Legal entity code 188692688

Office at Birutės g. 3A, 62151 Alytus

8. ALYTUS COUNTY FIRE AND RESCUE BOARD

Legal entity code 19012465

Office at Suvalkų g. 34, 62121 Alytus

**ALYTUS REGIONAL ENVIRONMENTAL PROTECTION DEPARTMENT OF THE
MINISTRY OF ENVIRONMENT OF THE REPUBLIC OF LITHUANIA**

RESPONSE

To the Claimant's appeal in administrative case No I-613-422/2011 to annul part of Decision No ARV2-5-1810 of 30 December 2010 of the Alytus Regional Environmental Protection Department concerning the feasibility of the construction and operation of the 400 kV overhead power transmission line between the Alytus transformer substation and the Lithuanian-Polish border

28 March 2011 No ARV2-5-476

Alytus

1. Background

Capitalised concepts and abbreviations used in this response have the meanings described below:

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|-----------------------------------|--|
| 1. LAP | means the Law on Administrative Proceedings of the Republic of Lithuania; |
| 2. Alytus REPD | means the Alytus Regional Environmental Protection Department of the Ministry of Environment of the Republic of Lithuania; |
| 3. Response | means the present response to the Claimant's appeal of the Alytus Regional Environmental Protection Department of the Ministry of Environment of the Republic of Lithuania; |
| 4. Communication Procedure | means the Procedure for communication of information to the public and involvement in the process of environmental impact assessment of planned economic activity approved by Order No D1-370 of 15 July 2005 of the Minister of Environment of the Republic of Lithuania; |
| 5. Order | Means Order No 1-190 of 12 October 2009 of the Minister of Energy of the Republic of Lithuania by which it was decided to start drafting the Line's special plan; |

- 6. Lietuvos energija** means a third party concerned AB Lietuvos energija, legal entity code 220551550;
- 7. Line** means the planned 440 kV overhead power transmission line (EEPOL) between the Alytus transformer substation and the Lithuanian-Polish border;
- 8. LitPol Link** means LitPol Link Sp. z o. o., KRS 0000311446, address Wojciecha Górskiego 9, 00-033 Warsaw, Poland – a joint venture of Lithuanian and Polish power transmission system operators founded on 19 May 2008 that implements preparatory work to construct the Lithuanian-Polish power interconnection;
- 9. LITGRID** means the power transmission system operator responsible for the strategic project of the power interconnection with Poland – UAB LITGRID, legal entity code 302564383, address A. Juozapavičiaus g. 13, 09311 Vilnius, Lithuania;
- 10. SACL** means the Supreme Administrative Court of Lithuania;
- 11. Aarhus Convention** means the Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters;
- 12. Claimant** means the Claimant association Rudaminos bendruomenė, legal entity code 300109643, address Rudamina, Lazdijų seniūnija, Lazdijų rajonas;
- 13. EIA** means the environmental impact assessment of the construction and operation of the planned 400 kV overhead power transmission line between the Alytus transformer substation and the Lithuanian-Polish border;
- 14. EIA report** means a report on the environmental impact assessment of the construction and operation of the planned 400 kV overhead power transmission line between the Alytus transformer substation and the Lithuanian-Polish border prepared by UAB Sweco Lietuva (4th revision);
- 15. Law on EIA** means the Law on Environmental Impact Assessment of the Proposed Economic Activity of the Republic of Lithuania;
- 16. Appeal** means the Claimant's appeal of 11 February 2011 to annul the Decision;
- 17. SEIA** means the strategic environmental impact assessment of the special plan for the construction of the planned 400 kV overhead power transmission line between the Alytus transformer substation and the Lithuanian-Polish border;
- 18. SEIA report** means the report on the strategic environmental impact assessment of the special plan for the construction of the planned 400 kV overhead power transmission line between the Alytus transformer substation and the Lithuanian-Polish border prepared by UAB Sweco Lietuva;
- 19. Decision** means decision No ARV2-5-1810 of 30 December 2010 of the Alytus Regional Environmental Protection Department of the Ministry of

Environment of the Republic of Lithuania concerning the feasibility of the construction and operation of the 400 kV overhead power transmission line section between the Alytus transformer substation and the Lithuanian-Polish border;

20. Sweco means UAB SWECO LIETUVA, legal entity code 301135783;

21. Court means Kaunas Regional Administrative Court

On 4 March 2011, Alytus REPD received the Court's notice (proceedings No 3-62-3-00115-2011-5), by which the Court informed about the Claimant's Appeal and obligated Alytus REPD to file a response to the Appeal. In accordance with the aforementioned notice of the Court and the Court's order to file a response by 28 March 2011, we hereby file this Response to the Claimant's Appeal.

The Claimant asks the Court to annul the part of the Decision which allows planning and designing the construction and operation of a 400 kV overhead power transmission line in the section sub-alternative indicated in the Decision and on the website of LitPol Link (www.litpol-link.lt) in the section where the construction and operation of EEPOL is envisaged between Žuvintas Biosphere Reserve and the Lithuanian-Polish border near Lake Galadusys.

We disagree to the Claimant's appeal and provide reasons for our disagreement below which are based on the below-described factual circumstances and legal arguments.

2. The Claimant has no right of claim and legal interest in the case

Article 5(3) of LAP provides that a court will accept an administrative case for consideration: 1) on the complaint or petition of the person or his representative, applying for the protection of his right or interest protected under law; <...> 3) on the petition for the protection of state or other public interests lodged in the cases established by law by the prosecutor, entities of administration, state control officers, other state institutions, agencies, organisations or natural persons.

The Claimant association Rudaminos bendruomenė applied to the administrative court stating that it defends the public interest as well as the individual rights and interests of its own and of the members that form the organisation, in particular the right to take part in the EIA process and public consideration of the EIA report.

In the developed case-law, SACL has explained that the rights and statutory interests of members of an organisation can be defended:

- through the powers granted to the Claimant to defend the public interest. In such a case, from the point of view of administrative proceedings, i.e. from the procedural point of view, an organisation acts on its behalf (as a Claimant), but in principle in regard of a violation potentially caused to the rights and lawful interests of other persons (who are or are not members of an organisation), the society (its part) or the state the elimination of which is a matter of public interest.

It should be underlined, however, that Article 5(3)(3) and Article 56 of LAP provide that the powers (right) of persons (in this case, the Claimant) to defend the public interest must be stipulated by law. Where the law does not provide for such a right, it means that the person has no right to appeal to court to defend the public interest whereas the court has no

obligation to proceed with such an application. It should then be refused to accept an appeal (request) (Article 4(6) and Article 37(2)(1) of LAP) and where it has already been accepted, the proceedings should be terminated (Article 4(6) and Article 101(1) of LAP);

- through participation of the members of the organisation as Claimants in administrative proceedings who are authorised to represent a specific organisation (association) where such assignment does not come into conflict with legal rules and the bylaws of the organisation.¹

With reference to the Claimant's rights to defend the public interest, it should be noted that based on Article 5(3)(3) of LAP, the Claimant, as an association, may defend the public interest in cases stipulated by law, BUT:

It is seen from section II of the Claimant's bylaws contained in the case that the Claimant has no competence to act in the field of environmental protection. Based on this fact and according to the provisions of the Law on Associations and the Aarhus Convention, the association has not powers to defend the public interest by appealing against EIA procedures and the Decision.

The supposedly committed violations of EIA procedures named by the Claimant relate to the protection of the property rights of its individual members and not the public interest. Namely, the case-law formed by SACL consistently follows a position that the public interest, when LAP is applied, should be understood as something which is objectively significant, necessary and valuable to the public or a part thereof.² In each case where an issue arises whether a specific interest which is the subject of appealing to court should be considered a public interest and defended and protected as the public interest, the court hearing the case must decide whether not defending it under the law would come into conflict with the values which are enshrined in the Constitution of the Republic of Lithuania and are protected and defended by it. In this case, it is absolutely the contrary. The Claimant argues that it protects the interests of its members – owners of parcels of land, which are obviously private (For more please read below in this section). Whereas the construction of the subject of the Decision – EIA Line – is a public interest with ultimate significance to the Lithuanian state, its national security and economic stability: to build a Lithuanian-Polish power link and to interconnect the electricity systems of the Baltic States and continental Europe, increase the stability and reliability of power supply; develop the export and import of electricity, ensure the economic development, compatibility and energy independence of Lithuania (For more please refer to part 7 of the Response). This project ensure the interests of all residents of Lithuania to have access to the uninterrupted supply of electricity from different sources, which means that a competitive price is also being ensured. It can be guessed from the text of the Appeal and from the communication with the Claimant to date that the Claimant's only interest which was the reason for initiating legal proceedings are restrictions on land use established by the laws and secondary legislation, which would apply to individual members of the association once the Line is laid.

Because the Claimant was not granted the powers by the law to defend the public interest by appealing against the EIA procedures and the Decision, the Claimant's bylaws does not allow it to act in the field of environmental protection, and furthermore, the Appeal, is, in principle, a means

¹ Ruling of SACL of 9 December 2010 in administrative case No A⁵⁵⁶-393/2010.

² Resolutions of the Constitutional Court of 6 May 1997, 30 December 2003, 13 December 2004, 29 December 2004, 13 May 2005 and 16 January 2006 and the resulting SACL rulings in administrative proceedings: 23 January 2004 No A³-11/2004; 23 November 2005 No A13-1725/2005; 19 January 2007 No A³-64-2007, bulletin of the Lithuanian Supreme Administrative Court No 1(11), 2007, p. 221-248; 25 July 2008 No A¹⁴⁶-335/2008; 12 February 2009 No A⁸⁸²-65/2009; 29 June 2009 No A⁵²⁵-781/2009.

chosen by the Claimant to defend the private interests of its members and the Appeal does not indicate any violation of the public interest, the Claimant is obviously not a qualified Claimant either according to Article 5(1) of LAP or according to Article 5(3)(3) of LAP and its appeal should therefore be dismissed.

As was mentioned before, the rights and interests protected by law of the members of an organisation through participation of members of the organisation as Claimants in administrative proceedings but by authorising them to represent a specific organisation (association) where such an assignment does not come into conflict with legal rules.

It should be noted that when filing an appeal, the Claimant named itself as the only claimant and did not provide the powers of other persons that could be claimants to represent them (act on behalf of them (as claimants)) either. Furthermore, as was already pointed out, the Claimant's bylaws do not provide that it may represent its members in the field of environmental protection. It should therefore be concluded that in this case from the procedural point of view the Claimant may not represent and defend the rights and interests protected by law. Given the foregoing, in this case the Court has no right to decide whether the contested Decision violated the rights of other persons (other than the Claimant's as a legal entity). There is only one claimant in this case – the association Rudaminos bendruomenė, i.e. a legal entity whose legal form is an association. Because the Claimant is not authorised to act on behalf of represented members, the court should not proceed with its appeal.

Despite the fact that the Claimant has no powers to defend the public interest and neither does it have powers to represent the rights of the members of its organisation in court which constitutes sufficient ground to dismiss the Claimant's appeal, we would like to make a separate statement regarding the absence of interest of the Claimant and/or of its members in the administrative proceedings pending.

According to Article 5(1) of LAP, every interested entity is entitled to apply to the court, in the manner prescribed by law, for the protection of his infringed or contested right or interest protected by law. Hence the Claimant as a legal entity (association) has the right to apply to the Court concerning violation of its rights or interests protected by law of a legal entity (association). A prerequisite for declaring the Appeal grounded is the established fact of infringement of the Claimant's rights or lawful interests.³

In the Appeal, the Claimant points out the only, in principle, ground to annul the Decision – supposed infringements of the procedural rules concerning the provision of information to the public and the Claimant's involvement in the EIA process. However, the Claimant's reference to such infringements alone may not serve as ground to accept the Appeal and annul the contested Decision if it is not established what rights and interests protected by law of the Claimant are infringed and that namely the Claimant's rights and interests protected by law were violated. The Claimant provided no evidence in what way the supposed procedural infringements of legislation specified in the Appeal relate to its rights or interests protected by law and in general did not name which of the Claimant's specific personal rights and in what way were infringed by the adopted Decision that the construction of the Line is permissible according to the EIA report.

The Claimant only claims that the procedures of the provision of information to the public were being implemented inadequately and that its opinion was not heard.

³ Consultation No 93 of SACL of 3 July 2001, Case-law of administrative courts No 2, p. 326-327; SACL ruling of 10 June 2005 in administrative case No A²-675-05; SACL ruling of 19 August 2006 in administrative case No A¹⁴-1240/06.

Furthermore, the Claimant, supposing that it ostensibly has the right to defend the supposedly infringed rights and interests protected by law of its members, failed to provide a list of its members and evidence of the legal interest the members of the association have in the case. Based on the information provided by the Claimant, the members of the association are Rūta Cimakauskienė, Viliūtė Garbenčienė, Gintaras Garbenčius, Algimantas Juozas Dapkūnas, Vytautas Milukas, Ona Teresė Leskauskienė, Mindaugas Griškėlis, Vytautas Valukonis, Gintas Klimas, Simas Aškerkauskas, Kristė Aškerkauskienė, Gintas Cimakauskas, Kęstutis Sprangauskas, Gintaras Dapkūnas, Gintautas Mirijauskas, Asta Gadliauskienė, Angelė Marytė Nemurienė, Aldona Surdokienė, Arūnas Bliūdys, Antosė Dapkūnienė, Nida Labalauskienė, Eugenija Stankevičiūtė, Laima Češkevičienė, Ramūnas Valiokas, Regina Miliukienė, Rytė Bliūdienė, Ona Baškienė, Dalė Aukščiūnienė, Marija Klimienė, Marytė Valukonienė, Benas Aukščiūnas, Asta Klimaitė, Sigitas Klimas, Stasė Švetkauskienė, Angelė Griškėlienė, Janė Bernockienė, Adelė Žmuidzinienė, Laima Raškauskienė, Julija Stankevičienė, Ona Draskinienė, Petrutė Juodeikienė, Aldas Merijauskas, Elvyra Katilienė, Petras Bakša. To the Defendant's knowledge and following a more detailed inspection of the publicly available solutions of the special plan of the 400 kV overhead power transmission line, the planned Line (including its protection zone) could cross only six parcels of land owned by three members of the association (Algimantas Juozas Dapkūnas, Ona Teresė Leskauskienė, Regina Milukienė). The intended use of all the six parcels of land that can be crossed by the Line and its protection zone is agriculture. The total restricted area planned in all of these parcels would comprise merely 2.3 ha. In accordance with the "Special conditions for the use of land and forests" approved by Resolution No 343 of 12 May 1992 of the Government of the Republic of Lithuania (as amended and revised) and the Electricity protection rules approved by Order No 1-93 of 29 March 2010 of the Minister of Energy, on the parcels of land over which the electricity overhead lines will run and in the EEPOL protection zone itself, it is not prohibited either to engage in agriculture or plant crops, therefore the members of the association whose owned parcels of land are mainly intended for agriculture will be able to continue using the parcels of land according to their specific use, while in respect of the parts of the parcels where easements have been established individuals will be paid compensations as prescribed by law. In any case it should be observed that the EIA report and the Decision do not address issues of restrictions on land use because these are issues pertaining to a different process – territorial planning. The Decision decides on only one issue – whether the building of the Line is possible at the sites specified in the EIA report from the point of view of its environmental impact and in consideration of the planned measures to reduce that impact. In no way does addressing of the issue regarding the possibility of building the Line relate to the infringement of the rights and interests protected by law of either the Claimant or its members.

For aforementioned reasons it should be concluded that none of the personal rights, interests protected by law of the Claimant and/or its members and/or the public interest have been infringed. The Claimant – the association – has not right to apply to court to defend the rights of its members and/or the public interest in the field of environmental protection. The Appeal should therefore be dismissed as filed by a non-qualified, non-authorized and non-interested entity (Article 5(1), Article 5(3)(3), Article 56(1) of LAP).

Should the Court nevertheless decide that the Claimant has a personal right to file the Appeal, the Defendant disagrees with the Appeal and asks to dismiss it as unfounded for other reasons which are listed below.

3. The Claimant missed the period for bringing an appeal

Article 33(1) of LAP provides that unless a special law establishes otherwise, a complaint/petition may be filed with the administrative court within one month from the day of publication of the contested act or the day of delivery of the individual act to party concerned or the notification of the party concerned of the act (or omission) or within two months from the day of expiry of the time limit set by a law or any other legal act for the compliance with the demand.

Based on SACL case-law⁴, when appeals are brought against acts which approve territorial planning documents, including the documents serving as basis for adopting decision on the feasibility of planned economic activity, the period for appealing to court begins on the date of factual become aware of the respective administrative act, i.e. on the date of declaring the respective act (Article 33(1) of LAP). An contested act is considered declared to a person when they became or should have become aware who and when adopted the administrative act and what its content is.

The Claimant's Appeal cannot be decided by the Court and the proceedings must be terminated because the Claimant missed the period for bringing an appeal established in Article 33(1) of LAP and is not asking to renew it. Namely:

On 3 January 2011, the full text of the Decision was posted on the website of Alytus REPD in the section "Environmental impact assessment", subsection "Adopted decisions on planned economic activity" (Annex No 1);

On 7 January 2011, the organiser of PEA published detailed information about the adopted Decision in Lietuvos žinios daily and in the papers Alytaus naujienos and Lazdijų žvaigždė (Annex No 2);

On 12 November 2011, detailed information on the adopted Decision was also published in the Alytus local neighbourhood of Alytus district municipality, Kriokialaukis local neighbourhood, Miroslavas local neighbourhood, Simnas local neighbourhood, Budvietis local neighbourhood of Lazdijai district municipality, Teizai local neighbourhood, Šeštokai local neighbourhood, by placing information notices on the information boards of these local neighbourhoods (Annex No 3).

The content of the Decision and all information which is required for the persons concerned to properly exercise the rights stipulated in the laws and other legislation in the EIA process can be clearly understood from the published information about the Decision.

As early as on 7 January 2011, the Claimant became aware of the information about the Decision. This fact is confirmed by the Claimant's letter of 24 January 2011 (Annex No 4) which states that *"It can be assumed from the advertisement "On the admissibility from the environmental impact point of view of the construction and operation of the planned 400 kV overhead transmission line between the Alytus transformer substation and the Lithuanian-Polish border" in the 7 January issue of the paper Lazdijų žvaigždė that a decision was adopted"*.

Whereas the Claimant wrote the Appeal and filed it to the Court within more than one month (11 February 2011) after the adopted Decision became available (3 January 2011) and when it actually became aware of the adopted Decision (7 January 2011). Because the Claimant missed the deadline for filing an appeal and is not asking to renew it, the Claimant's appeal must not be proceeded with.

⁴ SACL ruling of 20 October 2005 passed in administrative case No AS⁵ – 383/2005; SACL ruling of 12 January 2006 passed in administrative case No AS⁵-8/2006; SACL ruling of 23 May 2008 in case No A-525-132-08, etc.

The Claimant, supposing that it did not miss the deadline for appeal, argues unfoundedly and unlawfully that the Defendant had infringed the Decision announcement procedure and announced the Decision inadequately.

Firstly, the Claimant's statement that the Decision, as a regulatory act adopted by a regional public authority, has not been officially announced to date because it has not been published in the Valstybės žinios official gazette, is unlawful and unfounded. The Decision is an individual and not a regulatory act (SACL ruling of 28 January 2008 in administrative case No A-525-107-08, etc.), therefore based on Article 3(3) of the Law of the Republic of Lithuania "On the procedure for publication and coming into force of the laws and regulations of the Republic of Lithuania", it was not supposed to be published in Valstybės žinios.

Secondly, the Claimant unfoundedly claims that Alytus REPD was obliged to deliver the Decision to the Claimant in writing. In accordance with the aforementioned effective legislation⁵, the competent authority must provide a reasoned decision only to the organiser (customer) of planned economic activity or the originator of EIA documentation and EIA entities. The Claimant is neither a customer of planned economic activity nor originator of EIA documentation nor an EIA entity. Whatever is the case, the Claimant was duly informed under the Rules for the provision of information.

Thirdly, the Claimant's statement that she supposedly did not receive the Decision according to the Claimant's request of 24 January 2011 to Alytus REPD is untrue. On 25 January 2011, Alytus REPD received a letter from the association Rudaminos bendruomenė asking to send the Decision to it (Annex No 4). With letter No ARV2-5-158 "Regarding request" of 1 February 2011, Alytus REPD sent a copy of the decision to the chairwoman of Rudaminos bendruomenė, Rūta Cimakauskienė (to the address: Rudamina, Lazdijų raj. LT-67059) and additionally, although it was not asked to, provided a copy of minutes No ARV4-18 "Minutes from a discussion on proposals from the public concerned and on the revised EIA report of the construction and operation of the 400 kV overhead power transmission line between Alytus transformer substation and the Lithuanian-Polish border" from the meeting that took place on 17 December 2010 at Alytus REPD with participation of the chairwoman of Rudaminos bendruomenė, Rūta Cimakauskienė, and the community representative Dr R. Valiokas, which addressed the proposals of the public concerned for the EIA report (Annex No 5).

Fourthly, Alytus REPD was carefully following effective legislation, including the provisions of the Rules for the provision of information and the specified requirements and properly announced information about the Decision:

- On 3 January 2011, the Defendant posted the Decision itself on its website (Annex No 1) whereas on 12 January 2011 posted information about the adopted Decision on its website at the address: <http://ard.am.lt/VI/index.php#a/543> (Annex No 6).

⁵ Article 10 (3) and Article 10(8) of the Law on EIA (revision of Law No X-258 of 21 June 2005 (Official Gazette, 2005, No 84-3105), revision of Law No X-1654 of 30 June 2008 (Official Gazette, 2008, No 81-3167)) and Part IV, point 22 of the Procedure for the review of documentation of the environmental impact assessment of proposed economic activity at the ministry of environment and at authorities reporting to it of the Republic of Lithuania (Order No D1-311 of 23 June 2006 of the Minister of Environment as last amended).

- As prescribed in effective legislation⁶, the Defendant provided the Decision in writing to the customer of planned economic activity, the originator of EIA documentation and EIA entities (Annex No 7).

Fifthly, it should be observed that the information on the Decision published on the Alytus REPD's website is fully compliant with the form and content prescribed in the Law on EIA and in the Rules for the provision of information. The Claimant's statements that information was supposedly published inadequately on the Alytus REPD website are unfounded:

- In contrast to what the Claimant argues, neither the Law on EIA nor the Rules on the provision of information establish any requirements to post the entire text of EIA administrative acts, reports, procedural documents, etc. on the website. It should be noted that those documents normally are large which makes posting them difficult, so it is important only to ensure proper provision of information. Once they become aware of the existence of respective documentation, individuals can freely visit the offices of competent authorities and read the entire text of documents.
- The rules on the provision of information do not require publishing the entire text of the Decision and instead point to the obligation to announce information about the Decision. The adopted Decision and Information about the adopted decision differ in form. Their content is government by the individual orders of the Minister of Environment.⁷ The information on the adopted decision posted on the Internet is an abridged version of the Decision intended for the part of the public that has access to the Internet, with a reference where and when more detailed information about the adopted decision is available.
- In contrast to what the Claimant argues, the determined form for publishing Information about the Decision there envisages no space for the originators' signatures.

A summary of the above makes it obvious that Alytus REPD duly implemented the provisions of effective legislation, including the requirements described in the Law on EIA and the Rules for the provision of information regarding the publishing of information about the Decision. The information notice on the Decision was posted on 3 January 2011 on the website of Alytus REPD whereas the Claimant's appeal was brought only on 11 February 2011, which means that the Claimant missed the deadline for bringing an appeal and the proceedings must be terminated.

4. The Decision may not be annulled partially

SACL has pointed out in its case-law that LAP grants the right to a court to partially annul a specific administrative act. But in each individual case where a decision is being adopted regarding partial annulment of an act it must be determined whether such judgement of the court is possible,

⁶ Article 10 (3) and Article 10(8) of the Law on EIA (revision of Law No X-258 of 21 June 2005 (Official Gazette, 2005, No 84-3105), revision of Law No X-1654 of 30 June 2008 (Official Gazette, 2008, No 81-3167)) and Part IV, point 22 of the Procedure for the review of documentation of the environmental impact assessment of proposed economic activity at the ministry of environment and at authorities reporting to it of the Republic of Lithuania (Order No D1-311 of 23 June 2006 of the Minister of Environment as last amended).

⁷ Part IV, point 21 of the Procedure for the review of documentation of the environmental impact assessment of proposed economic activity at the ministry of environment and at authorities reporting to it of the Republic of Lithuania (Order No D1-311 of 23 June 2006 of the Minister of Environment as last amended) and points 36-40 of the Rules on the provision of information.

i.e. it is necessary to consider whether the subject indicated in the act can be separated and broken down into parts in whose respect the act is to be annulled.

In the proceedings at issue, the Decision to approve the EIA report is integral and undivided. Separating a part of the Decision whose existence supposedly results in the infringements named by the Claimant is impossible, therefore the Claimant is actually asking to annul the Decision in full.

Annulment of the entire Decision in no way would help to protect the supposedly infringed rights and lawful interests of the Claimant and would have tremendous negative consequences to LITGRID and entire Lithuania. A new EIA report would have to be developed and co-ordinated. It means an at least several years' delay of increasing the development, security, reliability and independence of the Lithuanian electricity system, which, as described in more detail further in this Response, would violate the imperative legal rules and public interests in the electricity sector, increase the operating costs of the transmission system operator and at the same time the end price for electricity for all Lithuanian consumers and would be likely to cause infringements to Lithuania's international commitments in the field of energy.

5. The decision on the site and technique of building the Line was adopted following objective consideration of all the circumstances and is lawful and founded

In the Appeal the Claimant states arguments regarding the fact that the site/territory and technique of building the Line (an alternating-current high-voltage overhead line instead of a direct-current high-voltage underground cable) were supposedly wrongly selected in the EIA report, which supposedly violates environmental and individual interests, public values and the public interest pertaining to unique landscape.

According to the Claimant, its proposed alternative of the site and construction technique of the Line, which was supposedly not analysed during the EIA procedures, fully ensures the preservation of the public interest.

These statements of the Claimant are unlawful and totally unfounded for reasons described below.

Firstly, the Claimant wrongly understands the objectives and essence of EIA. Environmental impact assessment pursues three objectives (Article 4 of the Law on EIA):

- to identify, describe and assess the likely direct and indirect effect of the proposed economic activity on public health, fauna and flora, soil, surface and the underground, air, water, climate, the landscape and biodiversity, material assets and immovable cultural properties as well as interaction between these components of the environment;
- to minimise the adverse effect of the proposed economic activity on public health and other components of the environment listed in subparagraph 1 of this Article or to prevent this effect;
- to ascertain whether the proposed economic activity may be permitted in the selected location upon evaluating the nature and environmental effect thereof.

During EIA, all the circumstances were determined and the impact of the planned Line on all environmental elements was fully assessed. The Claimant did not indicate in the Appeal any new circumstances or impact that were not assessed.

It should be pointed out that the EIA report addressed such alternatives of the Line construction site which are in line with effective territorial planning documentation. The Line's route results from the solutions of the general plan of the territory of the Republic of Lithuania approved by Resolution No IX-1154 of 29 October 2002 of the Seimas of the Republic of Lithuania, does not come into conflict with the general plan of the territory of Alytus district municipality approved by Decision No K-79 of 24 March 2009 of the Alytus district municipal council and neither it does to the general plan of the territory of Lazdijai district municipality approved by Decision No 5TS-648 of 5 December 2008 of Lazdijai district municipal council, which plan the Line (EIA report. Volume L-1, p. 40. Volume L-2, 2 graphic supplement). The construction site of the Line is also planned in the National Energy Strategy. All the listed territorial planning documents were publicly discussed and co-ordinated before adopting them. So the Claimant knew or should have known where it was planned to build the Line across Alytus and Lazdijai districts, had the opportunity to take part in the public discussions on the planning documents of the aforementioned territories and to provide reasoned proposals or exercise the right to appeal against inadequate solutions under the law, but failed to exercise its rights. No one, including the Claimant, appealed against this solution in the process of approving the above general plans, which means that the solution is in effect and must be followed when drafting lower-level territorial planning documentation. Without having exercised its statutory rights to participate in the drafting of higher-level territorial planning documentation (i.e. general plans of the territories of the state, counties and districts), in the process of drafting lower-level territorial planning documentation (i.e. the special plan) the Claimant unfoundedly questions the previously discussed, agreed and approved solutions.

The band sub-alternative B1 (as well as all the other discussed alternatives) selected as the most acceptable one in the EIA report fully complies with the aforementioned general plans. Whereas the site alternative of the Line suggested by the Claimant falls within the territories of Marijampolė district and Kalvarija municipality, where, according to the solutions of the general plans of the territories of the Republic of Lithuania and of the aforementioned municipalities, no construction of a high-voltage 400 kV overhead power transmission line is envisaged at all.

The infrastructure corridor provided in the general plan of the territory of Kalvarija municipality which the Claimant refers to is not intended for developing power transmission infrastructure. Only a European gauge railway is planned in this infrastructure corridor. However, railway development areas cannot be directly used for electricity facilities without prior amendments to the solutions of the general plan.

A review of the Claimant's proposed territorial alternative, which was assessed from the environmental point of view in the EIA report⁸, showed that the impact of the offered band to the natural environment will be the same as that of the band sub-alternative B1. Territorial planning-related aspects were also taken in to account. To summarise this assessment, it should be pointed out that in order to implement the Claimant's proposed alternative it would be necessary to:

- Change the general plan of the Republic of Lithuania (the decision on the necessity to change the general plan must be adopted by the Seimas of the Republic of Lithuania based on a reasoned proposal from the Ministry of Environment of the Republic of Lithuania);
- Change the general plan of the territory of Marijampolė county (the decision on the necessity of changing the general plan must be adopted by the Government of the Republic

⁸ After the Lazdijai district municipal authority brought forward a proposal regarding the Line's alternative bands across the territories of Marijampolė district and Kalvarija municipality, which was similar to the proposals of representatives of the public concerned, a preliminary environmental assessment of proposed alternatives was carried out. See EIA report. Volume L-1, Part II, Sweco letter No V1-2036 of 8 October 2010.

- of Lithuania based on a reasoned proposal from the Housing and Urban Development Agency) and adjust the drafted general plan of the territory of Alytus county;
- Change the general plans of the territories of Marijampolė district and Kalvarija municipalities;
 - Repeat the SEIA and EIA process and cross-border consultations.

These actions are highly time- and cost-consuming. The amendment of the solutions of the general plan of the territory of the Republic of Lithuania alone may take between 3 and 5 years. Whereas the strategic goal of Lithuania when implementing the Line's construction project is to interconnect the electricity grids of the Baltic region states with the grids of continental Europe to ensure integration of energy markets. Whereas the Claimant also points out timely implementation of this project and its importance for the Lithuanian state in its Appeal.

Nevertheless, because the alternative proposed by the Claimant falls within the territories of Marijampolė district and Kalvarija municipalities, LitPol Link applied to the authorities of the aforementioned municipalities asking to express opinions regarding the feasibility of building the Line and received responses stating that Marijampolė municipality disapproves of the planning of the Line on the territory of Marijampolė district municipality whereas in order to plan the Line on the territory of Kalvarija municipality, it is necessary to carry out all the related territorial planning procedures according to effective legislation.⁹

It is important to point out that the site of the Line is determined not only by national instruments of maximum power but also by international commitments. In the EIA report, the alternatives of the Line's bands were selected taking account of the consultations between the Republic of Lithuania and the Republic of Poland on the point of crossing the national border. As a result of cross-border consultations, it was decided that when drafting SEIA and EIA documentation and the special plan, Sweco [planned] the crossing point of the border on the territory which is specified in the local territorial planning document of Seinai district and taking account of the solutions of the general planning documentation that apply on the territory of Lithuania (EIA report. Volume L-2. Textual attachment 8, report No D4-50 of 30 April 2010). According to this agreement, in the EIA report, the point of crossing the Lithuanian-Polish national border is planned in Lazdijai district, to the north-west from Lake Galadusys (EIA report. Volume L-2. Textual attachment 3). Similarly, the Polish competent authorities also rely on the aforementioned agreement on the crossing point of the national border in the process of planning the Line band and EIA procedures. According to the alternative proposed by the Claimant, the Line would cross the Lithuanian-Polish border on the territory of Kalvarija municipality, which would, in principle, come into conflict with the agreement reached between the two states. In order to change the crossing point of the Lithuanian-Polish national border, not only Lithuania but also the Republic of Poland would have to repeat SEIA and EIA procedures. In view of the large scale, duration and cost of such work, the alternative proposed by the Claimant is unacceptable.

Furthermore, on the border between Kalvarija municipality and Poland, Kalvarija Biosphere Ground (about 2,000 ha) was established by Order No D1-407¹⁰ of 14 July 2009 of the Minister of Environment of the Republic of Lithuania which is intended to be an integral part of the national integrated ecological and specialised biodiversity status monitoring system and of Natura 2000, the European network of nature protection areas, to monitor, control and forecast changes in the natural

⁹ EIA report. Volume L-1. Part II: letter fo LitPol Link No W/185/2010 of 7 October 2010; letter No AS-10719-(5.6) of 15 October 2010 of Marijampolė municipal authority; letter No 13-1394(4.10-01) of 14 October 2010 of Kalvarija municipal authority.

¹⁰ Official Gazette, 2009, No 86-3646.

systems; preserve the ecosystem of agrarian landscape, particularly with a view to preserving the populations of Corn Crake, Marsh Harrier, Harrier, Spotted Crake and Towny Pipit, natural meadow communities, including the natural habitat types of Community interest: 6210 Dry grasslands, 6430 Tall herb communities, 6450 Alluvial meadows, 6510 Lowland hay meadows.

Therefore changing the crossing point of the Lithuanian-Polish national border to Kalvarija municipality was unacceptable from the protected areas point of view. The Claimant and its representative Laima Raškauskienė were informed about these natural properties in the form of separate Order No (10-3)-D8-11477 of 8 December 2010 of the Ministry of Environment of the Republic of Lithuania “On the planned 400 kV overhead power transmission line between Alytus and the Polish border” (Annex No 8).

For all reasons listed above, it was decided during the EIA procedures that the implementation of the alternative proposed by the Claimant would come into conflict with the strategic goals of Lithuania.

Contrary to what the Claimant states, during the EIA procedure, the potential environmental impact was thoroughly assessed from different aspects: (a) impact on ambient air, (b) impact on waters, (c) impact on other environmental elements: soil, the Earth’s crust, landscape, protected natural areas, flora, fauna, cultural heritage properties, (d) impact on public health, (e) impact on tourism and other planned economic activity. After a thorough analysis of the environmental impact of planned economic activity, the EIA report provided for respective measures to minimise that impact (EIA report. Volume L-1, p. 162-261).

It is also important to draw the attention of the Court to the fact that it was found during the assessment of the impact on protected areas that the planned Line, contrary to what the Claimant states in the Appeal, does not cross the Vingrėnai Geomorphological Reserve envisaged in the solutions of the currently drafted general plan of Alytus district and will be built next to it (EIA report. Volume L-1, p. 149, 188, 189).

During EIA it was taken into account that the solutions of the currently drafted general plan of Alytus county provide not only the establishment of Vingrėnai Geomorphological Reserve but also construction of a 400 kV overhead power transmission line. It means that the planned Line is in total compliance with the solutions of the general plan of Alytus county. The solutions of the currently drafted general plan of Alytus county were publicly discussed and co-ordinated before the aforementioned plan was approved. Therefore both the public concerned and the authorities in charge of protected areas were aware or should have been aware of the intended construction of a 400 kV line and of its planned site next to the designed reserve whereas, by agreeing upon the territorial planning document and not appealing against it, they favoured the planned solutions.

In addition, contrary to what the Claimant states, both Sweco’s information publication “The Lithuanian-Polish power interconnection. Information about the Project. For Lithuanian energy security” which was published in 1,000 copies (Annex No 9) and the EIA report offer a detailed examination alternative of an underground alternating-current high voltage power transmission cable (EIA report. Volume L-2, textual attachment 9). A comparison of the construction of an overhead power transmission line and an underground cable showed a significant advantage of the overhead line for the following reasons:

- Lower environmental impact because soil can be removed only in small individual areas and not continuously in the entire construction band;

- There is no requirement of full deforestation in the route section;
- Lower restrictions on economic activity (agricultural activity and growing specific trees are not prohibited in the route section), whereas no soil excavations are allowed over an underground cable route;
- Finding and repairing faults is much easier and cheaper;
- Easier construction/assembly operations;
- Significantly (5-10 times) lower cost of construction.

In addition, as regards the advantages of an overhead line over the alternating-current underground cable technology and as regards the inadequacy of the direct-current cable technology in the LitPol Link project, a detailed explanation of the Ministry of Energy of the Republic of Lithuania was submitted to Alytus REPD in response to the comments by R. Valiokas and P. Kavaliauskas (Attachment No 10).

Attention should also be drawn to the fact that the alternative of the power transmission line proposed by the Claimant – an underground direct-current high voltage cable – is impossible because it fails to secure the strategic objective of the Lithuanian energy sector defined for the project to establish an interconnection with the Polish electricity system, LitPol Link, i.e. interconnecting with the energy system of continental Europe for synchronous work, and the Ministry of Energy of the Republic of Lithuania had previously received proposals from the Claimants' representatives R. Valiokas and P. Kavaliauskas and after their examination provided detailed responses in letter No (11.2-13)-3-3275 of 23 November 2010 (Annex No 10).

A summary of the above leads to the conclusion that the impact of the planned Line on all the environmental elements was identified and thoroughly assessed. In addition, measures were envisaged to minimise or prevent the negative effect. The alternatives proposed by the Claimant were thoroughly analysed and dismissed in a justified and reasoned way. On those grounds, the Decision was adopted on valid ground which acknowledged that the Line is feasible on the planned site and that the Line alternative proposed by the Claimants is inadequate. It follows that the Decision is lawful and founded and was adopted taking account of all the circumstances and therefore cannot be annulled (Article 89(1)(3) of LAP).

6. The Claimant and the public were properly, thoroughly and fully informed about the planned construction of the line

The Claimant points out in the Appeal that throughout the EIA process the public concerned was not being properly informed about the approval of the SEIA and EIA programme, the EIA report and the adopted Decision. Such statements of the Claimant are untrue and unfounded, which is obviously justified by the arguments and evidence described below.

The Aarhus Convention and the Law on EIA provide for the right and obligation of the public to take part in the EIA process and to have access to information about the potential environmental impact of planned economic activity to ensure quality environmental decisions and to improve their implementation (preamble of the Aarhus Convention, Article 2(10), Article 5(1)(5), Article 6(5), Article 7(9), Article 8(12), Article 9(3), Article 10(1) and Article 10(4), Article 13 of the Law on EIA). Public information procedures are aimed at facilitating public access to information about planned economic activities and to take part in the assessment of the potential environmental impact of such activities and its minimisation.

The EIA covered all the essential procedures defined in the Law on EIA and the Rules for the provision of information¹¹ (as described in more detail below) and duly complied with the provisions of the Aarhus Convention. In particular, information about the EIA programme was published:

- In advertisements in the local papers Lazdijų žvaigždė (22 January 2010), Miesto laikraštis (22 January 2010) and the national paper Respublika (23 January 2010);
- On the information boards of Alytus and Lazdijai district municipalities as well as on the information boards of Alytus, Miroslavas, Kriokialaukis, Simnas, Lazdijai town and Lazdijai, Krosna, Šeštokai, Teizai and Būdviētis local neighbourhoods (22 January 2010);
- On the website of the project co-ordinator LitPol Link Sp. z.o.o.;
- On the website of the competent authority, Alytus REPD.

The drafted EIA programme was available at the office of the originator of EIA documentation, Sweco, at the Alytus district municipality, at Alytus, Simnas, Miroslavas and Kriokialaukis municipalities; at Lazdijai district municipality, at Lazdijai town, Lazdijai, Krosna, Šeštokai, Teizai and Būdviētis local neighbourhoods; on the website of the project co-ordinator LitPol Link <http://www.litpol-link.com/lt/aplinkosauga/pav-dokumentai/lietuva/>.

Information about the prepared EIA report and about its communication to the public was published:

- In the local papers Lazdijų žvaigždė (25 June 2010), Alytaus naujienos (26 June 2010), Krosna town paper Saugok šeimą (June 2010) and the national paper Lietuvos žinios (26 June 2010);
- On the information boards of Alytus and Lazdijai district municipalities as well as on the information boards of Alytus, Miroslavas, Kriokialaukis, Simnas, Lazdijai town and Lazdijai, Krosna, Šeštokai, Teizai and Būdviētis local neighbourhoods (29 June 2010).

The drafted EIA report was available at the office of the originator of EIA documentation, Sweco, at the Alytus district municipality, at Alytus, Simnas, Miroslavas and Kriokialaukis municipalities; at Lazdijai district municipality, at Lazdijai town, Lazdijai, Krosna, Šeštokai, Teizai and Būdviētis local neighbourhoods; on the website of the project co-ordinator LitPol Link <http://www.litpol-link.com/lt/aplinkosauga/pav-dokumentai/lietuva/>.

- Between 29 June 2010 and 14 July 2010, the EIA originator was providing feedback to the proposals of representatives of the public received prior to the public discussion;
- Public presentation and discussion of the EIA report took place at: (a) Alytus district municipality: Miroslavas and Kriokialaukis local neighbourhoods (13 July 2010), Simnas local neighbourhood (14 July 2010), Alytus district municipality and Alytus municipality (16 July 2010); (b) Lazdijai district municipality: Krosna local neighbourhood (14 July 2010), Šeštokai and Būdviētis local neighbourhood (15 July 2010), Teizai local neighbourhood, Lazdijai district municipality, Lazdijai town and Lazdijai local neighbourhood (19 July 2010);
- Between 28 July 2010 and 5 August 2010, the EIA originator was providing feedback to the proposals from the public received during and after the public discussion;
- The Decision regarding the planned economic activity and information about the adopted Decision was published: (a) on the website of the competent authority Alytus REPD; (b) on

¹¹ See EIA report. Volume L-2, textual attachment 2 (EIA programme publicity documentation); EIA report. Volume L-1, Part II (EIA programme publicity documentation).

the website of the project co-ordinator LitPol Link; (c) in the national and local press and (d) on the information boards of Alytus and Lazdijai municipality local neighbourhoods which will be crossed by the planned overhead power transmission line.

Apart from the aforementioned compulsory procedures stipulated by law, the EIA originator also took additional measures as listed below to ensure that the public is aware and can access detailed information about the planned Line:

- The project organisers held two information conferences about the project in Jaczn, Poland (15 May 2009) and Alytus (23 October 2009) to ensure access for representatives of local authorities and public and non-governmental organisations to information about the project in the early planning phase and the opportunity to provide comments and to take part in discussions. The conference in Lithuania was attended by representatives from Alytus REPD, municipalities and local neighbourhoods of Alytus and Lazdijai districts, Alytus county governor's authority, Meteliai regional park, the Lithuanian Ornithological Society, the media and other organisations (for a list of participants and participant questionnaires please contact the management of LitPol Link). Both conferences offered special press conferences, therefore information about and feedback from the conferences were also provided in the media releases (Annex No 11);
- The EIA originator developed and made it public at local neighbourhoods and municipalities a special information booklet (1,000 copies), which offers a vivid and informative account of planned economic activity and its potential impacts, the process of the project, public access to EIA documentation and the opportunity to take part in the EIA process;
- The EIA results for the planned Line were presented to the Lazdijai district municipal authority on 27 July 2010 with the participation of the organiser of the planned activity, the project co-ordinator, originator of EIA documentation and media representatives¹²;
- The planned activity was made public on the website of the Lietuvos rytas daily www.lrytas.lt (29 June 2010), Delfi portal www.delfi.lt, Cika portal www.cika.lt (23 July 2007), website of Lazdijai district paper Dzūkų žinios www.dzukuzinios.lt (7 July 2010), website of the Lithuanian news agency Elta www.elta.lt (7 September 2010);
- All drafted documentation (EIA programme, EIA report, information booklets) have been at their display sites to date.

The reasoning set out confirms that the EIA originator, from the very beginning of the EIA process, took various measures to make the public aware of the planned Line in the earliest phase of the EIA process and has access to all documentation which is in the process of drafting, take an active part in the EIA process and provide reasoned proposals.

The Compliance Committee of the Aarhus Convention¹³ has pointed out that the 90-day period from initial announcements about planned economic activity until the adoption of the respective act is a sufficient term to ensure effective participation of the public according to Article 6 of the Aarhus Convention.

¹² An article on the presentation of EIA results was published in Lazdijai district paper Dzūkų žinios (27 July 2010) (<http://www.dzukuzinios.lt/vietos-gyventojai-kvieciami-aktyviai-dometis-%E2%80%9Elitpol-link%E2%80%9C-elektros-perdavimo-linijos-alytus-%E2%80%93-valst>) and on the website of Lazdijai district municipality.

¹³ Koester Veit, The Compliance Committee of the Aarhus Convention. An Overview of the Procedures and Jurisprudence. Environmental Policy and Law, 2007, p. 91. Access: http://cmsdata.iucn.org/downloads/cel10_koester.pdf.

The period between the information conference in Alytus (23 October 2009) and the adoption date of the Decision (30 December 2010) is more than 14 months. Over this period the public was being informed more than once in different ways about the EIA procedures in progress and was invited to provide proposals regarding the planned economic activity. Hence the Claimant was being informed about all the significant details of planned economic activity fully and effectively and had sufficient time to prepare for and efficiently take part in adopting the Decision. Therefore the statement of the Claimant's appeal regarding supposedly too short deadlines for analysing the documentation of the EIA process and for providing reasoned proposals and regarding infringements of the Aarhus Convention is unfounded.

The chairwoman of Rudamina bendruomenė Rūta Cimakauskienė and other representatives of the community were more than once informed about the EIA procedures performed in the form of letters of the Ministry of Environment of the Republic of Lithuania (letter No (10-3)-D8-8312 of 2 September 2010 the copy of which was sent to the Office of the Chancellor of the President of the Republic of Lithuania and the response of Alytus REPD of 8 December 2010 to the Claimant's representative Laima Raškauskienė No (10-3)-D8-11477 "On the planned 400 kV overhead power transmission line between Alytus and the border of the Republic of Poland") (Annexes No 8;12).

There is a lot of evidence proving that both the Claimant and other representatives of the public exercised their statutory right to take part in the EIA process, i.e. (a) were providing questions to EIA originators before the public discussion on the EIA report; (b) took part in the public discussions on the EIA report; (c) provided their proposals after the public discussion on the EIA report.

One cannot agree to the statement in the Claimant's appeal that the proposals provided by representatives of the public were not taken into account. All the proposals of the Claimant and other representatives of the public were examined and detailed and reasoned feedback was provided by sending it to respective persons by registered mail¹⁴.

These arguments confirm that the measures selected by the EIA originator were used to implement the goal stipulated in legislation that the public becomes aware of planned economic activity and has the opportunity to provide its proposals. For this reason the Claimant's arguments regarding inadequate performance of procedures of the provision of information to the public and regarding restraint on its rights to take part in the EIA process are totally unfounded.

7. The EIA procedure was carried out in line with the procedure laid down in legislation

In the Appeal the Claimant provides arguments related to the Order by which it was decided to begin drafting the Line's special plan. These arguments are totally unrelated to the case because the law is not the subject of the proceedings at issue.

It should nevertheless be underlined that the Order was passed in a lawful and reasoned way. It initiated the special planning process. The special planning process is started after the Government

¹⁴ See EIA report. Volume L-1, Part II: Sweco response No V1-1509 of 27 July 2010 to the question asked by A. Kvedaravičius on 14 July 2010 during the public discussion at Simnas local neighbourhood; Sweco response No V1-1506 of 26 July 2010 to the proposal of Verstaminai village community brought forward during the public discussion at Teizai local neighbourhood; Sweco response No V1-1510 of 27 July 2010 to the questions asked by R. Valiokas during the public discussion at the Lazdijai town local neighbourhood; the proposal of representatives of the Rudamina town community of 26 July 2010 and Sweco response No VI-1572 of 5 August 2010; proposal of A. Patackas, D. Mazurkevičius, R. Kavaliauskas and R. Valiokas of 28 July 2010 and Sweco response No V1-1573 of 5 August 2010.

or its competent authority adopts a decision regarding the drafting or amending of plans¹⁵. The terms of reference of the Ministry of Energy provide that the Ministry of Energy of the Republic of Lithuania drafts a plan of the implementation of the National Energy Strategy, co-ordinates the implementation of the National Energy Strategy and co-ordinates the implementation of the interconnection of the energy systems of Lithuania and other EU member states¹⁶. It means that the Ministry of Energy of the Republic of Lithuania passed the Order within the competences assigned to it. There is nothing to indicate that the Line's construction technology was selected by the Order because the only aim of the Order is to begin a special planning process whereas the issue of the Line's construction technology was addressed in the EIA report (EIA report. Volume L-2. Textual attachment 9).

In the Appeal the Claimant states that the EIA procedures were supposedly carried out inadequately:

(a) SEIA was not carried out; (b) the EIA report was not co-ordinated with all EIA entities, i.e. the EIA report was not co-ordinated with the National Land Service as the successor of the Alytus county governor's authority, Lazdijai fire and rescue service and Lazdijai Public Health Centre; (c) conclusions were received not from all EIA entities; (d) Lazdijai district municipality disapproved of the Line's construction across the territory of Lazdijai district.

The Claimant's arguments regarding the infringement of the EIA procedure are unfounded.

The Claimant, without a valid reason, considers SEIA as a component of the EIA process. The Law on EIA does not stipulate the requirement to carry out SEIA during the EIA process. SEIA is carried out in the process of drafting different-level territorial planning documentation and is one of the stages of territorial planning (Article 17(4) of the Law on Territorial Planning). The subject of SEIA is territorial planning documentation. Whereas EIA aims to determine, describe and assess the potential environmental impact of, i.e. the subject of EIA is planned economic activity and not a territorial planning document (Article 2(5) and Article 3(1) of the Law on EIA). Hence EIA and SEIA are two separate processes which are governed by different legislation.

Regardless of the fact that SEIA is not part of the EIA process but part of the territorial planning process, it is necessary to underline that SEIA was carried out during the preparation of the Line's special plan (a SEIA scope document and a SEIA report were drafted) (information taken from LitPol Link website <http://www.litpol-link.com/lt/teritoriju-planavimas/specialusis-planas/lietuva-89.html>).

As part of SEIA, on an area of 590 km², a status quo analysis was carried out, territories where the planned economic activity is impossible or restricted were determined and assessed, a network of available alternatives to plan the proposed economic activity was singled out which was analysed in more detail during the plan's SEIA (EIA report. Volume L-1, p. 40). The band alternatives singled out during SEIA were examined during the EIA process.

The EIA programme and the EIA report were co-ordinated with all EIA entities listed in the Law on EIA. Article 5(1)(2) of the Law on EIA that was in effect at the time of drafting the EIA programme and its co-ordination with EIA entities listed the following entities of planned economic activity: (a)

¹⁵ Point 13 of the Regulations for drafting special plans of infrastructure development (heating, electricity, gas and petroleum supply networks) approved by Order No 4-240/D1-330 of 11 June 2004 of the Minister of Economy and the Minister of Environment of the Republic of Lithuania.

¹⁶ Points 6.2.8 and 6.2.22 of the terms of reference of the Ministry of Energy of the Republic of Lithuania approved by Resolution No 86 of 11 February 2009 of the Government of the Republic of Lithuania.

public authorities in charge of healthcare, fire protection and protection of cultural properties; (b) county authorities; (c) municipal authorities.

Once legal regulation changed as of 1 July 2010, county authorities were excluded from the list of EIA entities, i.e. this function of county governor's authorities was withdrawn. There was therefore no legal ground to co-ordinate the EIA report with the successor of the liquidated Alytus county governor's authority.

The EIA report was duly co-ordinated with:

- Lazdijai district municipal authority;
- Alytus local office of the Cultural Heritage Department;
- The Service for Protected Areas;
- Alytus district municipal authority;
- Alytus county fire and rescue board;
- Alytus public health centre (EIA report. Volume L-1. Part II (documentation of co-ordinating the EIA report)).

The Lazdijai fire and rescue service and the Lazdijai office of the Alytus public health centre (referred to by the Claimant as Lazdijai public health centre) which the Claimant refers to are not separate and independent authorities but are territorial organisational units of the Alytus county fire and rescue board and the Alytus public health centre (they also received EIA reports for their information). Co-ordination of an EIA report with an authority's central organisational unit is suitable and adequate, which means that the EIA report co-ordination procedure was carried out without violating the provisions of the Law on EIA.

Other public authorities can also be EIA entities, but only if they are invited to participate by the competent authority or they themselves are interested in participating in the environmental impact assessment process and the competent authority, taking account of the nature, scope and location of planned economic activity, approves of it (Article 5(2) of the Law on EIA). The competent authority has the right of discretion to decide which authorities will be invited to take part in the EIA process.

Alytus REPD did not invite the Forestry Department reporting to the Ministry of Environment and the Lithuanian State Department of Tourism reporting to the Ministry of Economy to take part in the EIA process. The aforementioned authorities did not express interest to take part in the assessment of the EIA programme and report either.

The Claimant points out in the Appeal that the Decision does not include the conditions that were established by the State Service for Protected Areas reporting to the Ministry of Environment in the process of co-ordinating the EIA report. This statement does not correspond to the actual situation because section 10 of the Decision lists all the conditions referred to in the conclusion of the State Service for Protected Areas reporting to the Ministry of Environment regarding the EIA report.

Article 10(1) of the Law on EIA provides that after examining the drafted EIA report, the conclusions of EIA entities on the report and the feasibility of planned economic activity and a reasoned assessment of the proposals from the public concerned as well as written reasoned proposals from the public concerned, the competent authority, within 25 business days following receipt of the report: (a) submits reasoned requirements to amend or supplement the report or (b) adopts a decision. Where the conclusions of EIA entities regarding the feasibility of planned

economic activity contradict each other and/or the competent authority has received reasoned proposals from the public concerned, the competent authority, before adopting a decision, invites the organiser (customer) of planned economic activity, the originator of EIA documentation and EIA entities to review their conclusions and/or reasoned proposals. Representatives of the public concerned who have submitted reasoned proposals are also invited (Article 10(4) of the Law on EIA). Point 21 of the Procedure for the review of documentation of the environmental impact assessment of proposed economic activity at the ministry of environment and at authorities reporting to it of the Republic of Lithuania approved by Order No D1-311 of 23 June 2006 of the Minister of Environment describes in more detail that after a discussion the competent authority drafts minutes from the meeting and after examining the conclusions of all the EIA entities and the proposals of the public concerned, adopts a decision. Hence according to the aforementioned legal regulation, if there are contradictions between the conclusions of EIA entities and/or proposals from them, the competent authority is not obliged to adopt a negative decision on the acceptability of planned economic activity and, subject to obtaining the opinion of all EIA participants, can decide by itself whether the planned economic activity is feasible.

Prior to adopting the Decision regarding the planned economic activity, Alytus REPD examined all the proposals received from the public concerned regarding the construction of the planned Line and provided a reasoned response to each representative of the public (Annex No 13). In accordance with the provisions of Article 10(4) of the Law on EIA, the Defendant invited all EIA participants, including the Lazdijai district municipal authority and representatives from the public, to examine the conclusions of EIA entities and the submitted proposals (Annex 14). Taking account of the comments of EIA participants, Alytus REPD demanded more than once to amend and supplement the EIA report (Annex No 15) and adopted the Decision only after the indicated requirements were fulfilled (Annex No 16). Hence the Decision was adopted following a detailed and comprehensive consideration and evaluation of the conclusions and proposals of all EIA entities in line with all the procedures laid down in the Law on EIA.

In summary of the above, it is obvious that EIA procedures were carried out properly and co-ordinated with the respective entities according to effective legislation. So the Claimant's statements that the EIA supposedly was not properly co-ordinated are unfounded.

8. The planned Line is a strategic project of special interest – Lithuanian public interest

According to effective legislation¹⁷, the Lithuanian-Polish electricity interconnection project – the construction of the Line – is acknowledged an economic project of strategic national interest with special significance to public needs.

¹⁷ The LitPol Link interconnection is referred to as a strategic project of national interest of the Republic of Lithuania in the following documents: 13(6) and 31(3) of the National Energy Strategy approved by Resolution No X-1046 of the Seimas of the Republic of Lithuania (Official Gazette, 2007, No 11-430; 2008-2013 annual plan for the implementation of the National Energy Strategy approved by Order No 1442 of 27 December 2007 of the Government of the Republic of Lithuania, measure 3.1 (Official Gazette, 2008, No 4-131); Article II(5) of Resolution No 300 of 22 April 2009 of the Government of the Republic of Lithuania approving the strategic axes for the project to build a new nuclear power plant in Lithuania (Official Gazette, 25 April 2009 No 46-1814); point 83 of Resolution No 1568 of 9 December 2003 of the Government of the Republic of Lithuania approving a plan of measures to implement the general plan of the territory of the Republic of Lithuania (to build a power supply line between Lithuania and Poland) (Official Gazette, 2003, No 116-5282); Resolution No 1227 of 6 December 1997 of the Government of the Republic of Lithuania approving a list of structures of national interest (the Lithuanian part of the 400 kV power supply line between Kruonis HPP, Alytus and Elk (Poland)) (Official Gazette, 1997, No 102-2573); the abridged strategic operational plan 2010 of the Ministry of Energy approved by Resolution No 250 of 10 March 2010 of the Government of the Republic of Lithuania (Official Gazette, 2010, No 31-1436); strategic operational plan 2010-2010 of the Ministry of Energy approved by Order No 1-108 of 31 March 2010 of the Minister of Energy of the Republic of Lithuania; BEMIP plan approved on 17 June 2009 –

The interconnection of the Lithuanian electricity system with the Polish electricity systems is acknowledged to be of special strategic interest to the national security of Lithuania.¹⁸

After years of negotiations and unsuccessful attempts to implement the project since as early as 1993, on 12 February 2008, with participation of Presidents of the Republic of Lithuania and the Republic of Poland, an Incorporation Agreement of the Shareholders of LitPol Link was signed between the Lithuanian and Polish Transmission Systems Operators, which, in principle, initiated all the preparatory work already delivered to date. The main subject of the Agreement is the construction of an overhead power transmission line between Alytus town in Lithuania and Elk town in Poland and the construction of a direct current converter in the Alytus substation. The Agreement defines the obligations of the parties, including financial ones, in the process of drafting the project.

It should additionally be noted that the implementation of this project is the subject of the activities of LITGRID as energy company. The activities of energy companies, as the Constitutional Court pointed out in its ruling of 21 January 1996, covers for special public needs, therefore this economic activity is based on the public interest.¹⁹

The importance of the Line's construction to the state and to public needs is determined by the objective to develop the electricity sector defined in the National Energy Strategy – to ensure the energy security and the strategic reliability of electricity supply of the Republic of Lithuania and integration into the energy area of the EU to establish a single electricity market of the EU.

It is only once the Line is built that the Lithuanian and Polish electricity systems are interconnected; the Lithuanian energy system will be linked to the continental Europe networks, i.e. the Western European electricity system²⁰ which will significantly improve the energy independence of Lithuania, enable Lithuania to contribute to the creation of a single electricity market of the EU and facilitate improving the reliability of power supply.

Thus, once the Line is built, the transmission grid and development will be reinforced in North Eastern Poland and South Lithuania, reliable supply of imported electricity to Lithuania and the opportunity to transfer it further through the power interconnection across Poland to the network of continental Europe will be secured.

Once the Line is built, electricity will be able to flow through the link where it is more necessary. For example, after the Ignalina nuclear power plant is closed in 2009, the potential lack of energy in the Lithuanian region can be compensated by importing energy and should new sources of energy generation emerge, surplus electricity can be exported.

a Memorandum of Understanding on the Baltic Energy Market Interconnection Plan signed by eight EU Member States of the Baltic region and the President of the European Commission, Jose Manuel Barroso – BEMIP”;
http://ec.europa.eu/energy/infrastructure/bemip_en.htm (EIA report. Volume L-1, 11, 24-26, p. 265).

¹⁸ Law No IX-1132 of 10 October 2002 on Enterprises and Facilities of Strategic Importance to National Security and Other Enterprises of Importance to Ensuring National Security adopted on 10 October 2002.

¹⁹ See also the Ruling of 13 Uly 2007 of the Supreme Court of Lithuania in civil case No 3K-3-315/2007, A. J. V AB VST.

²⁰ The Lithuanian energy system is currently interconnected only with the energy systems of Latvia, Belarus and the Russian Federation. The aforementioned interconnection will line the energy network of Western and Central Europe (Austria, Belgium, Bosnia, Bulgaria, Czech Republic, West Denmark, Greece, Spain, Italy, Montenegro, Croatia, Poland, Luxembourg, Macedonia, France, Netherlands, Portugal, Romania, Serbia, Slovakia, Slovenia, Switzerland, Hungary, Germany) the the networks of the Baltic States.

Hence the importance of the project when it comes to ensuring the functioning of the electricity system after the Ignalina nuclear power plant is closed, is undoubtedly strategic for the energy security and energy independence of Lithuania and was acknowledged on the highest public administration and governance level. Without this Line the Lithuanian state has no realistic chances to minimise its dependency on power supply from Russia both in terms of price and in terms of supply reliability.

The Ministry of Energy of the Republic of Lithuania has informed the Claimants' representatives R. Valiokas and P. Kavaliauskas about the importance of the project within the framework of the objectives defined in the National Energy Strategy by letter No (11.2-13)-3-3275 of 23 November 2010. Copies of this letter were also submitted to Alytus REPD, the Environmental Committee of the Seimas of the Republic of Lithuania, the Ministry of Environment of the Republic of Lithuania, Lazdijai district municipality, the State Service for Protected Areas and the Cultural Heritage Department (Annex No 10).

The Claimant also points out and completely agrees about the importance of this project for the Lithuanian state, its economy and energy security in the Appeal.

Annulment of the Decision and/or any other unfounded suspension of the Line construction project would have tremendous negative effects. LITGRID would not be able to carry out the necessary procedures, draft and approve the Line's special plan, co-ordinate the Line construction project and apply for documentation permitting to build the Line. It means that work to improve the development, security, reliability and independence of the Lithuanian electricity system would halt for at least several years, which would (a) infringe the imperative legal rules and public interests in the electricity sector, (b) raise the operating costs of the transmission system operator and at the same time the final price for electricity for all Lithuanian consumers and (c) possibly cause infringements of Lithuania's international energy commitments in the field of energy.

In particular, annulment of the Decision and/or other suspension of the Line construction project the deadlines for the construction of the Line provided in the National Energy Strategy and other legislation²¹, the strategic objectives and axes of the national energy policy²² as well as the lawful interests of grid users to safe and reliable supply of electricity would be infringed.

Annulment and/or other suspension of the Line construction project would raise the operating costs of the transmission system operator and the same time the final price for electricity for consumers. In view of the special importance of the Line for the Lithuanian energy system and for its national security, the construction of the Line is LITGRID's priority project²³ for which EU funding is earmarked. Delay of the Project implementation deadlines can result in losing EU funding because financing is available only if the project is completed over the defined financing term. For this

²¹ Based on effective legislation, the solutions of the entire LitPol Link interconnection (between Alytus and Elk) are planned to be implemented by 2015.

²² It should be underlined that the project of the inter-system link with Poland is named in the Strategy as one of the main development objectives of the Lithuanian energy sector.

²³ The legislator obligates the transmission system operator to "operate, maintain, manage and develop transmission grids and interconnections with other grids, securing reliable operation of the transmission grid facilities" (Article 17(3) of the Law on Electricity). Hence the implementation of the Project is a direct duty and responsibility of the transmission system operator stipulated by law. It should be underlined that the statutory pricing principles for services in the electricity sector explicitly provide that in the process of setting ceiling prices for electricity transmission services the following is taken into account inter alia: "costs of expansion, restoration and maintenance of grids which is required for safe and efficient operation" (Article 43(3)(1) of the Law on Electricity). Whereas as the Project implementation period increases, so do the costs of LITGRID to implement it.

reason the Project would have to be implemented from the internal resources of LITGRID AB, which means large losses for LITGRID AB. These losses should be included in the calculation of the electricity tariff as additional costs, which would raise the cost of electricity for all residents of Lithuania.

Annulment and/or other suspension of the Line construction project would infringe the states international commitments in the field of energy. In particular, the Baltic Energy Interconnection Plan (BEMIP) which was the subject of the Memorandum of Understanding signed by the Prime Minister of the Republic of Lithuania and representatives of Denmark, Germany, Estonia, Latvia, Poland, Finland, Sweden and the European Commission on 17 June 2009²⁴, provides for the intentions of the contracting parties to integrate the energy market of the Baltic region states by 2015, inter alia, to strengthen the possibilities of inter-system electricity traffic through infrastructure projects. The Line construction project is one of the implementation axes of BEMIP. Seeking timely implementation of the objectives worded in BEMIP, the contacting parties must take all necessary measures to reduce barriers, including administrative ones, that impede implementation of national projects.

In light of the foregoing, it is necessary to underline that in the event of delays with the Line construction project, the integration of the Lithuanian electricity system into the electricity grids of continental Europe and the integration of the energy market into Nordic energy markets will face additional barriers which means infringing of the state's national commitments assumed by BEMIP and intentions regarding the expansion and development of energy systems and energy markets. For this reason creation of additional barriers for the implementation of the Line construction project will not only violate the Strategy's provisions regarding the development and integration objectives of the Lithuanian energy system but will also impede the implementation of the strategic axes of the state's energy policy, including those pertaining to energy independence and security of energy supply and will reduce the economic and investment reliability of the state from the point of view of its regional and international partners.

It is obvious from the foregoing that the planned Line will serve the public interest. Therefore the Defendant believes that in the case at issue it is necessary to look at the proportionality of the Claimant's claims not only to the interests of LITGRID, which is engaged in the construction of the line, but also to all third parties – Lithuanian electricity consumers, which will be directly influenced by the Decision (public interest), as well as for the implementation of the state's strategic objectives. The Defendant believes that the annulment of the Decision would have a significant negative impact on the public interest, the implementation of Lithuania's energy reliability and national security objectives and proper fulfilment of international commitments and initiatives.

Personal property interests of the individual members of the Claimant may not be set against or raised above the public interest of the entire Lithuanian society in the Line construction project.

9. Regarding abuse of procedural rights

Article 1.2. of the Civil Code of the Republic of Lithuania (Official Gazette, 2000, No 74-2262) stipulates the principle of prohibition of abuse a right whereas Article 1.137 (3) of the Civil Code of the Republic of Lithuania states that "A person shall be forbidden to abuse his own right, i.e. there being no legal ground, no civil rights may be exercised in a manner or by means intended to violate other persons' rights and interests protected by laws; or to restrict other persons in their rights and

²⁴ http://ec.europa.eu/energy/infrastructure/doc/2009_bemip_mou_signed.pdf.

interests protected by laws; or with the intent of doing damage to other persons; or where this would be contrary to the purpose of the subjective right. Abuse of a right that causes injury to other persons shall be the grounds for the implementation of civil liability. A court may refuse to protect the subjective right of which the person abuses.”

Article 20(2) of the Law amending the Law on Public Administration (Official Gazette, 2006, No 77-2975) provides that “A person shall exercise the rights granted to them fairly and without abusing them.”

In the civil case UAB Init v UAB Parabolė et al, No 3K-3-905/2000, the Supreme Court of Lithuania pointed out that „Abusing a right is unlawful conduct, therefore a right does not and may not protect the interests of a person who abuses that right.”

In addition, in civil case A. Gudonis v Vilnius county state tax inspectorate No 3K-466/2000, the Supreme Court of Lithuania pointed out that bringing unfounded claims or unfounded disputes should be considered as abuse of a right, i.e. as unlawful conduct which should be subject to statutory sanctions”.

By bringing the Appeal to the Court where it raises the same issues which had been analysed in detail and responded to in letters from Sweco, the Ministry of the Environment of the Republic of Lithuania, the Ministry of Energy of the Republic of Lithuania and Alytus REPD and, furthermore, had been additionally evaluated and described both in the EIA report and in the Decision, i.e. by raising the same issues which had been responded to previously to the Claimant and its representatives both by public authorities and by the originators of the EIA report, by not pointing out no new lawful and reasoned arguments and not offering any evidence of its infringed rights and thus by initiating an unfounded dispute, the Claimant unfairly seeks to suspend the implementation of the Project of the Republic of Lithuania of special strategic interest, obviously abuses its right, from which it follows that the interests of the Claimant as an entity which abuses a right many not be protected.

In view of these unfounded accusations, both the Defendant and the Third Parties will be forced to protected their property and non-property rights by statutory measures.

10. Inclusion of third parties concerned in the case

10.1. Lietuvos energija is a non-qualified party in the administrative case at issue and should be replaced by LITGRID

To the Defendant’s knowledge, on 28 October 2010, the extraordinary general meeting of Lietuvos energija approved the conditions for separating Lietuvos energija (hereinafter referred to as **Conditions**). The Conditions provided that the management, operation, development, maintenance and repair of electricity transmission grids and of the interconnecting lines with other electricity systems as well as another specific part of the operations of Lietuvos energija, as an entirety of property, rights, obligations and transactions, is unbundled to become LITGRID turtas AB (the successor of Lietuvos energija).

Based on the Conditions, LITGRID turtas AB was incorporated on 16 November 2010. According to statement of transfer and acceptance of property No 743-10 of 1 December 2010, LITGRID turas AB took over the part of property defined in the Conditions of Lietuvos energija as well as all the rights and obligations related to that property.

On 14 March 2011, the name of LITGRID turtas AB (code 302564383) was changed into LITGRID AB (code 302564383) and no other details changed.

Because the Line as well as the related rights and obligations of Lietuvos energija were transferred to LITGRID on 1 December 2010 (see 1.17 of the second annex of the statement of transfer of property No 743-10 of 1 December 2010), it is LITGRID that should be involved in this case and not Lietuvos energija.

10.2. The Lithuanian-Polish company LitPol Link must be included in the case

The Defendant believes that the Lithuanian-Polish joint venture LitPol Link Sp. z.o.o., KRS 0000311446, address Wojciecha Gorskiego 9, 00-033 Warsaw, Poland, also has an interest in the administrative case at issue and should be included into the case as a third party concerned (Article 48 of LAP).

Based on the findings of the EIA report,²⁵ LitPol Link is a company incorporated on 19 May 2008 that carries out preparatory works to construct a Lithuanian-Polish power transmission interconnection line. LitPol Link is a company founded by the Lithuanian company Lietuvos energija and the Polish company Polskie Sieci Elektroenergetyczne Operator S. A.” (hereinafter referred to as **PSE-Operator**). Fifty per cent of its shares is owned by LITGRID and the other 50% by PSE-Operator S.A., which performs the electricity transmission functions in Poland. LitPol Link co-ordinates work, based on the powers of both shareholders, in the two countries – Lithuania and Poland – to select and co-ordinate the route of the planned Line in Lithuania and Poland, to assess the environmental impact of the construction and operation of the planned power transmission Line, to draft a technical design of the Line, address issues pertaining to land ownership, obtaining of permits and licensing, to carry out other necessary preparatory work and to prepare tender documentation for selecting a construction contractor.

10.3. SWECO INTERNATIONAL, AB must be included in the case

According to the information available to the Defendant²⁶, according to the signed consortium agreement, two companies have assumed joint responsibility for drafting the documentation of the Line’s environmental impact assessment and territorial planning to LITGRID:

- Sweco (successor of UAB Sweco BKG LSPI); and
- Sweco International AB, Gjorwellsgatan 22, Stockholm, 34044 S-100 26, Sweden.

It follows that both Sweco and the Swedish company Sweco International AB have equal legal interest in the outcome of the case and Sweco International AB, as Sweco, must be included as a third party concerned (Article 48 of LAP).

10.4. Other parties should also participate in the case

The Defendant believes that because the Claimant in its appeal contests the decisions adopted by public authorities within the framework of the National Energy Strategy approved by the Seimas of the Republic of Lithuania, apart from other included entities, the public authorities responsible for

²⁵ p. 24 of the EIA report

²⁶ p. 11 of the EIA report

the implementation of this strategy should also be included in the case as third parties concerned (Article 48 of LAP) the Ministry of Energy of the Republic of Lithuania, legal entity code 302308327, Gedimino pr. 38 / Vasario 16-osios g. 2, LT-01104, Vilnius.

11. Regarding the Claimant's request to require to produce evidence

The Claimant is asking the Court to require from the Defendant to produce:

- The Decision and the annexes to this Decision as well as the conclusions of EIA entities which are provided in part 7 of the Information notice;
- The EIA report bearing all the stamps of receipt and acceptance of that document and registration marks by Alytus REPD;
- All the documentation of the EIA programme and evidence that the programme was published, including the text of publication;
- SEIA documentation and evidence of the publication of the Decision and the text of the published decision;
- The 2007 general plan of Kalvarija district municipality.

This request of the Claimant is unfounded, unlawful and must be dismissed for reasons stated below.

Firstly, all the documents requested by the Claimant are public, made public and publicly available, therefore the Claimant unreasonably disturbs the Court with the request to require to produce evidence which it can collect and submit to the Court by itself.

Secondly, according to Article 68(1)(4) of LAP, a court may require to produce evidence that the parties are unable to obtain. Hence the parties must furnish the court with all evidence available to them and it is only after the parties have provided all the documents available to them that they can ask the court to require to produce other documents that they need. The Claimant provided no proof of any effort to collect evidence, i.e. that it had attempted to obtain the aforementioned evidence but failed for reasons that are not dependent on the Claimant.

Thirdly, the Claimant failed to explain why the required documents are not accessible to it and why it thinks that the required documentation is possessed and stored by and accessible to the Defendant.

Fourthly, both in civil and administrative proceedings, the amount of documentation is particularly limited by the criterion of direct interrelation and proportionality. The Claimant offered no arguments to justify in what way the evidence that it requests to require to produce directly relate to the ground of the Appeal and how they are significant in deciding the case, i.e. the Claimant failed to point out which significant circumstances the evidence required to be produced should justify.

In summary of all the foregoing, it is obvious that all the evidence that the Claimant requests to require to produce are accessible to the Claimant, therefore the Claimant has no ground to transfer the burden of proof to the Defendant. The Claimant's request to require to produce evidence is an abuse of procedural rights and must be dismissed as unlawful and unfounded.

Should the Defendant be forced to collect evidence at its expense and with its own effort not only for itself but also for the opposite contesting party, the principles of equal rights of the parties and fairness would be grossly violated.

In any case, the Defendant agrees to furnish the Court with the Decision and the EIA report including all the annexes and annexes to this Response. On the account of large volumes of documentation, we are asking the Court to permit to provide the annexes to the Response in one copy.

12. Requests of the Defendant

In light of the foregoing and in accordance with Article 5(1), Article 5(3)(3), Article 48, Article 57(4) of LAP, the Defendant **is asking** the court:

1. To dismiss the Claimant's appeal to annul part of Decision No ARV2-5-1810 of 30 December 2010 of Alytus REPD concerning the feasibility of the construction and operation of the 400 kV overhead power transmission line between the Alytus transformer substation and the Lithuanian-Polish border;
2. To include in the case the following entities as third parties concerned:
 - a. LITGRID AB, A. Juozapavičiaus g. 13, 09311 Vilnius, Lithuania;
 - b. SWECO INTERNATIONAL AB, Gjorwellsgatan 22, Stockholm, 34044 S-100 26, Sweden;
 - c. LitPol Link Sp. z.o.o., Wojciecha Gorskiego 9, 00-033 Warsaw, Poland;
 - d. Ministry of Energy of the Republic of Lithuania, legal entity code 302308327, Gedimino pr. 38 / Vasario 16-osios g. 2, LT-01104, Vilnius.
3. To exclude from the case AB Lietuvos energija, A. Juozapavičiaus g. 13, 09311 Vilnius, Lithuania;
4. To dismiss the Claimant's request to require to produce evidence;
5. To order the Claimant to pay the costs incurred by the Defendant in connection with the hearing of the case and we will provide the proof of costs later.

Annexes:

- | | |
|------------|---|
| Annex No 1 | - Extract from the Decision posted on the website of Alytus REPD with reference to the date of creating the document – 1 page; |
| Annex No 2 | - Copy of letter No V1-330 of 1 February 2011 of UAB Sweco Lietuva – 4 pages; |
| Annex No 3 | - Copy of letter No V1-83 of 10 January 2011 of UAB Sweco Lietuva – 3 pages; |
| Annex No 4 | - Copy of the letter of the association Rudaminos bendruomenė (registered as received by Alytus REPD on 25 January 2011, No 164) – 1 page; |
| Annex No 5 | - Copy of letter No ARV2-5-158 of 1 February 2011 of Alytus REPD – 1 page; |
| Annex No 6 | - Extract from the information about the adopted decision posted on the REPD website with reference to the date of creating the document – 7 pages; |
| Annex No 7 | - Copy of Decision No ARV2-5-1810 of 30 December 2010 of Alytus REPD – 6 pages; |

- Annex No 8 - Copy of letter No (10-3)-D8-11477 of 8 December 2010 of the Ministry of Environment – 2 pages;
- Annex No 9 - Publication “LITHUANIAN-POLISH ELECTRICITY INTERCONNECTION. Information about the project. FOR THE ENERGY SECURITY OF LITHUANIA” – 1 copy;
- Annex No 10 - Copy of letter No (11.2-13)-3-3275 of 23 November 2010 of the Ministry of Energy – 7 pages;
- Annex No 11 - Extract from Verslo žinios business news portal, lrt, which is the website of the Lithuanian national radio and television, Alfa and Delfi news portals. Articles posted on Polish information websites – 10 pages;
- Annex No 12 - Copy of letter No (10-3)-D8-8312 of 2 September 2010 of the Ministry of Environment – 7 pages;
- Annex No 13 - Copy of letter No ARV2-5-1693 of 1 December 2010 of Alytus REPD to the chairwoman of Rudaminos bendruomenė – 1 page, copy of letter No ARV2-5-1696 of 1 December 2010 of Alytus REPD to Algirdas Patackas – 1 page, copy of letter No ARV2-5-1694 of 1 December 2010 of Alytus REPD to Ramūnas Valiokas and Paulius Kavaliauskas – 1 page;
- Annex No 14 - Copies of letters No ARV2-5-1732 of 10 December 2010 of Alytus REPD to Lazdijai district municipal authority, ARV2-5-1734 to AB Lietuvos energija, ARV2-5-1733 to UAB Sweco Lietuva, ARV2-5-1731 to Algirdas Patackas, ARV2-5-1728 to Ramūnas Valiokas, Paulius Kavaliauskas, ARV2-5-1730 to the chairwoman of Rudaminos bendruomenė, ARV2-5-1727 to LitPol Link Sp.z.o.o. – 7 pages;
- Annex No 15 - copies of letter No ARV2-5-1648 of 25 November 2010 and letter No ARV2-5-1698 of 3 December 2010 of Alytus REPD – 2 pages;
- Annex No 16 - Copy of letter No V1-2524 of 3 December 2010 of UAB Sweco Lietuva – 5 pages;
- Annex No 17 - Report on the environmental impact assessment of the construction and operation of a 400 kV overhead power transmission line between the Alytus transformer substation and the Lithuanian-Polish border. Volume L-1. Text of the report – 489 pages; Volume L-2. Annexes to the report – 286 pages.

Copies of the annexes to the Response are submitted only to the court on the account of large volumes of documentation and that most documentation is publicly available, moreover that most is in the possession of the Claimant.

Director

/Signed/

Česlovas Meržvinskas

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/Signed/ 28 March 2011

/Signed/

/Stamp: TRUE COPY/