



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

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Data are filed and stored in the Register of Legal Entities, Code 190742671

To the Supreme Administrative Court of Lithuania
Žygimantų g. 2, LT-01102 Vilnius

No (2)-V2-1395 of 27 August 2012
Re: No A-3169-12 of 13 August 2012

Administrative Case No A-3169-12

- APPELLANT:** ASSOCIATION RUDAMINOS BENDRUOMENĖ
Legal entity registration number 300109643
Address: Rudamina, Lazdijai eldership, Lazdijai district
- APPELLANT'S REPRESENTATIVE:** Attorney-at-Law RAMUNĖ DULEVIČIENĖ
Registered office at Sodų g. 6, 01313 Vilnius
- DEFENDANT:** ALYTUS REGIONAL ENVIRONMENTAL PROTECTION DEPARTMENT
Legal entity registration number 190742671
Registered office at Kauno g. 69, 62107 Alytus
- THIRD PARTY CONCERNED:**
1. UAB SWECO LIETUVA
Legal entity registration number 301135783
Registered office at Gerulaičio g. 1, 08200 Vilnius
 2. ALYTUS DISTRICT MUNICIPALITY ADMINISTRATION
Legal entity registration number 188718528,
Registered office at Pulko g. 21, 62133 Alytus
 3. LAZDIJAI DISTRICT MUNICIPALITY ADMINISTRATION
Legal entity registration number 188714992
Registered office at Vilniaus g. 1, 67106 Lazdijai
 4. ALYTUS PUBLIC HEALTH CENTRE
Legal entity registration number 191344670
Registered office at Savanorių g. 4, 62151 Alytus
 5. STATE SERVICE FOR PROTECTED AREAS UNDER THE
MINISTRY OF ENVIRONMENT OF THE REPUBLIC OF
LITHUANIA

Legal entity registration number 188724381
Registered office at A. Juozapavičiaus g. 9, 09311 Vilnius

6. ALYTUS TERRITORIAL DIVISION OF THE DEPARTMENT OF CULTURAL HERITAGE UNDER THE MINISTRY OF CULTURE OF THE REPUBLIC OF LITHUANIA
Legal entity registration number 188692688
Registered office at Birutės g. 3 A, 62151 Alytus
7. ALYTUS COUNTY FIRE AND RESCUE BOARD
Legal entity registration number 19012465
Registered office at Suvalkų g. 34, 62121 Alytus
8. SWECO INTERNATIONAL, AB
Legal entity registration number 556079-1336
Gjörwellsgatan 22, SE-100 26 Stockholm, Sweden
9. LITPOL LINK SP. Z O.O.
Legal entity registration number KRS 0000311446
Registered office at ul. Wojciecha Górskiego 9, 00-033 Warsaw, Poland
10. KALVARIJA DISTRICT MUNICIPALITY ADMINISTRATION
Legal entity registration number 188751268
Registered office at Laisvės g. 2, 69214 Kalvarija
11. MINISTRY OF ENERGY OF THE REPUBLIC OF LITHUANIA
Legal entity registration number 302308327
Registered office at Gedimino pr. 38 / Vasario 16-osios g. 2, 01104 Vilnius
12. LITGRID AB
Legal entity registration number 302564383
Registered office at Juozapavičiaus g. 13, 09311 Vilnius
13. MARIJAMPOLĖ MUNICIPALITY ADMINISTRATION
Legal entity registration number 188769113
Registered office at J. Basanavičiaus a. 1, 68307 Marijampolė
14. ENVIRONMENTAL PROTECTION AGENCY
Legal entity registration number 188784898
Registered office at A. Juozapavičiaus g. 9, 09311 Vilnius

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

RESPONSE

**to the Appellant's appeal of 19 July 2012 regarding the reversal of the judgement of 5 July 2012
of Kaunas Regional Administrative Court in Administrative Case No I-757-422/2012**

1. Introduction

For the purpose of this response, capitalised words and abbreviations should read as follows:

1. **LAP** shall be the Law of the Republic of Lithuania on Administrative Proceedings
2. **Alytus REPD or the Respondent** shall be Alytus Regional Environment Protection Department of the Ministry of Environment of the Republic of Lithuania;
3. **Appeal** shall be the Appellant's appeal of 19 July 2012 regarding the reversal of the judgement of the Court;
4. **Appellant** shall be the claimant Association *Rudaminos bendruomenė*, legal entity registration number 300109643, address: Rudamina, Lazdijai eldership, Lazdijai district;
5. **Response** shall be this response of 27 August 2012 of the respondent Alytus Regional Environmental Department of the Ministry of Environment of the Republic of Lithuania to the Appellant's Appeal;
6. **Order** shall be Order No 1-190 of 12 October 2009 of the Minister of Energy of the Republic of Lithuania to commence the drawing up of the special plan of the Line;
7. **Line** shall be the 400 kV overhead power transmission line (OPTL) between the Alytus transformer substation and the Lithuanian-Polish border;
8. **LitPol Link** shall be LitPol Link Sp. z o. o., KRS 0000311446, address: Wojciecha Górskiego 9, 00-033 Warsaw, Poland, i.e. the joint venture incorporated on 19 May 2008 by the Lithuanian and Polish power network operators, which performs the preliminary works for the construction of the Lithuanian-Polish power transmission link;
9. **LITGRID** shall be the power network operator responsible for the strategic Lithuanian-Polish power transmission link project, viz. UAB LITGRID, legal entity registration number 302564383, address: A. Juozapavičiaus g. 13, 09311 Vilnius, Lithuania;
10. **EIA** shall be the environmental impact assessment of the construction and operation of the Line;
11. **EIA report** shall be the report on the environmental impact assessment of the construction and operation of the Line drawn up by Sweco and included into this case-file;
12. **Law on EIA** shall be the Law of the Republic of Lithuania on Environmental Impact Assessment of the Proposed Economic Activity;
13. **SPZ** shall be the sanitary protection zone;
14. **Complaint** shall be the Appellant's complaint of 11 February 2011 regarding the reversal of the Judgement;

15. **SEIA** shall be the strategic environmental impact assessment of the special plan for the construction of the Line;
16. **SEIA report** shall be the report on the strategic environmental impact assessment of the special plan for the construction of the Line drawn up by Sweco;
17. **Special Plan** shall be the special plan for the construction of the 400 kV overhead power transmission line between the Alytus transformer substation and the Lithuanian-Polish border approved by Order No 1-211 of 30 August 2011 of the Minister of Energy of the Republic of Lithuania;
18. **Decision** shall be Decision No ARV2-5-1810 of 30 December 2010 of Alytus Regional Environment Protection Department of the Ministry of Environment of the Republic of Lithuania on 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;
19. **Sweco** shall be UAB SWECO LIETUVA, legal entity registration number 301135783;
20. **Court** shall be Kaunas Regional Administrative Court;
21. **Court judgement** shall be the Court judgement of 5 July 2012 in Administrative Case No I-757-422/2012 which dismissed the Complaint of the claimant Association *Rudaminos bendruomenė* regarding the reversal of the Decision;
22. **PHC** shall be the third party Alytus Public Health Centre.

On 16 August 2012, Alytus REPD received the Appellant's Appeal regarding the Court judgement. The appealed Court judgement dismissed the Appellant's Complaint regarding the Decision, which allowed to plan and design the construction and operation of the Line in Subalternative B1 defined in the Decision and on the website (www.litpol-link.lt) of LitPol Link to the extent where the Line is expected to be constructed and operated between Žuvintas biosphere reserve and the Lithuanian-Polish Border at Lake Galadusys.

The Court obligated Alytus REPD to submit a response to the Appeal by 27 August 2012. In compliance with the Court obligation, we hereby submit this Response to the Appellant's Appeal.

We disagree with the Appellant's Appeal and believe that the Court Judgement is lawful and justified. The Court judgement has reasonably stated that the EIA of the Line has been lawfully carried out and has been free of any material violation of EIA procedures of public information and participation or any material violation of EIA procedures. The Appellant has failed to prove that the Line, with due consideration to its environmental impact, cannot be built in the strip, which is specified in the EIA report as Subalternative B1. The Appellant's opinion regarding other allegedly possible alternatives is not mandatory for the Respondent and cannot form the grounds for reversing the lawful and justified Decision of Alytus REPD.

The Court has reasonably stated that the Appellant has failed to indicate any specific violation of its rights. According to the Respondent, this forms an independent ground for dismissing the Appeal as being unjustified and for recognising that the Appellant abuses its rights.

In general, the Appellant has failed to prove that the alternative of the Line approved by the Decision was inadmissible due to its environmental impact, which was the key matter of this case. There would be legal grounds for declaring the Respondent's Decision as being unjustified and unlawful only if it is proven that the Line would have a negative environment impact if it was built in the strip named Subalternative B1, and only if the conditions laid down in the Decisions were met.

The motives of our disagreement with the Appeal are provided below; the motives are based on the factual circumstances and legal arguments stated below.

2. Regarding the construction method of the Line

Regarding the Appellant's arguments

The Appellant states that the construction method of the Line, i.e. an overhead line, is unsuitable for the environment. Furthermore, the Appellant claims that the underground direct current cable, just as the overhead line, will provide the same synchronisation result, while the case-file lacks any objective data on the advantages of the overhead line over the underground line. These arguments of the Appellant are unjustified. To the contrary to the Appellant's claims, the Court have analysed and have correctly assessed evidence in the case-file regarding the construction method of the Line, including regarding the underground direct current cable.

First, the Appellant has failed to provide any evidence that would justify its claim that the construction method of the Line by the underground direct current cable was suitable for the Lithuanian-Polish link and that the overhead line was not permitted. The Court has reasonably refused to refer to the explanations given by the Appellant's representative R. Valiokas regarding the construction of lines in other Member States, because, as the Court has reasonably stated, no evidence has been provided that projects mentioned by R. Valiokas were identical by their scope, the strategic importance and conditions of implementation. Furthermore, the said representative of the Appellant lacks special knowledge in the field of electricity¹. The reasonableness of the explanations given by R. Valiokas has been denied at the court hearing by A. Vaišnoras, the representative of Sweco, and by J. Neverovič, the representative of LitPol Link, who provided explicit arguments that the method of building underground direct current cable was unacceptable both technologically and strategically.

Second, the Appellant's statements regarding the allegedly lower environmental impact of the underground line are negated by the evidence in the case-file. During the performance of EIA, Sweco specialists (who have long-term experience in the project of identical nature) also performed the comparison of the construction alternatives of the overhead line and the underground cable from different angles (EIA report, Volume L-2, Text Annex 9). It has been established that the impact of the overhead line would be much lower:

- During the construction of an overhead line, the soil is removed and construction works are carried out only in individual small land plots where the transmission tower is being built. One reinforced concrete transmission tower occupies approximately 10 m² of land. The span between towers is 330-600 m (EIA report, Volume L-1, p. 64). Meanwhile, the construction of the 400 kV underground line would involve the digging of a trench, 1.5-2 m deep and approximately 24 m wide, along the entire route. The amount of earthwork is huge; it shall also require additional area for taking the removed soil and for temporary storage, for bringing new soil in, for access roads (the additional 30 ha);

¹ According to the information available to the public on the website of the Institute of Physics, research areas of R. Valiokas are as follows: surface physics and chemistry, self-agglomeration systems, nanotechnology and biomaterials, micro and nanoformation methods (cf. <http://www.fi.lt/MDFL/MDFL-darbuotojai.html>).

- The construction of an overhead line would not require the complete deforestation of the area along the route, as is the case during the laying of underground cables;
- An overhead line would involve significantly less restriction for economic activities, as agricultural activities can be performed in the area of the route, except for the areas occupied by the towers. Meanwhile, if cables are laid, no excavation, construction or tree planting works can be carried out and no traffic is allowed in the area of approximately 38 m above and near the cables (except for the places intended and prepared for that purpose). Thus, any land use (including farming) that is not related to the operation of the Line would have to be restricted in area of approximately 60 ha;
- The zone where such extensive works of the laying of the underground cable are performed would be respectively affected as far as the relief and landscape, biodiversity, ambient air, underground, public health and land use is concerned, and such effect would be much more extensive than in the case of the construction of towers for the overhead line.

Third, pursuant to the legal acts, the construction of the Line has been acknowledged as an economic project of strategic importance to the State, which has a special importance for the public². Furthermore, the interconnection of the power system of Lithuania with the power system of the Republic of Poland has been acknowledged as being of strategic importance to national security³. Therefore, the Line, being an object of particular strategic importance, is subject to significantly higher reliability requirements⁴.

The construction of the Line underground would significantly reduce the general reliability of the Line. Due to various technical reasons, cable lines are significantly less reliable than overhead lines. For instance, many breakdowns in overhead lines are eliminated by itself by reconnecting the line with the help of automatics. This cannot be done in the case of cable inclusions in the underground line, as cable breakdowns are permanent. Additional complicated line elements are installed at the end of each cable inclusion that may breakdown and cause the disconnection of the line. The installation of additional line elements required many additional bolt connections, which are also significantly less reliable than the solid wire of an overhead line. Furthermore, it takes significantly more time to repair a cable breakdown – if a breakdown of elements of an overhead line is eliminated in 0.5-1 working day, the elimination of a cable line breakdown takes 10 to 18 days, because the elimination of a cable line breakdown requires special equipment to identify the precise location of the

² LitPol Link interconnection is acknowledged as an object of strategic importance to the Republic of Lithuania in the following documents: Clause 13(6) and 31(3) of the National Energy Strategy approved by Resolution No X-1046 of 18 January 2007 of the *Seimas* of the Republic of Lithuania; Clause 6(1), 33(2), 48 and 51 of the National Energy Independence Strategy approved by Resolution No XI-2133 of 26 June 2012 of the *Seimas* of the Republic of Lithuania; Measure 3.1. of the National Energy Strategy Implementation Plan for 2008-2012 approved by Resolution No 1442 of 27 December 2007 of the Government of the Republic of Lithuania; Article II(5) of Resolution No 300 *Strategic Directions of the New Nuclear Power Plant Project in Lithuania* of 22 April 2009 of the Government of the Republic of Lithuania; Clause 83 of Resolution No 1568 *On the Approval of the Action Plan for the Implementation of the General Plan of the Territory of the Republic of Lithuania* of 9 December 2003 of the Government of the Republic of Lithuania (To build a power transmission line between Lithuania and Poland); Resolution No 1227 *On the Approval of the List of Construction Works of National Importance* of 6 December 1997 of the Government of the Republic of Lithuania (the section of the 400 kV power transmission line Kruonis pumped storage plant – Alytus - Elk (Poland) running in the territory of Lithuania); the Abridged Strategic Action Plan of the Ministry of Energy for 2010 approved by Resolution No 250 of 10 March 2010 of the Government of the Republic of Lithuania; the Strategic Action Plan of the Ministry of Energy for 2010-2010 /as stated in the original text, - translator's note/ approved by Order No 1-108 of 31 March 2010 of the Minister of Energy of the Republic of Lithuania; BEMIP plan approved by a memorandum of understanding of 17 June 2009 on the integration of the Baltic electric power systems into Western European electricity markets (BEMIP) signed by 8 EU Member States in the Baltic Sea Region and J. M. Baroso, President of the European Commission (http://ec.europa.eu/energy/infrastructure/bemip_en.htm) (EIA report, Volume L-1, p. 27, 41-43, 282).

³ Article 6(1) of the Law of the Republic of Lithuania on Enterprises and Facilities of Strategic Importance to National Security and Other Enterprises of Importance to Ensuring National Security.

⁴ Article 6(2)(1) of the Law of the Republic of Lithuania on Enterprises and Facilities of Strategic Importance to National Security and Other Enterprises of Importance to Ensuring National Security.

breakdown, huge volume of earthworks and a long process of the installation of couplers that requires highly qualified specialists.

Fourth, the strategic goal of the Lithuanian energy sector for the project of the interconnection with the Polish power system is the connection with the power system of continental Europe for synchronous operation⁵. Meanwhile, the power transmission alternative proposed by the Appellant, viz. the underground direct current cable, is impossible, as it fails to ensure synchronous operations. By its Letter No (11.2-13)-3-3275 of 23 November 2010, the Ministry of Energy of the Republic of Lithuania provided explicit answers to the Appellant's representatives R. Valiokas and P. Kavaliauskas regarding the impossibility of the underground direct current cable from the technological and strategic point of view (Volume I, case-file p. 132), while the Appellant failed to submit any evidence to the case-file that would negate the arguments provided in the said letter.

Regarding the submission of new evidence

The Appellant states in its Appeal that it is collecting evidence regarding the underground line as being the most optimal solution and that it will submit a request to accept such evidence to the case-file.

Article 138(3) of LAP provides that the court of appeal instance shall examine new evidence, which was not submitted to the court of first instance, only if the court acknowledges the reasons for not submitting such evidence earlier as being justifiable, or if the necessity to submit new evidence has arisen later. This means that the submission of new evidence during the appeal procedure is limited.

As it was said before, by its Letter No (11.2-13)-3-3275 of 23 November 2010 the Ministry of Energy of the Republic of Lithuania provided a reasoned answer to the Appellant's representatives R. Valiokas and P. Kavaliauskas regarding the impossibility of the underground direct current cable. As of the moment of the receipt of this letter the Appellant has been aware of the motives why no underground direct current cable could be laid for the LitPol Link interconnection. Therefore, the Appellant could realistically commence the collection of rebutting evidence at the end of 2010.

Information about the comparison of advantages and disadvantages of the overhead line and the cable has also been provided in the EIA report (Volume L-2, Text Annex 9). This information has also been provided in a popular brochure intended for the society; a run of almost 1,000 copies of this brochure has been distributed during the implementation of the project (Volume I, case-file p. 130; EIA report, Volume L-2, Text Annex 2). This brochure was also distributed to the participants of the public hearing of the EIA report, which was held on 19 July 2010 in Lazdijai eldership and in which the Appellant's representatives Rūta Cimakauskienė and Ramūnas Valiokas participated (Volume I, case-file p. 47, 49).

The Appellant initiated this case on 14 February 2011. One year and four months have passed from the submission of the Complaint until the hearing of the case on the merits on 22 June 2012. This means that the Appellant had sufficient time for the collection of evidence, which the Appellant thinks to be necessary, and for the submission of such evidence to the court of first instance. Therefore, the submission of new evidence to the case-file during the appeal procedure is overdue and unjustified. With due consideration to this, Alytus REPD opposes to the joining of new evidence submitted by the Appellant to the case-file.

3. Regarding the location selected for the Line

⁵ Article 6(2)(3) of the Law of the Republic of Lithuania on Enterprises and Facilities of Strategic Importance to National Security and Other Enterprises of Importance to Ensuring National Security; Clause 14(2), 15(4) and (9), 31(4) of the National Energy Strategy approved by Resolution No X-1046 of 18 January 2007 of the *Seimas* of the Republic of Lithuania; Clause 6(1), 33(2), 48 and 51 of the National Energy Independence Strategy approved by Resolution No XI-2133 of 26 June 2012 of the *Seimas* of the Republic of Lithuania.

3.1. The Line cannot be designed in the infrastructure corridor in the territory of Kalvarija municipality and in the industrial area among the settlements of Šeštokai, Jukneliškė and Mockava

The Appellant stated that, when selecting the border crossing location, the drafter of the EIA report has mistakenly limited itself only to the territory of Lazdijai district municipality, because it has ignored an opportunity to design the Line in the existing free infrastructure corridor in Kalvarija municipality and in the industrial area among the settlements of Šeštokai, Jukneliškė and Mockava.

First, infrastructure corridors provided in the general plan of the territory of Kalvarija municipality referred to by the Appellant are not intended for the development of the power transmission infrastructure. The Court judgement has correctly stated that the general plans of the territories of Marijampolė municipality and Kalvarija municipality do not provide for the construction of the 400 kV electricity line (Volume IV, case-file p. 100-119; Volume V, case-file p. 6). On the contrary, the solutions of the general plan of the territory of Kalvarija municipality stated in Part 7.5 *Power Supply* of the Explanatory Note provide that the current scheme of power supply system in the municipality shall be supported rather than expanded (Volume IV, case-file p. 117).

Nevertheless, Sweco has carried out a preliminary evaluation of the possibility to build the Line in the territories of Kalvarija municipality and Marijampolė municipality, and has compared it with the recommended subalternative provided in the EIA report. Even the preliminary evaluation revealed that the route proposed by the Appellant *inter alia* include protected areas, which would be greatly affected by the construction of the Line. Furthermore, LitPol Link addressed Kalvarija Municipality Administration requesting to provide its opinion on the feasibility of the construction of the Line and received the response stating that, in order to plan the construction of the Line in the territory of Kalvarija municipality, all territorial planning procedures related to such construction must be performed as prescribed by the applicable legal acts (EIA report, Volume L-1, p. 488). Marijampolė Municipality Administration has categorically disapproved the construction of the Line in the territory of Marijampolė municipality (EIA report, Volume L-1, p. 489). The construction of the Line in the territory of municipalities indicated by the Appellant was thus evaluated and reasonably rejected.

Moreover, Kalvarija biosphere reserve (of approximately 2,000 ha) has been established near the Polish border by Order No D1-407 of 14 July 2009 of the Minister of Environment of the Republic of Lithuania; the intended purpose of this polygon is as follows: to be an integral part of the national complex ecological and specialised biodiversity condition monitoring system and the Natura 2000 European Ecological Network, which monitors, controls and forecasts the changes of nature systems; to preserve the ecosystem of the agrarian landscape, especially for the purpose of preserving the populations of crakes, marsh harriers, montagu's harriers, spotted crakes and tawny pipits, natural meadow vegetations, including natural habitat types of Community importance, viz. 6210 Grasslands, 6430 Eutrophic tall herb, 6450 Alluvial meadows, 6510 Mesophile hay meadows. Meanwhile, it has been correctly stated in the Court judgement that, according to Subalternative B1, the Line did not cross any areas of the Natura 2000 European Ecological Network (EIA report, Volume L-2, p. 285). Therefore, the change of the Lithuanian-Polish border crossing location by moving it to Kalvarija municipality was completely unacceptable with due consideration to protected areas.

The Appellant also incorrectly states that the alternative route proposed by the Appellant would be shorter by 8 km. Based on the performed evaluation, the alternative route proposed by the Appellant would be longer than Alternative B1 proposed by the drafter of EIA documents by 7.9-11.5 km (EIA report, Volume L-1, p. 479).

Second, the existing industrial area among the settlements of Šeštokai, Jukneliškė and Mockava cannot be used, as it would be non-compliant with the nature of land use. Pursuant to No 3D-37/D1-40 of 20 January 2005 of the Minister of Agriculture and the Minister of Environment of the Republic of Lithuania, industrial and storage object areas are intended for the construction of industrial and

manufacturing enterprises, storage facilities, terminals and other storage objects rather than for the construction of electricity lines.

The provided arguments certify that the construction of the Line across the territory of Kalvarija municipality and in the industrial area among the settlements of Šeštokai, Jukneliškė and Mockava would be non-compliant with the legal acts regulating territorial planning, protected areas and the nature of land use.

The appealed Court judgement has reasonably make a lawful conclusions that the detailing of the solution of the Line provided in the general territorial plan of the Republic of Lithuania is possible within the boundaries of administrative territorial units marked in the general plan and defining the document level. According to territorial planning documents, the construction of the Line is thus possible within the boundaries of Alytus and Lazdijai district municipalities; therefore, the Appellant's proposals to build the Line in the territory of other municipalities is non-compliant with the overriding mandatory provisions of the Law on Territorial Planning (Article 2(1), 11(7) and 18(2)).

Moreover, as the Court has correctly stated, the specific location of the construction of the Line has been stated in the Special Plan approved by Order No 1-211 of 30 August 2011 of the Minister of Energy of the Republic of Lithuania. It is the Special Plan rather than the appealed Decision that can change the extent of rights and obligations of persons. However, the Appellant has failed to contest this order or special planning procedures.

3.2. Lithuanian-Polish electric power link project is implemented on time

The Appellant disagrees with the motive of the Court judgement that the alternative of the location of the Line proposed by the Appellant is unacceptable, because its implementation would require much time; the Appellant reasons such disagreement by stating that the implementation of LitPol Link project is significantly late. Such arguments of the Appellant are unjustified.

Both the previously applicable National Energy Strategy and the newly adopted National Energy Independence Strategy provide that the deadline for the implementation of the Lithuanian-Polish electric power link is the year 2015.

Information about works performed under LitPol Link project is publicly available on the website of LitPol Link at <http://www.litpol-link.com/lt/projektas/projekto-darbai/>.

Presently, the Special Plan has already been approved. Based on information provided by LitPol Link, land easements are being established for land plots in Alytus and Lazdijai districts (approximately 95% of land easements have already been established).

On 12 September 2011, LITGRID AB announced an international public procurement for the drawing up of the detail design documentation of the Line. The detail design contractor has already started work; geological survey and archaeological investigation is in progress.

At the beginning of 2012, LITGRID AB announced a public procurement of 500 MW HVDC converter with 400 kV switchyard in Alytus. The negotiated procedure with contractors who submitted tenders is currently in progress according to the schedule; based on the conditions of the tendering procedure, contractors must deliver the converter with the switchyard by the end of 2015.

On 21 February 2012, a contract was awarded to the successful tenderer in LitPol Link project; this successful tenderer will draw up the detail design documentation of the expansion and reconstruction of 330 kV switchyard of Alytus and will obtain the document permitting the construction.

In Poland, works are being performed by the successful tenderer company Eltel Networks Rzeszów S.A. The works include the drawing up of the detail design documentation of the 400 kV overhead power transmission line between Elk and the border of the Republic of Poland, the preparation of territorial planning documents, the drafting and the approval of the final EIA report, the signature of agreements with land owners and the obtaining of the construction permit.

The Polish side has already performed all research and carried out the environmental impact assessment of possible alternatives of the line route. The decision of the competent authority is currently being awaited regarding the admissibility of the construction of the line route in the proposed most optimal route. Territorial planning documents have also been prepared; they are currently being coordinated. The permit for the construction of the line is expected to be obtained in Poland by November 2013, while construction works are expected to be completed by the end of 2015.

With due consideration to the provided circumstances, there is no reason to claim that LitPol Link project is late or to declare the Court judgement to be unlawful or unjustified on such absurd grounds.

3.3. The selected location of the Line is compliant with the general territorial plan of the Republic of Lithuania

The Appellant unreasonably contests the conclusion drawn by the Court that Subalternative B1 of the Line selected in the EIA report is compliant with the general territorial plan of the Republic of Lithuania approved by Resolution No IX-1154 of 29 October 2002 of the *Seimas* of the Republic of Lithuania.

The general plan shall mean a document of integrated planning establishing the spatial concept of the planned territory development and the principles of use and protection of the territory taking into account the levels and tasks of territorial planning (Article 2(1) of the Law on Territorial Planning). The general plan shall be amended only if the principal concept of management, use and protection of the territory is amended and if the intended amendments have a material impact on use of urban structure, infrastructure system or areas in shared use. The decision on the necessity to amend the general plan shall be made (on the reasoned proposal of the planning organiser) by the authority that approved the general plan (Clause 19¹ the Profile of the Procedure for the Drawing Up of the General Territorial Plan of the Republic of Lithuania approved by Resolution No 753 of 16 June 2004 of the Government of the Republic of Lithuania⁶).

The special plan (project) shall mean a territorial planning document in which, taking into account the levels and tasks of territorial planning, the territorial development, infrastructure management and/or protection directions, measures and requirements are set for separate areas of activities (Article 2(31) of the Law on Territorial Planning). The special plans shall be prepared when the valid solutions of the general or detailed planning are not prepared for the planned activity or it is necessary to detail the solutions of the general planning documents (Article 16(1)(3) of the Law on Territorial Planning).

The system interpretation of the said rules of law allows to state that the general plan establishes only the principled concept of territorial development the individual principles of which are further specified in special plans. If solutions provided in special plans are in line with the concept provided in the general plan, there is no need to amend the general plan.

The 400 kV overhead electricity line running through the territory of Alytus district municipality and Lazdijai district municipality is marked in Drawing *Technical Infrastructure* of the general territorial plan of the Republic of Lithuania (Volume V, case-file p. 68). With due consideration to the provided definition of the general plan, this solution of the general territorial plan of the Republic of Lithuania

⁶ As amended on 31 January 2007.

should be assessed only as a preliminary and schematic marking of the line direction and cannot be considered to be the specific location of the Line. For the purpose of detail specification of the solutions of the general territorial plan of Lithuania and in order to select the specific location of the Line, the drawing up of the Special Plan was commenced, which included the performance of the environment impact assessment of all the alternatives resulting the selection of the alternative with the minimal environmental impact. Meanwhile, the explanation to the contrary would make the drawing up of the Special Plan and the EIA of the Line to lose its meaning.

Line Subalternative B1 is projected for the territory of Alytus district municipality and Lazdijai district municipality, i.e. it is compliant with the line direction marked in the general territorial plan of the Republic of Lithuania. Therefore, there were no legal grounds for amending the general plan, as the principled concept of territorial development did not change.

With due consideration to the provided circumstances, the Court judgement stating that the selection of the location of the Line did not violate any provisions of law was lawful and justified.

It should also be noted that the Appellant has failed to state which specific rights and legitimate interests of the Appellant have allegedly been violated by the fact that the location of Subalternative B1 of the Line has allegedly failed to meet the requirements of territorial planning. The Court cannot defend the allegedly violated abstract right or legitimate interest of the person (Article 5(1) of the LAP).

4. Regarding Line alternatives and Lithuanian-Polish interstate consultations

The Appellant stated that the Court has drawn an unjustified conclusion that the Line alternative proposed by the Appellant would be non-compliant with the interstate agreement on the Lithuanian-Polish border crossing point in Lazdijai district. According to the Appellant, this is also confirmed by the fact that the drafter of the EIA report have themselves analysed other alternatives of the Line. The Appellant incorrectly quotes the Court judgement; therefore, the resulting arguments of the Appellant are completely unjustified.

First of all, the Court judgement correctly stated that an agreement was reached during interstate consultations to have the location (NB: but not the point) where the Line crossed the Lithuanian-Polish border would be in Lazdijai district, northwest of Lake Galadusys. Resolution No 3 of Minutes No D4-50 of the coordinating discussion of the matters of the Lithuanian-Polish electric power link held on 30 April 2010 explicitly stated that the border crossing point had to be planned by Sweco during the drafting of EIA and SEIA documents of the Line and with due consideration to the territorial planning documents of Sejny Gmina and solutions of general planning documents applicable in the territory of Lithuania (EIA report, Volume L-2, p. 215-218). That was exactly how it was done.

The Appellant unreasonably ignores the fact that all the alternatives of the Line, which the drafter of the EIA report analysed during SEIA and EIA procedures, cross the border in Lazdijai district, northwest of Lake Galadusys, i.e., contrary to the alternative proposed by the Appellant, the alternatives analysed by the drafter of the EIA report were compliant with the agreement achieved during interstate consultations regarding the location where the Line had to cross the Lithuanian-Polish border.

Whether the consultation agreement has the importance of an interstate agreement is the subject-matter of the assessment rather than of proof. Therefore, no evidence has justifiably been submitted in the case.

The notice of 27 March 2012 of the Ministry of Environment on the commencement of the drawing up of the special plan referred to by the Appellant does not have any significance to or impact on the lawfulness and justification of the Court judgement.

With due consideration to the above circumstances, we think that the Court has lawfully and justifiably recognised that the construction of the Line in the territory proposed by the Appellant would be non-compliant with the agreement reached during interstate consultations regarding the border crossing location. Meanwhile, information referred to by the Appellant about the commencement of the drawing up of the territorial development plan of the region near the Lithuanian-Polish border also fails to justify the Appellant's statements and, thus, is irrelevant to the case.

5. Regarding the failure of the National Land Service to participate in the evaluation of the EIA report

The Appellant argues that the National Land Service had to participate in the evaluation of the EIA report. These arguments of the Appellant are non-compliant with the rules of law and are unjustified.

It has been correctly stated in the Court judgement that the EIA programme and the EIA report have been coordinated with all EIA entities provided in the Law on EIA. Article 5(1)(2) of the Law on EIA applicable at the time of the drawing up of the EIA programme and its coordination with EIA entities provided for the following entities of the EIA of the proposed economic activity: (a) public authorities in charge of health care, fire protection, protection of cultural properties; (b) county authorities; (c) municipal authorities.

Following the amendment of legal regulation carried out on 1 July 2010, county authorities have been deleted from the list of EIA entities, i.e. this function of the county governor's administration has been abolished.

When adopting the Law Amending Article 5 and 8 of the Law on Environmental Impact Assessment of the Proposed Economic Activity, which deleted county authorities from the list of EIA entities, the legislator has failed to state its will that EIA procedures commenced prior to the enforcement of these amendments should/could be completed according to the requirements of legal acts that were in force at the time these procedures were commenced. Therefore, in this case the general principle of the validity of legal acts in time, which provides that the legal act in force at the time of the performance of actions is applicable, should be applied.

Furthermore, the regulations of the National Land Service under the Ministry of Agriculture approved by Order No 194 of 14 June 2001 of the Minister of Agriculture of the Republic of Lithuania and defining the competence of the National Land Service has never established and does not establish that the functions of the National Land Service include the analysis of EIA programmes and reports or the submission of conclusions on EIA programmes, reports or feasibility of the proposed economic activity.

The Court has correctly stated that the National Land Service has approved the Special Plan of the Line and has established land easements for the construction of the Line, which the members of the Appellant Association *Rudaminos bendruomenė* have the right to contest in court, and some of the members are exercising this right. Therefore, the violation of rights of the Appellant and its members related to the functions of the said authority is unrelated to the subject-matter of this dispute and will be investigated in other court proceedings.

The condition mentioned by the Appellant that the taking of the land required for the construction of the Line for public needs would not have significantly increased the costs of the implementation of LitPol Link project is unrelated to the subject-matter of this case. Furthermore, land plots situated

within the power grid protection zones are not taken from land users⁷. Therefore, the Appellant's arguments are legally insignificant.

With due consideration to the above, a conclusion should be drawn that there was no legal justification for the coordination of the EIA report with the successor of the liquidated Alytus County Governor's Administration. Therefore, the Court has reasonably failed to establish any violation of the EIA procedure because of the absence of the National Land Service during the evaluation of the EIA report.

6. Regarding the public health impact assessment

The Appellant unreasonably criticises the Court conclusion that the public health impact assessment has been properly performed. The Appellant improperly explains the rules of law and incorrectly interprets the results of the measurement of the electric field strength.

Clause 4.1.5 of Lithuanian Hygiene Standard HN 104:2000 *Public Protection from Electric Fields caused by Electricity Lines*⁸ provides that the electric field strength and duration of exposure to humans in desolated locations, locations accessible by vehicles and locations of land use should not exceed 15 kV/m, and the exposure should not exceed 90 min. The remaining time a person can be in the environment where the electric field strength does not exceed 5 kV/m.

The calculation of the future electric field strength showed that the electric field reaches its maximum level exceeding 8 kV/m within 10 m from the centre of the transmission tower. Thus, the maximum electric field strength of the Line does not exceed the permissible value established in HN 104:2000 *Public Protection from Electric Fields caused by Electricity Lines*. Therefore, the Appellant's arguments that allegedly no farming activities could be performed near the Line should be dismissed.

With due consideration to the above arguments, we believe that the Court conclusion that the public health impact assessment has been properly performed is lawful and justified.

7. Regarding separate coordination of SPZ with PHC

The Appellant claims that SPZ had to be separately coordinated with PHC, because there were persons living less than 250 m away from the Line. These claims of the Appellant are unjustified.

First, Hygiene Standard HN 104:2000 *Public Protection from Electric Fields caused by Electricity Lines* uses two concepts, viz. SPZ and distance between the electricity line and residential buildings. These two concepts are not identical. The distance between the electricity line and residential buildings is specifically defined in the hygiene standard, viz. 250 m, with the opportunity to reduce it to 20 or 30 m under certain conditions. Meanwhile, the area of SPZ is not defined; it depends on the electric field strength. SPZ is established in the area where the electric field strength exceeds 1 kV/m. These two concepts are unreasonably made identical in the Appeal.

Second, the case-file lacks evidence proving that there were residential buildings located less than 250 m from the Line (e.g. according to the documents in the case-file, J. Želionienė mentioned in the Appeal has only an agricultural plot of land rather than a homestead; Volume I, case-file p. 105). On the other hand, in exceptional cases, when local conditions does not allow to keep the 250 m-distance between the overhead line and residential buildings, such distance can be reduced in coordination with public health care authorities. PHC approved the EIA report (Volume II, case-file p. 54-56). It means

⁷ Clause 8 of the Power Grid Protection Rules approved by Order No 1-93 of 29 March 2010 of the Minister of Energy of the Republic of Lithuania.

⁸ Approved by Order No 4 of 4 January 2001 of the Minister of Health of the Republic of Lithuania.

that even if the distance between the Line and residential buildings is less than 250 m, there would be no grounds for stating a violation of legal acts.

Third, SPZ boundaries are established during the drawing up of general design projects, special and detail design plans. In this case the EIA report has been evaluated; therefore, the drafter of the EIA report has not been obliged to separately coordinate SPZ with PHC. Furthermore, the EIA report is not an administrative act establishing SPZ. SPZ are established by a territorial planning document; in case of a dispute, such document shall be the Special Plan, which the Appellant did not contest.

Fourth, Clause 5.2 of Lithuanian Hygiene Standard HN 104:2000 *Public Protection from Electric Fields caused by Electricity Lines approved by Order No 4 of 4 January 2001 of the Ministry of Health of the Republic of Lithuania in force at the time of EIA procedures provides that SPZ had to be established for overhead electricity lines*. Presently, the said hygiene standard is no longer in force. It has been replaced by Lithuanian Hygiene Standard HN 104:2011 *Public Protection from Electromagnetic Field caused by Electricity Lines approved by Order No V-552 of 30 May 2011 of the Minister of Health of the Republic of Lithuania*. This legal act does not provide any SPZ for electricity lines. With due consideration to the amended legal regulation that no longer provide for the establishment of SPZ for electricity lines, the Appellant's arguments are legally insignificant.

8. Regarding EIA and SEIA

The Appellant states that there was no proper SEIA which had to decide whether to construct an underground line or an overhead line; the Appellant also claims that SEIA falls within EIA and therefore had to be performed prior to EIA. There are no grounds for agreeing with such position of the Appellant, as it is non-compliant with the applicable provisions of EU and national legal acts.

First, the contents of both EU and national legal acts confirms that EIA and SEIA are two different procedures, viz. they are regulated by different legal acts, while Directive 85/337/EEC (EIA Directive) and Directive 2001/42/EC (on SEIA procedures) or the Law on ETA, which regulates the performance of EIA, do not provide that SEIA is a composite part of the EIA process.

Second, Clause 2 of the Profile of the Procedure for the Strategic Environmental Impact Assessment of Plans and Programmes approved by Resolution No 967 of 18 August 2004 of the Government of the Republic of Lithuania provides that the assessment is carried out during the preparation of a plan or programme and before its adoption and/or approval, also by selecting the most suitable alternative of the solutions of a plan or programme. This rule of law basically repeats Article 4(1) of Directive 2001/42/EC. Thus, legal acts only provide that SEIA has to be carried out before the approval of the plan or programme the environmental impact of the outcomes of which is being assessed. However, legal acts do not regulate the matter of whether SEIA has to be carried out before the EIA procedures.

Third, in the case of the Lithuanian-Polish electric power link, the underground direct current cable proposed by the Appellant cannot be treated as an alternative to the overhead line. It has already been mentioned that the strategic goal of Lithuania was not just any link but the State's strategic link for synchronous operation, which could not be achieved by laying an underground direct current cable.

Fourth, the EIA of the Line included a special assessment and comparison of the option of building an overhead line or an underground cable. This process included active participation of the public, including the Appellant. Thus, the public enjoyed all statutory opportunities to state its opinion on the construction method of the Line before the adoption of the disputed Decision regarding the EIA of the Line and the order on the approval of the Special plan, and it received reasoned answers.

9. Regarding Žuvintas biosphere reserve

The Appellant unreasonably stated that the impact on Žuvintas biosphere reserve was improperly assessed, as the legal acts listed by the Appellant were not followed. The legal acts referred to by the Appellant fail to provide any special rules for the assessment of protected areas that are important for the protection of general habitats and birds. Resolution No 276 of 16 March 2004 of the Government of the Republic of Lithuania regulates the assessment of only the site where the area of importance for the protection of habitats or birds is expected to be established. Meanwhile, Order No D1-609 of 1 December 2004 of the Minister of Environment of the Republic of Lithuania referred to by the Appellant has been repealed since 1 June 2006.

Second, the Appellant itself not only fails to contest the part of the Decision providing for Subalternative B1 of the Line between the Alytus transformer substation to Žuvintas reserve, but also demands to select the alternative proposed by the Appellant that runs significantly closer to Žuvintas reserve than the one provided in the contested Decision⁹ (Volume I, case-file p. 37-38). Thus, the Appellant contradicts its own position of principle in this dispute.

Third, the Court judgement reasonably and lawfully states that the expected Line will not cross the area of Žuvintas reserve; it will pass by the reserve within the distance of approximately 200 m. The Court judgement has also correctly concluded that the impact on Žuvintas reserve has been legitimately assessed during the disputed EIA procedures, as legal acts have not provided for any separate procedures, and that Subalternative B1 would cause the least negative impact on nature in comparison with other considered alternatives.

With due consideration to the position stated in this Respond and pursuant to Article 140(1)(1) of the LAP, we hereby

r e q u e s t the Honourable Court:

To uphold the judgement of 12 July 2012 of Kaunas Regional Administrative Court and to dismiss the appeal of the appellant Association *Rudaminos bendruomenė* as being unjustified.

Attached: 15 copies of the Response to the parties of the procedure.

Yours Sincerely,

Representative of Alytus Regional Environment Protection
Department of the Ministry of Environment of the Republic
of Lithuania, acting under Power of Attorney No ARV2-2-
53 of 17 January 2011

/signed/

Raimondas Merčaitis

Irma Jestremskienė (8-315) 56 757, e-mail: i.jestremskiene@ard.am.lt

/signed/
TRUE COPY

⁹ In the plans in the case-file (Volume I, case-file p. 37-38) Subalternative B1 proposed by the drafter of EIA is marked by a black hatching or a red line, the alternative proposed by the Appellant is marked by a yellow line, while Žuvintas reserve is marked in green to the northwest of point where these two alternatives separate.