

GK-7627/2B/08/2013

DECISION

Pursuant to Article 72 paragraph 4 and 4a of the act of 3rd October 2008 on the provision of information on the environment and its protection, public participation in environmental protection and environmental impact assessments (Journal of Laws of 2008, No. 199, item 1227 as amended), in conjunction with Article 123 clause 1 of the act of 14th June 1960 – the code of administrative procedure (uniform text, Journal of Laws of 2008, No. 199 item 1227 as amended), after considering the application of “Wiatromill” Spółka z ograniczoną odpowiedzialnością in Gdańsk, with the registered seat at ul. Abrahama 1A, 80-307 Gdańsk, dated 19.07.2013, on the prolongation for 2 years of the validity date of environmental decisions of the permit to execute the undertaking of 18 August 2009, reference: GK-7627/2/2008, issued by the Head of Banie Commune for the undertaking consisting in the construction of **“A complex of wind power plants Banie”** comprised of 46 wind power plants with appropriate technical infrastructure on plots of land: No. 801, 818, 848, 853, 835 Banie precinct, No. 149 Piaseczno precinct, No. 174/1, 180/2, 791, 810, 817, 822 Swobnica precinct, No. 409/2, 417/1 435 Baniewice precinct, No. 216, 330, 88/4, 92, 95, 97/2, 314,4, 314/5 Lubanowo precinct, No. 18, 23/1, 33, 42, 127, 129, 132/2, 134, 139 Sosnowo precinct, in Banie commune, Gryfino district, transferred to Wiatromill Spółka z ograniczoną odpowiedzialnością with the registered seat in Gdańsk, by the final decision of the Head of Banie Commune dated 15th March 2011, reference number: GK-7627/2A/08/2011

I hereby decide

to find justified the prolongation of the validity date of environmental decisions of the permit to execute the undertaking of 18th August 2009, reference consisting in the construction of “A complex of wind power plants Banie” comprised of 46 wind power plant with the appropriate technical infrastructure planned on the plots of land: No. 801, 818, 848, 853, 835 Banie precinct, No. 149 Piaseczno precinct, No. 174/1, 180/2, 791, 810, 817, 822 Swobnica precinct, No. 409/2, 417/1 435 Baniewice precinct, No. 216, 330, 88/4, 92, 95, 97/2, 314,4, 314/5 Lubanowo precinct, No. 18, 23/1, 33, 42, 127, 129, 132/2, 134, 139 Sosnowo precinct, in Banie commune, Gryfino district, issued by the Head of Banie Commune, reference number: GK-7627/2/2008

JUSTIFICATION

On 18th August 2009, the Head of Banie Commune issued decision No. GK-7627/2/2008 on environmental conditions of the permit for the execution of the undertaking consisting in the construction of “A complex of wind power plants Banie” comprising 46 wind power plants with the appropriate technical infrastructure, planned on the plots of land: No. 801, 818, 848, 853, 835 Banie precinct, No. 149 Piaseczno precinct, No. 174/1, 180/2, 791, 810, 817, 822 Swobnica precinct, No. 409/2, 417/1 435 Baniewice precinct, No. 216, 330, 88/4, 92, 95, 97/2, 314/4, 314/5 Lubanowo precinct, No. 18, 23/1, 33, 42, 127, 129, 132/2, 134, 139 Sosnowo

precinct, in Banie commune, Gryfino district. The decision of the Head of Banie Commune of 18th August 2009 is final.

With the final decision of 15th March 2011, reference number: GK-7627/2A/08/2011, the Head of Banie commune transferred the above decision on environmental conditions to Wiatromill Spółka z ograniczoną odpowiedzialnością with the seat in Gdańsk.

On 19th July 2013, Wiatromill Spółka z ograniczoną odpowiedzialnością in Gdańsk filed a motion requesting that the Head of Banie commune take stand that the execution of the undertaking referred to hereinabove is performed in phases, and the conditions specified in the decision on environmental conditions of 18th August 2009 have not changed.

Pursuant to Article 72 paragraph 3 of the act of 3rd October 2008 on the provision of information on the environment and its protection, public participation in environmental protection and environmental impact assessments, the decision on environmental conditions is enclosed to the application for the decision, referred to in paragraph 1. The application should be submitted within 4 years from the date on which the decision on environmental conditions became final, with the reservation of paragraphs 4 and 4b. The provision of Article 72 paragraph 4 provides for that the application can be filed within 6 years from the date on which the decision on environmental conditions became final, provided that the party applying for the decision on environmental conditions, or the entity to which that decision had been transferred, before the expiry of the term specified in paragraph 3, receive from the authority which issued the decision on environmental conditions, the standing that the execution of the planned undertaking happens in phases, and the conditions specified therein have not changed. The stand is taken by way of issuing a decision.

Following the proceedings, and assessment of the evidentiary material collected in the case, the Head of Banie commune finds that the execution of the undertaking Wiatromill Spółka z ograniczoną odpowiedzialnością in Gdańsk happens in phases, and the conditions specified in the environmental decision of the Head of Banie commune of 18th August 2009, case reference GK-7627/2/2008 have not changed.

The undertaking in question is executed in 4 phases:

- Phase I – “A complex of wind power plants Banie 1”, consisting of 13 wind power plants located on the plots of land No.: 127/5, 129/1, 132/3, 134/1, 139/2, 23/2, 18/1, 42/1, 33/1 within Sosnowo precinct, and on the plots of land: 848/1, 848/2, 835/1 and 853/1 within Banie 3 precinct,
- Phase II – “A complex of wind power plants Banie 1”, consisting of 24 wind power plants located on the plots of land No.: 88/7, 92/2, 95/1, 97/5, 314/12, 314/8, 314/6, 216/2, 330/6, 330/2, 330/4 within Lubanowo precinct, No.: 409/3, 409/4, 435/1, 417/2, 417/3 within Baniewice precinct, and No.: 180/3, 822/1, 822/2, 817/1, 174/2, 791/1, 810/1 and 180/4 within Swobnica precinct;
- Phase III – consisting in 2 wind power plants;
- Phase IV – consisting in 5 wind power plants.

The progress of respective phases of the undertaking is different. For the first two phases, the investor obtained decisions of the Gryfino Starost on the approval of construction design and granting building permit.

Pursuant to information provided by Wiatromill Spółka z ograniczoną odpowiedzialnością in Gdańsk, as the investor, the execution of the undertaking in phases is caused by a number of objective factors which were described by the investor in the following manner:

- Different course, and in the consequence, different duration of negotiations with the owners of the real properties to secure legal titles to the properties for the needs of the

investments in respective survey precincts, which causes that the contracts concerning respective groups of wind turbines are concluded on different dates (and obtaining legal titles to the real properties is the prerequisite for applying for building permit);

- The first phase of the undertaking is very complex and covers numerous activities, in particular: necessary division of the real properties, exclusion of land from agricultural produce, preparation and updating the maps for designing purposes, etc. Therefore, it is inevitable that the course and duration of the works on technical documentation is different, which causes that it is unreal to perform all these activities parallelly, over the same period of time, for all wind power plants (otherwise, it would considerably prolong and disorganise the execution of the undertaking);
- The large scale, and capital consumption of the undertaking determines the fact that it is financed in phases, with the obligation to settle previously completed phases before commencing further phases;
- Logistically complicated (negotiations, concluding agreements on the servitude of transfer in the form of a notarial deed, formal and legal issues associated with unregulated legal status of some of the real properties), a time consuming and costly, but necessary process is to obtain legal titles to the real properties on which the power and optical-fibre lines will run. Therefore, it is justified to obtain legal titles to the real properties to execute cable connections for respective groups of wind power plants, and not for the entire undertaking at one time (46 wind power plants).

In the opinion of the Head of Banie Commune, in the light of the circumstances specified by the investor, the distinguishment of the respective phases of the undertaking does not raise any doubts. Moreover, the nature of this undertaking makes its execution in phases possible.

The execution of the undertaking by Wiatromill Spółka z ograniczoną odpowiedzialnością in Gdańsk in phases is confirmed by obtaining respective decisions on the approval of the construction project and granting building permit for the respective phases, and so:

- Pursuant to the decision No. 115/2013 of 14th March 2013, reference No.: AB.6740.1.1.2013.LW, Gryfino Starost approved the construction project and granted building permit to Wiatromill Sp. z o.o. 80-307 Gdańsk, ul. Abrahama 1 A, covering the construction of the "Complex of wind power plants Banie 1", consisting of 13 (thirteen) wind towers with ENERCON E-92 turbines, 2.3 MW each/ building structure category – VIII/ located on plots of land: No. 127/5, 129/1, 132/3, 134/1, 139/2, 23/2, 18/1, 42/1, 33/1 within Sosnowo precinct, and No. 848/1, 848/2, 835/1, 853/1 within Banie 3 precinct;
- Pursuant to the decision No. 247/2013 of 27th May 2013, reference No.: AB.6740.1.11.2013.LW, Gryfino Starost approved the construction project and granted building permit to Wiatromill Sp. z o.o. 80-307 Gdańsk, ul. Abrahama 1 A, covering the construction of the "Complex of wind power plants Banie 2", consisting of 24 (twenty four) wind towers with ENERCON E-92 turbines, 2.3 MW each/ building structure category – VIII/ located on plots of land: No. 88/7, 92/2, 95/1, 97/5, 314/12, 314/8, 314/6, 216/2, 330/6, 330/2, 330/4 within Lubanowo precinct, No. 409/3, 409/4, 435/1, 417/2, 417/3 within Baniewice precinct, and No. 180/3, 822/1, 822/2, 817/1, 174/2, 791/1, 810/1 and 180/4 within Swobnica precinct.

Moreover, Wiatromill Spółka z ograniczoną odpowiedzialnością in Gdańsk, informed about the intention to apply for the decision on the approval of a construction project, and granting building permit concerning 2 wind power plants and cable connections of those power plants

(third phase). According to information provided by the investor concerning the fourth phase of the execution of the undertaking, it is necessary to obtain legal titles to real properties on which wind power plants and their infrastructure may be located.

Considering the above circumstances, the authority decided that the undertaking of Wiatromill Spółka z ograniczoną odpowiedzialnością in Gdańsk is executed in phases, as provided for in Article 72 paragraph 4 of the act of 3rd October 2008 on the provision of information on the environment and its protection, public participation in environmental protection and environmental impact assessments.

In the opinion of the Head of Banie commune, the conditions of execution specified in the Head of Banie Commune's decision dated 18th August 2009, reference number GK-7627/2/2008, have not changed. The characteristic of the undertaking, in particular the planned number of turbines, their parameters, the total capacity of the wind power plants, and location of the wind power plants remain unchanged. Therefore, there is no need to amend the decision on environmental conditions. All conditions specified in the decision on environmental conditions are still valid, and the investor, Wiatromill Spółka z ograniczoną odpowiedzialnością in Gdańsk, is obliged to observe those conditions under execution of the undertaking.

While issuing this decision, this authority also considered that the subject matter of the proceedings concluded with this decision were only the formal issues referred to in Article 72 paragraph 4 of the act of 3rd October 2008 on the provision of information on the environment and its protection, public participation in environmental protection and environmental impact assessments, so only the assessment whether the undertaking is executed in phases, and whether the conditions specified in the decision on environmental conditions have changed or not. Therefore, the subject matter of the proceedings was not to re-evaluate the grounds for granting the decision on environmental conditions. That matter was finally and validly settled by the decision on environmental conditions issued by the Head of Banie Commune dated 18th August 2009, case reference GK-7627/2/2008.

Therefore, it was decided as in the introductory part of this decision.

Instruction

The parties may appeal against this decision to Self-government Appeal Court in Szczecin, through the Head of Banie Commune within 7 days from the date of receipt of this decision.

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The Head of the Commune

Teresa Sadowska

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To:

1. Wiatromill Spółka z ograniczoną odpowiedzialnością in Gdańsk,
2. Parties to the proceedings, pursuant to Article 49 of the code of administrative proceedings
3. On file

[oblong stamp with the following reading]

I confirm that this a true copy of the original document.

24th October 2018

The Head of the Commune

Teresa Sadowska

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