

[The translation is based on a scanned document in *.pdf format, consisting of 18 pages. Upon the Client's request, only pages 1-15 are translated]

[Rectangular stamp of the issuing authority in the left upper corner of the page, with the following identification and contact information:

SAMORZĄDOWE KOLEGIUM ODWOŁAWCZE / LOCAL GOVERNMENT BOARD OF APPEALS

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10-547 Olsztyn

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Olsztyn, on [handwritten date: 6] June 2011

SKO-60-44/11

DECISION

Pursuant to Article 138 § 1(2) of the Act of 14 June 1960 - Code of Administrative Procedure (Journal of Laws of 2000, No. 98, item 1071, as amended) and Article 46a(1) and (7)(4), with reference to Article 46(1) and Article 56 of the Act of 27 April 2001 - Environmental Protection Law (Journal of Laws of 2008, No. 25, item 150, as amended), with reference to Article 153 of the Act of 3 October 2008 on Presentation of Information Concerning the Environment, Protection of the Environment, Community Participation in Environmental Protection, and Environmental Impact Assessment (Journal of Laws No. 199, item 1227, as amended), and § 3(1) (6), § 5 (2)(e) of Regulation of the Council of Ministers of 9 November 2004 concerning specification of types of projects likely to have a significant environmental impact and on specific eligibility criteria for projects which must be covered by an environmental impact report (Journal of Laws No. 257, item 2573, as amended), the Local Government Board of Appeals (*Samorządowe Kolegium Odwoławcze*) in Olsztyn, at a session on 29 April 2011, proceeding through:

Chairman	- Bogdan Muzyczuk
Members-	Izabela Oleksy - Piesik
	Patrycja Mordasiewicz

pursuant to the examination of an appeal filed by Danuta Nałęcz, running a business activity with the business name Centrum Biznesu Wschodniego PHU "U RYCHA" Danuta Nałęcz against the decision ref. GI.III.7627/12/08, issued on 24 May 2010 by the Mayor of Sępól, on refusal to issue a decision on the environmental conditions of consent to the execution of a project of construction of a set of 30 wind power plants,

Resolved

To repeal the contested decision and to define the following environmental conditions of consent to the execution of the above specified project:

1. Project type and location.

The project consists of the erection of a set of 30 x 2MW Enercon E-82 wind turbines with GPZ (main power supply point) on the following land plots:

- 217/2, 256/3, 337/4 in cadastral district Różyna, commune: Sępól

- 254, 27/10, 30/37, 31 in cadastral district Śmiardowo, commune: Sępól,

and the construction of a medium voltage cable connecting the wind turbines with the main power supply point, and the construction of assembly yards and temporary process roads for the duration of the construction works, including exits from communal and county roads, on land plots nos.

- 328, 337/10, 300, 301/1, 301/2, 301/3, 303, cadastral district: Różyna, commune: Sępól

- 119, 126/1, 126/2, 127, 143 in cadastral district Kinwągi, commune: Sępól

- 19/1, 24/42, 28/3, 29, 31, 101 in cadastral district Śmiardowo, commune: Sępól

2. Land use requirements for the construction and operation phase

2.1 Land use during the construction and operation phase cannot deteriorate the status of the natural environment, nor have any adverse effect on adjacent areas;

2.2. The topsoil layer needs to be removed before commencement of earth works on foundations, excavations, temporary

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- and final roads, to be used elsewhere according to its functional properties;
- 2.3. Upon completion of the construction phase, the original condition of the project area should be reinstated;
- 2.4. Management of soil masses produced during the civil works is required;
- 2.5. The project will be executed in a manner consistent with the aesthetic properties and spatial order in the landscape, taking into account the characteristics of the adjacent site;
- 2.6. Waste produced as a result of the construction, operation, repair or liquidation of wind power plants should be handled in accordance with the Waste Act of 27 April 2001 (Journal of Laws of 2001, No. 62, item 628, as amended). Any produced waste should be stored in designated and secured locations. Hazardous waste should be stored in leakproof containers before disposal. Waste will be transported from temporary storage areas with the use of the waste collection company's vehicles;
- 2.7. The specific requirements applicable to civil works carried out near or at points of crossing/collision with water engineering lines/units should be agreed with the Water Engineering and Water Lines/Units Management Company in Olsztyn, Branch in Bartoszyce (*Zarząd Melioracji i Urządzeń Wodnych w Olsztynie Oddział w Bartoszycach*);
- 2.8. A Water Law permit decision must be obtained for building wind farm power cable and telecommunication cable lines at the river crossing, with regard to the respective scope of works;
- 2.9. The contemplated project area is located outside the cultural heritage and historical asset protection areas, and no documented archaeological sites were discovered within the area of the land plots under consideration;
- 2.10. If any unrevealed relics of material culture are discovered on the site covered by the decision, during the earth works on the construction of foundations for wind turbine towers, of temporary process roads, assembly yards and power lines, the works shall be withheld and the site should be presented for an archaeological survey - Article 32 of the Historical Assets Protection and Maintenance Act of 23 July 2003 (Journal of Laws No. 162, item 1568, as amended);
- 2.11. Civil works should be carried out from 6:00 a.m. to 10:00 p.m., so as to reduce temporary noise peaks produced by working construction machinery and vehicles supplying construction materials and serving the construction site. The level of noise produced during machine operation should not exceed the permitted limits. Assembly works on wind power plant towers and turbines should be carried out before the return spring flights of lesser spotted eagles, i.e. by the end of April, and/or after their autumn migration as of September.
- 2.12. Heavy transport vehicle traffic has to be properly managed for the duration of construction, concrete transport for foundations and transport of wind turbine structural components.
- 2.13. The Investor is required to implement such engineering, technological and organizational solutions that will prevent any violation of environmental quality standards by the operation of the contemplated project outside the area to which the operator holds a valid legal title.

3. Environmental protection requirements to be incorporated in the building permit design.

- 3.1. The building permit design should comply with the provisions of the Act of 27 April 2001 – Environmental Protection Law (Journal of Laws of 2008, No. 25, item 150, as amended), and

Regulation of the Minister of the Environment of 14 June 2007 concerning the permissible noise levels in the environment (Journal of Laws No. 120, item 826), including determination of the locations of any objects that may cause violation of the permitted limits.

3.2. The contemplated wind power plants should be identified in accordance with the Regulation of the Minister of Infrastructure of 25 June 2003 concerning the method of identifying and marking aviation obstacles (Journal of Laws of 2003, No. 130, item 1193, as amended).

3.3 To mitigate the impact of high-rise buildings on the landscape, appropriate colors shall be used, and any advertising display structures will not be allowed.

3.4. The wind farm's internal power system should be built as an underground cable installation.

3.5. The Investor is required to install state-of-the-art bird control equipment or to provide automated WTG shutdown in particularly hazardous time periods, which will be available at wind farm commissioning and upgraded thereafter according to the current technology advancements.

4. Requirements concerning prevention of industrial accident consequences, with respect to projects classified among establishments that present a threat of a major failure.

The contemplated project does not qualify as an establishment presenting a threat of a major failure as specified in the Regulation of the Minister of Economy of 9 April 2002 concerning the types and quantities of hazardous substances the presence of which qualifies an establishment as an increased risk or high risk establishment in terms of major failures.

5. Transborder environmental impact requirements.

No transborder environmental impact risks were determined, whether during the project construction or operation phase.

6. Restricted use area determination requirements.

The contemplated project does not qualify among the projects enumerated in Article 135(1) of the Act of 27 April 2001 – Environmental Protection Law (Journal of Laws of 2008, No. 25, item 150, as amended) that would require determination of a restricted-use area.

7. Wind farm monitoring requirements.

The investor is required to carry out post-construction monitoring in the following ranges:

7.1. Impact on birds.

7.1.1. Ongoing monitoring of birds (after the commissioning of the project), covering:

- The autumn migration period,
- The winter season,
- The spring migration, breeding and post-breeding periods.

The scope of monitoring should be extended with special observation of white stork behaviors, so as it is possible to transfer technical bases of their nests to a safer location in the event of any unsafe behaviors among specified couples.

7.1.2 According to the recommendations concerning follow-up monitoring, bird monitoring should commence during the initial period of wind turbine erection (the first 3-4 wind turbines) and any remarks that may transpire from such observations should be followed at the further stages of construction.

7.1.3 The basic 3-year follow-up monitoring should be the two initial years of wind farm operation, and one more year constituting the third, fourth or fifth year of wind farm operation. A decision regarding the third year of observation can only be taken after the analysis of the data collected during the initial period.

7.1.4. The follow-up monitoring methodology should cover the preliminary monitoring range + the controls focused on discovering any collision victims. Automated methods should be used as far as reasonably possible, provided that such methods are available by that time.

7.2. Impact on bats.

7.2.1. Ongoing monitoring of bats (after the commissioning of the project), covering bat activity throughout the yearly cycle.

7.2.2. Bat monitoring should commence during the initial period of wind turbine erection (the first 3-4 wind turbines).

7.2.3. The basic 3-year follow-up monitoring should be carried out in accordance with the guidelines and methodology specified in the Temporary Guidelines for the Assessment of Wind Turbine Impact on Bats (*Wytyczne Dotyczące Oddziaływania Elektrowni Wiatrowych Na Nietoperze*, rev. II, December 2009)

7.3. Acoustic safety and comfort.

Monitoring of noise emissions to the environment, including noise emission measurements at the observation points determined through the analysis in the Report, for varying wind conditions and during the particular seasons.

8. Follow-up analysis presentation requirements.

The Investor is required to present a follow-up analysis upon completion of each project execution stage, based on the findings of the monitoring procedures recommended to determine the actual impact of the WTG set on birds, bats and the acoustic climate, including any proposed measures to minimize the adverse effects.

9. The whole project characteristics is an integral part of the Decision, in accordance with Article 56(3) of the Act - Environmental Protection Law. The characteristics are enclosed to the Decision as Appendix 1.

EXPLANATORY MEMORANDUM

As it transpires from the case files, Danuta Nałęcz, running a business activity with the business name Centrum Biznesu Wschodniego PHU "U RYCHA" in Markajmy, filed an application dated 8 July 2008 to the Mayor of Sępopol for issuing a decision on the environmental conditions of a construction project concerning a wind farm of 30 x 2 MW Enercon E-82 wind turbine generators with the main power supply point (GPZ), roads, assembly yards, power and telecommunication service lines. An environmental impact report was appended to the application.

Through the contested decision, the first instance authority refused to issue a decision on environmental conditions of consent for the execution of the above mentioned project. The explanatory section states that the State Sanitary Inspector of the County in Bartoszyce approved of the project execution conditions in a ruling of 14 October 2008. However,

the Regional Director of Environmental Protection in Olsztyn refused to give such an approval in the ruling of 17 December 2008, ref. RDOŚ-28-WOPN-6632-0003-09/08/tb, claiming that the environmental impact report failed to meet a number of criteria. The explanatory section of the Decision further specifies the measures undertaken in order to supplement the report with the results of extended bird surveys and opinions assessing the report consistency with the ruling setting out the scope of a project environmental impact report. It was noted that on the above-mentioned basis, a decision was passed on 10 March 2010, determining the environmental conditions of consent to the project execution, yet that decision was repealed in the appeal procedure by the Local Government Board of Appeals in Olsztyn and the case was transferred for re-examination to the first level authority, considering the above mentioned ruling of the Regional Director of Environmental Protection with a refusal to approve of the project execution.

In her appeal against that decision, Danuta Nałęcz, representing Centrum Biznesu Wschodniego PHU "U RYCHA" of Markajmy, further appealed against the ruling of the Regional Director of Environmental Protection in Olsztyn, of 17 December 2008, ref.: RDOŚ-28-WOPN- 6632-0003-09/08/tb, with a refusal to approve the project execution, on the grounds of Article 142 of the Code of Administrative Procedure.

She claimed in the appeal that the ruling constituting the reason for a negative decision was passed in violation of:

1. Article 33(1) of the Nature Protection Act of 16 April 2004 through making an unreasonable and frivolous assumption, not supported by evidence, that the contemplated project might lead to significant deterioration of natural habitats and sites for plant and animal species, or significantly and adversely affect any species for the protection of which a "Natura 2000" area was set out;
2. Article 52(1) of the Act of 27 April 2004 - Environmental Protection Law, by exceeding the limits of the legally permitted claim regarding the content of an environmental impact report, particularly section 12 of the above mentioned provision (unauthorized demand for the party to provide the yearly monitoring findings, whereby such an obligation is not prescribed by law or by the ruling of the Governor of Warmińsko-Mazurskie Province (*Wojewoda Warmińsko-Mazurski*) of 13 August 2008, setting out the scope of the report;
3. Article 7, Article 10, Article 81 with reference to Article 106 of the Code of Administrative Procedure, by failing to duly clarify the facts of the case and by failing to enable the party to take an active part in the proceeding.

The party requested that the contested decision be amended and that the authority rule to approve of the environmental conditions of consent to the execution of the project under consideration. It is stated in the explanatory notice that no protests were allowed against the ruling of the Regional Director of Environmental Protection in Olsztyn in the course of the administrative proceedings, and hence the ruling could only be contested through an appeal against the decision of the first instance authority, pursuant to Article 142 of the Code of Administrative Procedure. In the ruling thus contested, the collaborating authority did not determine any possible major adverse impact of the contemplated project of the environment. The refusal to approve was only based on a dispute with the findings made by the author of the report (prof. Busse), whereas the judgments presented by the authority were unfounded. Moreover, the authority demanded that the report be supplemented with contents outside the scope of that report. Specifically, the authority demanded that the party present a yearly monitoring database, where such a requirement was neither prescribed by law nor ruled by the Province Governor with regard to the report scope. The ruling further stated the following: 'in the opinion

of the authority, by the time of completion (of the monitoring) it is not possible to present the complete findings that could be the basis for determining the potential impact of the project on the environment.' The complete monitoring results can only be presented upon completion, however within the time limit set in Article 52(1)(12) of the Environmental Protection Law. Further in the appeal, there is a presentation of a series of violations of the administrative procedure by the collaborating authority, and a claim to the effect that whereas protests are not allowed against the ruling of the regional director of environmental protection, it cannot be binding without limitations upon the authorities appointed to pass a decision on the matter. This would constitute a negation of the actual role of that authority as a collaborator, in its procedural position prescribed in Article 106 of the Code of Administrative Procedure. For this reason, the position of the collaborating authority should be subject to unrestricted assessment of evidence. It was further emphasized that, notwithstanding the invalidity of the objections contained in the ruling to refuse approval, they were subsequently clarified and supplemented, and the report - as it transpires from the opinions dated 26 January 2010 and 10 February 2010, respectively - covered the entire statutory scope required for the contents of such a report. Hence, if the negative decision was based solely on the lack of approval of the project execution, this should be amended as a consequence of re-examination of the evidence in the proceeding at the particular level, and the ultimate resolution should account for the direction of the party's application that triggered the opening of the administrative proceeding.

Through a decision of 14 June 2010, ref. SKO-60-51/10, the Local Government Board of Appeals repealed the decision of the first instance authority and ruled on the essence of the matter by determining the environmental conditions of consent to the execution of the project. The Board concluded that the ruling regarding the refusal to approve by the Regional Director of Environmental Protection was not binding without limitation and could be contested pursuant to the procedure of Article 142 of the Code of Administrative Procedure. With reference to the arguments presented in the ruling of the authority refusing approval, the Board noted the body of evidence gathered in the course of proceedings, particularly the expert opinions.

That decision was contested by way of a protest lodged with the Provincial Administrative Court by Maria Beziuk-Iwańczyk and Stanisław Iwańczyk, which was accepted through the judgment of 9 December 2010, ref. II SA/OI 756/10. The Court admitted that the outcome of an auxiliary proceeding cannot ultimately determine the resolution given in the primary proceeding, without the option to control the former. However, the reasons for the decision were considered inadequate because the appeals authority 'actually failed to verify the case behind the resolution' and did not determine the case for the 'actual claims of the approving authority, whether or not the documents gathered afterwards nullified these claims and if so, to what extent and with what effect upon the resolution.' According to the Court, the explanatory part of the decision further lacked information about the participation of the public in the proceedings.

In its re-examination of the case in the appeal proceeding, the Board took the following into consideration:

According to Article 46(1) of the Act - Environmental Protection Law (in the wording effective by 15 November 2008, applicable to the case under consideration), execution of the contemplated project that may have a major impact on the environment, as defined in Article 51(1)(1) and (2), or another project which is not directly associated with and does not directly transpire from the protection of a Natura 2000 site, if it is capable of having a major impact on that site, is only permitted upon obtaining a decision on the environmental conditions of project execution approval. Before passing such a decision, the competent authority

agrees on the project execution terms and conditions with the competent environmental protection authority and the Province Governor, pursuant to Article 48(2)(1) and (3). As of the date of entry into force of the Act of 3 October 2008 on Presentation of Information Concerning the Environment, Protection of the Environment, Community Participation in Environmental Protection, and Environmental Impact Assessment (Journal of Laws No. 199, item 1227, as amended), the competent authority is the regional director of environmental protection. No protests can be lodged against the rulings issued by that authority, in line with Article 153 of the recently quoted Act. Hence, if no protest options are prescribed by the applicable legislation, the ruling cannot be established as finally binding. Otherwise, the collaborating authority in a single-instance proceeding would actually decide whether or not a specific project can be executed. The function of the actual decision-making authority would be irrelevant.

In accordance with Article 142 of the Code of Administrative Procedure, if no right to protest is prescribed with respect to a decision, the party may only protest such a decision through filing an appeal. The right to contest a negative ruling by the regional director of environmental protection by filing an appeal is also established by the Regional Director of Environmental Protection in Olsztyn and the Chief Director of Environmental Protection; the two authorities were filing requests to the Board for determination of invalidity of the decision setting out the environmental conditions of approval of project execution by the first instance authority. The ruling members of the Board concur with the position according to which in the course of instance-specific control, the appeals authority is entitled to assess the case for a ruling issued by a collaborating authority, obviously only if that ruling is contested in an appeal.

The ruling of the Regional Director of Environmental Protection in Olsztyn, contested in an appeal, dated 17 December 2008, ref. RDOŚ-28-WOPN-6632-0003- 09/08/tb, refusing to give approval of the execution of the project, implicated the following nonconformities in the report produced upon the investor's instruction:

1. Assessment of observation of birds for only 40.5 hours of 11 days of migration (the autumn 2008 season) and for the subsequent season (spring/summer) during 27 days (17 visits);
2. The author omitting a spring migration report;
3. Omission of dwelling and preying areas of *Falconiformes*, including the lesser spotted eagle;
4. Failure to examine the use of the farm location area by white stork during the breeding and post-breeding period;
5. Lack of reference to other groups of animals, mainly bats;
6. Practical uselessness of the applied collision estimation methodology, identical with the Band approach,
7. Inadequate assessment of the significance of SPAs in terms of protection priority for the density of white stork and the density of lesser spotted eagle;
8. Missing proper habitat assessment as prescribed by Article 6 of the Habitat Directive.

The ruling referred to above was numerously targeted by the investor with the intention to eliminate or alter it. Bird surveys were being carried out when such measures were undertaken upon the instruction of Danuta Nałęcz CBW, of which the Regional Director of Environmental Protection was notified. As a consequence, the following documents were obtained:

1. Bird supplement authored by prof. Przemysław Busse to the Environmental Impact Report - Birds, in two parts: Commentary to the bird monitoring results of 06-12-2008, Estimation methodology of 15-07-2008; appendix to the Report
2. List of observations based on the notes taken by Paweł Kaźmierski during June-October 2007 and March-June 2008 as an appendix to the Environmental Impact

Report; appendix to the Report,

3. Letter from prof. Busse of 22-05-2009, sustaining the assessment dated 21-12-2008; appendix to the Report,
4. Analysis of potential threats to birds caused by the contemplated construction of "Sępopol" Wind Farm, authored by prof. Busse, dated 24-06-2009, concerning observations for the period from 27-08-2008 to 27-05-2009; appendix to the Report,
5. Final assessment of potential threats to birds caused by the contemplated project, authored by prof. Busse, dated 24-11-2009, concerning observations for the period from 27-08-2008 to 18-08-2009; appendix to the Report,
6. Bird collision estimation method authored by prof. Busse, dated 20-11-2009; appendix to the Report,
7. Opinion on the bird collision estimation methodology authored by dr. Traxler, dated 30-11-2009; appendix to the Report,
8. Letter from prof. Busse - Remarks to the ruling of the Regional Director of Environmental Protection (of 17-12-2008), dated 21-12-2008,
9. Letter from prof. Busse concerning the opinion of dr. Chylarecki of 14-01-2009.

Further opinions were also pursued to assess the evidence in the course of the proceedings. These specifically included the assessment of consistency of the gathered evidence, including the Environmental Impact Report for the project with the Final Assessment of the yearly bird monitoring for the project location and with the ruling dated 26 August 2008 no. GI.III.7627/12/08, passed by the Mayor of Sępopol, defining the scope of the environmental impact report for the project. As a result of these additional measures, opinions were obtained from the following authors:

1. Paweł Oglęcki, PhD, Warsaw University of Life Sciences (SGGW), Faculty of Environmental Engineering and Formation;
2. Patryk Rowiński, D.Eng., Warsaw University of Life Sciences (SGGW), Faculty of Forestry;
3. Wojciech Zyska, D.Eng.; Przemysław Zyska, M.Eng., Szczecin;
4. Jakub Hankiewicz, ECOINVENT, Warsaw;
5. Andrzej G. Kruszewicz, D.Eng., Warsaw City Zoo;
6. Andrzej Jamiołkowski, MSc, Environmental Noise Measurement Laboratory, Olsztyn;
7. prof. Piotr Tryjanowski, PhD, Poznań University of Life Sciences, Poznań;
8. Monika Górawska, M.Sc., chiropterology expert, Poznań;
9. prof. Tadeusz Stawarczyk, Wrocław;

The documents and supplements specified are sufficient for a subject-matter response to the claims presented in the ruling to refuse approval, and such response follows below.

1. Bird monitoring was extended to cover the period from 27 August 2008 to 18 August 2009 at Różyna and Spurgle vantage points (see appendix 8 to the Environmental Impact Report of November 2009, pp. 9-14). It was a total of 200 hours of observation across 48 days (see appendix 9 to the November 2009 report, p. 4).
2. Spring migration was the object of observation in Różyna on: 14 and 27 March; 11 and 26 April; 8, 17, 27 May; 6, 18, 30 June 2009; in Spurgle on: 6 and 20 March; 5 and 18 April; 2, 12, 21 May; 1, 13, 24 June 2009 (see the documents referenced above under point 1).
3. It is stated on page 11 of the Final Assessment of the potential threats to birds caused by the contemplated construction of the "Sępopol" Wind Farm (including the yearly

monitoring), appendix 9 to the November 2009 Report, that the lesser spotted eagle (*Aquila Pomarina*) was observed 13 times throughout the breeding season. Known nests of this species are located within 1.5 to 8 km from the vantage point. Based on the infrequent appearance and range of flying heights, the area under consideration does not seem to be an important feeding area. The eagles' wariness about wind turbines, known from literature, implies that the wind farm will be bypassed by these birds, without excessive deterioration of their feeding options. The results of lesser spotted eagle flight monitoring, specifying the dates and times of observation, are shown on page 37 of appendix 8 to the Report. The summary on pages 16 and 17 of appendix 9 states that for the lesser spotted eagle, which is one of the most essential species of the "Ostoja Warmińska" site, for the two vantage points of Różyna and Spurgle, the risk of collision is very low, at 0.04 and 0.19 specimen, respectively, totaling 0.23 specimen a year for the entire wind farm (based on a very cautious assessment based on calculations involving a proprietary avoidance factor - see 'Bird Collision Estimation Methodology', appendix 10 to the Report), or even at 0.02 and 0.07, respectively, yielding a total of 0.09 specimen, if the avoidance factor given in Fernley's latest paper (2009) is used. The author of the document claims that the potential losses presented therein could not in any significant manner affect the lesser spotted eagle population in the "Ostoja Warmińska" bird area. Information about observations of other *Falconiformes*, such as buzzards and sparrowhawks, is presented on p. 12 of appendix 9 to the Report.

4. The impact of the wind farm on the status of storks is presented on pp. 12 and 13 of appendix 9 to the Report. It is claimed there that 15 nests of these birds were discovered within the broadly defined vicinity of Sępopol Wind Farm (those used during the recent breeding season and those currently unused). No nest has been found on the contemplated wind farm area, and the minimum distance is at least 500 m from the nearest turbine. In the assessment of the situation with reference to biotopes, it is stated that the groups of turbines identified as ROZ (Różyna) on the map and the southern section of the SPU (Spurgle) group are not a risk of collision for storks during their breeding period. Storks nesting in Spurgle, Kierz and Różyna have sufficient feeding areas around to avoid regular flights towards the northern group of wind turbines (SPU). Storks nesting in Śmiardowo have alternative feeding grounds towards the south-east. In the worst case scenario, should subsequent observations imply the storks' regular interest in the wind farm site, prevention and mitigation measures should be implemented, such as changing the layout of the man-made supports for their nests. In the summary, the author of the paper claims that it is highly probable that the wind farm will be adequately safe for storks; the estimations for the entire wind farm are at 1 to 2.5 possible collisions each year, which is a small value compared to fatalities on electricity lines. It is further noted on p. 17 of the appendix that the potential losses within the entire stork population in the protected area are at 0.05% a year, which is practically unnoticeable.
5. A description of the survey, observation and impact of the project execution on bats is presented on pages 55-66 of the November 2009 Report. This matter was also assessed by Monika Górawska, chiropterology expert, in her opinion of 18 September 2009, where she states that the wind farm location does not cover any bat protection areas. Screening activities were undertaken in various weather conditions, at the turn of phenological summer and autumn, which is when young bats are fully capable of flying and they

leave the breeding colonies by themselves, ready to commence the autumn migrations, and proved that the area chosen for the wind farm location is not valuable in terms of natural resources for bats. The characteristics of the developments in the neighborhood are convenient for bat hiding, yet the layout of turbines is consistent with the requirement to keep a minimum distance of 500-600 m away from any buildings/development. The results derived from the screening rule out any major negative impact of the Sępopol Wind Farm location on essential species.

6. The relevance of the collision estimation methodology applied in the November 2009 report was assessed by environmental protection experts (see Wojciech Zyska, D.Eng., and Przemysław Zyska, M.Eng., Opinion dated 4 February 2010). They state in the conclusion of the opinion that the analytic method used to determine the consequences of the contemplated wind farm's impact on birds, based on yearly monitoring results analyzed on the basis of an estimation method, is an objective method and the best available method applied in Poland at the moment. In his opinion dated 12 February 2020, Patryk Rowiński, D.Eng., from the Faculty of Forestry of the Warsaw University of Life Sciences states that it was possible to precisely assess the project location on the basis of the collision estimation method, recognized among the most objective methods and gaining popularity in Poland and worldwide, on the results of preliminary monitoring. The negative opinion issued on 17 August 2009 by prof. Piotr Tryjanowski, PhD, from the Adam Mickiewicz University of Poznań, was verified by the author following the supplementation of the Report, in his opinion of 7 February 2010. Prof. Tadeusz Stawarczyk, PhD, also partially modified his original negative opinion on the bird monitoring results processing methodology after the Report was supplemented (see: opinion of 18 January 2010). It should be reminded that the detailed description of the bird collision estimation methodology is enclosed to the November 2009 Report as Appendix 10.
7. The "Ostoja Warmińska" Special Protection Area for birds, identified with code PLB 280015, was proposed as a Natura 2000 site primarily for the purpose of protecting a single species - the white stork, with the highest numbers and density in Poland. There is also a large population of the lesser spotted eagle. The impact of the operation of the Sępopol Wind Farm on the two species, and the threats involved, are presented under points 3 and 4 above.
8. Article 6 of Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora (OJ L 206/7) does not require an absolute ban on executing projects which are not directly connected with or necessary to the management of special areas of conservation. Point 3 states that any project of this type shall be subject to appropriate assessment of its implications for the site in view of the site's conservation objectives. National authorities shall agree to the project only after having ascertained that it will not adversely affect the integrity of the site concerned. The Environmental Impact Report for the project defined as the construction of the Sępopol Wind Farm, Różyna and Śmiardowo districts, November 2009 revision, contains appendix 9 with the final assessment of potential threats for birds. Professor Przemysław Busse, PhD, stated on p. 17 in the summary of the assessment that a wind farm located on the site would not constitute a major collision threat for birds. Both fields scored as average (Spurgle) or good (Różyna). The wind farm is not a major threat for species, particularly for the lesser spotted eagle or the stork, for which the "Ostoja Warmińska" Natura 2000 site was designed, nor for any other bird species. It does not adversely affect the protection system integrity or protected sites in the broader neighborhood, as these are located far beyond the possible impact range.

All the claims specified in the ruling by the Regional Director of Environmental Protection of 17 December 2008, refusing to approve the conditions of execution of a wind farm in Sępopol commune, have been clarified. The concerns expressed in the final section of the above referenced ruling, to the effect that the presented materials did not exhaustively cover the elements of the natural environment at the contemplated project location, as would be necessary to determine the environmental impact of that project, specifically on the Natura 2000 site, should be resolved on the basis of the data transpiring from the additional evidence and opinions gathered. The authority that issued the ruling envisaged an option to provide missing information in the following phrase: “In the opinion of the authority, the submission needs to be supplemented in its major part...”.

The November 2009 revision of the Report meets the requirements specified in the ruling ref. GI.III.7627/12/08 by the Mayor of Sępopol, dated 26 August 2008, requiring the investor to produce a report. It should be noted here that all of these conditions were implied in the ruling of 13 August 2008, ref. ŚR.III.6638-103-18/08, issued upon the authority of the Governor of Warmińsko-Mazurskie Province by the Provincial Nature Conservator with regard to passing on opinion on the necessity to produce a report. The following details should be presented with regard to the supplemented Report’s compliance with the rulings:

1. The scope of the Report, of which point 1 covers the rulings of the Mayor of Sępopol: “description of the natural elements of the environment covered by the scope of the predicted impact of the planned project (nature survey of the site, description of the fauna, flora, the nearest existing and contemplated protection areas and possible impact of the project on these areas)”, is discussed in the November 2009 Report under points: 4.1; 5.2.10.1; 5.2.10.2;
2. The scope of the Report of which point 2 covers the rulings of the Mayor of Sępopol: “specific indication of the contemplated project location on the map, with reference to Natura 2000 sites and other valuable natural habitats”, is discussed in the November 2009 Report, appendix 8 (Maps);
3. The scope of the Report, of which point 3 covers the rulings of the Mayor of Sępopol: “landscape analysis (impact on landscape value, introduction of spot height features being the towers and the wind turbines, analysis of the system visibility from specified distances, preferably on the basis of a numerical site model, using GIS technology)”, is discussed in the November 2009 Report under point 6 and appendix 5, as well as point 5.2.10.2 and appendix 8, photos A-B, C-D, E-F,
4. The scope of the Report, of which point 4 covers the rulings of the Mayor of Sępopol: “presentation of the methodology of preliminary nature analysis for the wind farm project location, within the scope of preliminary monitoring”, is discussed in the November 2009 Report, appendix 10 “Bird Collision Estimation Methodology” of 20-11-2009;
5. The scope of the Report, of which point 5 covers the rulings of the Mayor of Sępopol: “a list of all bird species from Annex 2 to Regulation of the Minister of the Environment of 21 July 2004 (Journal of Laws No. 229, item 2313) concerning Natura 2000 special protection areas for birds, which are present in and around the contemplated project area (probably breeding,

feeding)”, is discussed in the November 2009 Report, respective paragraphs under point 5.2.10.2, in appendix 8, items: Şepopol- tables ROZ, Şepopol- tables SPU, and in appendix 9 with associated exhibits,

6. The scope of the Report of which point 6 covers the rulings of the Mayor of Şepopol: “description (survey) of species from Annex 1 to the Bird Directive, located in and around the contemplated project site, and the impact of the project on these species”, is discussed in the November 2009 Report in the respective paragraphs of point 5.2.10.2, in appendix 8 under items: Şepopol- species ROZ, Şepopol- species SPU,
7. The scope of the Report, of which point 7 covers the rulings of the Mayor of Şepopol: “characteristics and occurrence of migrating fauna all year, including the exact routes, directions and heights of animal movements in a yearly cycle, the relationship between bird presence and habitats in terms of resting and feeding in temporary habitats, followed by spring migration (end of February to end of May), autumn migration (mid-July to end of November), resting and feeding during the winter season, and possible breeding (from the beginning of March to mid-July)”, is discussed in the November 2009 report, point 5.2.10.2, in appendix 8 under items: Şepopol- fig. ROZ, Şepopol - fig. SPU, and in appendix 9 with exhibits;
8. The scope of the Report, of which point 8 covers the rulings of the Mayor of Şepopol: “the impact of the project on animal migration routes, mainly birds, and their resting/feeding sites during the seasonal migrations”, is discussed in the November 2009 Report, appendix 9 “Final Assessment of the potential threats for birds caused by the contemplated construction of “Şepopol” Wind Farm, Şepopol commune, accounting for the yearly monitoring,
9. The scope of the Report of which point 9 covers the rulings of the Mayor of Şepopol: “operation of a wind turbine field as an ecological barrier”, is discussed in the November 2009 Report, point 8;
10. The scope of the Report, of which point 10 covers the rulings of the Mayor of Şepopol: “a list of all natural habitats, plant and animal species enumerated in the Annexes to Regulation of the Minister of the Environment of 16 May 2005 concerning the types of natural habitats and the plant and animal species requiring protection in the form of determination of Natura 2000 sites (Journal of Laws No. 94, item 795) located in the contemplated project area”, is discussed in the November 2009 report, point 5.2.10.1, point 5.2.10.2, and in appendix 8;
11. The scope of the Report of which point 11 covers the rulings of the Mayor of Şepopol: “impact of the project on future land use”, is discussed in the November 2009 Report, point 6 and point 8;
12. The scope of the Report of which point 12 covers the rulings of the Mayor of Şepopol: “impact of the project in combination with other wind farms located nearby on the integrity of Natura 2000 sites”, is discussed in the November 2009 Report, point 5.2.10.2 and appendix 9;
13. The scope of the Report, of which point 13 covers the rulings of the Mayor of Şepopol: “expected impact of the project on the elements of the Natura 2000 ecological network (potential indirect or direct impact of the contemplated project on the condition of natural habitats and habitats of plant and animal species for which Natura 2000 sites were defined or proposed; assessment of the consequences of setting up a wind farm for the continuity of existence of Natura 2000 sites, possible

- major impact of wind farms on species for which Natura 2000 special protection areas are defined or proposed, the impact of other factors or elements connected with the operation of power generators on the Natura 2000 system)”, is discussed in the November 2009 Report, point 5.2.10.2 and appendix 9;
14. The scope of the Report of which point 14 covers the rulings of the Mayor of Sępopol: “analysis of project execution alternatives that would avoid any adverse effect on the integrity of the Natura 2000 site”, is discussed in the November 2009 Report, point 7, point 5.2.10.2 and appendix 9;
 15. The scope of the Report of which point 15 covers the rulings of the Mayor of Sępopol: “information about any project collisions with protected elements of the natural environment”, is discussed in the November 2009 Report, point 8;
 16. The scope of the Report of which point 16 covers the rulings of the Mayor of Sępopol: “description of the anticipated measures to minimize and mitigate the project’s adverse effects on the environment”, is discussed in the November 2009 Report, point 9, point 5.2.10.2 and appendix 9;
 17. The scope of the Report of which point 17 covers the rulings of the Mayor of Sępopol: “description of the project execution during the construction and operation phase, with the monitoring options”, is discussed in the November 2009 Report, point 14 and point 5.2.10.2.

Hence, the final November 2009 revision of the Report is consistent with the scope determined for the report in the ruling of the Mayor of Sępopol of 26 August 2008, which implies that the party has fully complied with the obligations imposed thereon to the extent transpiring from the administrative act. Moreover, the report is consistent with the statutory scope of an environmental impact report for the project under consideration in terms of quantity, as per Article 52(1)(1)-(12) of the Act of 27 April 2001 - Environmental Protection Law (Journal of Laws of 2008, No. 25, item 150, as amended). It should be further noted that the Report submission contains the remaining items specified under points 13-16 of the above referenced provision of Article 52(1) of the same Act of law, specifically:

1. To the extent transpiring from point 13 - no difficulties were noted that would transpire from technology deficiency or gaps in contemporary knowledge encountered in the process of producing the Report;
2. To the extent transpiring from point 14 - a summary presented in non-specialized language of the report information, with regard to every part of the report, is included in chapter 1.0, p. 3;
3. To the extent transpiring from point 15 - the name of the author(s) of the report is presented on the cover page;
4. To the extent transpiring from point 16 - the sources of information used as a basis for the elaboration of the report are included in chapter 16.0, p. 81.

The above specification is fully sufficient to determine the compliance of the Report submitted by the party with the ruling of the Mayor of Sępopol of 26 August 2008 and Article 52(1) of the Act of 27 April 2001 - Environmental Protection Law, while the body of evidence regarding possible major adverse impacts of the contemplated wind turbines on the environment proves that no such impacts would occur.

The project under consideration is a pro-environmental project in which electricity is produced from renewable sources without any contaminating emissions to the environment,

located in unenclosed farmland areas which are not particularly attractive for birds in terms of breeding.

The project is perfectly harmonized with the 1997 Kyoto Protocol and the preceding UN Convention, with the objective of greenhouse gas emission reduction by 2012 (particularly through the use of renewable energy sources from wind), and in accordance with the Brussels Summit of 29-30 October 2009 (the European Council set a 30% emission reduction target by 2020 against the 1990 baseline); with the EU Directive of 09.12.2008 on renewable energy under the climate and energy package, where 1/3 of all electricity must be derived from renewable energy sources (including wind) by 2020; with the Substances Depleting the Ozone Layer Act of 20 April 2004; and with the principles of Poland's energy safety.

The project is an implementation of the statutory claim of sustainable development/environmental protection in spatial development. The Spatial Development Conditions and Directions Study of the Town and Commune of Sępólno (*Studium Uwarunkowań i Kierunków Zagospodarowania Przestrzennego Miasta i Gminy Sępólno*) of 28 April 2005 (Resolution XX/127/05 of the Town and Commune Council), the areas constituting the cadastral district of Różyna and district of Śmiardowo are designed for construction of wind power plants.

The reasons of the Decision should be further extended with information regarding community participation in the procedure, in accordance with Article 56(8) of the Act - Environmental Protection Law. The community was notified of the submission by Danuta Nałęcz and commencement of the administrative procedure in the announcement dated 10 July 2008. It was communicated to the public by way of publication in Biuletyn Informacji Publicznej Miasta Sępólno and displaying on the notice board of Sępólno Municipal Office, the Różyna and Śmiardowo Villages, from 10 July to 30 July 2008. All those interested had the opportunity to view the materials and to lodge their remarks, requests or objections for a period of 21 days. The public were notified in the 25 September 2008 announcement of the presentation in a public database of the request opening the procedure, with the right to file requests and remarks from 26 September to 16 October 2008. Other measures undertaken in the course of the procedure were communicated to the public in the same form. Anyone interested in the outcomes of the procedure had the opportunity to take an active part in all the process measures. The public were informed of the decisions of the appeals authority through announcements published on the BIP web page of the Local Government Board of Appeals and displayed in locations used customarily for public announcements in the territory of Sępólno Commune. It should be emphasized that the Local Government Board of Appeals was not undertaking any evidence-related measures, basing entirely on the body of evidence gathered by the first level authority. The level of participation of the general public in the administrative procedure should be considered negligible. Such participation occurred only once, when Maria Beziuk-Iwańczyk and Stanisław Iwańczyk filed an appeal against the decision of the Mayor of Sępólno of 22 March 2010, ref. GI-III-7627-12/08, defining the environmental conditions of the project contemplated by Danuta Nałęcz. The case proceedings were transparent, with participation options guaranteed for all stakeholders.

Members of the Board reviewed the entire body of evidence in case files. Negative opinions and positions regarding the possibility of project execution were expressed on the basis of the original documentation. They were partially modified or were not restated after the supplementation of the Report

in November 2009. Hence, the views expressed therein could not counterbalance the positive opinions.

For the reasons enumerated above, the Board considered it necessary to exercise the reformatory authority of the second instance authority and ruled as stated above.

This Decision is final and no further appeals are available.

A protest can be filed against the Decision to the Provincial Administrative Court in Olsztyn. Protests shall be lodged through the intermediation of the Local Government Board of Appeals in Olsztyn, address: ul. M. Kajki 10/12, 10 - 457 Olsztyn, within thirty days of the date of service of the present Decision upon the Party. A protest should meet the requirements prescribed by Article 57 § 1 with reference to Article 46 § 1 of the Act of 30 August 2002 - Law on Proceeding before Administrative Courts (Journal of Laws No. 153, item 1270, as amended); specifically, it should include the identification of the court; the full name of the appealing party; indication of their place of domicile or registration or, if no such place exists, the address for service of notices; identification of the contested decision; identification of the authority whose action or inaction is contested; specification of the violation of the law or legal interest; signature of the person filing the protest or, if the protest is filed by an attorney, signature of the attorney, and a power of attorney attached to the protest. Each protest shall be accompanied by its copies, one for each of the participants of the administrative procedure and one for the authority whose decision is contested.

Chairman – *[illegible signature]*

Members – *[two illegible signatures]*

Attn.:

1. Danuta Nałęcz

Centrum Biznesu Wschodniego

PHU "U Rycha"

Markajmy 2/7

11-100 Lidzbark Warmiński

2. Other parties in the proceeding - announcement according to the procedure prescribed in Article 49 of the Code of Administrative Procedure

3. Mayor of Sępole

(with case files)

Attn.:

1. Regional Director of Environmental Protection in Olsztyn

2. Governor of Bartoszyce county

[Circular stamp of the authority, with the Polish national emblem in the center and identification of the authority on the rim: LOCAL GOVERNMENT BOARD OF APPEALS in Olsztyn]