

Vitásková Case

Unconditional sentence of 8,5 years

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1) Key actors

Name	Highest position reached at ERO	Activity at ERO
Ing. Alena Vitásková	ERO's chairwoman	08/2011 – until now
Ing. Michaela Schneidrová	Director of the licence department, director of REMIT department	12/2011 - 10/2012 01/2014 – until now
Ing. Josef Fiřt	ERO's chairman	09/2004 - 07/2011
Mgr. Antonín Panák	Vice-chairman of the legal department (member of the advisory board)	03/2002 – 03/2012
Ing. Bohuslav Němeček	Vice-chairman and director of the regulatory department	01/2001 – 12/2011
Mgr. Ing. Jaroslav Vítek	Director of the licence department	03/2001 – 08/2013
Ing. Jaroslav Chalupa	Director of the licence department	03/2013 – until now
Ing. Vladimír Kabelka	Director of the operating department	12/2001 – until now
Ing. Roman Marek	Officer at the licence department	05/2002 – 06/2012
Ing. Ilona Floriánová	Officer at the licence department (on 31. 12. 2010 she issued a licence to photovoltaic power plants Saša-Sun and Zdeněk-Sun)	06/2001 – 03/2013
Ing. Pavel Peňáz	Officer at the electricity department	7/2009 - 04/2012
PhDr. Ing. Rostislav Krejcar	Officer at the electricity department	04/2002 - 03/2012
Mgr. Aleš Landsmann	Officer at the legislative department (member of the advisory board)	03/2002 – until now
JUDr. Zdeněk Zdvihal	Officer at the legislative department	04/2008 – until now
Ing. Ladislav Žáček	Officer at the licence department	07/2004 - 01/2011

Mgr. Ing. Jaroslav Vítek was withdrawn from his post on 31.7.2011, but was still acting as director of the licence department



2) Facts on licence grant to the PPPs 1/4

16. 11. 2010

- A request for a licence grant to photovoltaic power plants Zdeněk-Sun and Saša-Sun was submitted to ERO.

20. 11. 2010

- The construction administration decided to grant an authorization of test operation based on technical documentation including audit reports.

5. 12. 2010

- Grant of the audit report by Vladimír Čimpera, inspector (Technical inspection of the Czech Republic – TIČR, granted the certificate of expertise, 33 years of experience).

20. 12. 2010

- Inspection of the PPPs by ERO's employees (PhDr. Ing. Krejcar, JUDr. Zdvihal, Ing. Peňáz), they noticed a difference between audit reports and reality:
 - Court questioning on 11. 6. 2014 – PhDr. Ing. Krejcar:
„In your opinion, which parts of the PPPs are subjected to revision? What is being controlled by the technical inspector?“
„I'm not a technical inspector. I'd never want to be one and particularly not one in a PPP. I don't really know what parts of a PPP need to be inspected, electrical equipment in general.“

The inspection of the PPPs was done by ERO's employees, none of them was competent to state on the technical status of the plants, (they were not aware of ČSN norms (Czech technical norms) and did not have them at their disposal). Infringement to § 56 of the administrative law: *„If the decision depends on an assessment of facts demanding expertise **that officials do not have**, and if the expert assessment of the facts cannot be obtained from any other administrative body, **the administrative authority will appoint an expert by decree.**“*



2) Facts on licence grant to the PPPs 2/4

22. 12. 2010

- Authorization protocol on the manufacture – first parallel connection to the grid=> done by the distribution system operator – at the same time, examining the technical status of the PPPs, their **operations and operations' safety**.

30. 12. 2010

- A notarial registration was delivered to ERO, in which a Siemens Engineering a.s. employee, responsible for technical supervision, states that he was in the manufacture on 27. 12. 2010, from 7:30 - 19:30 and that all plants were working alright after testing.

30. 12. 2010

- A notarial registration was delivered to ERO, in which an ACTHERM servis a. s. employee, states that an inspection of the test operation was done as well as of the functioning of the manufacture.

Would it be possible, that the biggest part of the PPP's manufacture was not finished on **20. 12. 2010** and that on **22. 12. 2010** the DSO did connect it to the grid?

In the judgment of a case from 23. 11. 2015 sp. Ref. 10T 1/2013, of the Regional Court in Brno, p. 37 ... "We can now state and conclude that if from a technical perspective the PPP realistically met legal conditions of an early use permit and was then found in such stage of building works, which was sufficient to approve the first parallel connection, therefore the PPP met the technical conditions expected for the allocation of a license."

2) Facts on licence grant to the PPPs 3/4

31. 12. 2010

- A second inspection of PPPs Saša-Sun and Zdeněk-Sun was done by ERO's employees (PhDr. Ing. Krejcar, Ing. Žáček, Mgr. Landsmann), two expert witnesses, the investor, the bank, White&Case (lawyers) and others, with the agreement of ERO's former chairman **Ing. Fiřt and on the basis of his meeting with s JUDr. Ing. Zemek, which took place on 30. 12. 2010.**
- **Conclusions of the inspection:** Ing. Žáček and Mgr. Landsmann are in favor of granting the licence and therefore inform Ing. Floriánová, the competent authority officer about the granting of the licence; PhDr. Ing. Krejcar **does not agree** with the licence grant.
 - Expert witnesses' inspection conclusions : the experts **did not find any defects or inadequacies** that were stipulated in the 20. 12. 2010 and 31. 12. 2010 protocols.
 - ENA, s.r.o. conclusions (investor's technical advisor): the overall performance of both PPPs **corresponded to the performance stated in the audit reports.**

31. 12. 2010

- At 20:40 Ing. Floriánová granted a licence to PPPs Saša-Sun and Zdeněk-Sun.

With the granting of the licence no claim of the 2010 purchase price was created, in order to do so it would have to comply with a valid ERO's tariff determination. Currently, there is litigation between OTE a.s. and ČEZ distribution s.r.o., where OTE a.s. is receiving subsidies back from 2011, as from 1. 1. 2013. And Actherm Distribution is facing a complaint regarding the unauthorized pay out of subsidies to OTE a.s.



2) Facts on licence grant to the PPPs 4/4

31. 12. 2010

- At 20:40 Ing. Floriánová granted a licence to PPPs Saša-Sun and Zdeněk-Sun

31. 12. 2010

- A phone call between PhDr. Ing. Krejcar and JUDr. Ing. Zemek.
- Court questioning on 12. 6. 2014 - JUDr. Ing. Zemek (p. 28):
„While I was traveling from Chomutov to Uherské Hradiště, I've got a call from our manager from Chomutov, Mr. Ing. Hubočan, who informed me about his call with Mr. Krejcar. He informed me that Mr. Krejcar thanked him about the work that has been successfully handled, that we made it. And since I was in this euphoria, I've asked for Mr. Krejcar's number in order to call him and share with him. So I called Mr. Krejcar in the evening, who told me almost the same. He said: „congratulations for the licence grant. The inspection from our side was tough and difficult, you can't deny it. But you were correct.“ This i show our call went and ended.“

Until now, PhDr. Ing. Krejcar was not able to explain why he sent a totally different position to Ing. Fiřt, regarding the fact that the PPP's manufactures are technically incompetent.



3) Verification of granted licences for the year 2010

10. 1. 2011

- ERO's managing board asked Mr. Ing. Němeček, ERO's vice-chairman, to ask to distribution companies for a list of connected PPPs for the year 2010. The licence department was asked to compare the list with the licences that were granted.

17. 1. 2011

- The managing board established the evaluation board (Ing. Němeček, Mgr. Panák, Ing. Kabelka) in order to examine the accuracy of the granted licences.

7. 2. 2011

- The managing board considered the task as accomplished. The evaluation board findings (report) were never found in ERO's archives (from BDO's Audit s.r.o audit, there should be at least 16 licensing documents on the subject).

4. 3. 2011

- Regarding the above mentioned, ERO filed several complaints, between which a complaint against unknown, which was filed by Mgr. Panák, regarding licences granted to Saša-Sun and to Zdeněk-Sun, in which Mgr. Panák stipulates, „*at first, the falsification of the audits is **not so obvious.***“

At the Police questioning, on 5. 12. 2012, Mgr. Panák said: „(..) Ing. Fiřt asked me to examine administrative documents regarding this matter and this is how I got to the report on the initial revision from 27. and 28. 12. 2010, I think. **It could be seen that the signature on the report was like cut out and scanned...**“



4) Steps aiming at licence withdrawal

21. 6. 2011

- ERO received an incentive from the Police of the Czech Republic, in which it was stated that the **27. 12. 2010 audit report was falsified** because while this report was done, the audit expert was at the hospital and the **5. 12. 2010 audit report** was only done following the project, knowing that the power plant was far from being ready.

1. 7. 2011

- Reopening of the case following the incentive from the police. Following the act on the start of the procedure, the only reason for the reopening of the case is the falsified document added to the administration documentation regarding the grant of the licence.

Mgr. Panák had to be aware that it was not possible to reconvene the procedure on the basis of a falsified audit report from 27. 12. 2010, since it was not the only document proving the fulfilment of the technical expectations under § 9 of the public notice no. 426/2005 Sb., regarding the details for licence grants, which was added to the legal action. This is why he did not initiate the reopening of the procedure already on 4. 3. 2011, but filed a complaint against unknown. The evidence can also be found in the illogical correspondence with the police, where it was replied to ERO's incentives by the incentive.



5) Ing. Vitásková taking office at ERO

1. 8. 2011

- **Ing. Alena Vitásková** was nominated chairwoman of the Czech Energy Regulatory Office (ERO).

Nov. 2011

- Following the chairwoman's request „an audit was processed regarding the operating of licence grants in 2010 and in 2011 as well as an audit on system and process' measures adopted at the end of 2010.“ Audit, p. 12, section IV.2. Organizational resources: *„the position of director of the licence department is not filled at the moment. Following the information we received it is not clear if the position is going to be filled by a new employee or if employees will be given the grade of director of the department. “*

1. 12. 2011

- **Ing. Michaela Schneidrová** was appointed director of the licence department (Ing. Schneidrová started working at ERO on 3. 10. 2011 at the post of advisor to the chairwoman, under the department of control).

The chairwoman was misled since the beginning. She was not aware that such an exposed department did not have any direct management. This fact would not be discovered without BDO's Audit s.r.o. audit because Mgr. Ing. Vítek was acting as director of the licence department.



6) Documentary evidence presented in the frame of the reopening of the procedure 1/2

31. 8. 2011

- A letter from the audit expert Vladimír Čimpera, in which he describes the writing process of the audit report from 5. 12. 2010.
- P. 9 of the letter from the audit expert:
(...)„I am aware of the building of the PPPs since the very beginning and I was observing the realization process on the ground on an everyday basis... The audit was done since the start of the test operating (20.11.2010)...until its accomplishment...(5.12.2010). I have worked on the audit properly...”

15. 9. 2011

- While explaining himself at ERO, Vladimír Čimpera has, among other things, stated that thefts occurred at the PPPs and if **works are occurring at the PPPs after vandalism there is no need for a new audit report**. He has also claimed having pictures of the vandalism acts.

The truthfulness of V. Čimpera's audit declarations are backed in the specification of Czech technical norms (ČSN) no. 33 1500, art. 2.7 and also in all expert reports added to the administrative documentation and to the penal documentation.



6) Documentary evidence presented in the frame of the reopening of the procedure 2/2

20. 9. 2011

- Documents delivered to ERO:
 - Expert opinion of Ing. Milan Kulovaný, Court expert, from 30. 8. 2011 „*Consideration of PPPs' electricity audit reports done by Vladimír Čimpera*“,
 - ENA's position from 25. 7. 2011 states that in the frame of the project, acting as technical advisor to the financing bank (COMMERZBANK AG, DE), ENA was participating to the audit of the PPPs (31. 12. 2010),
 - Expert opinion from Mgr. Miloslav Wainera from 26. 8. 2011,
 - **Extraordinary** audit report from Libor Hanák from 30. 12. 2010.

In their conclusions, Mgr. Ing. Vítek and Mgr. Panák state that the ERO did not take these documents as proofs in the frame of the reopening of the procedure because these suggested proofs could not influence the mandate of the procedure's reopening as they were seen as fictive proofs.

„The aim of the procedure's reopening is different from the aim of the procedure's reexamination. (...) Within the procedure's reexamination, legal acts and circumstances that arouse, or get revealed after the virtue of the decision, are not taken into account. This is what motives the reopening of a procedure in cases set by an act (see Administrative Rule § 100 Art. 1).“ (Vedral, J.: comment in Administrative Rules)



7) Unexploited legislative possibilities 1/2

20. 12. 2010

- Inspection of the PPPs by ERO's employees (PhDr. Ing. Krejcar, Ing. Peňáz, JUDr. Zdvihal), the works are not finalized and the audit report is not matching the reality - § 51 Art. 3 Administrative Rules (AR): „*If following the requirements in § 3, the reality does not match, the administrative body denies the request without further comments.*“

31. 12. 2010

- Inspection PPPs' manufacture by ERO's employees (PhDr. Ing. Krejcar, Ing. Žáček, Mgr. Landsmann), find several insufficiencies but do not state about any contradiction with the audit report- § 51 Art. 3 AR (see above).

The audit report can only be contested by an inspection done by the competent administrative authority, which is to say by SEI (State Energy Inspection, until 31. 7. 2011) the day the audit report was issued. The court expert in this field can only consider the legitimacy of its content.

2. 1. 2011

- Regarding the information stating that licences were granted in conflict with the local investigation, Ing. Fiřt and Mgr. Panák, had to, knowing their positions, use all available resources to rectify the situation following § 94 Art. 1 AR: “*Within the reexamination of the procedure, the administrative authorities given their administrative powers reexamine final decisions in the case, where reasonable doubt could arise regarding the concordance of the decision with legal acts*”.

After the PPPs' inspection on 31. 12. 2010, PhDr. Ing. Krejcar informed Ing. Fiřt by email that the PPPs' manufacture is not eligible for a licence grant.

7) Unexploited legislative possibilities 2/2

4. 3. 2011

- The ERO submits an incentive to the Police of the Czech Republic, by Mgr. Panák, because of a false document - § 100 Art. 3 AR – the reopening of the procedure had to be done at the same time.

1. 7. 2011

- Reopening of the procedure on the basis of the false document.
- The document did not have any impact on the licence grant.

20. 9. 2011

- On the basis of all collected proofs, a immediate decision was supposed to be made in 30 days at the latest - § 71 AR (until 20. 10. 2011).

13. 2. 2012

- On the basis of the opinion that the reopening of the procedure was stopped illegally, Mgr. Panák had to, regarding his position, use all available resources to fix the situation - § 94 Art. 1 AR.

Former management, including Mgr. Panák, had enough time to solve and fix the situation, between 20. 12. 2010 and 1. 12. 2011, regarding the licence grant cancelling and the cancelling of the licence itself. Even before the new chairman/woman would take office at ERO and before Ing. Schneidrová's nomination on the post of director of the licences department. Mgr. Panák, vice-chair and director of the legal department and member of the advisory board was participating in all actions coming from ERO until 4/2012.



8) Former management's next steps

2. 1. 2011

-

1. 12. 2011

- NO ACTION – if the licence was granted to an unfinished PPP, ERO was supposed to take the same next steps as for example in the case of the company **POWER OF TOWER alfa s.r.o.**, where a licence was granted starting 31. 12. 2010 and, where a reexamination procedure was started on 19. 1. 2011.
 - Mgr. Ing. Vítkek's main deposition at the trial on 11. 6. 2014:
 - „Why were you waiting until February 2012 if the decision could have already been known in September 2011?“
 - „It was new for us... We have already been involved in some procedures in the past, and as I have already mentioned, I was, at that time, also managing the department of litigious and approving procedures and the agenda was very busy.“

If ERO considered the licence grant as unjustified, why did ERO not act for almost a year, which means that ERO was contributing to an unjustified support payout?



13. 12. 2011

- Mgr. Antonín Panák informs Ing. Michaela Schneidrová, that she will have to decide on the reopening of 3 procedures.
- Ing. Schneidrová **does not agree with deciding on the reopening of these procedures** (including PPPs Zdeněk-Sun and Saša-Sun) following the fact that the procedure has to be finished by the employees who started it => this was not made possible to Ing. Schneidrová by her superior (Mgr. Panák).

9) Delegating the decision responsibility to Ing. Michaela Schneidrová 1/3

16. 1. 2012

- ERO received a request from the Supreme Public Prosecutor's Office (SPPO) of the Czech Republic to show administrative documents: *„(..) Following the penal scope of the Public Prosecutor, it was shown that companies Zdeněk – Sun, Saša-Sun and PPP 28 were granted licences by ERO ...without complying with the legally established conditions, apparently (...) I am therefore asking to be given the disposal of all originals of complete administrative documents (..) **Please accompany the above mentioned dossier with the information, whether the above mentioned decision was repealed in the meantime. You can also attach your opinion.**“*

19. 1. 2012

- Mgr. Ing. Víték, starts writing the decisions, even though he was not the entitled person to do so.

1. 2. 2012

- Mgr. Panák sent to Ing. Schneidrová an email with a preprepared decision regarding the case of the PPPs with the instruction on releasing the decisions before 3. 2. 2012. Nevertheless, the decision on the withdrawal of the licence prepared by Mgr. Panák is in contraction with the documents located in the administrative documents and also in contradiction with administrative rules:
„(..) could you please read it and correct if needed. I would like to ask you to release the decision on Friday. The documents will be sent on Friday, following SPPO's request...“.

There is a noticeable interest regarding the result. Mgr. Panák received a note from SPPO on 16. 1. 2012, which was not administrated following § 17 AR, which did not give Ing. Schneidrová the chance to inform herself about the content. Considering this fact, Mgr. Panák asks Ing. Schneidrová to release the decision within 48hrs.



9) Delegating the decision responsibility to Ing. Michaela Schneidrová 2/3

2. 2. 2012

- At a training on „administrative rules“ Ing. Schneidrová asks advice to her training instructor and writes an email to Mgr. Panákovi after, saying that **she will not decide** his way until she gets to see a final decision that a crime has been committed:
- „(..) it is clear from the attached document that the Court has not given its final decision concerning a criminal act...ERO will not ask about a reopening of the procedure until we get a copy of the final decision of the Court. (§ 57 law. nr. 500/2004 Sb., AR)“
- Ing. Schneidrová also calls the chairwoman and informs her about the argument between her and Mgr. Panák, about the contradiction of his decision with the documents within the administrative documentation and with the administrative rules and that ERO has to wait until the Court published its final decision. The chairwoman states that she does not know the document; she is not a lawyer and thus cannot advise Ing. Schneidrová. She only promises to ask Mgr. Panák whether it is necessary to act immediately in this matter.

4. 2. 2012

- Ing. Schneidrová prepared a decision on the reopening of the procedure
- She sent the draft of the decision to Ing. Vitásková by email, which is considered as evidence by prosecution bodies. This testifies about the culpability of both of them.

See „Corpus delicti?!“



9) Delegating the decision responsibility to Ing. Michaela Schneidrová 3/3

6. - 10.
2. 2012

- The chairwoman met with Mgr. Panák and discussed about the necessity of releasing the decision. See Mgr. Panák testimony at the main Court questioning on 10. 6. 2014: *„She was asking if it was possible continuing with this matter without waiting on the end of police inquiries. I have answered following the administrative rules and giving my opinion that there is no need to be waiting on other conclusions because it is that particular case, where false proof was given.“* (...) *I said if ERO did not have enough proofs to cancel the decision, the competence of the Supreme Public Prosecutor might be used to start a lawsuit in public interest.“*

At that time, Mgr. Panák demonstrably did not mention the possibility of not deciding at all and sending the documentation to SPPO. The chairwoman and Ing. Schneidrová were then misled by Mgr. Panák sayings about the necessity of releasing the decision.

Following the above mentioned causes and ignoring the status of the administrative procedures, the chairwoman supported Mgr. Panák 's point of view to immediately release the decision.

13. 2. 2012

- According to documents within the administrative documentation, decisions on the suspension of the procedure and on the withdrawal of licences were released.

10) Corpus delicti?!

- 4. 2. 2012 Ing. Michaela Schneidrová prepared a decision on the suspension of the reopening of the procedure.
- She sent the draft of the decision to Ing. Vitásková by email, on the same day. Which is considered as evidence by prosecution bodies. This testifies about the culpability of both of them:

*„I have attached the draft of the decision on the withdrawal of the licence request for Saša-Sun companies. Other decisions will be done next week by Panák. I will also inform Ms. Bartoňová that nothing coming from these two companies will be going into the decision. That is the way it is and I think that there will be no problem stopping the process already at the level of the licence department director. The causes are evident and significant. **As you can read it in the third part about the suspension reasons, there are so many proofs that the manufacture was operating on 31. 12. 2010 that the trial at the Court might be very heavy.** Furthermore, there is a protocol in the administrative documentation about the viewing of the documentation by the anticorruption department...regarding Panák, who cannot attend the meeting of the advisory board. If you agree with the draft, I can sign it on Monday 13. 2. 2012, directly.”*

The chairwoman did not reply to this email!



11) Chairwoman's next steps after the decision announcement 1/3

13. 2. 2012

- Meeting of the chairwoman, Mgr. Panák and Ing. Schneidrová about their conflict of views regarding the released decision on the suspension of the reopening of the procedure. Even though Mgr. Panák was convinced that the decision in this matter was not correct, he informs the chairwoman that **nothing can be done** anymore regarding this matter.

Administrative bodies can reexamine final decisions in case there are suspicions regarding the accordance of the decision with administrative rules. (§ 94 Art. 1 AR)

- At Mgr. Panák's questioning during the main trial, on 11. 6. 2014, Ing. Vitásková asks „*Why didn't you prepare a written position regarding such an important matter. A position, in which you would describe alternatives and what could be done?*“
Mgr. Panák answers: „*Because you did not ask for it*“.
- From the witness questioning protocol (Mgr. Panák) at the Police, on 5.12.2012, p. 5: „*(...)after which Ms. Vitásková started comforting Ms. Schneidrová that she shouldn't worry, that such things happen and **that I should check, if it would be possible to cancel these decisions, if needed***“.

On 15. 2. 2012, Mgr. Panák sent by postal services the original administrative documents to SPPO without notifying the chairwoman and Ing. Schneidrová.

Following ERO's organizational chart, the director of the legal department is responsible for preparing documents for ERO's chairwoman advising bodies. He was responsible for informing and using all necessary means to rectify the situation, e.g.: by introducing an incentive regarding a reexamination procedure; introducing the matter to the advisory board; discussing with the chairwoman the possibility of starting a reexamination of the procedure. See Back up slides.

11) Chairwoman's next steps after the decision announcement 2/3

Únor 2012

- Regarding the divergence of opinions between Ing. Schneidrová and Mgr. Panák, the chairwoman ordered a selection procedure of an external lawyers' office, which would evaluate the „*Decision on the suspension of the reopening of the procedure*“.

Březen 2012

- The selected lawyer's office Johnson, Šťastný, Kramařík, has worked on a written legal opinion, concluding: „*Regarding the absence of some argumentation elements within the decision on the suspension of the reopening of the procedure, we consider the decision on the suspension of the reopening of the procedure being right.*“

Following the logic of the lawyer's opinion, Ing. Schneidrová was acting in the right way.

Srpen 2012

- The chairwoman was called to the Police to explain the situation. Mgr. Pinka, a police counsellor, informs the chairwoman about proving the incomplete status of PPPs' manufactures and the existence of false audit reports. Eventually, the chairwoman added this information into the documents by the lawyer's office Čapčuch.
- Based on this matter the chairwoman creates an ERO employees working group with the task to come up with a proposal regarding this issue.

After ERO filed its complaint (on 4. 3. 2011), Mgr. Panák had sent to Mgr. Pink, between 4/2011 and 07/2011, the complete copies of the administrative documentation, the complete photo documentation of the Administration (including videos), other required documents and information regarding this matter.

11) Chairwoman's next steps after the decision announcement 3/3


17. 8. 2012

- The chairwoman receives the outcome of various solutions and possible risks from ERO's employees:
 - *Option I. ERO will leave the procedure as it is.*
 - *Option II. Open the procedure and order a reopening of the procedure on the order of the reopening of the procedure.*
 - *Option III. Wait on the outcome of police investigations and on the Supreme Public Prosecutor's next steps*
- Outcome of the action proposal: *„Regarding the fact that since 2/2012, no changes arouse to the situation that could change ERO's action. The right solution should be not taking any actions that could change the current situation and this keeping in mind that currently an inquiry is being held by the Supreme Public Prosecutor“.*

17. 10. 2012

- The chairwoman still chooses Option II. And cancels in a shortened reexamination procedure the *„Decision on suspension of the reopening of the procedure“.*

12) Who was in favor of suspending the reopened procedure?

- Mgr. Veronika Petrová, legal advisor to the chairwoman – position from April 2012: *„The question is, when ERO had the still valid Čimpera’s audit reports and later the extraordinary audit reports from Hanák, would ERO get to another solutioning of this question, which was subject to the decision making. I tis to say, would ERO get to the conclusion that there were reasons to withdraw the licence. I don’t think so, in my point of view. But ERO has already decided about the reopening of the procedure, no reasons were given to withdraw the licences. In case ERO would withdraw the licences (in the situation, where ERO had also other audit report, than the ones that were attacked by police bodies, in case, where ERO had expert opinions at its disposal and was aware that the inspection took place after the robbery of a part of the PPPs), then ERO would pursue an illegal practice, knowing that ERO would withdraw licences to PPPs, which were demonstrably able to operate“.*
- JUDr. Zdeněk Zdvihal, lawyer at ERO, questioning from 14. 11. 2012: is not denying that the manufactures were supplying or operating on 20. 12. 2010.


JUDr. Zdvihal states here that the PPPs were operating.
- Ing. Jaroslav Chalupa, director of the licence department, nominated on his position on 1. 3. 2013 – based on his experience in energy (inspector in electricity and in gas, State Energy Inspection). On 17. 1 .2014, Ing. Chalupa released an identical decision concerning this matter, based on the **cooperation with AK Kříž and partners s.r.o. and VŠB -TUO Faculty of electricity and information sciences, expert institute.**

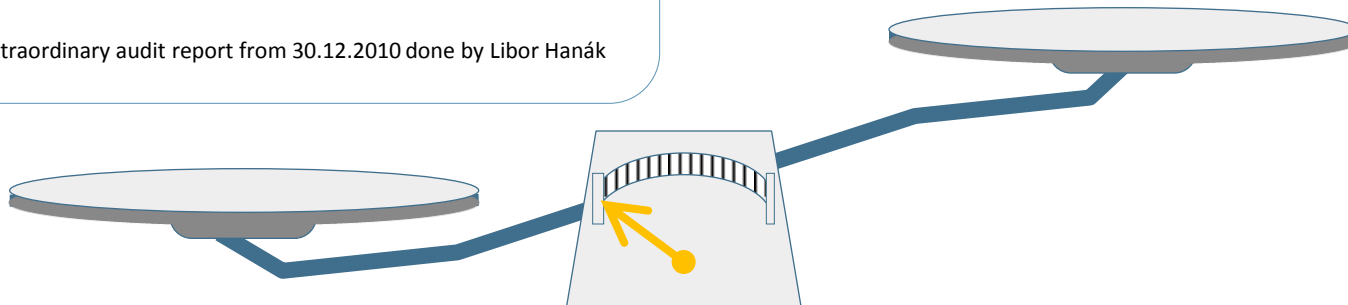
13) Was the reopening of the procedure necessary? 1/2

Documents in favor of the **SUSPENSION** of the reopening of the procedure

- 20.11.2010 Decision on test operating
- 5.12.2010 Initial audit report, done by Vladimír Čimpera
- 22.12.2010 First parallel connection, ACTHERM distribution s.r.o.
- 30.12.2010 Notarial registration with a Siemens Engineering, a.s. employee
- 30.12.2010 Notarial registration with an ACTHERM servis, a.s. employee
- 31.8.2011 V. Čimpera's letter, which describes the writing process of the audit report from ze dne 5.12.2010
- 15.9.2011 Witnesses' testimonial protocol at ERO – V. Čimpera's questioning
- 20.9.2011 ENA s.r.o. Position – Energy analyses (technical guidance by the financing bank)
- 20.9.2011 Court expert expertise by Ing. Miloslav Wainer
- 20.9.2011 Court expert expertise by Ing. Milan Kulovaný
- 20.9.2011 Extraordinary audit report from 30.12.2010 done by Libor Hanák

Documents in favor of the **REOPENING** of the procedure

- 20.12.2010 PPPs manufacture inspection done by ERO's employees (incoherence with the audit report).
- 21.12.2010 Explanatory note – participants to the procedure promised to deliver a new audit report.
- 31.12.2010 PPPs manufacture inspection done by ERO's employees (few breaches).
- 4.3.2011 ERO filed a „*Complaint against unknown*“, in which it is stated that, „(..) it can't be seen at first sight that **the audit was falsified** .“
- 21.6.2011 ERO was given an incentive from the Police, which states that the audit report from 27.12.2010 is falsified, because the expert was, at the time of the report release, in the hospital (this is the only information from the police in the documentation) and that the report from 5.12.2010 was only made following the project, knowing that the power plant was not totally built.



13) Was the reopening of the procedure necessary? 2/2

- The reply gives a comment to the administrative rules:
 - Vedral, J. Administrative rules. Comment. Prague: BOVA Polygon, 2006, p. 859:

„No previously unknown matter or proof, which has been shown as false, will automatically allow the reopening of the procedure. Along with this formal criteria, there is the need for the fulfillment of a material criteria as well, which includes facts or proofs, that were discovered additionally. It is to say that the fact that a former proof was found as false, might be (and not „should be“) motivated by a different solutioning of the question, which was the object of the previous decision. The decision of the authorization of the reopening itself means that in the new procedure, it is not sure that the solutioning of the question, different this time and based on new facts or proofs will be adopted“ .
 - Jemelka, Pondělíčková, Bohadlo. Administrative rules. Comment. Prague: C. H. Beck, p. 341:

*“The administrative body, already in the first phase of the reopening of the procedure, in which it will be decided if the reopening will be allowed or ordered, has to focus on the relevance of the facts, on the proofs or on the decision from the former procedure, preliminarily, in the meaning if they are able to justify a different solutioning of the question, than the one that was subject of the decision making process. It is an equivalent of a pre-consideration of the matter in the re-examination procedure, during which, the administrative body would assess if they are dealing with facts, proofs or decisions that formally correspond to reasons in favor of the reopening of the procedure as stipulated under a) and b) of this provision, but they evidently cannot motivate a different solutioning of the question, that was subject to a decision making process, thus **it would be unnecessary to lead the reopening of the procedure”**.*

Was Ing. Schneidrová wrong when she based herself on a general interpretation of the law?!



14) Bits of testimonials from penal proceedings

- Mgr. Panák at the preparatory meeting on 25. 4. 2013, said:

„I did not read every paper, I was more basing myself on knowledge while drafting the complaint“.
(comment: before the start of the reopening of the procedure)

- Mgr. Ing. Vítek at the main trial on 11. 6. 2014, said:

„How did you feel about this decision?“

„I did not have access to the documents during the last two months, so I couldn't know if there was something new.“

..... „How did you feel about the conclusions of the decision?“ (the decision that was made by Ing. Schneidrová)

„I didn't know the documents into details, but it was said, that there were things missing in the documents and that they are in the justifications“.

- Ing. Marek at the main trial on 10. 6. 2014, said:

„Were you involved in the preparation of the decision concept regarding Saša-Sun power plant, which was supposed to order the reopening of the procedure?“

„Mr. Vítek was working on this. Together we were only checking some details. The entire decision was done by Mgr. Vítek“.

On what basis was the decision made if non of the actors has read the documentation? The decision seems to have a purpose with a predefined outcome. Is this outcome trustworthy?



15) Suspicious events

Non of the below mentioned documents was to be found in the administrative documentation!

31. 12. 2010

- A CD with PPPs pictures was delivered to ERO – but couldn't be found in the documentation.

14. 7. 2011

- Mgr. Panák looked into the prosecution documentation without being officially entitled to do so. He didn't do any copies, nor any report on looking into it and he didn't inform any officially entitled person.

29. 7. 2011

- At 10:23 all videos from local investigations from 20. 12. 2010 and 31. 12. 2010 were **deleted** from ERO's intranet – by Ing. Radim Kříž.

16. 1. 2012

- ERO received SPPO's request asking for documentation on the base of § 66 s. AR.

Why was §17 of administrative law violated again by the people who knew the issue? And in addition just before the commencement of Ing. Vitásková's duty?

16) Comparison with ERO's former cases

- In contradiction with his testimony at the main trial on 11. 6. 2014, **Mgr. Ing. Vitek** was acting as follow in a similar case, during his activities at ERO:
 - 4. 2. 2010: citizen's incentive on PPP's unfinished building, although the licence was already granted,
 - 10. 2. 2010: request to the State Energy Inspection regarding the cooperation on the inspection of the PPP,
 - 13. 11. 2010: inspection conclusions: „...*the company did not provide ERO with full and trustworthy information neither with necessary documents for accomplishing its competences defined by law.*“,
 - 17. 12. 2010: start of the reopening of the procedure,
 - 20. 1. 2011: The office stops the procedure. „*The participant to the procedure intends to complete the proofs by an expert opinion, the expert will assess the necessity of revision of the equipment after disconnection, in case this equipment already underwent revision.*“, “*The office takes the reason of disconnection seriously from a reviewing point of view regarding the fact if the electricity producing equipment, after manipulation with interconnection elements, still meets the requirements for a safe operating.*”
 - 17. 5. 2011: added ZP – conclusion: „*The start of operations of such voluminous electricity equipment as the PPP surely requires field testing, which is intended especially for checking safety and a bug-free functioning. It will be also possible to operate any necessary changes e.g. to the project, connection changes, rearrangement of several photovoltaic panels for an optimization of the performance, etc. I consider irrelevant any discredit of technical documents during field testing.*”
 - 5. 10. 2011: start of the reopening of the procedure, wrapped up in one sentence – „*on the basis of gathered proofs no facts that would motivate the order of reopening of the procedure, have been proven*“.

§ 2 Art. 4 AR: „*The administrative authority shall ensure ... that while deciding on factually identical or similar cases it avoids unjustified differences.*“ It did not happen, apparently.



17) Conclusions:

things that were not taken into account 1/2

- Until now, no body active within the penal proceeding has dealt with the reality: withdrawing licences to PPPs Saša-Sun and Zdeněk-Sun would create a billion loss that would be paid with taxpayers money at the end (in case of entering a lawsuit against the State).
- The Mgr. Panák initially prepared decision that was prepared without him knowing the documents and without being an entitled person and that Ing. Schneidrová was supposed to sign and release, was in conflict with administrative documentation, with administrative rules and with former ERO's decisions.
- Ing. Schneidrová had to evaluate documentary evidence following its content; she was not entitled to reevaluate the content of this evidence. As an administratively entitled person, she is responsible for deciding according to generally binding regulations.
- The chairwoman never gave a position to Mgr. Panák nor to Ing. Schneidrová on how to decide. On the contrary, after the pressure of Mgr. Panák, she was asking to have the decision immediately handled in accordance with the law.

17) Conclusions:

things that were not taken into account 2/2

- Decisions taken under administrative procedures are not criminal acts.
- Violation of the principle of the subsidiarity of criminal repression (§ 12 Art. 2 Penal Law). Penal law is seen as the most extreme instrument in democratic states and has to be used only when the use of other legal instruments (e.g. civil law or administrative law) to redress the situation cannot be used, because they have already been used or are clearly ineffective or inappropriate.
- The violation of the principle of the subsidiarity of criminal repression is considered, by the Constitutional Court of the Czech Republic as a violation of Art. 39 of the Charter of Fundamental Rights and Freedoms: „Only a law may designate which acts constitute a crime and what penalties, or other detriments to rights or property, may be imposed for committing them“.
- We are witnessing a criminalization of official decisions by police authorities and by the Public Prosecutor’s Office and this despite the fact that corruption was not proven.
- In ERO’s practice, there are cases, where officers are called up to explain their decisions.

Criminal law tools are used for influencing decision-making process of administrative authorities.



Back up

Decision making in Administrative Justice

- The case is parallel dealt with at the County Court in Brno, in the Administrative Justice section:
 - 12. 9. 2012 – the Supreme Public Prosecutor brought the lawsuit as a public interest litigation to the Administrative County Court in Brno,
 - May 2014 – the procedure has been suspended because of the withdrawal of the licence –
 - New licence grant 17. 1. 2014 (Ing. Chalupa's decision),
 - 20. 8. 2014 – introduction of a new lawsuit in public interest litigation,
 - 16. 3. 2016 – a hearing on the public action lawsuit was supposed to take place, but was cancelled .

Other processes within the frame of the administrative procedure with ERO

- 17.10.2012 participants to the procedure have submitted an analysis against chairwoman's decision,
- 21.12.2012 the analysis was rejected and the reopening of the procedure „came back to life“,
- 28.01.2013 participants to the procedure were informed about the continuation of the procedure as well as the authorization of the procedure's reopening,
- 19.02.2013 decision of the order of reopening of the procedure,
- 15.03.2013 participants to the procedure have submitted an analysis ,
- 10.06.2013 attacked decisions were cancelled and the case was back to a new discussion,
- 15.07.2013 ERO designed an expert for an expert evaluation of the validity of the audit reports,
- 14.10.2013 decision of the order of reopening of the procedure,
- 25.10.2013 participants to the procedure have submitted an analysis ,
- 18.11.2013 attacked decisions were confirmed and participants' analysis were rejected,
- 17.01.2014 new decisions with legal impact as from 31. 12. 2010 were released.

Failure of Mgr. Antonín Panák's obligations

ERO's internal guideline	Field	Obligations
Measure no. 2/2010 Organizational Chart	2. Legal department The legal department provides legal support to the chairman and to several organizational subdivisions	4) prepares second-instance decisions of administrative proceedings and disputes, whose solutioning is done by the office (ERO), 12) is responsible for assignments in the frame of internal legislation, 17) submits proposals to the chairman on procedure reopening or on decision cancellation during procedures besides appeal 19) prepares documents for the ERO chairman's advisory board meetings 21) is responsible for the coordination of administrative procedures with other bodies of ERO and with the chairman's advisory board
Measure no. 1/2010 Documentation Rules	Art. 2 Definition of basic concepts	(21) Reference number – (...) Documents dealing with related issues are classified in files and are always given the same reference number following the initial document
	Artl. 3 Competences and obligations in documentation services	(2) During organizational changes at ERO, attention must be paid to the rigorous handover of all documents, including in-process agendas and following the protocol of the established work regulations
	Art. 10 Handling method for paper documents	(6) If it is necessary to inform the chairman on the handled document or if the reply will be going through the form of a chairman's letter a file has to be created: (...) 6c) information to the chairman – is a document that will be classified in a file, it includes a description of the issue and a solution proposal
	Art. 34 Samples and lending of saved documents	(4) The lending of files and of documents outside of ERO (in cases of legal procedures etc.) as well as the person who will be lending them, have to be authorized by ERO chairman through the form in annex no.4
Measure no. 15/2006 Pracovní řád	Art. 10 End of employment	3. The employee has to inform his superior regarding the status of preparation of duties and hand him/her properly any uncompleted duties and all files. The responsible superior will make a report about the handing over of these duties (a transfer protocol), which has to include the level of completion of the uncompleted duty on the day of end of employment, a recommendation or a proposal regarding the measures to be taken in order to complete the duties, finally a list of documents that have been handed over.
	Art. 12 Employee's obligations	3l) draw the attention of the superior, in case he/she gave an inadequate instruction, even before its completions, to its contradiction with the regulations that are in place, 4b) being well aware and following the establishment of all generally binding and internal regulations

Short summary of ERO's actions under the office of Ing. Vitásková these last 4 years

ERO's chairwoman 08/2011 – until now

- ERO estimated at almost 1 billion Czk the repercussions of the allowance into public finances (in case the allowance will continue and will be broadened with new allowances of 1,5 billion Czk, under the law that has passed no. 165/2012 Sb.) – ERO has informed the general public and gave an impulse to hold back any new allowances.
- ERO promotes the change of the law and the cessation of the allowance for new sources from 2014, this way ERO has almost secured the stagnation of the allowance at 45 billion Czk per year. (Unfortunately due to the compulsory indexation of 2% per year of purchase prices, this amount will be rising).
- ERO promotes equal conditions and would like to put a limit to the amount of the charge that everyone has to pay to 495 Kč/MWh for companies and for citizens. The amount left is paid by the State –approximately 13 billion Czk for 2015.
- ERO stopped the support for biomethane (it is different from biogas).
- ERO was concerned that biomethane was prepared following the PPPs scenery. The impact on public finances was incalculable (it could be the same as in the PPPs' case, billions of Czk per year for the next 20 years, that we would have to be paying from public finances). PPPs itself cost 25 billion Czk per year, with the fact that the allowance for photovoltaics on household roofs is totally insignificant while considering this amount.
- ERO drew the attention to the fact that ERO's former management determined subsidies for renewables that were above the frame of legal mandate and this regarding the subsidies amount and the length of its payment. Instead of a simple backflow a discounted backflow was set and the length of the subsidies was determined without determining the backflow considering the time of durability e.g. instead of 15 years, it was set to 20. (Combining the above mentioned will result into a payment of costs for the support of renewables only for PPPs with the extra amount of approximately 162 billion Czk).
- Despite all ERO's calls, no responsible person has been found until now, someone who would get this misconduct reviewed by the Constitutional Court.
- ERO has evaluated in the new energy law, the fact that the prepared change will allow the slit of big photovoltaic manufactures as well as the possibility of avoiding solar power's dissipation. The direct impact into public budget has been calculated at 2 billion Czk per year, which represents 30 billion Czk for the next 15 years. (This was deleted from the new energy law after ERO has criticized it).

Short summary of ERO's specialized departments under the functions of Ing. Schneidrová

Director of licence department from 12/2011 until 10/2012

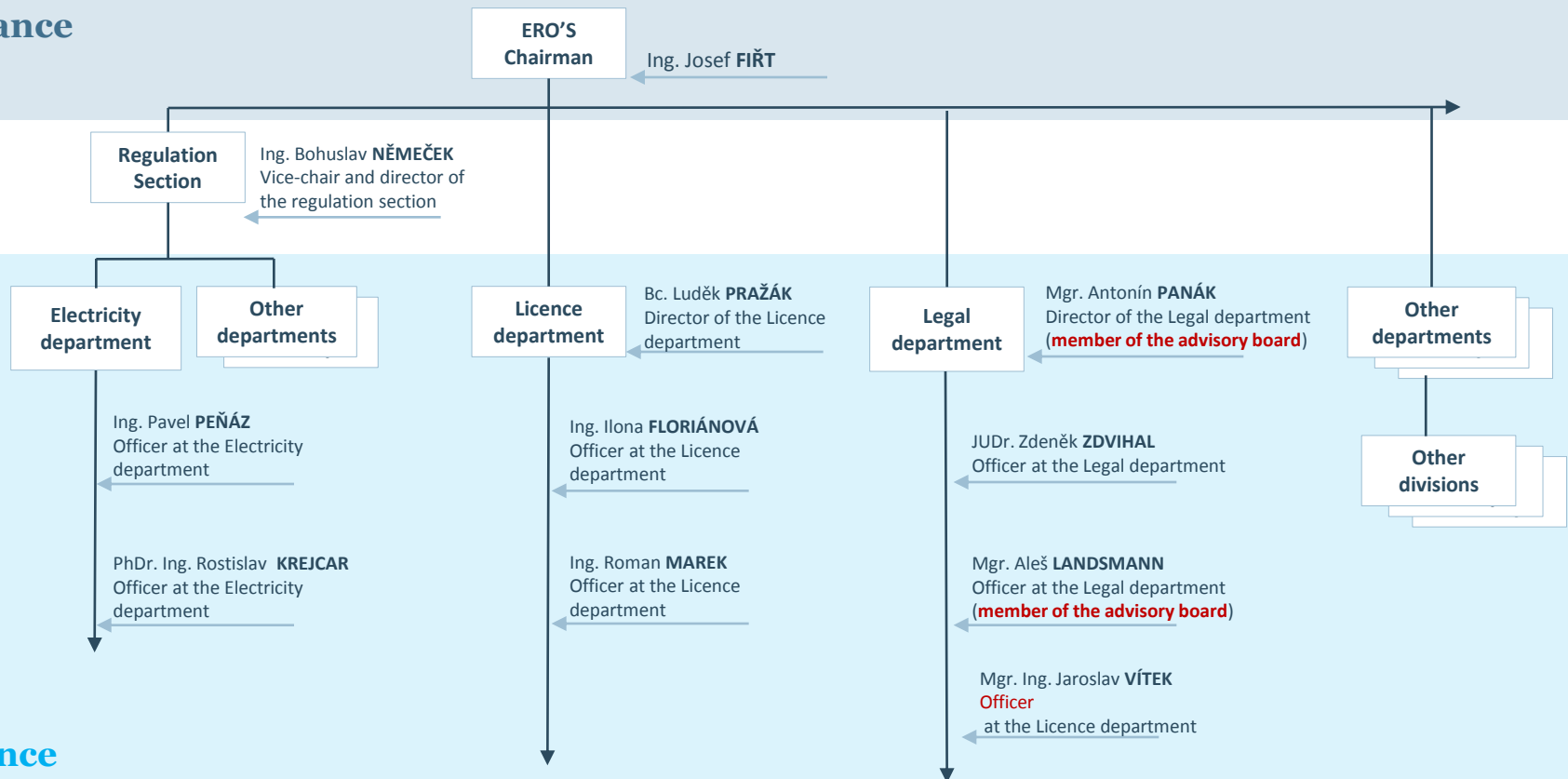
- Management of the department: until then no standardized meetings were taking place at the department. Employees were not getting any continuous training regarding the matter and deadlines were not met for administrative procedures.
- Unique rules were set for the licence grants. Until then, requests for licence grants were not analyzed equally.
- Under the management of Ing. Schneidrová, ERO's licence grant has risen for 2012 (for small PPPs under 30 kWh).
- Employees of the licence department were sent on the ground to see the reality, for what kind of equipment are the licence grants requests meant. A short methodology was elaborated on the actions to take, which led to the creation of a transparent process of licence grants. The setting of guidelines for licence grants was evaluated positively also from the part of the applicants.

Director of REMIT department (supervision of the energy wholesale market) since 1/2014

- In 2013, a new department was created at ERO. The aim of this department is set to the monitoring of the energy wholesale markets and well as the monitoring of the following of the REMIT Regulation. Ing. Michaela Schneidrová was nominated director of the department as from 1 January 2014.
- Requirements regarding the employee's profile are very strict: higher education accompanied by expert knowledge of electricity and gas markets (production, trade, contracts, trade principles, the ability of understanding the information system and the content of data linked to trading), the capability of orientation in Czech and European energy legislation. At the moment a general overview is necessary in Czech and EU energy fields as well as in the international energy scenery. Ing. Schneidrová has fulfilled all these requirements with her systematic preparation and with consequent experience obtained the position of expert in this particular field. With her managing methods, she reached that the department reached the level of a feared monitoring department by energy companies.
- The department was, under the management of Ing. Michaela Schneidrová provided with experts and trained for interventions in the highest levels of energy companies.
- ERO has provided, with energy companies' managers' disapproval, Implementing Acts for energy wholesale markets that were implemented into the energy law.
- REMIT department participated to meetings at the Agency for the Cooperation of Energy Regulators (ACER) on a regular basis, where it cooperated on the creation of a unique code for the EU energy wholesale market monitoring.

Organizational structure of the second half of 2010

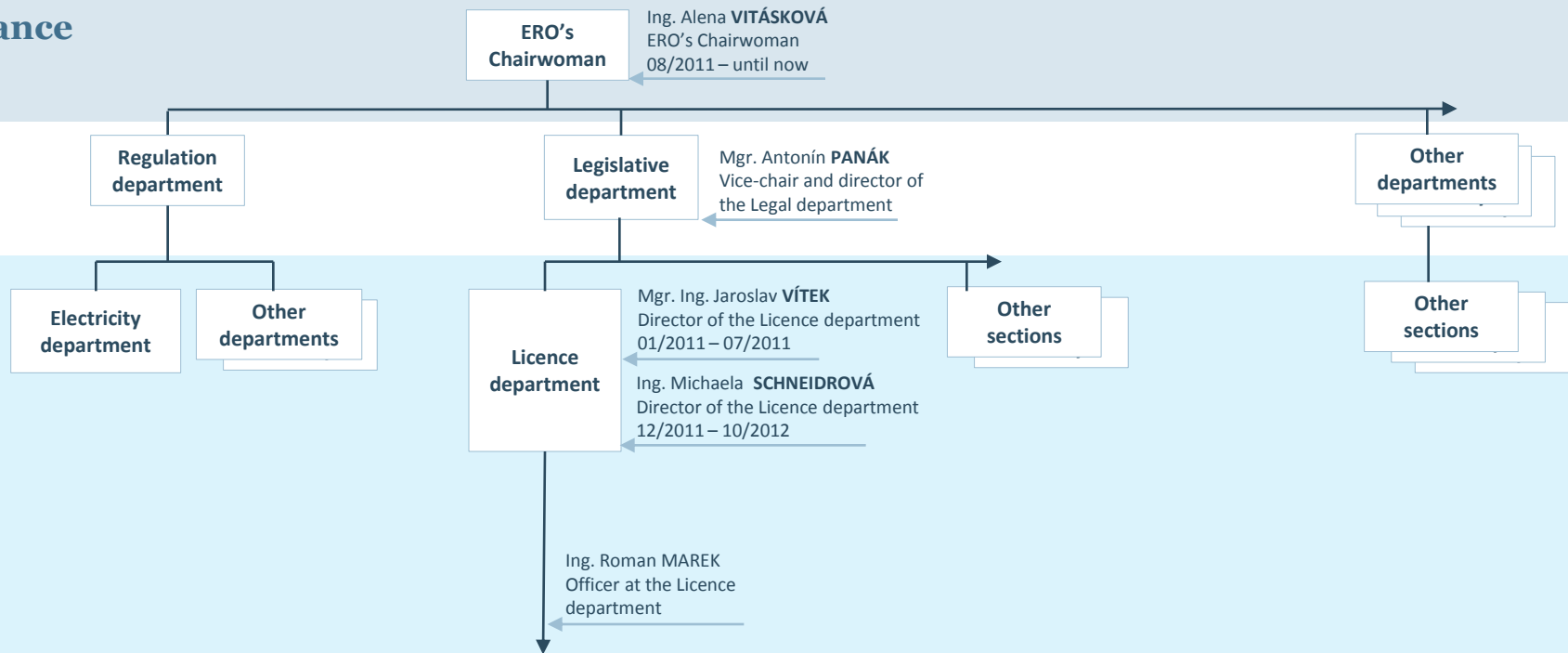
II. Instance



I. Instance

Organizational structure of 2012

II. Instance



I. Instance