

STATE OF INDIANA
UTILITY REGULATORY COMMISSION

VERIFIED PETITION OF DUKE ENERGY	)	
INDIANA, INC. SEEKING (1) APPROVAL OF AN	)	
ONGOING REVIEW PROGRESS REPORT	)	
PURSUANT TO IND. CODE §§8-1-8.5 AND 8-1-8.7;	)	
(2) AUTHORITY TO REFLECT COSTS INCURRED	)	
FOR THE EDWARDSPORT INTEGRATED	)	
GASIFICATION COMBINED CYCLE	)	
GENERATING FACILITY ("IGCC PROJECT")	)	CAUSE NO. 43114 IGCC
PROPERTY UNDER CONSTRUCTION IN ITS	)	
RATES AND AUTHORITY TO RECOVER	)	
APPLICABLE RELATED COSTS THROUGH ITS	)	
INTEGRA TED COAL GASIFICATION	)	
COMBINED CYCLE GENERATING FACILITY	)	
COST RECOVERY ADJUSTMENT, STANDARD	)	
CONTRACT RIDER NO. 61 PURSUANT TO IND.	)	
CODE §§8-1-8.8-11 AND -12; (3) ESTABLISHMENT	)	
A SUBDOCKET PROCEEDING TO REVIEW THE	)	
COST ESTIMATE FOR THE IGCC PROJECT;	)	
AND (4) APPROVAL OF A SETTLEMENT	)	
AGREEMENT FILED SEPTEMBER 17,2010,	)	
INCLUDING A REQUEST TO UPDATE ITS	)	
DEPRECIATION RATES FOR PRODUCTION,	)	
TRANSMISSION, DISTRIBUTION AND GENERAL	)	
PLANT AND EQUIPMENT	)	

SETTLEMENT TESTIMONY OF KERWIN L. OLSON,
PROGRAM DIRECTOR
CITIZENS ACTION COALITION OF INDIANA, INC.

1 **Q. Please state your name and business address.**

2 A. My name is Kerwin L. Olson, and I am the Program Director for Citizens Action
3 Coalition of Indiana, Inc. (“CAC”). My business address is 603 E. Washington
4 Street, Suite 502, Indianapolis, IN 46204.

5 **Q. Please briefly summarize your employment and educational background.**

6 A. I studied American History at the University of Chicago from 1986 to 1989, and I
7 am certified by Office of Indiana State Chemist in agronomy, lawn care,
8 horticultural, and aquatic maintenance. I have attended numerous workshops and
9 seminars on energy, energy efficiency, renewable energy, coal, coal gasification,
10 carbon capture and sequestration, biomass and bio-fuels, and nuclear energy.

11 I joined the staff at CAC in 2004, working in member outreach. In 2006 I
12 became CAC’s Public Outreach Coordinator and briefly served as its Phone
13 Canvass Director until 2008, when I became CAC’s Program Director. Prior to
14 that I spent fifteen years in the landscape industry, first as an Operations Manager
15 overseeing and average of 30 to 35 employees and responsible for hiring, training,
16 and oversight of an average of 15,000 customer accounts, and eventually working
17 into the position of Commercial Sales Manager in the Bloomington office of
18 TruGreen-Chemlawn.

19 **Q. Please describe your current responsibilities.**

20 A. My current responsibilities include issue and policy research as well as working
21 with the organization’s Board of Directors, executive staff, and members to
22 develop the organizations policy and advocacy positions. My duties also include
23 lobbying at the Statehouse, legislative outreach and education, community and
24 media outreach, writing press releases, guest columns and op-ed columns, and
25 community and member organizing. I am also the CAC’s representative on the
26 board of the Indiana Coalition of Human Services.

27 **Q. Have you previously testified before this or other utility commissions?**

1 A. I testified before the Commission in Cause No. 43653 (Duke CCS study), Cause
2 No. 43669 (gas universal service programs), Cause No. 43839 (SIGECO rates),
3 and Cause No. 43912 (NIPSCO DSM), and Cause No. 43922 (NIPSCO net
4 metering and feed-in-tariff). I have also testified in Cause No. 43114 IGCC 4,
5 IGCC 4 S-1 and IGCC 5. In addition, my duties require me to testify before
6 several of the Indiana General Assembly's House and Senate committees and
7 participate in panel discussions in public forums.

8 **Q. What is the purpose of your supplemental settlement testimony?**

9 A. The purpose of my testimony is to discuss the ongoing ethics scandal and its
10 relevance to this proceeding.

11 **Q. Please describe the history and mission of cac.**

12 A. CAC is an Indiana based 501(c)4 not-for-profit membership organization that was
13 founded in 1974 by a group of organizations, churches, labor unions, and senior
14 groups, to name a few, who saw the need for a grassroots organization dedicated
15 to protecting consumers during the energy crisis. Since that time, CAC has
16 expanded to a statewide organization with about 40,000 members. CAC is
17 dedicated to protecting ratepayers and advocating for affordable healthcare and a
18 clean environment. CAC does this through community outreach and organizing as
19 well as through lobbying and litigation on behalf of its members.

20 CAC's mission is to initiate, facilitate and coordinate citizen action
21 directed to improving the quality of life of all inhabitants of the State of Indiana
22 through principled advocacy of public policies to preserve democracy, conserve
23 natural resources, protect the environment, and provide affordable access to
24 essential human services.

25 **Q. What did you do to prepare yourself to testify in this proceeding?**

26 A. I reviewed much of the Petitioner's direct, rebuttal and settlement testimony in
27 this docket, as well as testimony and transcripts in the previous cases involving

1 the Edwardsport IGCC project. I have also reviewed the direct, rebuttal and
2 settlement testimony of the Office of Utility Consumer Counsel and the Duke
3 Energy Indiana Industrial Group in this docket. I also attended the entire
4 November 3 technical conference in this docket. I have also participated in
5 meetings with the CAC's Board and staff. In addition, I also have relied on
6 knowledge gained from meeting with CAC members, low-income advocacy
7 organizations, and the general public, as well as reviewing research, trade
8 journals, and government sources.

9 **Q. Why should the Commission consider the details of burgeoning ethics**
10 **scandal as relevant in this proceeding?**

11 **A.** Most importantly, the ratepaying public deserves no less than full disclosure of
12 the truth regarding any improper communications relating to the Commission's
13 decision-making process and any improper influence on the Commission's
14 decisions themselves with respect to the Edwardsport project. Ratepayers are
15 mandated currently to provide financing for a power plant that is not now and
16 may never be "used and useful" in providing them with electricity. Those same
17 ratepayers will experience even larger rate increases if the project moves forward
18 to completion. The trust and confidence of the ratepaying public in the integrity
19 of the regulatory process, especially relating to Edwardsport, has been damaged.
20 Chairman Atterholt said as much in the technical conference on November 3,
21 2010: "The process and the integrity of the Commission has understandably been
22 brought into question by some recent events..." (Transcript, pg A-30 lines 8-10).
23 In addition, three individuals, who were all key employees at the Commission
24 when the original CPCN for the Edwardsport IGCC was issued, have since been
25 terminated from their positions with the Commission or with Duke Energy

1 Indiana as a result of evidence uncovered during various investigations of the
2 scandal. One of those individuals, the former Chairman of the Commission, was
3 terminated by the Governor, and the other two, the former Chief Administrative
4 Law Judge and General Counsel and the former Executive Director of the
5 Commission, were terminated by the Petitioner, DEI, within months of their
6 hiring by DEI.

7 Also, the Governor has expressed grave concern over the events. A memo issued
8 by David Pippen, General Counsel to the Governor, stated: “In short, he will not
9 tolerate even the appearance of impropriety.” (Exhibit CAC-KLO-1) . In the same
10 memo, the Governor also directed the Commission to re-open and review all
11 decisions by former Chief ALJ Scott Storms pertaining to the IGCC “to ensure no
12 undue influence was exerted in those decisions.”

13 It is evident that Chairman Atterholt, Governor Daniels, and DEI all believe the
14 ethics scandal is relevant with respect to this ongoing case. CAC agrees.

15 Q. **Is the Commission currently following the Governor’s directive and**
16 **conducting a review of Cause No. 43114 and all related sub-dockets?**

17 A. Yes. On October 14, 2010, the Commission publicly released a document titled
18 “Internal Audit of Duke Energy Cases Presided over by Former Administrative
19 Law Judge Storms.” (Exhibit CAC-KLO-2). On its face, this document indicates
20 that the Commission is conducting at least a paper trail audit of orders, docket
21 entries and staff reports in the various Edwardsport dockets. In addition,
22 Chairman Atterholt has indicated several times publicly that the Commission is
23 conducting an internal investigation. For example, an Indianapolis Star article

1 from October 15, 2010 summarizes the IURC release and the document
2 describing the internal audit. (Exhibit CAC-KLO-). This article quotes Chairman
3 Atterholt as follows: “It is of the utmost importance to determine whether the
4 cases were handled improperly or mismanaged in any way, and, if so, for us to
5 take swift and corrective action immediately.”

6 **Q. Is the IURC investigation complete?**

7 **A.** Not to my knowledge.

8 **Q. Is that relevant?**

9 **A.** Absolutely. The IURC investigation, along with the other investigations
10 underway, should be completed and the findings made public and considered by
11 the Commission before DEI ratepayers are asked to pay a single dime more than
12 they are today for the Edwardsport project.

13 **Q. You mention an investigations by the Governor’s office; could you clarify?**

14 **A.** Yes. The October 5th memo from David Pippen mentions “an internal review of
15 the matter” by the Governor’s office.

16 **Q. Were the results of that internal review made public?**

17 **A.** No. The Pippen memo did state that the review “revealed the lawyer was
18 communicating with Duke regarding a position with the Company at a time he
19 was presiding over administrative hearings concerning Duke.” However, no other
20 findings included in the review nor any documentation of the review has been
21 made public.

22 **Q. What were the results of the Governor’s review?**

1 **A.** In addition to the previously discussed directive for the IURC to investigate its
2 decision-making processes and the decisions themselves in the IGCC dockets,
3 then Commission Chairman, David Lott Hardy, was terminated by the Governor;
4 an article from the October 6' 2010 edition of the Indianapolis Star summarizes
5 the actions of the Governor and is included as Exhibit CAC-KLO-4.

6 **Q. What reason was given for Mr. Hardy being terminated?**

7 **A.** The Governor's office review revealed that Mr. Hardy was aware of Mr. Storms'
8 ongoing employment negotiations with Duke Energy Indiana and failed to remove
9 Mr. Storms from cases pertaining to DEI.

10 **Q. Is there other information in the public domain regarding the events leading**
11 **up to Mr. Hardy's termination?**

12 **A.** Yes, there is a series of e-mails among Mssrs. Hardy, Reed and Storms that were
13 published in the Indianapolis Star on October 12' 2010. The article discussing
14 those e-mails is attached as Exhibit CAC-KLO-5 and the e-mails are attached as
15 Exhibit CAC-KLO-6. However, the Governor's office may well have more
16 information than the e-mails published by the Star. After all, the Governor
17 terminated Mr. Hardy a week before the Star published the e-mails.

18 **Q. You mention other investigations?**

19 **A.** Yes, there are several of which I am aware.

20 **Q. Please summarize those other investigations.**

21 **A.** First, Duke Energy is conducting its own internal investigation and has also hired
22 the law firm of Gibson, Dunn, & Crutcher to conduct an independent review.

23 **Q. Are those Duke investigations complete?**

1 **A.** Not to my knowledge. An article from the November 9, 2010 Indianapolis Star
2 indicates that the Duke internal investigation is still ongoing. It is unclear if the
3 investigation by Gibson, Dunn, & Crutcher is complete, but that same article
4 references that the firm has provided Duke with some findings, but does not
5 indicate if their investigation is concluded. The article is attached as Exhibit
6 CAC-KLO-7.

7 **Q.** **Did Duke take action as a result of the findings provided by Gibson, Dunn, &**
8 **Crutcher?**

9 **A.** Yes. Then President of DEI, Michael W. Reed, and DEI staff attorney Scott
10 Storms were terminated as a result of those findings.

11 **Q.** **Have the findings of the Gibson, Dunn & Crutcher investigation been made**
12 **public?**

13 **A.** No.

14 **Q.** **Is that investigation significant?**

15 **A.** Absolutely. DEI's hiring of Mr. Storms was the spark that ignited this ongoing
16 scandal. Articles from the Indianapolis Star from September 22 and 23, 2010,
17 attached as Exhibits CAC-KLO-9 and Exhibit CAC-KLO-10, summarize the
18 events which had transpired at that time. Also an article from the Louisville
19 Courier Journal from September 22, 2010 (attached as Exhibit CAC-KLO-11)
20 describes what was known at that time. Not only was Mr. Storms General
21 Counsel for the Commission, he was also the presiding ALJ over the IGCC
22 docket for every proceeding and order issued prior to August 2010. In addition,
23 Jim Rogers, President of Duke Energy, stated at the technical conference on

1 November 3rd that his company would take “decisive and appropriate action” if
2 any wrongdoing was uncovered as a result of the Dunn, Crutcher investigation.
3 The Indianapolis Star article attached as Exhibit CAC-KLO-12 quotes the
4 testimony of Mr. Rogers in this respect.
5 The ratepayers of Duke Energy Indiana, who are involuntarily financing the
6 Edwardsport project, deserve to know those findings. At a minimum, DEI should
7 make those findings available to the Commission to assist them in their current
8 audit of cases being reviewed and to the Governor’s office to comply with the
9 Governor’s previous directive to ensure that there was no “undue influence”
10 exerted during the various Edwardsport proceedings. Those findings should then
11 be made available, under confidentiality agreement if necessary, to the other
12 parties so that they may assess their significance for themselves and rely on them
13 as evidence regarding any improper communications or undue influence relating
14 to Commission deliberations and decisions.

15 **Q. You mention former Chief ALJ Scott Storms. Are there any current**
16 **investigations pertaining to Mr. Storms that have yet to be resolved?**

17 **A.** Yes. As a result of his testimony before the Indiana Ethics Commission on
18 September 9, 2010, the Inspector General has filed an ethics complaint against
19 Mr. Storms. The transcript from that hearing is attached as Exhibit CAC-KLO-
20 13. Also, an article from law.com describing the nature of the complaint is
21 attached as Exhibit CAC-KLO-14. The actual complaint is attached as Exhibit
22 CAC-KLO-15.

23 **Q. What is the status of that complaint by the IG?**

1 **A.** The hearing was originally scheduled to be held on November 10, 2010.

2 However, for reasons unknown to us, the hearing was continued until January 13,
3 2010, at the request of Mr. Storms' attorney.

4 **Q. Other than the complaint filed by the IG as a result of Mr. Storm's testimony,**
5 **does the transcript from the September 9th hearing raise any other**
6 **unanswered questions?**

7 **A.** Yes. The transcript references a memo created on behalf of Mr. Storms by his
8 ethics officer at the Commission. Specifically, Mr. Storms said: "What I have
9 done was obtain an opinion from my ethics officer with respect to my ability to
10 initially pursue the position to accept the position. And she has put together a memo
11 on my behalf that spelled out her view of the potential issues that need to be
12 addressed." He continued stating: "So that's the one difference based on her advise
13 she did not think I needed a formal opinion but out of an abundance of caution I
14 wanted to present to the Ethics Commission to gain confirmation with respect to the
15 opinion I received from my Ethics Officer."

16 **Q. Why is that of concern?**

17 **A.** Two reasons. First of all, CAC submitted an information request to the Inspector
18 General requesting all information pertaining to the formal opinion granted Mr.
19 Storms by the Ethics Commission. That opinion is attached as Exhibit CAC-
20 KLO-16. As a result of that request, we obtained the attachment labeled as
21 Exhibit CAC-KLO-17. The memo written on Mr. Storm's behalf is on page 26
22 on that attachment. That memo stated: "I understand that you neither negotiated
23 nor administered a contract with your prospective employer [DEI] while at the
24 IURC." We now know this to be untrue.

1 Secondly, the ethics officer that wrote the memo and advised Mr. Storms that he
2 did not need to seek a formal opinion is the ALJ currently presiding over this
3 proceeding.

4 **Q. Speaking of the Ethics Commission, was there another ALJ from the IURC**
5 **who went before the Ethics Commission seeking an opinion about**
6 **employment with a utility?**

7 A. Yes. An advisory opinion was issued at the request of ALJ Aaron Schmoll who
8 was apparently interested in the same job accepted by Mr. Storms at DEI. That
9 advisory opinion is attached as Exhibit CAC-KLO-18. In addition, all documents
10 received from the IG with respect to that opinion are attached as Exhibit CAC-
11 KLO-19.

12 **Q. Was a hearing held before the Ethics Commission as a result of Mr.**
13 **Schmoll's request?**

14 A. Yes, the transcript from that hearing is attached as Exhibit CAC-KLO-20.

15 **Q. Getting back to the Inspector General for a moment, wasn't he also directed**
16 **to conduct an investigation by the Governor?**

17 A. Yes, the October 5th memo by David Pippen indicates the IG was asked to
18 conduct an investigation "to see if any laws were broken..."

19 **Q. Is that investigation concluded?**

20 A. Not to my knowledge.

21 **Q. Is that investigation significant?**

22 A. Of course. The IG has already filed a complaint against Mr. Storms that has yet
23 to be heard. In addition, the public has been told by the Governor's office that the

1 IG would conduct a thorough investigation including interviews with relevant
2 State employees involved with this and other IURC proceedings. Whether or not
3 any crime was committed pertaining to this proceeding is of vital importance and
4 may have a direct effect on previous orders issued. For the sake of the trust and
5 confidence of the ratepayers of DEI and the public, no further orders granting DEI
6 additional rate or other relief for the Edwardsport project should be issued before
7 it is determined whether any laws were broken in this or prior proceedings
8 relating to Edwardsport.

9 **Q. Going back for a moment to the action taken by DEI as a result of the**
10 **findings presented them by Gibson, Dunn, & Crutcher, you mention Michael**
11 **W. Reed was terminated along with Mr. Storms. Why is that relevant to this**
12 **proceeding?**

13 **A.** Several reasons. At that time, Mr. Reed was the President of DEI. The
14 termination of the sitting President of the Company seeking relief from the
15 Commission in this and other Edwardsport dockets should be of grave concern to
16 the Commission, especially in the context of the previous events in the ongoing
17 ethics scandal. In particular, it should be noted as a result of the e-mails
18 published by the Star, Mr. Reed had previously been placed on administrative
19 leave by DEI. An article from the Indianapolis Business Journal from October 5,
20 2010 reporting this development is attached as Exhibit CAC-KLO-21. The clear
21 implication of the firing is that additional matters beyond the e-mails were
22 discovered by the DEI and Dunn, Crutcher investigations.

23 **Q. Where was Mr. Reed employed prior to accepting his position at DEI?**

1 **A.** He was employed by the State of Indiana as Commissioner of INDOT.

2 **Q.** **Where was Mr. Reed employed prior to his position at INDOT?**

3 **A.** He was also employed by the State as Executive Director at the IURC.

4 **Q.** **Since he was a State employee, did Mr. Reed seek the advice of the Ethics**
5 **Commission prior to accepting his position with DEI?**

6 **A.** Yes. Mr. Reed did request an advisory opinion prior to accepting the position.
7 The opinion he received is attached as Exhibit CAC-KLO-22. In addition, all
8 documents with respect to that opinion obtained from the IG are attached as
9 Exhibit CAC-KLO-23.

10 **Q.** **Did the Ethics Commission conduct a hearing prior to issuing the opinion?**

11 **A.** Yes. A hearing was held on June 8, 2010. The transcript of that hearing is
12 attached as Exhibit CAC-KLO-24.

13 **Q.** **Did the transcript from the hearing raise any additional unanswered**
14 **questions pertaining to the current ethics scandal?**

15 **A.** Yes. It appears the position of Executive Director may have been created
16 specifically for Mr. Reed at the instigation of the recently terminated Chairman,
17 David Lott Hardy. Mr. Reed stated during that meeting: "It's worth noting that
18 this was a newly created position by Chairman Hardy and the other four
19 Commissioners."

20 **Q.** **Anything else?**

21 **A.** It appears to us that Mr. Reed may have misled the Ethics Commission in his
22 testimony.

23 **Q.** **Please explain.**

1 **A.** As part of a lengthy response as to whether he had influenced decisions at the
2 IURC in favor of DEI, Mr. Reed stated: “I wasn’t assigned to any case because
3 there was no need for me to be assigned to a case.”

4 **Q.** **Why is this of significance?**

5 **A.** A review of the IGCC docket reveals that Mr. Reed was present during an
6 executive session on November 16, 2007. The minutes from that meeting are
7 attached as Exhibit CAC-KLO-25. This is of great significance as the Statute
8 pertaining to executive sessions at the IURC, IC 8-1-1-5, informs us that in order
9 to participate in an executive session one must be either a commissioner, or
10 “formally assigned to advise or assist in preparing the order, including
11 commission’s technical staff and attorneys.”

12 **Q.** **Please continue with your answer.**

13 **A.** It is evident that Mr. Reed was in fact assigned to the case and misled the ethics
14 commission in his response, or the IURC ignored the law and allowed Mr. Reed
15 to attend the session. Either way, why Mr. Reed was in that meeting at that time
16 is a critical question that has yet to be answered.

17 **Q.** **What was discussed at that particular executive session?**

18 **A.** This executive session is where the final decision was deliberated in consolidated
19 Cause Nos. 43114 and 43114-S1 pertaining to the issuance of the original CPCN
20 for the Edwardsport IGCC and the approval of DEI’s initial carbon capture and
21 sequestration study. What role Mr. Reed played in those deliberations and why
22 the law was violated relative to that particular executive session are matters that
23 must be disclosed for the ratepayers of DEI and the public at large to have any

1 confidence whatsoever that the CPCN, CCS study, and later rate increases which
2 were the result of the conclusions reached at that executive session are not the
3 product of improper communications and undue influence.

4 **Q. Has the Inspector General or the Ethics Commission filed a complaint against**
5 **Mr. Reed?**

6 **A.** Not to my knowledge.

7 **Q. Did you glean anything else of concern from the transcripts of Mr. Reed's**
8 **hearing before the Ethics Commission?**

9 **A.** Yes. Similar to Mr. Storms, he received a letter from the IURC ethics officer
10 stating she saw no reason to preclude Mr. Reed from seeking employment with
11 DEI. Specifically the transcript reads:

12 Seyfried: Petitioner's Exhibit One is my letter of June 3rd to Mr. Michael Reed
13 concerning my review of the issues posed by his prospective employment.

14 Arceneaux: And what solution did you come to as a result of your investigation
15 (inaudible)?

16 Seyfried: As set forth in my letter, I don't believe that he is precluded from
17 moving on and accepting that employment under the ... and would not violate the
18 ethics code

19 Arceneaux: And if you were asked to testify as to all of the facts and details that
20 are contained in Exhibit One, would your testimony be the same as it is contained
21 in this Exhibit?

22 Seyfried: Yes, it would.

1 **Q. Is this the same ethics officer as referenced in the Storms transcript who is**
2 **currently the presiding ALJ in this case?**

3 A. Yes.

4 **Q. Are there any other investigations pertaining to the ongoing ethics scandal?**

5 A. CAC and Common Cause submitted a request to U.S. Attorney Joe Hogsett to
6 investigate the matter. According to the Star article, Exhibit CAC-KLO-7, Mr.
7 Hogsett has referred the case to the Department of Justice.

8 **Q. Are there issues CAC raised in the past with respect to potential ethical**
9 **violations pertaining to this proceeding?**

10 A. Yes. Attached as Exhibit CAC-KLO-26 is a letter a CAC member received from
11 the Commission in response to a letter submitted to the Commission opposing the
12 proposed IGCC. The letter advocates for coal gasification and all but presumes
13 approval of the Edwardsport project. This is highly inappropriate given that the
14 Commission is supposed to be an objective, impartial, fact finding body. To
15 advocate for a new, first of a kind technology currently under consideration in a
16 pending proceeding certainly brings the objectivity and impartiality of the
17 Commission squarely into question.

18 **Q. What are your recommendations?**

19 A. The Commission should immediately schedule at least two field hearings to be
20 held in Duke Service territory and provide ample notice so that those members of
21 the public who are currently paying for this project have adequate time to adjust
22 their schedules in order to attend one of the hearings. The ratepayers of DEI have
23 only had a single opportunity to express their views with respect to their current

1 and future obligations imposed by the Commission to pay for the Edwardsport
2 project. That single opportunity was over three years ago – in August 2007.

3
4 It should be noted, that at the time that one hearing was held. the cost estimate for
5 the IGCC was \$1.985 billion. Now the amount is approaching 3.0 billion. Were
6 an increased payment obligation of this magnitude to involve property tax money,
7 a public referendum would typically be required before the additional costs could
8 be passed on to the taxpayers. Similarly, general tax increase of any size, let
9 alone a billion dollars, would require a majority vote by both Chambers of the
10 General Assembly and approval by the Governor. Yet with respect to this
11 decision to pass on a total of nearly \$3 billion to the ratepayers, only one
12 opportunity has been afforded the public to be heard, and none offer to cast a vote
13 on whether they should be required to assume such a payment obligation..

14 **Q. Any other recommendations?**

15 **A.** Yes. Considering all of the unanswered and yet to be asked questions that are
16 contained in the before mentioned investigations, specifically being performed by
17 the following:

- 18 1) The IURC
- 19 2) The Inspector General
- 20 3) The petitioner, Duke Energy
- 21 4) Gibson, Dunn, & Crutcher
- 22 5) Department of Justice

1 All orders and hearings in this cause relating to affirmative relief sought by DEI
2 for the Edwardsport project should be suspended indefinitely pending the
3 completion of all of those investigations and release of all the findings to the
4 public and the Commission.

5 **Q. DOES THIS CONCLUDE YOUR TESTIMONY?**

6 **A.** Yes, it does.



**STATE OF INDIANA
OFFICE OF THE GOVERNOR**

State House, Second Floor
Indianapolis, Indiana 46204

Mitchell E. Daniels, Jr.
Governor

Memo

To: All Agency Heads/General Counsels
From: David Pippen, General Counsel to the Governor
Date: October 5, 2010
Re: Ethics

Recently, a former general counsel and administrative law judge (ALJ) for the Indiana Utility Regulatory Commission left state government to work for Duke Energy of Indiana, a regulated entity. I wrote a letter to the IURC explaining the Governor's interpretation of the spirit and intention of the ethics reform he spearheaded when he came to office. In short, he will not tolerate even the appearance of impropriety.

Upon the Governor's direction, an internal review of the matter revealed the lawyer was communicating with Duke regarding a position with the company at a time he was presiding over administrative hearings concerning Duke. Additionally, the agency head was aware of the communications and did not remove the lawyer from matters for which the lawyer was now conflicted.

So you understand the seriousness of this matter, I want you to know our response:

1. The Governor has terminated the employment of the chairman of the IURC;
2. The administrative opinions over which the ALJ presided regarding Duke will be reopened and reviewed to ensure no undue influence was exerted in the decisions;
3. The one-year cooling off period for decision makers are to be considered to include ALJs who preside over information gathering and order drafting; and
4. The matter has been referred to the Inspector General to determine if any laws were broken or misinformation given to the Ethics Commission when requesting a formal opinion;

To reiterate the ethics rules as they relate to regulated entities:

1. No ALJ should engage in communications with regulated entities regarding possible employment without recusing oneself from matters appearing before that regulator;
2. Administrative opinions over which an ALJ presided while pursuing employment opportunities with the regulated entity will be reopened and reviewed to ensure no undue influence was exerted in the decision;
3. The one-year cooling off period for decision makers includes ALJs who preside over information gathering and order drafting; and

4. Violations of these points will be referred to the Inspector General.

Please advise your staff to avoid this circumstance in the future.

*Internal Audit of Duke Energy Cases
Presided over by Former
Administrative Law Judge Storms*



October 14, 2010
Prepared By: DeAnna L. Poon, Administrative Law Judge

STATE OF INDIANA



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To: Chairman James D. Atterholt

From: DeAnna L. Poon, Administrative Law Judge

cc: Commissioner Larry S. Landis
Commissioner Carolene Mays
Commissioner David E. Ziegner
Joseph Sutherland, Executive Director
Robert Veneck, Executive Director
Loraine Seyfried, Acting Chief Counsel
Bradley Borum, Director of Electricity
Dale Thomas, Assistant Director of Electricity

Overview: On October 5, 2010, David Pippen, General Counsel to the Governor, sent an ethics memo in which he outlined steps the Commission should take to determine whether any impropriety occurred: "Administrative opinions over which an ALJ presided while pursuing employment opportunities with the regulated entity will be reopened and reviewed to ensure no undue influence was exerted in the decision." More specifically, "The administrative opinions over which the ALJ presided regarding Duke will be reopened and reviewed to ensure no undue influence was exerted in the decisions."

Pursuant to the Governor's directive, this report includes information regarding the legal and technical audit of cases on which former Administrative Law Judge ("ALJ") Scott Storms presided involving Duke Energy Indiana, Inc. ("Duke"). This audit spans from January 1, 2010 through September 30, 2010. In addition, because the foundation for the current Edwardsport Integrated Gasification Combined Cycle ("IGCC") proceedings is related to prior Commission orders regarding the IGCC plant, six additional Duke cases will be reviewed. By including these cases, the Commission's review will encompass the inception of Edwardsport. The Commission estimates completing the following process and issuing a formal report on or before year-end.

Auditor Information: The auditor reviewing these cases is current Administrative Law Judge DeAnna Poon. Ms. Poon's entire legal career has been spent in service to State government. First a law clerk, she was promoted to Deputy Attorney General working directly under then-section chief Greg Zoeller in 2004. After three years, she transitioned to the Indiana State Department of Agriculture as Chief Counsel before coming to the Commission. Ms. Poon's role at the Commission mostly consists of rulemakings, advising the Consumer Affairs Division, and some casework. Ms. Poon was never previously assigned to any Duke proceedings.

Table of Contents

Audit Process	4
Internal Case Review Process	4
Case Audits	5
Appendix	7

Audit Process

The audit process will consist of reviewing both decisions that were autonomous (such as bench rulings) and group decisions (such as final orders). Specifically, the following process will be followed to determine if any activity by ALJ Storms did not follow normal processes or failed to be supported by evidence or another legal basis.

1. Transcripts of each hearing will be read to determine when ALJ Storms ruled from the bench. Ruling will be evaluated as described above.
2. All rulings on motions will be evaluated.
3. Staff reports,¹ which are drafted after prefiled testimony, but prior to the evidentiary hearing with cross examination and redirect, will be compared to Orders. If there are differences, the following process will occur:
 - a. Transcripts will be reviewed to determine if evidence was filed after the staff report that led to conclusions in the Order that differed from the staff report.
 - b. Staff will discuss whether there were other reasons the staff report differed from the Order.
4. Staff report questions will be compared with docket entries² and hearing testimony to see if staff questions were answered. If questions were not answered, a determination will be made to see if there were other reasons the questions were not asked.

Internal Case Review Process

To understand what is audited, it is important to understand the process staff uses to review cases. Below is the procedure used for Commission hearings.³ In addition, please see the Appendix following this document to review the following procedural guidelines previously issued to staff:

- Case Management Meetings (issued 12-09-09)
- Staff Report Guidelines (issued 03-24-10)
- Order Review Procedures for Technical Staff (issued 04-09-10)

¹ See "Staff Report Guidelines" in the Appendix for a comprehensive explanation of what is included in a staff report.

² A docket entry is issued by the Presiding Officer(s) of a case either to inform the parties of information (such as continuing a case) or requesting one of the parties file information (such as their response to a Commission question).

³ This information can also be found in the 2010 Indiana Utility Regulatory Commission Annual Report, p 5.

Commission Hearing Procedure

1. A formal proceeding before the Commission begins with the filing of a Petition or Complaint with the Commission. The Commission also has the authority to open a Formal Investigation into matters as may be necessary. A Petition, Complaint, or notice of Formal Investigation is given a five-digit cause number and assigned to an Administrative Law Judge and staff members within the appropriate technical division. A single Commissioner may also be assigned to the proceeding.
2. Following the assignment of a proceeding, the matter is scheduled for a Prehearing Conference to establish a procedural schedule that includes dates for the prefiling of testimony and the date for the Evidentiary Hearing. In some instances, a public Field Hearing may be held in the utility's largest service territory. Field Hearings are generally scheduled in the evening to provide customers of the utility with an opportunity to express their opinions about the utility's case directly to the Commission.
3. Once the utility files its case-in-chief testimony, intervening parties to the proceeding and the Office of Utility Consumer Counselor ("OUCC") may file their case-in-chief testimony, which contains evidence in support of their positions. The utility then has an opportunity to prefile rebuttal testimony in response to the testimony presented by intervening parties and the OUCC.
4. After all parties have prefiled their testimony and exhibits, an Evidentiary Hearing is conducted by the Commission on the date and time scheduled in the Prehearing Conference Order. The assigned Administrative Law Judge presides over the Evidentiary Hearing along with the assigned Commissioner. Assigned staff attends the Evidentiary Hearing and additional Commissioners may also attend the Evidentiary Hearing. During the Evidentiary Hearing, the parties present their direct and rebuttal testimony and witnesses are cross-examined. All testimony presented at the Evidentiary Hearing becomes part of the record in that proceeding. In every proceeding, the Commission must issue its decision based on matters that are part of the record.
5. Following the close of the Evidentiary Hearing, the Commission issues an Order in the proceeding. Determinations made by the Commission in its Orders may be appealed to the Indiana Court of Appeals.

Case Audits

The following cases are those in which former Administrative Law Judge Scott Storms presided over a Duke matter. As stated above, most causes span from January 1, 2010 through September 30, 2010. In addition, prior Edwardsport IGCC cases were added for continuity.

1. *Cause Numbers 42693 and 42693 S1*, In the Matter of the Commission's Investigation, Pursuant to I.C. § 8-1-2-58, into the Effectiveness of Demand Side Management ("DSM") Programs Currently Utilized in the State of Indiana, Including an Examination of Issues that Could Improve the Effectiveness of Demand Side Management Programs in the State, Including Consideration of the Establishment of an Independent DSM Administrator Model on a State-Wide Basis; Respondents: All Jurisdictional Electric and Gas Utilities in the State of Indiana

2. *Cause Number 42736 RTO 21*, Application of Duke Energy Indiana, Inc. for Approval of a Change in its Midwest Independent System Operator Management Cost and Revenue Adjustment Factor Under Its Standard Contract Rider No. 68
3. *Cause Number 43501*, Verified Petition of Duke Energy Indiana, Inc. Requesting the Indiana Utility Regulatory Commission to Approve an Alternative Regulatory Plan Pursuant to I.C. 8-1-2.5-1, et seq., for the Implementation of an Electric Distribution System “Smartgrid” and Advanced Metering Infrastructure, Distribution Automation Investments, and a Distributed Renewable Generation Demonstration Project, for Approval of New Depreciation Rates for Electric Distribution Plant, for a Waiver of the Provisions of 170 I.A.C. 4-1, et seq., and for Associated Accounting and Rate Recovery Mechanisms, Including a Ratemaking Proposal to Update Distribution Rates Annually and a “Lost Revenue” Recovery Mechanism, in Accordance with I.C. 8-1-2-42(a) and I.C. 8-1-2.5-1 et seq., and Preliminary Approval of the Estimated Costs and Scheduled Deployment of the Company’s Smartgrid Initiative
4. *Cause Number 43653*, Verified Petition of Duke Energy Indiana, Inc. Requesting the Indiana Utility Regulatory Commission to Approve an Alternative Regulatory Plan Pursuant to I.C. 8-1-2.5-1, et seq., to the Extent Required, for the Approval of and Cost Recovery Associated with the Study of Carbon Storage for the Edwardsport Integrated Gasification Combined Cycle Generating Facility (“IGCC Project”)
5. *Cause Number 43743*, Petition of Duke Energy Indiana, Inc. for Approval of Authority for Deferred Accounting Treatment for Operating Expenses Associated with the Restoration of Extensive System Damage Resulting from the January 27, 2009 Ice Storm
6. *Cause Numbers 42894, 43114, 43114 S1, 43114 IGCC 1, 43114 IGCC 2, 43114 IGCC 3, 43114 IGCC 4, 43114 IGCC 4 S1, and 43114 IGCC 5*, the Edwardsport IGCC Cases

Appendix

Following please find documents that outline Commission procedures:

Case Management Meetings (issued 12-09-09).....	Page 8
Staff Report Guidelines (issued 03-24-10).....	Page 10
Order Review Procedures for Technical Staff (issued 04-09-10).....	Page 12

Case Management Meetings

1. What is the purpose?

The purpose of the case management meeting is to have a focused discussion with a larger group within the Commission, outside the team assigned, of issues in pending cases that contain either complex or challenging policy issues. It is intended for Commissioners, but includes ALJs, external affairs and other technical team members. The direction of the meeting is to present the issues and facts of the case with staff recommending various resolutions to issues.

The discussion will be led by the assigned case team and should:

- a. Present the facts of the case clearly and distinctly (keep it brief)
- b. Identify the team's plan, and
- c. Clarify any concerns raised by the larger group.

2. Who is the intended audience?

The intended audience should be staff not directly assigned with a concentration toward Commissioners and ALJs. The meetings should include the Public Information Officer, Consumer Affairs Director, Executive Directors and General Counsel.

3. How should the meeting be scheduled?

Use Outlook meeting notice invites, and require RSVPs. The Commissioners can work out among themselves who will attend any given meeting. Two meeting may be required if more than two Commissioners are interested in attending.

4. What cases should be covered?

Typically, the cases to be covered in a case management meeting are rate cases; however, any case with unique circumstances or with policy implications should also be discussed. Also, include any rulemaking or special projects that have policy implications or may be of interest. The focus of the meeting should concentrate on just three or four cases to limit the discussion and keep the meeting to approximately 1.5 hours.

5. What other items should be addressed?

Other items that should be addressed in a case management meeting include issues of consistency in regard to previously issued orders and those issues that stretch across all industries (i.e. acquisition adjustment, benchmarking, etc.).

6. How should the meeting be conducted?

The meeting should allow for assigned staff to present the issues and facts of the case, but the division director should guide the meeting and keep the discussion and the meeting on track. It remains important for staff development to have team leaders and assigned staff present information. Staff should be encouraged to offer for discussion potential resolutions/proposals to issues.

7. How often should the meeting occur?

The frequency of a case management meeting is difficult to determine given the timing of cases, filings and the establishment of the procedural schedule. A case discussed prior to an evidentiary hearing should not be precluded from being discussed in another case management meeting before writing the order. This allows staff to adequately research the issues especially after discussions with other staff and after listening to the testimony in the evidentiary hearing. The scheduling may best be at the director's discretion.

8. Meeting notes?

Following the meeting, written notes should be created and circulated to those who were not able to attend the meeting. The notes should be circulated within a few days following the meeting. If they include deliberative (i.e. decision making) or attorney-client privileged information, this should be stated across the top of the document.

Staff Report Guidelines

1. Technical staff is required to prepare a staff report for all docketed cases. The staff report should include the following:
 - a. An executive summary describing the key issues in the case.
 - b. Brief case history including a list of Petitioner's prior docketed case(s) with the cause number(s), date order was issued, and a brief description of the relief granted (e.g., 10% rate increase).
 - c. In some instances, a description of Petitioner's characteristics regarding the type(s) of service provided, the number of customers served, and a general description of the service area and the utility's infrastructure.
 - d. Brief summaries of each witnesses' testimony that identifies the issues.
 - e. Independent staff analysis identifying staff's concerns/issues that may need further clarification/discussion during the hearing process. Include "compare and contrast" of parties' positions to help with the resolution of the issues in the case.
 - f. Provide background information that might impact/influence the current case such as other similar Commission cases that may assist Commissioner's understanding of the impacts.
 - g. Develop recommendations on all prevalent issues with sufficient cites/references to support analysis including but not limited to additional research.
 - h. If adopting a party's position, include specific reasons and rationale for supporting the position.
 - i. Develop questions and list questions by witness in the staff report to be addressed in the hearing process or in preparation of a docket entry. Work with assigned Commissioner and ALJ on questions and to obtain additional information for clarification of relevant issues. *[Request that information be provided in the format necessary to make your analysis more productive and efficient]*
 - j. If new rates are proposed, prepare a table that compares the typical monthly bills and percentage increase based on each of the parties' position.
 - k. For lengthy staff reports, include a table of contents after the executive summary. Present the brief case history and Petitioner's characteristics before the case summaries. If new rates are proposed, include a rate comparison table in the report.

2. All staff reports should include the following statement on each page in either the header or the footer:

Intra-agency Advisory or Deliberative Material
Not Subject to Public Disclosure under I.C. § 5-14-3-4(b)(6)

3. An email providing a link to the staff report is required for notification of a completed staff report. Notification should be directed to the industry staff report distribution list.

The email should identify **all** assigned staff including Commissioner(s) and ALJ(s). If a hearing is scheduled, the email should list the day, date, time, and room number.

For example: *Please find the link to view the staff report for Cause No. 45000, Indiana Energy Utility at S:/industry division/case. The hearing is scheduled for Wednesday, August 18, 2010 at 9:30 a.m. in JCR 222. The assigned team members are ALJ Seyfried, Commissioner Atterholt, Michael Gallagher (team leader), and Jerry Webb.*

4. Staff is required to provide a brief written summary for compliance filings within 10 business days of the filing, distributed via email using the industry staff report distribution list.

Order Review Procedures for Technical Staff

Generally, for most cases, the technical staff needs at least five (5) business days to provide comments and edits to draft orders prior to general circulation for Conference. In the event of a complex case or a case with policy implications, the technical staff needs at least ten (10) business days prior to general circulation for technical staff to review and provide comments and edits prior to general circulation. Additional time may be necessary and assessment should be made on a case-by-case basis. The technical staff, through the assigned team leader, should review the draft order for technical analysis, references to testimony, accuracy of calculations or financial information, as well as spelling/grammar. In addition, the technical division director(s) should be included in the review process, if not assigned to the case.

The team leader is responsible to provide the ALJ a consolidated review of the draft order reflecting all suggested edits and any comments from the assigned technical staff and the technical director(s).

Order Review Procedural Process & Responsibilities:

1. Assigned Technical Staff—Provide review of draft order to ALJ and assigned Commissioner, if any, prior to general circulation within ≤ 5 business days for general cases or ≤ 10 business days for complex cases. Review should include:

- ✓ Technical analysis
- ✓ References to testimony
- ✓ Accuracy of calculations or financial information
- ✓ Policy implications
- ✓ Spelling/grammar

After a draft order is circulated and on the agenda for Conference, assigned technical staff should perform a second review of the draft order, as found on the Conference folder, prior to Conference. Assigned staff and the Division Director shall be prepared to review any substantive changes made to the draft order during the circulation process.

2. Executive Session—Executive sessions are meetings of the full Commission that may take place once all evidence on the matter has been received by the Commission. In the event that the Commission conducts an executive session, assigned technical staff should plan on attending the session and be prepared to address issues related to staff analysis of the issue(s) presented. Only assigned technical staff may attend an executive session.

IURC PRESSURING DUKE

Regulators plan investigation of southwestern Indiana plant

By John Russell

john.russell@indystar.com

Its owner describes it as a "power plant of the future," an engineering wonder that will use "clean coal" technology to power hundreds of thousands of Indiana homes.

Opponents decry it as a boondoggle that is unnecessary and prohibitively expensive.

Now Duke Energy Corp.'s \$2.9 billion Edwardsport power plant, about half-completed, is coming under increased scrutiny.

The Indiana Utility Regulatory Commission — stung by findings that one of its own high-level officials had presided over hearings about the plant while talking to Duke about a job — on Thursday demanded that Duke's chief executive appear Nov. 3 in Indianapolis to justify the need for the plant.

"It is in the public interest for the

» See Duke, Page A6

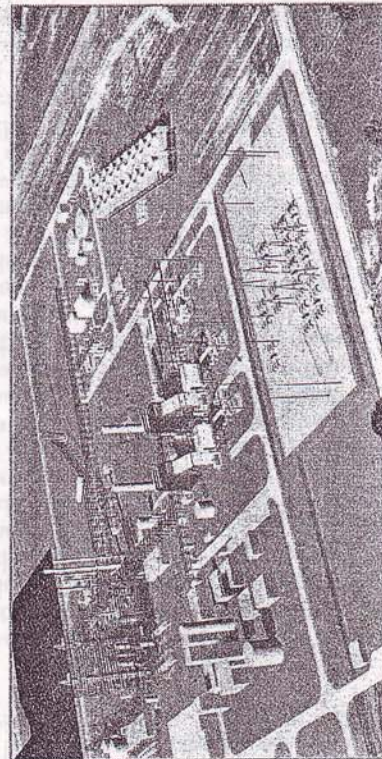
PRO VS. CON

Duke Energy says:

- » The plant will be one of the cleanest coal-powered facilities in the world.
- » It will create hundreds of full-time jobs and thousands of temporary construction jobs.
- » It will use nearly 2 million tons of Indiana coal a year, supporting Hoosier mining jobs.

Opponents of the Edwardsport plant say:

- » It will unnecessarily raise electric rates and increase harmful emissions.
- » Energy demand could be better met by promoting efficiency.
- » Technology that would be used in the plant is unproven.



Artist's rendering provided by Duke Energy

The Edwardsport Integrated Gasification Combined Cycle Station, at the Edwardsport Station in Knox County, is about half-completed. The cost, initially estimated at less than \$2 billion, has increased to almost \$2.9 billion.

Exhibit CAC-KLO-3

Duke

Utility's hiring of former IURC official triggered current uproar.

From A1

utility to explain why the plant is still necessary," the commission said in a statement.

The commission also plans to conduct a sweeping investigation into the plant in southwestern Indiana. It said it would review decisions related to the plant dating to 2006.

Several consumer groups have long fought the plant, which is designed to convert coal into a synthetic gas, then burn it in turbines to produce electricity. The plant's construction costs have surged since the original estimate of \$1.985 billion in 2007.

Citizens Action Coalition of Indiana, a consumer group, said the company instead should ramp up energy efficiency programs to meet electrical demand. It also said "clean coal technology" is a misnomer, because the plant would be built without equipment to capture carbon dioxide emissions. The equipment would be added later, only when federal regulations governing carbon dioxide change, and then only if it is cheaper to do so than to pay for the carbon dioxide emissions.

Duke Energy recently said it could complete construction of the plant for \$2.88 billion, largely because of unforeseen costs of materials and design changes. It already has poured \$2 billion into construction and financing.

Much of the additional cost would be passed along to consumers, under an agreement reached last week among the utility, the Indiana Utility Consumer Counsel and Nucor Steel Indiana, one of the utility's largest customers. The agreement capped the costs that could be passed along to consumers at \$2.975 billion.

At the center of the uproar over the plant is Scott Storms, former general counsel and chief administrative law judge for the IURC. Storms presided over dozens of administrative hearings involving the plant. He left the IURC last month to take a job with Duke in its Indiana regulatory office in Plainfield.

On Oct. 5, Gov. Mitch Daniels fired the chairman of the IURC, David Lott Hardy, saying he knew that Storms had been in conversations with Duke while continuing to participate in hearings and issuing orders related to the company.

Later the same day, Duke put Storms on administrative leave, as well as Michael Reed, president of the company's Indiana operations.

Earlier this week, The Indianapolis Star published the contents of e-mails between the IURC and Duke, which indicated that

ABOUT THE STATION

» **WHAT:** Duke Energy's 160-megawatt Edwardsport Station in Knox County.

» **DETAILS:** The 618-megawatt Edwardsport Integrated Gasification Combined

Cycle Station facility will emit less sulfur dioxide, nitrogen oxide and mercury than the plant it replaces, while providing more than

10 times the power of the existing plant. The new plant will use 1.7 million to 1.9 million tons of Indiana and Midwestern coal per year. It is expected to employ 110 to 120 people.

» **OPENING:** Expected to begin operation in 2012.

» **COST:** Initially, the cost was estimated at \$1.985 billion, but the price tag has risen to \$2.88 billion. The cost is expected to push residential electric rates up about 14 percent over five years.



Source: Star archives

Storms had been talking to the utility about a job as early as June, a month before he signed an order clearing the way for Duke to pass on to customers the cost overruns for the Edwardsport plant.

The IURC said Thursday it would immediately conduct a legal and technical audit of all the cases that Storms presided over involving Duke, which also operates several older coal plants in the state. The audit will span from Jan. 1 to Sept. 30, but in the case of the Edwardsport plant, it will go back to 2006.

"It is of the utmost importance to determine whether the cases were handled improperly or mismanaged in any way, and if so, for us to take swift and corrective action immediately," Jim Atterholt, IURC's new chairman, said in a statement. He declined, through a spokeswoman, to be interviewed.

The commission's investigation will be conducted internally, and the findings will be issued by the end of the year, Atterholt said. The November review will be open to the public and the media.

The Citizens Action Coalition applauded the review but also called for an outside investigation.

"We are concerned that when an agency investigates itself, it may not be as aggressive and transparent as necessary," said Grant Smith, the coalition's executive director.

Another watchdog group, Common

Cause/Indiana, said it supported an outside investigation, in addition to the internal one. "It's really hard for a government entity to investigate itself or its peers," said Julia Vaughn, the group's program director.

Daniels' spokeswoman, Jane Jankowski, dismissed questions about the need for an outside investigation, pointing out that the state's inspector general also is reviewing the matter.

"It's an insulting question and infers that the governor isn't ethical," Jankowski said. "The governor instituted the ethics rules that are in place now and acted quickly to remove the chairman last week when he learned those standards were violated. The governor has a six-year track record of dealing with any difficult issue that has come up."

Daniels has long supported the plant, saying it will provide cleaner energy and reinvigorate Indiana's coal mining towns. He has said the plant is needed to support growing demand, even though it could mean higher bills.

Duke said Thursday it could not provide a figure for how much it will cost the plant to provide an hour of kilowatt energy, compared with traditional coal-powered plants.

But it said the plant's current construction cost would have the effect of raising rates by about 14 percent over five years. That means the typical residential customer would see his or her monthly bill gradually increase to \$107.29 per month in 2013 from \$94.08 per month in 2009.

The company touts the plant as the largest in the world to use advanced technology to "gasify" coal, strip out many of the pollutants and then burn that cleaner gas to produce power. It would replace power-generating units that are more than 60 years old.

Duke said its CEO, James E. Rogers, would appear at the November conference to talk about the continuing need for the Edwardsport plant.

"We understand the state's actions and recognize the need to ensure public trust," Rogers said in a statement. "This has my full attention, and I am prepared to appear before the commission on Nov. 3 to reaffirm the need for and benefits of the Edwardsport plant for our Indiana customers."

The company said the plant is crucial for modernizing Indiana's aging electrical system, which has not added a major new power plant in more than two decades.

The IURC said the point of the November conference is to explore Duke's forecasts for long-term and short-term energy demand needs, how the Edwardsport plant fits in to that plan, and how the company plans to meet demand, including the use of various alternatives.

★ Call Star reporter John Russell at (317) 444-6283.

"It is of the utmost importance to determine whether the cases were handled improperly or mismanaged in any way, and if so, for us to take swift and corrective action immediately."

Jim Atterholt, IURC's new chairman

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IN THE PINK

THE INDIANAPOLIS STAR

WEDNESDAY, OCTOBER 6, 2010 ★ "Where is liberty?" II COR. 3:17 ★ 75 CENTS ★ CITY EDITION

Today's weather
 LOW: 42 HIGH: 72
 Warmer temperatures,
 and no rain in sight.
Details, B6

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ETHICS CONTROVERSY ERUPTS

Daniels fires utility regulatory chairman; Duke Energy puts 2 on leave

**By Jeff Swiatek
 and Tim Evans**

jeff.swiatek@indyStar.com

What started as just another "revolving door" case of a utility hiring a state regulator blew up into something much bigger Tuesday.

Gov. Mitch Daniels sacked the chairman of the Indiana Utility Regulatory Commission, and Duke Energy put its Indiana president on leave amid conflict-of-interest concerns over the relationship between the agency and the energy provider.

The IURC chairman, David Lott Hardy, was bounced after five years in the job leading the powerful five-member commission that rules on rate-hike requests and other utility regulatory mat-

ters in the state. It was Daniels who appointed him to the commission.

Hours after Daniels gave Hardy his walking papers, Duke, the state's largest electric utility, announced it had put its Indiana president, Mike Reed, on paid leave.

Joining him on paid leave was Scott Storms, the man who touched off the erupting ethics controversy when he quit his position as general counsel and chief administrative law judge at the IURC to take a job

last week as a regulatory attorney at Duke, the company he had been deeply involved in regulating.

Daniels said an "internal review" of

MOVING BACK AND FORTH

Officials have been job-swapping between the Indiana Utility Regulatory Commission and energy companies it regulates for years. Three in the news today:

IURC → DUKE

Scott R. Storms: Put on leave after move sparked outcry. The IURC's chief legal adviser left in September to become a lawyer in Duke Energy's regulatory division. Gov. Mitch Daniels' administration said Tuesday that he participated in IURC hearings about Duke while talking with Duke about a job.



Michael W.

Reed: Put on leave Tuesday.

The Indiana president of Duke since June, Reed had been IURC executive director from 2006 to 2009.



ENERGY INDUSTRY → IURC

David Lott Hardy: Fired on Tuesday. Appointed chairman of the IURC by Daniels in 2005, Hardy worked for the energy company Public Service Indiana from 1969 to 1985. PSI merged with Cincinnati Gas & Electric in 1994 to form Cinergy; Cinergy merged with Duke in 2005.



Sources: IURC, Duke Energy, Indiana State Personnel Department

» See Ethics, Page A8

Ethics

» Memo says state will investigate the matter.

From A1

Storms' hiring by Duke found Storms didn't remove himself from IURC regulatory matters involving Duke this summer while he was talking to the utility about working there. Furthermore, the review concluded, Hardy was aware but took no action.

The governor's spokeswoman, Jane Jankowski, said the review of the incident that prompted the governor's firing of Hardy would not be publicly released because it was "a verbatim report. There is no internal review document."

Reed, who has been Duke's Indiana president since June, was swept up in the controversy because he played a role in hiring Storms away from the IURC, said Duke spokeswoman Angelina Protogere. In addition, Reed is himself a former IURC executive director.

At the heart of the controversy is the practice — common but ethically questionable — of state regulators going to work for the companies they regulate.

The Indiana General Assembly in the past five years has put restrictions on public-private job-switching by top officials, but the latest turn of the revolving door didn't sit well with Indiana's governor.

Storms' boss, Hardy, who was making \$110,000 a year as IURC chairman, "was aware of the communications and did not remove (Storms) from matters for which the lawyer was now conflicted," the governor's general counsel, David Phippen, said in an "ethics memo" sent to state agency heads Tuesday and made public.

The memo said the state Inspector General's Office will investigate the matter for any vio-

lations of state law. The state also will look into IURC decisions related to Duke in which Storms participated, potentially including any rate increases related to the construction of Duke's coal gasification plant in Edwardsport.

As if the revolving door of employment between Duke and the IURC wasn't blatant enough, the now-fired IURC chairman's resume also includes a 16-year stint as an attorney with a utility, Public Service Indiana, that was later bought by Duke Energy.

"We always question the appearance of a cozy relationship between regulators and utilities," said Kerwin Olson, program director of Citizens Action Coalition, an Indianapolis watchdog group that often fights utility rate hikes on behalf of ratepayers.

"We applaud the governor in this act (firing Hardy); however, it is just the tip of the iceberg. We believe there is possible criminal misconduct that warrants further investigation."

Olson wouldn't discuss the evidence Citizens Action is gathering but said it involves examples of deeper conflicts of interest at the IURC.

Citizens Action called for vacating all regulatory orders involving Duke that Storms worked on while he was in contact with Duke about the job.

The governor's memo to agency heads didn't go as far as Citizens Action wants but said those regulatory orders over Duke that Storms worked on will be "reopened and reviewed to ensure no undue influence was exerted in the decisions."

Big power companies appear frequently before the IURC to obtain approvals for such things as rate hikes and new plant construction and even to respond to tree trimming complaints. IURC's website shows Duke has had 142 docketed cases filed before the IURC since January 2005, with

"We applaud the governor in this act (firing Hardy); however, it is just the tip of the iceberg."

Kerwin Olson, program director of Citizens Action Coalition

Storms listed as the administrative law judge on 25 of them. Duke Energy Indiana, based in Plainfield, serves 780,000 customers in a 69-county service area, including much of the metro area outside Marion County.

Duke's most pressing regulatory filings in recent years involve its \$2.9 billion coal gasification plant under construction in Edwardsport in Southern Indiana. Storms was integrally involved at the IURC in regulatory matters involving the plant and Duke's wish to bill ratepayers for its construction costs before the plant opens as the first in the nation to use a new cleaner-burning technology to generate electricity from coal.

"We'd like to see the Edwardsport case reopened and re-evaluated for misconduct," Olson said. "We feel the commission ignored evidence and essentially has given a blank check to Duke" to forge ahead with its construction despite cost overruns, he said.

Julia Vaughn, policy director for another government watchdog group, Common Cause/Indiana, questioned whether Inspector General Dave Thomas — being an appointee of the governor — is in a good position to lead a probe into other ap-

pointees of the governor.

Instead, the investigation of the IURC should be handled by the U.S. attorney's office, she said. "That way, people can be assured a really independent investigation is done."

Vaughn said the matter involving Storms and Hardy "raises a lot of serious questions about decision-making" at IURC and also casts a cloud over the state ethics commission, which approved Storms' move to Duke without the mandated "cooling-off" period that bans high-level government officials from taking a job with a company they regulate for one year after leaving their state job.

"It raises questions about their ability to make decisions," she said of the ethics commission. "If you read the transcript (of meetings where Storms' case was discussed), they didn't come off as being very professional or very concerned."

The commission decided that Storms didn't have to abide by the one-year ban because he didn't hold a decision-making job at the IURC.

In his Tuesday memo to agency heads, Daniels' general counsel countered that ethics commission finding, saying that from now on, "administrative law judges who preside over information-gathering and order drafting" come under the one-year ban on working for companies they help regulate.

Duke said it will conduct its own review of its actions in the hiring of Storms. Reed and Storms will remain on leave while the review is done. Protocol, the Duke spokeswoman, said Duke will also "fully cooperate" with the state's review, according to the company's statement.

"We value the trust our customers and communities have in us, and we're committed to doing all that we can to maintain their confidence," the Charlotte, N.C.-based utility said in its statement.

Indiana House Speaker B. Patrick Bauer, D-South Bend, praised the governor's firing of Hardy but questioned the relationship between utilities and regulators in the state.

"Was there a cozy relationship there? It puts a stain on all these rate increases (approved for utilities)," said Bauer.

Named by the governor to replace Hardy as IURC chairman is one of the other four members, Jim Atterholt, a former state insurance commissioner.

Olson, of Citizens Action, called Hardy a "utility-friendly" IURC chairman during his tenure. "He said before the General Assembly ... he sees it as his role to ensure a business-friendly climate for utilities," Olson said.

Timothy Stewart, an Indianapolis attorney who represents industrial customers of utilities before the IURC, said Hardy's reputation as IURC chairman "depends on who you are asking. I know there were times utilities were frustrated with the commission."

A New Jersey company called Regulatory Research Associates, which ranks state utility regulatory commissions for their relative willingness to grant requests of investor-owned utilities, notes in a March report that Indiana hasn't been extra-obliging to utilities.

"Indiana regulation continues to be comparatively constructive from an investor perspective" with "authorized equity returns (to utilities) over the past few years (that) have tended to approximate prevailing nationwide industry averages," the report said.

An IURC spokeswoman didn't respond to a request to interview Hardy.

Duke Energy didn't make Reed or Storms available for interviews.

★ Call Star reporter Jeff Swiatek at (317) 444-6483.

WHO'S INVOLVED?

David Lott Hardy

Age: 66.

Position: Appointed chairman of the Indiana Utility Regulatory Commission in September 2005 by Gov. Mitch Daniels; he was then reappointed in April 2010. Daniels announced Tuesday that he fired Hardy.

Annual salary at IURC: \$109,262. Professional history: 1969 to 1985, staff member and assistant general counsel, PSI; 1985-97, attorney in Louisville, Ky., primarily representing a utility company; 1997 to 2005, practiced law out of his Fort Wayne home.

Education: Bachelor's and law degrees, Indiana University.

Michael W. Reed

Age: 59.

Position: President, Duke Energy Indiana, since June 2010. Duke put him on paid leave on Tuesday.

Previous: Commissioner, Indiana Department of Transportation, February 2009 to June 2010; executive director, IURC, 2006-09; previously held various positions at GTE/Verizon.

Annual salary at IURC: \$98,996.

Education: Bachelor's, business, IU; master's, finance and management; Ball State University.

Scott R. Storms

Age: 50.

Position: Previously, Storms was general counsel and chief legal adviser to the Indiana Utility Regulatory Commission. He left in September to be a lawyer in Duke Energy's regulatory division. Put on paid leave by Duke.

Annual salary at IURC: \$93,375.

Career: Joined IURC in June 2000.

He also served as the commission's chief administrative law judge. He previously served as enforcement section chief in the office of legal counsel at the Indiana Department of Environmental Management.

Education: Indiana University

School of Law-Indianapolis.

Sources: IURC, Duke Energy, Indiana Personnel Department.

E-mails show clubby IURC, Duke | IndyStar.com

<http://www.indystar.com/article/20101012/NEWS05/10120327/E-mails-show-clubby-relationship-between-IURC-Duke?odyssey=tab|topnews|text|IndyStar.com>

October 12th, 2010

It was late June when the Indiana president of Duke Energy sent a warm, personal e-mail to the top lawyer at the state commission that regulated his business.

"I am still working the 'you' issue with Duke mgt," said the e-mail from Michael W. Reed to Scott Storms, general counsel of the Indiana Utility Regulatory Commission. "Don't sense a concern about making this happen, rather more of an issue of when and how. Call and [I'll be] glad to elaborate."

A month after that e-mail exchange, Storms signed off on matters that helped clear the way for Duke to pass on to customers the cost overruns for a \$2.9 billion coal gasification plant.

In September, he was hired by Duke.

A series of e-mails, obtained by The Indianapolis Star under a public-records request, offer a peek behind the scenes of a looming ethics controversy that began last month with Storms' hiring by Duke and erupted last week with Gov. Mitch Daniels' firing of IURC Chairman David Lott Hardy. They also show the close relationships between Duke and state regulators and how dismissive state regulators were of a state ethics review.

For months, Duke Energy had been looking for a lawyer to fill an opening in its regulatory group in Indiana, preferably someone with a utility regulatory background. Storms, who had worked at the IURC for a decade, seemed to be a good fit. And he appeared interested, despite a state ethics law that prohibited regulators from moving to industry without a one-year cooling-off period.

The e-mails suggest Storms and Reed had been in deep discussions and casual banter over how to get Storms hired at Duke, even as Storms continued to preside over Duke cases.

Also joining in the banter was Storms' boss, Hardy, then-chairman of the IURC, whose job was to oversee regulation of electric, gas, water and telecommunications on behalf of taxpayers.

In early September, Hardy and Storms joked about the State Ethics Commission's review of Storms' plan to accept a job with Duke. "It was impressive that you did not laugh during the Ethics hearing," Storms wrote in an e-mail to Reed and Hardy.

(Page 2 of 4)

The same day, Storms asked Hardy and Reed whether they would serve as references for a company background check conducted by Duke Energy Indiana's parent, Duke Energy Corp., based in Charlotte, N.C.

"I added both of you," he wrote in the Sept. 10 e-mail. "I hope this is OK."

Reed shot back: "Absolutely not." Storms replied: "Uh oh. . ." and Reed quickly made it clear he was joking. "Well ok. :)" he wrote. Exhibit CAG-KLO-5

His light manner revealed his close working relationship with Storms. The two had worked together for three years at the IURC, when Reed was executive director of the state commission and Storms was a lawyer. Reed had left the commission to oversee the state Department of Transportation. Four months ago, he became president of Duke Energy Indiana.

Hardy, for his part, fired an e-mail back to Storms: "Attending the Ethics hearing and not laughing is more credit than is in your account."

Storms survived the ethics review. The panel ruled he was not covered by the one-year cooling-off period because he had never made a regulatory or licensing decision on behalf of the state affecting Duke.

A few days later, he accepted a job as assistant general counsel with Duke Energy Indiana, leaving the state commission's Downtown offices for Duke's state offices in Plainfield. But soon consumer watchdog groups began crying foul over the revolving-door move and demanding an explanation.

Last week, in a flurry of activity, Daniels fired Hardy, the man he had appointed to chair the IURC in 2005, citing conflict-of-interest concerns. Later that day, Duke Energy put Reed and Storms on administrative leave, pending the results of an investigation.

On Monday, a Star reporter shared some of the e-mail contents with the company. Duke declined to respond to them specifically but said it would investigate thoroughly. It has hired an outside firm to probe the hiring process.

"Many of these e-mails are very concerning to Duke Energy, and they will be considered as part of a larger, more comprehensive review," James E. Rogers, Duke Energy chairman and chief executive, said in a statement.

(Page 3 of 4)

Still, Duke executives in North Carolina had joked about Storms' hiring process along the way. On Sept. 17, as they were awaiting the results of Storms' company drug test, James Turner, a group executive and president of Duke's U.S. Franchised Electric & Gas division, wrote: "I'm still waiting on mine. There is concern about a history of delusion-inducing substances."

Julia Vaughn, policy director of the government watchdog group Common Cause/Indiana, said she was "appalled" that state regulators and utility executives were joking in e-mails about revolving-door issues and ethics procedures.

"It's very disturbing to hear that key members of state agencies seem to laugh at the idea of ethics, and to make a mockery of a law we've worked hard to support," she said. "We hope this attitude isn't pervasive in state agencies."

Daniels' office has declined to disclose the contents of a state review of the hiring of Storms by Duke, saying it was an oral report, not a document.

On Monday, Daniels spokeswoman Jane Jankowski again declined to provide additional details about the Storms matter.

She said the governor takes ethics issues seriously. "The governor isn't going to

tolerate suggestions of impropriety, and I think that's why you saw the very clear and direct action he took last week," Jankowski said. Exhibit CAC/KLO-5

Daniels had said that an internal review of Storms' negotiations with Duke found that Storms didn't remove himself from IURC regulatory matters involving Duke while he was talking to the utility about working there. The review also concluded that Hardy was aware but took no action.

Daniels also ordered that regulatory and administrative opinions over which Storms presided should be reopened and reviewed to ensure no undue influence was exerted.

It remains unclear how long Duke and Storms were talking about a job. The Indianapolis Star's public records requested covered just three months, from June 23 to Sept 23, in an effort to obtain state documents quickly.

Angeline Protogere, a spokeswoman for Duke Energy Indiana, said Monday that the company first contacted Storms and several others in April, asking informally whether they were interested in the open position or could recommend a suitable candidate.

(Page 4 of 4)

She declined to say when Storms submitted his resume or otherwise expressed formal interest in the position. The governor's office also declined to provide this information, saying it was under internal review.

According to the June 27 e-mail between Hardy and Storms, talks apparently had been under way for a while, judging from Hardy's comment that he was "still working the 'you' issue" with his superiors. The subject line of that e-mail simply read "Update."

In the meantime, Storms would continue to work on Duke cases. On July 28, Storms signed an IURC order that proposes that Duke recover billions of dollars in costs for construction of the Edwardsport plant from customers and earn incentives.

The plant, which is still under construction, has seen its construction costs climb sharply, which will result in higher electrical rates for customers. Storms also acted as an administrative law judge in the case, taking testimony and evidence and overseeing numerous proceedings about the Edwardsport plant.

On Monday, Citizens Action Coalition, an Indianapolis watchdog group that often fights utility rate increases on behalf of customers, sent a three-page letter to Daniels, demanding more answers about the IURC conduct, saying the issue goes well beyond bad judgment of a few people.

"This problem is absolutely systemic," Kerwin Olson, the group's program director, said in an interview.

From: Karn, Kelley A [Kelley.Karn@duke-energy.com]
Sent: Wednesday, June 30, 2010 12:02 PM
To: Storms, Scott
Subject: Re: PJM issues

I'm not sure of the timing of the tour yet. I'll email you later and let you know if that will work. It's not critical and can wait until tomorrow, as well.
Thanks.

----- Original Message -----

From: Storms, Scott <SStorms@urc.IN.gov>
To: Karn, Kelley A
Sent: Wed Jun 30 11:53:57 2010
Subject: RE: PJM issues

Hi Kelley-

How does 3:30 look for you?

Scott R. Storms
General Counsel
Indiana Utility Regulatory Commission
101 W. Washington Street
Suite 1500E
Indianapolis, Indiana
Tel. (317) 232-2102
Fax. (317) 232-6758
Email. ssstorms@urc.in.gov

-----Original Message-----

From: Karn, Kelley A [mailto:Kelley.Karn@duke-energy.com]
Sent: Tuesday, June 29, 2010 6:38 PM
To: Storms, Scott
Subject: Re: PJM issues

Thanks, Scott. I'll try you tomorrow.

----- Original Message -----

From: Storms, Scott <SStorms@urc.IN.gov>
To: Karn, Kelley A
Sent: Tue Jun 29 13:07:18 2010
Subject: RE: PJM issues

Kelley-

I just got back from vacation today, and will not be in the office until tomorrow. I think the rest of the week is fairly clear for me.

Scott

Tel. (317) 232-2102
Fax. (317) 232-6758
Email. ssstorms@urc.in.gov

Exhibit CAC-KLO-6

-----Original Message-----

From: Karn, Kelley A [mailto:Kelley.Karn@duke-energy.com]
Sent: Tuesday, June 29, 2010 6:38 PM
To: Storms, Scott
Subject: Re: PJM issues

Thanks, Scott. I'll try you tomorrow.

----- Original Message -----

From: Storms, Scott <SStorms@urc.IN.gov>
To: Karn, Kelley A
Sent: Tue Jun 29 13:07:18 2010
Subject: RE: PJM issues

Kelley-

I just got back from vacation today, and will not be in the office until tomorrow. I think the rest of the week is fairly clear for me.

Scott

From: Karn, Kelley A [Kelley.Karn@duke-energy.com]
Sent: Monday, June 28, 2010 5:26 PM
To: Storms, Scott
Subject: PJM issues

Hi Scott - I know you're just getting back from vacation today, so I didn't want to bug you. Are you available tomorrow b/w 10 and 11:30 for a quick discussion with me?

Thanks,
Kelley

From: Storms, Scott
Sent: Wednesday, June 30, 2010 11:43 AM
To: Reed, Michael W
Subject: RE: Update

Hi Mike-

How do tomorrow or Friday look for you?

Scott

Scott R. Storms
General Counsel
Indiana Utility Regulatory Commission
101 W. Washington Street
Suite 1500E
Indianapolis, Indiana
Tel. (317) 232-2102
Fax. (317) 232-6758
Email. ssstorms@urc.in.gov

-----Original Message-----

From: Reed, Michael W [mailto:Michael.Reed2@duke-energy.com]
Sent: Monday, June 28, 2010 6:54 AM
To: Storms, Scott
Subject: Re: Update

Enjoy. Let's have lunch.

----- Original Message -----

From: Storms, Scott <SStorms@urc.IN.gov>
To: Reed, Michael W
Sent: Mon Jun 28 02:03:31 2010
Subject: Re: Update

Thanks for the update. Am on vacation and saw the Red Sox defeat the Giants today. Alcatraz tour scheduled for tomorrow. I should be back in the office later this week and will give you a call.

Hope all is going well for you.

Scott

----- Original Message -----

From: Reed, Michael W <Michael.Reed2@duke-energy.com>
To: Storms, Scott
Sent: Sun Jun 27 15:59:04 2010
Subject: Update

I am still working the "you" issue with Duke mgt. Don't sense a concern about making this happen, rather more of an issue of when and how. Call and glad to elaborate.

Subject: Meeting with DSMCC
Location: IURC Boardroom

Start: Mon 7/19/2010 1:30 PM
End: Mon 7/19/2010 3:00 PM
Show Time As: Tentative

Recurrence: (none)

Meeting Status: Not yet responded

Organizer: Storms, Scott

Required Attendees: Reed, Jeffrey; Seitz, Brandon; Seiwert, Sherry; Price, Melanie D; Wheeler, Kristina; Veneck Jr., Robert; Ray, James; Borum, Bradley; Susan Stratton; IURC Boardroom

From: Price, Melanie D [Melanie.Price@duke-energy.com]
Sent: Wednesday, July 14, 2010 8:43 AM
To: Storms, Scott
Subject: Accepted: Meeting with DSMCC

Scott, thanks for working around my schedule. I get back in the country late Thursday—do I need to talk with you on Friday about anything related to this meeting?

Melanie

From: Price, Melanie D [Melanie.Price@duke-energy.com]
Sent: Wednesday, July 14, 2010 8:40 AM
To: Storms, Scott
Subject: Out of Office: Meeting with DSMCC

I am out of the office until Monday, July 19 and will be checking e-mails infrequently. If your matter requires more immediate attention, please call Amy Heisick at 317.838.2294 for assistance.

From: Karn, Kelley A [Kelley.Karn@duke-energy.com]
Sent: Wednesday, June 30, 2010 10:57 PM
To: Storms, Scott
Subject: RE: PJM issues

Great - I'll call you then.

-----Original Message-----

From: Storms, Scott [mailto:SStorms@urc.IN.gov]
Sent: Wednesday, June 30, 2010 4:40 PM
To: Karn, Kelley A
Subject: RE: PJM issues

10 works for me.

Scott

Scott R. Storms
General Counsel
Indiana Utility Regulatory Commission
101 W. Washington Street
Suite 1500E
Indianapolis, Indiana
Tel. (317) 232-2102
Fax. (317) 232-6758
Email. ssstorms@urc.in.gov

-----Original Message-----

From: Karn, Kelley A [mailto:Kelley.Karn@duke-energy.com]
Sent: Wednesday, June 30, 2010 3:41 PM
To: Storms, Scott
Subject: Re: PJM issues

How about I call you tomorrow? 10 or 2 pm work for you?

----- Original Message -----

From: Storms, Scott <SStorms@urc.IN.gov>
To: Karn, Kelley A
Sent: Wed Jun 30 11:53:57 2010
Subject: RE: PJM issues

Hi Kelley-

How does 3:30 look for you?

Scott R. Storms
General Counsel
Indiana Utility Regulatory Commission
101 W. Washington Street
Suite 1500E
Indianapolis, Indiana

Hang in there, still think this will get done.

Exhibit CAC-KLO-6

A dark, irregular redacted area located below the exhibit label.

From: Karn, Kelley A [Kelley.Karn@duke-energy.com]
Sent: Monday, June 28, 2010 5:26 PM
To: Storms, Scott
Subject: PJM issues

Hi Scott – I know you're just getting back from vacation today, so I didn't want to bug you. Are you available tomorrow b/w 10 and 11:30 for a quick discussion with me?

Thanks,
Kelley

From: Reed, Michael W [Michael.Reed2@duke-energy.com]
 Sent: Saturday, September 11, 2010 11:26 AM
 To: Hardy, David Lott; Storms, Scott
 Subject: Re: Reference

Am sure even scott will pick up on the subtlety of this threat!

Meridian Hills is a nice choice,,,,,

----- Original Message -----

From: Hardy, David Lott <dlhardy@urc.IN.gov>
 To: Reed, Michael W; Storms, Scott <SStorms@urc.IN.gov>
 Sent: Sat Sep 11 09:34:57 2010
 Subject: Re: Reference

If Scott is to buy - the most abstract of concepts - and if any of his soon to be former colleagues are to be invited to be his guest at Meridian Hills (love those corporate paid memberships) we need to do it ere he departs in Jan, 2011.

----- Original Message -----

From: Reed, Michael W <Michael.Reed2@duke-energy.com>
 To: Storms, Scott; Hardy, David Lott
 Sent: Sat Sep 11 08:55:44 2010
 Subject: Re: Reference

Can't recall last time Scott bought? For that matter, can't recall him ever buying?

Could the celebration be his coming out party? Afterall, he has private sector dollars now.

----- Original Message -----

From: Storms, Scott <SStorms@urc.IN.gov>
 To: Hardy, David Lott <dlhardy@urc.IN.gov>; Reed, Michael W
 Sent: Fri Sep 10 19:55:24 2010
 Subject: RE: Reference

It was impressive that you did not laugh during the Ethics hearing. I think Goltz is screening my calls for some reason. Don't understand it, we were always so close when he was at the Commission. The colonoscopy was uneventful, which I think must be a good thing. The gala celebration can commence at anytime. I will check my schedule and see if we can plan something for next week.

Great news about Commissioner Hadley...

Scott

From: Hardy, David Lott
 Sent: Friday, September 10, 2010 6:21 PM
 To: 'michael.reed2@duke-energy.com'
 Cc: Storms, Scott
 Subject: Fw: Reference

Scott R. Storms
General Counsel
Indiana Utility Regulatory Commission
101 W. Washington Street
Suite 1500E
Indianapolis, Indiana
Tel. (317) 232-2102
Fax. (317) 232-6758
Email. ssstorms@urc.in.gov

From: Karn, Kelley A [Kelley.Karn@duke-energy.com]
Sent: Sunday, September 12, 2010 9:46 PM
To: Storms, Scott
Subject: RE: Offer Letter

Sounds great. Thanks for the update, Scott.

-----Original Message-----

From: Storms, Scott [mailto:SStorms@urc.IN.gov]
Sent: Sunday, September 12, 2010 9:18 PM
To: Karn, Kelley A
Subject: Offer Letter

Kelley-

I am not sure if I told you, but I received the offer letter from HR at the end of last week. I am planning to send it back tomorrow. The background check should be in progress and I will call in the morning to get the drug screen scheduled.

Things are moving...Thanks for your help.

Scott

From: Storms, Scott
Sent: Thursday, September 09, 2010 3:57 PM
To: 'Kelley.Karn@duke-energy.com'
Subject: Re: Ethics Commission

I think it should not be too long before I receive the official letter. A week seems about right.

Nothing from HR yet.

Scott

From: Karn, Kelley A <Kelley.Karn@duke-energy.com>
To: Storms, Scott
Sent: Thu Sep 09 15:25:17 2010
Subject: RE: Ethics Commission

Great. When will you get the official letter (a week or so)? Did you get the offer letter from HR?

From: Storms, Scott [mailto:SStorms@urc.IN.gov]
Sent: Thursday, September 09, 2010 12:13 PM
To: Karn, Kelley A
Subject: Ethics Commission

Kelley-

Just wanted to let you know that I made it though the Ethics Commission with flying colors.

Scott

From: Storms, Scott
Sent: Monday, September 13, 2010 5:12 PM
To: Kam, Kelley A
Subject: Message

Kelley-

I tried to return your call but your cell phone number is not clear on my wonderful voice mail system. Can you give me a call at 232-2102?

Thanks!

Scott

Scott R. Storms
General Counsel
Indiana Utility Regulatory Commission
101 W. Washington Street
Suite 1500E
Indianapolis, Indiana
Tel. (317) 232-2102
Fax. (317) 232-6758
Email. ssstorms@urc.in.gov

From: Storms, Scott
Sent: Friday, September 17, 2010 2:02 PM
To: Hardy, David Lott; 'michael.reed2@duke-energy.com'
Subject: RE: Formal Advisory Opinion from the Ethics Commission

I have not heard anything on the drug test or background check. Those are the last two things to be completed.

Scott

Scott R. Storms
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Indiana Utility Regulatory Commission
101 W. Washington Street
Suite 1500E
Indianapolis, Indiana
Tel. (317) 232-2102
Fax. (317) 232-6758
Email. ssstorms@urc.in.gov

From: Hardy, David Lott
Sent: Friday, September 17, 2010 2:00 PM
To: Storms, Scott; 'michael.reed2@duke-energy.com'
Subject: Re: Formal Advisory Opinion from the Ethics Commission

Last barrier - Whooped!
What about the drug test?

From: Storms, Scott
To: Hardy, David Lott; Reed, Michael W <Michael.Reed2@duke-energy.com>
Sent: Fri Sep 17 13:43:43 2010
Subject: Formal Advisory Opinion from the Ethics Commission

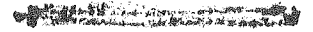
Received the letter today...Passed it along to Kelley.

Scott

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Email. sstorms@urc.in.gov

Exhibit CAC-KLO-6



From: Storms, Scott
Sent: Friday, September 17, 2010 2:04 PM
To: Reed, Michael W; Hardy, David Lott
Subject: RE: Formal Advisory Opinion from the Ethics Commission

I was afraid of that, but have no memory of the details!

Scott R. Storms
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Indiana Utility Regulatory Commission
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Suite 1500E
Indianapolis, Indiana
Tel. (317) 232-2102
Fax. (317) 232-6758
Email. sstorms@urc.in.gov

From: Reed, Michael W [mailto:Michael.Reed2@duke-energy.com]
Sent: Friday, September 17, 2010 2:03 PM
To: Hardy, David Lott; Storms, Scott
Subject: Re: Formal Advisory Opinion from the Ethics Commission

Am told there was some residue found, apparently from his wild IU days\$

From: Hardy, David Lott <dlhardy@urc.IN.gov>
To: Storms, Scott <SStorms@urc.IN.gov>; Reed, Michael W
Sent: Fri Sep 17 14:00:01 2010
Subject: Re: Formal Advisory Opinion from the Ethics Commission

Last barrier - Whooped!
What about the drug test?

From: Storms, Scott
To: Hardy, David Lott; Reed, Michael W <Michael.Reed2@duke-energy.com>
Sent: Fri Sep 17 13:43:43 2010
Subject: Formal Advisory Opinion from the Ethics Commission

Received the letter today...Passed it along to Kelley.

Scott

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Fax. (317) 232-6758
Email. ssstorms@urc.in.gov

Exhibit CAC-KLO-6

From: Reed, Michael W [Michael.Reed2@duke-energy.com]
Sent: Friday, September 17, 2010 2:34 PM
To: Hardy, David Lott; Storms, Scott; Turner, Jim
Subject: Re: Formal Advisory Opinion from the Ethics Commission

Same day!

From: Hardy, David Lott <dlhardy@urc.IN.gov>
To: Reed, Michael W; Storms, Scott <SStorms@urc.IN.gov>; Turner, Jim
Sent: Fri Sep 17 14:08:25 2010
Subject: Re: Formal Advisory Opinion from the Ethics Commission

Seriously - I thot all drug tests came back the same day if you passed.
 Oh. Forget that - I'm probably wrong.
 Mike/Jim: when did yours come back?

From: Hardy, David Lott
To: 'michael.reed2@duke-energy.com' <michael.reed2@duke-energy.com>; Storms, Scott
Sent: Fri Sep 17 14:04:53 2010
Subject: Re: Formal Advisory Opinion from the Ethics Commission

Is Duke still using the Goltz Laboratory for drug testing?

From: Reed, Michael W <Michael.Reed2@duke-energy.com>
To: Hardy, David Lott; Storms, Scott
Sent: Fri Sep 17 14:02:31 2010
Subject: Re: Formal Advisory Opinion from the Ethics Commission

Am told there was some residue found, apparently from his wild IU days\$

From: Hardy, David Lott <dlhardy@urc.IN.gov>
To: Storms, Scott <SStorms@urc.IN.gov>; Reed, Michael W
Sent: Fri Sep 17 14:00:01 2010
Subject: Re: Formal Advisory Opinion from the Ethics Commission

Last barrier - Whooped!
 What about the drug test?

From: Storms, Scott
To: Hardy, David Lott; Reed, Michael W <Michael.Reed2@duke-energy.com>
Sent: Fri Sep 17 13:43:43 2010
Subject: Formal Advisory Opinion from the Ethics Commission

Received the letter today...Passed it along to Kelley.

Scott

Scott R. Storms

From: Storms, Scott
To: Hardy, David Lott; Reed, Michael W <Michael.Reed2@duke-energy.com>
Sent: Fri Sep 17 13:43:43 2010
Subject: Formal Advisory Opinion from the Ethics Commission

Received the letter today...Passed it along to Kelley.

Scott

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Suite 1500E
Indianapolis, Indiana
Tel. (317) 232-2102
Fax. (317) 232-6758
Email. ssstorms@urc.in.gov

From: Storms, Scott
Sent: Friday, September 17, 2010 2:35 PM
To: Reed, Michael W; Hardy, David Lott
Subject: RE: Formal Advisory Opinion from the Ethics Commission

That might be what is taking so long...I heard the folks at Goltz labs do not work very hard.

Scott R. Storms
 General Counsel
 Indiana Utility Regulatory Commission
 101 W. Washington Street
 Suite 1500E
 Indianapolis, Indiana
 Tel. (317) 232-2102
 Fax. (317) 232-6758
 Email. ssstorms@urc.in.gov

From: Reed, Michael W [mailto:Michael.Reed2@duke-energy.com]
Sent: Friday, September 17, 2010 2:33 PM
To: Hardy, David Lott; Storms, Scott
Subject: Re: Formal Advisory Opinion from the Ethics Commission

One of the best if one desires a specific outcome, regardless of price!

From: Hardy, David Lott <dlhardy@urc.IN.gov>
To: Reed, Michael W; Storms, Scott <SStorms@urc.IN.gov>
Sent: Fri Sep 17 14:04:53 2010
Subject: Re: Formal Advisory Opinion from the Ethics Commission

Is Duke still using the Goltz Laboratory for drug testing?

From: Reed, Michael W <Michael.Reed2@duke-energy.com>
To: Hardy, David Lott; Storms, Scott
Sent: Fri Sep 17 14:02:31 2010
Subject: Re: Formal Advisory Opinion from the Ethics Commission

Am told there was some residue found, apparently from his wild IU days\$

From: Hardy, David Lott <dlhardy@urc.IN.gov>
To: Storms, Scott <SStorms@urc.IN.gov>; Reed, Michael W
Sent: Fri Sep 17 14:00:01 2010
Subject: Re: Formal Advisory Opinion from the Ethics Commission

Last barrier - Whooped!
 What about the drug test?

Sent: Fri Sep 17 14:00:01 2010

Subject: Re: Formal Advisory Opinion from the Ethics Commission

Exhibit CAC-KLO-6

Last barrier - Whooped!
What about the drug test?

From: Storms, Scott

To: Hardy, David Lott; Reed, Michael W <Michael.Reed2@duke-energy.com>

Sent: Fri Sep 17 13:43:43 2010

Subject: Formal Advisory Opinion from the Ethics Commission

Received the letter today...Passed it along to Kelley.

Scott

Scott R. Storms

General Counsel

Indiana Utility Regulatory Commission

101 W. Washington Street

Suite 1500E

Indianapolis, Indiana

Tel. (317) 232-2102

Fax. (317) 232-6758.

Email. ssstorms@urc.in.gov

From: Turner, Jim [Jim.Turner@duke-energy.com]
Sent: Friday, September 17, 2010 3:14 PM
To: Hardy, David Lott; Reed, Michael W; Storms, Scott
Subject: Re: Formal Advisory Opinion from the Ethics Commission

Never known you to take a pitch when a big fat softball is lobbed in...

From: Hardy, David Lott <dlhardy@urc.IN.gov>
To: Turner, Jim; Reed, Michael W; Storms, Scott <SStorms@urc.IN.gov>
Sent: Fri Sep 17 14:29:55 2010
Subject: Re: Formal Advisory Opinion from the Ethics Commission

Really, really, tempting but, for once, I will keep my mouth shut.

From: Turner, Jim <Jim.Turner@duke-energy.com>
To: Hardy, David Lott; Reed, Michael W <Michael.Reed2@duke-energy.com>; Storms, Scott
Sent: Fri Sep 17 14:26:55 2010
Subject: Re: Formal Advisory Opinion from the Ethics Commission

I'm still waiting on mine. There is concern about a history of delusion-inducing substances.

From: Hardy, David Lott <dlhardy@urc.IN.gov>
To: Reed, Michael W; Storms, Scott <SStorms@urc.IN.gov>; Turner, Jim
Sent: Fri Sep 17 14:08:25 2010
Subject: Re: Formal Advisory Opinion from the Ethics Commission

Seriously - I thot all drug tests came back the same day if you passed.
 Oh. Forget that - I'm probably wrong.
 Mike/Jim: when did yours come back?

From: Hardy, David Lott
To: 'michael.reed2@duke-energy.com' <michael.reed2@duke-energy.com>; Storms, Scott
Sent: Fri Sep 17 14:04:53 2010
Subject: Re: Formal Advisory Opinion from the Ethics Commission

Is Duke still using the Goltz Laboratory for drug testing?

From: Reed, Michael W <Michael.Reed2@duke-energy.com>
To: Hardy, David Lott; Storms, Scott
Sent: Fri Sep 17 14:02:31 2010
Subject: Re: Formal Advisory Opinion from the Ethics Commission

Am told there was some residue found, apparently from his wild IU days\$

From: Hardy, David Lott <dlhardy@urc.IN.gov>
To: Storms, Scott <SStorms@urc.IN.gov>; Reed, Michael W

From: Storms, Scott
Sent: Friday, September 17, 2010 5:20 PM
To: Karn, Kelley A
Subject: Bob Johnson Info

Kelley-

Here is some info to pass on to Bob Johnson. Have a great weekend.

Scott

Scott Storms has accepted a position as Assistant General Counsel with Duke Energy Indiana. Mr. Storms currently serves as General Counsel for the Indiana Utility Regulatory Commission. Prior to being named as General Counsel in 2007, Mr. Storms served as the Commission's Chief Administrative Law Judge. Before joining the Commission in 2000, Mr. Storms served as the Enforcement Section Chief for the Indiana Department of Environmental Management's Office of Legal Counsel. Mr. Storms has an undergraduate degree from Indiana University in Bloomington, and is a graduate of the Indiana University School of Law in Indianapolis. Mr. Storms resides in Indianapolis with his wife Nancy and daughter Casey. He will begin his duties with Duke Energy Indiana on September 27, 2010.

Scott R. Storms
General Counsel
Indiana Utility Regulatory Commission
101 W. Washington Street
Suite 1500E
Indianapolis, Indiana
Tel. (317) 232-2102
Fax. (317) 232-6758
Email. ssstorms@urc.in.gov

From: Karn, Kelley A [Kelley.Karn@duke-energy.com]
Sent: Friday, September 17, 2010 5:49 PM
To: Reed, Michael W; Turner, Jim; Stempien, Catherine S; Protogere, Angeline S
Cc: Storms, Scott
Subject: Attorney hire

FYI - I plan to send Bob Johnson (Indiana Utility Reports publication) the info below. He had asked me about Scott joining Duke, but I said I could not comment until it was official. Now that we got the ethics opinion, etc. I'll plan to send out early next week. Let me know if you have any comments.

Thanks.

Scott Storms has accepted a position as Assistant General Counsel with Duke Energy Indiana. He will be joining the Duke Energy Indiana regulatory team, reporting to Kelley Karn, Associate General Counsel. Mr. Storms currently serves as General Counsel for the Indiana Utility Regulatory Commission. Prior to being named as General Counsel in 2007, Mr. Storms served as the Commission's Chief Administrative Law Judge. Before joining the Commission in 2000, Mr. Storms served as the Enforcement Section Chief for the Indiana Department of Environmental Management's Office of Legal Counsel. Mr. Storms has an undergraduate degree from Indiana University in Bloomington, and is a graduate of the Indiana University School of Law in Indianapolis. Mr. Storms resides in Indianapolis with his wife Nancy and daughter Casey. He will begin his duties with Duke Energy Indiana on September 27, 2010.

From: Storms, Scott
Sent: Friday, September 17, 2010 7:07 PM
To: 'Michael.Reed2@duke-energy.com'; Hardy, David Lott
Subject: Re:

if I weren't so pleased, comments like that could be very upsetting!

----- Original Message -----

From: Reed, Michael W <Michael.Reed2@duke-energy.com>
To: Hardy, David Lott; Storms, Scott
Sent: Fri Sep 17 18:46:35 2010
Subject:

Young Storms should be in the bob johnson report this week. Guess that means we're stuck.....

[REDACTED]

----- Original Message -----

All I can assume is that the severance package Scott gets is better than Eileens and he intends to go directly into retirement. Gosh, Mike, sounds good- have any of those deals left?

From: Storms, Scott
Sent: Sunday, September 19, 2010 3:24 PM
To: 'Michael.Reed2@duke-energy.com'; Hardy, David Lott
Subject: Re:

I see how this is going.

Yea, when is the gala Mr Storms?

As there has been nothing beyond "penciling in", I presumed you were going for forgetfulness on my part and then stalling until the ethics officer would prohibit any Commission employee from partaking. Did the wines arrive from France or did Duke give them to the OUCC in the settlement? Are all the former Commissioners signed on to attend?

[illegible]

I thought the Gala celebration was penciled in for tuesday night? If melanie is going to be my boss, I may have to scale things back rather dramatically. Exhibit CAC-KLO-6

----- Original Message -----

From: Hardy, David Lott
To: Storms, Scott
Sent: Fri Sep 17 19:36:29 2010
Subject: Re:

Speaking of the Gala.....

----- Original Message -----

From: Storms, Scott
To: Hardy, David Lott; 'Michael.Reed2@duke-energy.com' <Michael.Reed2@duke-energy.com>
Sent: Fri Sep 17 19:31:42 2010
Subject: Re:

Now my stomach is starting to hurt. I am shifting from celebratory beers to medicinal bourbon.

----- Original Message -----

From: Hardy, David Lott
To: Storms, Scott
Sent: Fri Sep 17 19:23:54 2010
Subject: Re:

Is Melanie Price's promotion to be Scott's boss in there as well?

----- Original Message -----

From: Storms, Scott
To: 'Michael.Reed2@duke-energy.com' <Michael.Reed2@duke-energy.com>; Hardy, David Lott
Sent: Fri Sep 17 19:06:44 2010
Subject: Re:

if I weren't so pleased, comments like that could be very upsetting!

----- Original Message -----

From: Reed, Michael W <Michael.Reed2@duke-energy.com>
To: Hardy, David Lott; Storms, Scott
Sent: Fri Sep 17 18:46:35 2010
Subject:

Young Storms should be in the bob johnson report this week. Guess that means we're stuck.....

From: Reed, Michael W [Michael.Reed2@duke-energy.com]
Sent: Tuesday, August 17, 2010 12:16 PM
To: Storms, Scott
Subject: Re: Good luck!

No, downtown Indy. Call me later.

----- Original Message -----

From: Storms, Scott <SStorms@urc.IN.gov>
To: Reed, Michael W
Sent: Tue Aug 17 12:15:34 2010
Subject: Re: Good luck!

All done. Are you around?

----- Original Message -----

From: Reed, Michael W <Michael.Reed2@duke-energy.com>
To: Hardy, David Lott; Storms, Scott
Sent: Tue Aug 17 08:20:11 2010
Subject: Re: Good luck!

Yea but I feel like we're letting our first born head off to college.....

----- Original Message -----

From: Hardy, David Lott <dlhardy@urc.IN.gov>
To: Reed, Michael W; Storms, Scott <SStorms@urc.IN.gov>
Sent: Tue Aug 17 07:41:42 2010
Subject: Re: Good luck!

He will be fine.

----- Original Message -----

From: Reed, Michael W <Michael.Reed2@duke-energy.com>
To: Storms, Scott
Cc: Hardy, David Lott
Sent: Tue Aug 17 07:32:53 2010
Subject: Good luck!

From: Reed, Michael W [Michael.Reed2@duke-energy.com]
Sent: Tuesday, August 17, 2010 1:28 PM
To: Storms, Scott

Call me cell

From: Reed, Michael W [Michael.Reed2@duke-energy.com]
Sent: Friday, August 27, 2010 5:16 PM
To: Storms, Scott
Subject: Re: Update

Great!

----- Original Message -----

From: Storms, Scott <SStorms@urc.IN.gov>
To: Reed, Michael W
Sent: Fri Aug 27 17:15:31 2010
Subject: Re: Update

Kelley told me it was in the works and that she hoped to be able to extend a verbal offer soon, followed by a formal written package with the details.

I let her know that I was planning to get on the Ethics Commission agenda on September 9th.

Very exciting news!

Scott

----- Original Message -----

From: Reed, Michael W <Michael.Reed2@duke-energy.com>
To: Storms, Scott
Sent: Fri Aug 27 16:58:19 2010
Subject: Re: Update

Offer?

----- Original Message -----

From: Storms, Scott <SStorms@urc.IN.gov>
To: Reed, Michael W; Hardy, David Lott <dlhardy@urc.IN.gov>
Sent: Fri Aug 27 16:03:51 2010
Subject: Update

Kelley called to tell me things are moving. I just dropped off my packet to get on the Ethics Commission agenda for September 9th.

Scott

From: Storms, Scott
Sent: Tuesday, August 17, 2010 10:47 PM
To: 'Michael.Reed2@duke-energy.com'
Subject: Re: Confidential

Not sure what is going on with my blackberry, but I just saw this note today. Thanks for your help and guidance.

Scott

----- Original Message -----

From: Reed, Michael W <Michael.Reed2@duke-energy.com>
To: Storms, Scott; Reed, Michael W <Michael.Reed2@duke-energy.com>
Sent: Fri Aug 13 10:00:08 2010
Subject: Confidential

When your interviews are scheduled, particularly with stempien and manly, give me a call. Glad to provide some pointers if you wish.

From: Reed, Michael W [Michael.Reed2@duke-energy.com]
Sent: Tuesday, August 31, 2010 5:51 PM
To: Storms, Scott
Subject: Fw: Re:

I'm in Charlotte and now back at hotel. Call anytime this eve, if convenient. 317-412-5876.

----- Original Message -----

From: Reed, Michael W
To: 'sstorms@urc.in.gov' <sstorms@urc.in.gov>
Sent: Tue Aug 31 16:35:04 2010
Subject: Re: Re:

Sure

----- Original Message -----

From: Storms, Scott <SStorms@urc.IN.gov>
To: Reed, Michael W
Sent: Tue Aug 31 15:25:07 2010
Subject: RE: Re:

Seems pretty good from what Kelley told me. I would like to talk to you again about the process when you have time.

Scott R. Storms
General Counsel
Indiana Utility Regulatory Commission
101 W. Washington Street
Suite 1500E
Indianapolis, Indiana
Tel. (317) 232-2102
Fax. (317) 232-6758
Email. sstorms@urc.in.gov

-----Original Message-----

From: Reed, Michael W [mailto:Michael.Reed2@duke-energy.com]
Sent: Tuesday, August 31, 2010 3:22 PM
To: Storms, Scott
Subject: Re:

Good?

----- Original Message -----

From: Storms, Scott <SStorms@urc.IN.gov>
To: Reed, Michael W
Sent: Tue Aug 31 15:18:35 2010
Subject: RE:

I got it today!!! Very exciting news!!

Scott R. Storms

General Counsel
Indiana Utility Regulatory Commission
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Suite 1500E
Indianapolis, Indiana
Tel. (317) 232-2102
Fax. (317) 232-6758
Email. ssstorms@urc.in.gov

-----Original Message-----

From: Reed, Michael W [mailto:Michael.Reed2@duke-energy.com]
Sent: Tuesday, August 31, 2010 3:12 PM
To: Storms, Scott
Subject:

Offer received? Spoke to Manly today, if you do not have yet, maybe tomorrow or Thursday.
:)

From: Price, Melanie D [Melanie.Price@duke-energy.com]
Sent: Friday, September 03, 2010 3:09 PM
To: Storms, Scott
Subject: RE: phone call

It is, and let me offer you advice that was offered to me – some of the best vacation you ever get is when you are between engagements because you have no work issues hanging over your head, so it is true bliss. Enjoy every minute.

From: Storms, Scott [mailto:SStorms@urc.IN.gov]
Sent: Friday, September 03, 2010 3:06 PM
To: Price, Melanie D
Subject: Re: phone call

What a perfect day to have to take off. Talk to you next week. Have a great weekend.

Scott

From: Price, Melanie D <Melanie.Price@duke-energy.com>
To: Storms, Scott
Sent: Fri Sep 03 14:43:57 2010
Subject: phone call

What, are you burning through some vacation time? ☺

We can talk on Tuesday (I am at the demand response investigation technical conference all day)

Melanie D. Price
Assistant General Counsel
Duke Energy Business Services
317.838.6877

From: Karn, Kelley A [Kelley.Karn@duke-energy.com]
Sent: Wednesday, September 01, 2010 10:47 PM
To: Storms, Scott
Subject: offer

One thing I need for the offer letter is a final start date – they tell me that if we put a start date in the letter, and later change our minds, we have to do a new offer letter, so better to get it right the first time if possible. Let me know what your proposed date is and if we have to change later, we can do that.

Thanks,
Kelley

From: Herriman, Beth [Beth.Herriman@duke-energy.com]
Sent: Wednesday, September 08, 2010 2:28 PM
To: Storms, Scott
Subject: RE: Lunch

Great – see you then!

From: Storms, Scott [mailto:SStorms@urc.IN.gov]
Sent: Wednesday, September 08, 2010 6:50 AM
To: Herriman, Beth
Subject: Re: Lunch

I have been wanting to try the Cuban Cafe...I will plan on being there around noon.

From: Herriman, Beth <Beth.Herriman@duke-energy.com>
To: Storms, Scott
Sent: Tue Sep 07 21:49:15 2010
Subject: RE: Lunch

OK – I'll probably be at Reg. Flex that morning but can leave any time after the SUFG (not too interested in cloud computing). How about Tata's Cuban Café or City Café or anywhere else that sounds good around noon?

See you then!
Beth

From: Storms, Scott [mailto:SStorms@urc.IN.gov]
Sent: Tuesday, September 07, 2010 4:23 PM
To: Herriman, Beth
Subject: RE: Lunch

That sounds great. The 14th will work for me.

Scott

Scott R. Storms
General Counsel
Indiana Utility Regulatory Commission
101 W. Washington Street
Suite 1500E
Indianapolis, Indiana
Tel. (317) 232-2102
Fax. (317) 232-6758
Email. ssstorms@urc.in.gov

From: Herriman, Beth [mailto:Beth.Herriman@duke-energy.com]
Sent: Tuesday, September 07, 2010 3:43 PM
To: Storms, Scott
Subject: Lunch

Hey Scott –

Let's plan to have lunch sometime soon and catch up. I could do something any of these dates: 9/14, 9/15, 9/16 (after 1 p.m.), 9/20 (at 1 p.m.), 9/22, 9/27 (at 1 p.m.)

Just let me know if any of those times could work for you.

Thanks –
Beth

From: Reed, Michael W [Michael.Reed2@duke-energy.com]
Sent: Wednesday, September 08, 2010 6:03 PM
To: Storms, Scott
Cc: Hardy, David Lott
Subject: Good luck tomorrow!

From: Reed, Michael W [Michael.Reed2@duke-energy.com]
Sent: Wednesday, September 08, 2010 7:31 PM
To: Storms, Scott
Subject: Re: Tomorrow

Hurry up, we need you!

----- Original Message -----

From: Storms, Scott <SStorms@urc.IN.gov>
To: Reed, Michael W
Sent: Wed Sep 08 19:28:21 2010
Subject: Tomorrow

Thanks Mike...I hope you paved the way for me! Kelley called and said the formal offer should be on the way.

Scott

From: Storms, Scott
Sent: Thursday, September 09, 2010 3:57 PM
To: 'Kelley.Karn@duke-energy.com'
Subject: Re: Ethics Commission

I think it should not be too long before I receive the official letter. A week seems about right.

Nothing from HR yet.

Scott

From: Karn, Kelley A <Kelley.Karn@duke-energy.com>
To: Storms, Scott
Sent: Thu Sep 09 15:25:17 2010
Subject: RE: Ethics Commission

Great. When will you get the official letter (a week or so)? Did you get the offer letter from HR?

From: Storms, Scott [mailto:SStorms@urc.IN.gov]
Sent: Thursday, September 09, 2010 12:13 PM
To: Karn, Kelley A
Subject: Ethics Commission

Kelley-

Just wanted to let you know that I made it though the Ethics Commission with flying colors.

Scott

Scott R. Storms
General Counsel
Indiana Utility Regulatory Commission
101 W. Washington Street
Suite 1500E
Indianapolis, Indiana
Tel. (317) 232-2102
Fax. (317) 232-6758
Email. ssstorms@urc.in.gov

From: Storms, Scott
Sent: Thursday, September 09, 2010 12:15 PM
To: Reed, Michael W
Subject: RE: Scott is free! Eom

Thanks Mike...

One of the Commissioners chastised you for stealing talent. I told him that I would let you know that he is on to you!!

Very exciting to make it through that process.

Scott

Scott R. Storms
General Counsel
Indiana Utility Regulatory Commission
101 W. Washington Street
Suite 1500E
Indianapolis, Indiana
Tel. (317) 232-2102
Fax. (317) 232-6758
Email. ssstorms@urc.in.gov

-----Original Message-----

From: Reed, Michael W [mailto:Michael.Reed2@duke-energy.com]
Sent: Thursday, September 09, 2010 12:12 PM
To: Storms, Scott
Subject: Fw: Scott is free! Eom

Congratulations Dukie!!

----- Original Message -----

From: Hardy, David Lott <dlhardy@urc.IN.gov>
To: Pippen, David <DPippen@gov.IN.gov>; Reed, Michael W
Sent: Thu Sep 09 11:52:45 2010
Subject: Scott is free! Eom

Forgot you

Exhibit CAC-KLO-6

----- Original Message -----

From: Hardy, David Lott
To: Storms, Scott
Sent: Fri Sep 10 18:20:38 2010
Subject: Re: Reference

Certainly understandable as Hitler and Stalin are dead but still, attending the Ethics hearing and not laughing is more credit than is in your account.

I assume your mentor and first choice for a reference - Goltz - is not returning your calls.

When is the gala celebration for your exodus?

How went the colonoscopy?

----- Original Message -----

From: Storms, Scott
To: 'Michael.Reed2@duke-energy.com' <Michael.Reed2@duke-energy.com>; Hardy, David Lott
Sent: Fri Sep 10 17:18:24 2010
Subject: Re: Reference

Uh oh...

----- Original Message -----

From: Reed, Michael W <Michael.Reed2@duke-energy.com>
To: Storms, Scott; Hardy, David Lott
Sent: Fri Sep 10 17:13:43 2010
Subject: Re: Reference

Absolutely not

----- Original Message -----

From: Storms, Scott <SStorms@urc.IN.gov>
To: Hardy, David Lott <dlhardy@urc.IN.gov>; Reed, Michael W
Sent: Fri Sep 10 16:44:02 2010
Subject: Reference

As part of the hiring process Duke is conducting a background check on me (they say it is routine). Anyway, as part of this process I needed to include references, so I added both of you. I hope this is ok.

Scott

From: Reed, Michael W [Michael.Reed2@duke-energy.com]
Sent: Friday, September 10, 2010 5:21 PM
To: Storms, Scott
Subject: Re: Reference

Well ok. :)

----- Original Message -----

From: Storms, Scott <SStorms@urc.IN.gov>
To: Reed, Michael W; Hardy, David Lott <dlhardy@urc.IN.gov>
Sent: Fri Sep 10 17:18:24 2010
Subject: Re: Reference

Uh oh...

----- Original Message -----

From: Reed, Michael W <Michael.Reed2@duke-energy.com>
To: Storms, Scott; Hardy, David Lott
Sent: Fri Sep 10 17:13:43 2010
Subject: Re: Reference

Absolutely not

----- Original Message -----

From: Storms, Scott <SStorms@urc.IN.gov>
To: Hardy, David Lott <dlhardy@urc.IN.gov>; Reed, Michael W
Sent: Fri Sep 10 16:44:02 2010
Subject: Reference

As part of the hiring process Duke is conducting a background check on me (they say it is routine). Anyway, as part of this process I needed to include references, so I added both of you. I hope this is ok.

Scott

From: Storms, Scott
Sent: Monday, August 16, 2010 1:45 PM
To: 'Michael.Reed2@duke-energy.com'
Subject: Re: Call me.

Yes...

----- Original Message -----

From: Reed, Michael W <Michael.Reed2@duke-energy.com>
To: Storms, Scott
Sent: Mon Aug 16 13:40:08 2010
Subject: Re: Call me.

Do you want to discuss your interview scheduled tomorrow? Do you ever work? :)

----- Original Message -----

From: Storms, Scott <SStorms@urc.IN.gov>
To: Reed, Michael W
Sent: Mon Aug 16 13:34:49 2010
Subject: Re: Call me.

Just called. I am off today. Home number 257-2029.

----- Original Message -----

From: Reed, Michael W <Michael.Reed2@duke-energy.com>
To: Storms, Scott
Sent: Mon Aug 16 11:16:35 2010.
Subject: Call me.

From: Storms, Scott
Sent: Tuesday, August 17, 2010 8:34 AM
To: Hardy, David Lott; 'Michael.Reed2@duke-energy.com'
Subject: Re: Good luck!

On my way. No green tie.

----- Original Message -----

From: Hardy, David Lott
To: 'michael.reed2@duke-energy.com' <michael.reed2@duke-energy.com>; Storms, Scott
Sent: Tue Aug 17 08:22:56 2010
Subject: Re: Good luck!

You gotta push 'em out of the nest sometime.
Make sure he isn't wearing the green tie.

----- Original Message -----

From: Reed, Michael W <Michael.Reed2@duke-energy.com>
To: Hardy, David Lott; Storms, Scott
Sent: Tue Aug 17 08:20:11 2010
Subject: Re: Good luck!

Yea but I feel like we're letting our first born head off to college.....

----- Original Message -----

From: Hardy, David Lott <dlhardy@urc.IN.gov>
To: Reed, Michael W; Storms, Scott <SStorms@urc.IN.gov>
Sent: Tue Aug 17 07:41:42 2010
Subject: Re: Good luck!

He will be fine.

----- Original Message -----

From: Reed, Michael W <Michael.Reed2@duke-energy.com>
To: Storms, Scott
Cc: Hardy, David Lott
Sent: Tue Aug 17 07:32:53 2010
Subject: Good luck!

From: Price, Melanie D [Melanie.Price@duke-energy.com]
Sent: Saturday, August 14, 2010 12:34 PM
To: 'abecker@nisource.com'; 'abecker@silegal.com'; Paronish, April M.; Smith, Barbara Ann; Borum, Bradley; 'cjarls@nisource.com'; 'ccjackson@NiSource.com'; 'jake.allen@aes.com'; Ray, James; Stephenson, Jason; 'jpolk@polk-law.com'; 'JTerry@lewis-kappes.com'; 'kakirkham@nisource.com'; 'Kathyj@wvpa.com'; 'kjreeder@aep.com'; Krohn, Karol; Wheeler, Kris - impa; 'larryb@impa.com'; Goldenberg, Michael; 'mjsatterwhite@aep.com'; 'mquinn@Vectren.com'; 'rheidorn@vectren.com'; 'RSears@Vectren.com'; Storms, Scott; 'sstratton@ecw.org'; 'TMoore@vectren.com'; 'tvanparis@hepn.com'
Cc: 'cearle@nisource.com'; 'djefferson@nisource.com'; 'mchambers@nisource.com'; 'tcaister@nisource.com'
Subject: Re: DSMCC TPA Bidder Review

Thanks, Allison. Before Monday, Michael or I will send an agenda for Monday/ Tuesday's meetings and the scorecard developed by Barb Smith so that we can start to think about voting.
 On Monday, we will commence at 10AM at NIPSCO's offices.

Melanie D. Price
 Assistant General Counsel
 Duke Energy Business Services, Inc.
 317.838.6877

From: abecker@nisource.com <abecker@nisource.com>
To: abecker@silegal.com <abecker@silegal.com>; AParonish@oucc.IN.gov <AParonish@oucc.IN.gov>; barsmith@oucc.IN.gov <barsmith@oucc.IN.gov>; BBorum@urc.IN.gov <BBorum@urc.IN.gov>; cjarls@nisource.com <cjarls@nisource.com>; ccjackson@NiSource.com <ccjackson@NiSource.com>; jake.allen@aes.com <jake.allen@aes.com>; JaRay@urc.IN.gov <JaRay@urc.IN.gov>; Jason.Stephenson@btlaw.com <Jason.Stephenson@btlaw.com>; jpolk@polk-law.com <jpolk@polk-law.com>; JTerry@lewis-kappes.com <JTerry@lewis-kappes.com>; kakirkham@NiSource.com <kakirkham@NiSource.com>; kathyj@wvpa.com <kathyj@wvpa.com>; kjreeder@aep.com <kjreeder@aep.com>; kkrohn@oucc.IN.gov <kkrohn@oucc.IN.gov>; Wheeler, Kris - impa; larryb@impa.com <larryb@impa.com>; Price, Melanie D; Goldenberg, Michael; mjsatterwhite@aep.com <mjsatterwhite@aep.com>; mquinn@Vectren.com <mquinn@Vectren.com>; rheidorn@vectren.com <rheidorn@vectren.com>; RSears@Vectren.com <RSears@Vectren.com>; SStorms@urc.IN.gov <SStorms@urc.IN.gov>;sstratton@ecw.org <sstratton@ecw.org>; TMoore@vectren.com <TMoore@vectren.com>; TVanParis@HEPN.com <TVanParis@HEPN.com>; michael.goldenberg@duke-energy.com@nisource.com
Cc: earle@nisource.com <earle@nisource.com>; cjarls@nisource.com <cjarls@nisource.com>; djefferson@nisource.com <djefferson@nisource.com>; mchambers@nisource.com <mchambers@nisource.com>; tcaister@nisource.com <tcaister@nisource.com>
Sent: Sat Aug 14 12:17:05 2010
Subject: DSMCC TPA Bidder Review

Just FYI, I WILL be setting up a dial-in for this meeting, but our conference call system is being upgraded this weekend. As soon as it becomes available (well, it is supposed to be available by 5:00 AM on Monday...so as soon as I am available after that), I will set up the dial in. I also plan to send out notes from the presentations I covered by Monday morning.

Alison M. Becker

From: Price, Melanie D [Melanie.Price@duke-energy.com]
Sent: Sunday, August 15, 2010 6:39 PM
To: Alison Becker/NCS/Enterprise; abecker@silegal.com; Paronish, April M.; Smith, Barbara Ann; cjea@nisource.com; Cynthia Jackson/NCS/Enterprise; jake.allen@aes.com; Stephenson, Jason; jpolk@polk-law.com; JTerry@lewis-kappes.com; kakirkham@NiSource.com; kathyj@wvpa.com; kjreeder@aep.com; Krohn, Karol; Wheeler, Kris - impa; larryb@impa.com; Goldenberg, Michael; mjsatterwhite@aep.com; mquinn@Vectren.com; rheidom@vectren.com; RSears@Vectren.com; TMoore@vectren.com; TVanParis@HEPN.com; Regulatory Conference Room/Indianapolis Office; cearle@nisource.com
Cc: Storms, Scott; Borum, Bradley
Subject: Third-party administrator agenda for Monday and Tuesday/ rating matrix
Attachments: TPA Implementation Rating Matrix july 9 .xls; TPA Agenda August 16.docx

Please see attached the proposed agenda for tomorrow and Tuesday as well as the scoring matrix. As you will see, we have a lot of work to do and I will do my best to keep everyone moving at an appropriate pace to accomplish what we need to do in the allotted time.

Note that the revised pricing matrices from the vendors are not in a usable format and therefore we will have to ask them to resubmit. Because pricing is important, we will request this be done in an expeditious manner.

We will begin at 10AM tomorrow and 8AM on Tuesday (just as an FYI, I will be there tomorrow but not on Tuesday). Note that I do not have Susan Stratton's e-mail, so Scott or Brad, please forward.

Minutes from last week's presentations is forthcoming.

See you tomorrow.

Melanie D. Price
 Assistant General Counsel
 Duke Energy Business Services
 317.838.6877

Agenda
TPA Committee
Monday, August 16th & 17th (As needed)

Exhibit CAC-KLO-6

- Discuss proposed review and selection process
 - Discuss presentations – approximately 1 hour per vendor
 - Using Rating Matrix as guide
 - Strengths
 - Weaknesses
 - Concerns
 - 2nd Strawman – outcome to be compiled and presented but kept confidential by voting company vote
 - Voting due by COB, Thursday, August 19th
- Review of updated pricing
 - Changes
 - Any major impacts of bids?
- Development of follow-up questions

↑↑↑↑↑↑↑ AT LEAST THIS FAR ON DAY 1 ↑↑↑↑↑↑↑

- Discuss process for tackling upcoming work
 - Can we divide and conquer different work streams?
- Brand development
 - Discuss options for development
 - Hiring external firm
 - Waiting on selection of TPA & utilizing their marketing “department”
 - How would costs be allocated?
 - Other?
- Discuss process for initial negotiations
 - Assess/identify major obstacles with TPA which could/will be deal killers
 - Undertake with top two vendors
- Discuss timeline
 - Development of any date changes
 - Is there a need to inform the Commission?
- Discussion on updating impacts in bids
 - Do we want to have that work undertaken?
 - What are the implications of updating the impacts?
 - If yes, what is timing?
 - Who would undertake the work?
 - How would costs be allocated?
- Discussion of IT integration
 - Stated by bidders as key hinge point for maintain schedule
 - Do participating utilities have any concerns with being ready to have data in timely fashion?

PHASE 1

QUALIFICATIONS AND EXPERIENCE

35%

	1. Experience in providing general program administration and coordination including budget planning and tracking, financial management, contract management, and program reporting.	2. Experience in achieving energy efficiency savings similar to those identified in this RFP.	3. Demonstrated ability to facilitate and lead program development and planning involving multiple participants, including a demonstrated capacity to develop program designs and budgets and annual and multi-year program plans.	4. Education and experience of key personnel relevant to the needs of the project; project team has the knowledge and experience necessary to accommodate potentially short notification times and tight deadlines. The team's breadth and scope of experience should correlate to the scope of state-wide	5. Positive feedback from clients who have contracted services for similar scope projects.	6. Financial stability of company and applicable business unit.	TOTAL POINTS
Weightings	1.2	1.4	1.3	1	1	1.1	
Good Cents							0
ICF							0
MAX	5	5	5	5	5	5	35
Beck							0
WECC							0

WORK PLAN AND TECHNICAL APPROACH

30%

	7. Demonstrated ability to competently complete the assigned tasks, meet project deadlines and milestones, remain flexible to changing circumstances, and to respond to concerns and problems identified by the DSMCC.	8. Inclusion of detailed budget, which outlines proposed annual expenditures.	9. Clearly defined methodology to track service levels, ensure quality assurance and correct non-compliance/non-performance situations.	10. Demonstrate that verifiable energy savings, cost-effectiveness, and market transformation impacts will likely results from the bidder's proposal.			TOTAL POINTS
Weightings	1.5	1.6	1.1	1.8			
Good Cents							0
ICF							0
MAX	5	5	5	5			30
Beck							0
WECC							0

PRICING PER ENERGY SAVINGS

25%

	11. Unit and Portfolio pricing per kwh as shown in Appendix C.					TOTAL POINTS
Weightings	5					
Good Cents						0
ICF						0
MAX	5					25
Beck						0
WECC						0

PREFERENCE POINTS

10%

	12. Consideration shall be given to the use of local resources, including those available from Indiana based universities, businesses and non-profit organization, and to the impact on economic development in					TOTAL POINTS
Weightings	2					
Good Cents						0
ICF						0
MAX	5					10
Beck						0
WECC						0

TOTAL PHASE 1 SCORES

	QUALIFICATIONS AND EXPERIENCE	WORK PLAN AND TECHNICAL APPROACH	PRICING PER ENERGY SAVINGS	PREFERENCE POINTS	TOTAL PHASE 1 SCORE
Good Cents	0	0	0	0	0
ICF	0	0	0	0	0
MAX	35	30	25	10	100
BECK	0	0	0	0	0
WECC	0	0	0	0	0

Rating Scale

minimum expectations
minimum expectations
3 = Meets expectations
4 = Exceeds expectations
5 = Outstanding

Cc: Karn, Kelley A; Gay, Nancy L; Clack, Diane

Exhibit CAC-KLO-6

Subject: Duke Energy Indiana Smart Grid Evidentiary Hearing — C/N 43501

Judge Storms and Counsel,

The evidentiary hearing on Duke Energy Indiana's supplemental smart grid proposal is scheduled for next Thursday, the 29th. First, I wanted to mention that our new President of Duke Energy Indiana, Mike Reed, will be adopting the supplemental testimony of Jim Stanley (Petitioner's Exh. BB) at next week's hearing. Second, I wanted to ask whether the Commission or parties will have any questions for our supplemental witnesses (Mike Reed, Don Denton, Don Schneider, Mike Rowand, Casey Mather, Jeff Bailey and Kent Freeman). Several of our witnesses will need to make travel arrangements so the sooner you can let me know, the better.

Please let me know if there any questions or concerns.

Many thanks,
Beth

From: Karn, Kelley A [Kelley.Karn@duke-energy.com]
Sent: Wednesday, July 14, 2010 4:21 PM
To: Storms, Scott
Subject: RE: PJM Meeting Dates

Sorry for the delay — I was out last week. I believe Mike Reed wants to discuss with Chairman Hardy further (I think they will both be at NARUC). But, assuming a meeting is still needed after that discussion, August 10 at 2 PM is the best date for the Duke participants.

From: Storms, Scott [mailto:SStorms@urc.IN.gov]
Sent: Friday, July 02, 2010 12:52 PM
To: Karn, Kelley A
Subject: PJM Meeting Dates

Hi Kelley-

Here are a few possible dates for a meeting to discuss Duke/PJM issues:

7/19 Anytime between 10-2
8/2 Anytime
8/9 Anytime between 1-4
8/10 Anytime between 10-12 or 1-3
8/12 9-11 or 10-12
8/20 2-4

Let me know if any of these times work and I will send a calendar invite.

Scott

Scott R. Storms
General Counsel
Indiana Utility Regulatory Commission
101 W. Washington Street
Suite 1500E
Indianapolis, Indiana
Tel. (317) 232-2102
Fax. (317) 232-6758
Email. sstorms@urc.in.gov

----- Original Message -----

Exhibit CAC-KLO-6

From: Reed, Michael W <Michael.Reed2@duke-energy.com>

To: Storms, Scott

Cc: Hardy, David Lott

Sent: Tue Jul 27 18:08:40 2010

Subject:

Houston,,, we have (almost) landed! (Yea!!!)

7/23

From: Herriman, Beth [Beth.Herriman@duke-energy.com]
Sent: Monday, July 26, 2010 10:31 AM
To: Storms, Scott; Jennifer W. Terry; Aikman, Dick; Becker, Anne; Smith, Holly Rachel; Boehm, Kurt; Jerome E. Polk; Tolliver, Terry; Helmen, Randy; aohara@cchalaw.com; Eric Douthit; John M. Davis; Krohn, Karol; Kurtz, Michael; Peter Mattheis; Samuel Robinson; Shaun Mohler; Powers, William
Cc: Karn, Kelley A; Gay, Nancy L; Clack, Diane
Subject: RE: Duke Energy Indiana Smart Grid Evidentiary Hearing -- C/N 43501

Thanks Judge Storms.

Duke Energy Indiana will either answer the questions from the Docket Entry in writing prior to the hearing or in person at the hearing. Regardless, we will also have Don Denton, Jeff Bailey and Kent Freeman at the hearing.

Jerry, would it be convenient for you to limit your questions to those witnesses? If not, please let me know otherwise.

Thanks,
 Beth

From: Storms, Scott [mailto:SStorms@urc.IN.gov]
Sent: Friday, July 23, 2010 4:31 PM
To: Herriman, Beth; Jennifer W. Terry; Aikman, Dick; Becker, Anne; Smith, Holly Rachel; Boehm, Kurt; Jerome E. Polk; Tolliver, Terry; Helmen, Randy; aohara@cchalaw.com; Eric Douthit; John M. Davis; Krohn, Karol; Kurtz, Michael; Peter Mattheis; Samuel Robinson; Shaun Mohler; Powers, William
Cc: Karn, Kelley A; Gay, Nancy L; Clack, Diane
Subject: RE: Duke Energy Indiana Smart Grid Evidentiary Hearing -- C/N 43501

All-

The Commission has a few clarifying questions for Petitioner's witnesses that are reflected in a Docket Entry issued this afternoon. The Commission does not have any additional questions that will necessitate the attendance of any other witnesses at the Evidentiary Hearing.

Scott

Scott R. Storms
 General Counsel
 Indiana Utility Regulatory Commission
 101 W. Washington Street
 Suite 1500E
 Indianapolis, Indiana
 Tel. (317) 232-2102
 Fax. (317) 232-6758
 Email. sstorms@urc.in.gov

From: Herriman, Beth [mailto:Beth.Herriman@duke-energy.com]
Sent: Thursday, July 22, 2010 3:12 PM
To: Jennifer W. Terry; Storms, Scott; Aikman, Dick; Becker, Anne; Smith, Holly Rachel; Boehm, Kurt; Jerome E. Polk; Tolliver, Terry; Helmen, Randy; aohara@cchalaw.com; Eric Douthit; John M. Davis; Krohn, Karol; Kurtz, Michael; Peter Mattheis; Samuel Robinson; Shaun Mohler; Powers, William

From: Storms, Scott
Sent: Saturday, July 31, 2010 11:25 PM
To: 'Michael.Reed2@duke-energy.com'
Subject: Re: At Moo Poo

I think so. I feel bad for whoever that is...

----- Original Message -----

From: Reed, Michael W <Michael.Reed2@duke-energy.com>
To: Hardy, David Lott; Storms, Scott
Sent: Sat Jul 31 21:58:53 2010
Subject: Re: At Moo Poo

Very hurtful, don't you think Scott? :)

----- Original Message -----

From: Hardy, David Lott <dlhardy@urc.IN.gov>
To: Storms, Scott <SStorms@urc.IN.gov>
Cc: Reed, Michael W
Sent: Sat Jul 31 18:50:39 2010
Subject: Re: At Moo Poo

Great - don't forget Reed's milk shake.

----- Original Message -----

From: Storms, Scott
To: Hardy, David Lott
Sent: Sat Jul 31 18:45:00 2010
Subject: Re: At Moo Poo

I am in good shape. Was up that way today visiting my daughter at camp.

----- Original Message -----

From: Hardy, David Lott
To: 'michael.reed2@duke-energy.com' <michael.reed2@duke-energy.com>; Storms, Scott
Sent: Sat Jul 31 16:09:56 2010
Subject: At Moo Poo

Need anything?

From: Reed, Michael W [Michael.Reed2@duke-energy.com]
 Sent: Wednesday, July 28, 2010 9:07 AM
 To: Hardy, David Lott; Storms, Scott
 Subject: Re:

I have it!

----- Original Message -----

From: Hardy, David Lott <dlhardy@urc.IN.gov>
 To: Reed, Michael W; Storms, Scott <SStorms@urc.IN.gov>
 Sent: Wed Jul 28 09:02:11 2010
 Subject: Re:

No one likes smart ass lawyers. Lorraine is not a smart ass lawyer: Mike, would you like her number?

----- Original Message -----

From: Reed, Michael W <Michael.Reed2@duke-energy.com>
 To: Storms, Scott; Hardy, David Lott
 Sent: Wed Jul 28 08:49:19 2010
 Subject: Re:

But it did finally land!

----- Original Message -----

From: Storms, Scott <SStorms@urc.IN.gov>
 To: Hardy, David Lott <dlhardy@urc.IN.gov>; Reed, Michael W
 Sent: Wed Jul 28 08:40:48 2010
 Subject: RE:

That was later...Apollo 13, I believe. The Eagle landed successfully before that on the Apollo 11 mission.

Scott R. Storms
 General Counsel
 Indiana Utility Regulatory Commission
 101 W. Washington Street
 Suite 1500E
 Indianapolis, Indiana
 Tel. (317) 232-2102
 Fax. (317) 232-6758
 Email. ssstorms@urc.in.gov

-----Original Message-----

From: Hardy, David Lott
 Sent: Tuesday, July 27, 2010 7:09 PM
 To: 'michael.reed2@duke-energy.com'; Storms, Scott
 Subject: Re:

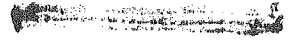
Thot it was: "Houston, we have a problem."

From: Reed, Michael W [Michael.Reed2@duke-energy.com]
Sent: Friday, August 13, 2010 10:00 AM
To: Storms, Scott; Reed, Michael W
Subject: Confidential

When your interviews are scheduled, particularly with stempien and manly, give me a call.
Glad to provide some pointers if you wish.

Northern Indiana Public Service Company
101 West Ohio Street, Suite 1707
Indianapolis, IN 46204
317.684.4910-telephone
abecker@nisource.com

Exhibit CAC-KLO-6



<http://www.indystar.com/article/20101109/BUSINESS/11090334/Duke-Energy-fires-Indiana-president-and-a-former-regulator?odyssey=tab|topnews|text|IndyStar.com>

Duke Energy Corp. has fired its Indiana president and a staff attorney in the wake of an ethics scandal that has cast a shadow over the company's operations in the state, particularly construction of its controversial \$2.9 billion power plant in Southern Indiana.

The electric utility told employees in an internal newsletter Monday that it had terminated the employment of Michael Reed, president of its Indiana operations, and Scott Storms, a lawyer in its regulatory affairs office. Both had worked in the company's Plainfield office.

The utility had been stung in recent months by disclosures that Storms, while still an administrative law judge with the Indiana Utility Regulatory Commission, had presided over numerous cases this year involving Duke, even as he was talking to Reed about a job at the electric company.

At the same time, Storms had signed administrative orders that helped clear the way for Duke to pass on to customers the cost overruns for its coal gasification plant in Edwardsport.

Storms and Reed had received clearance from the Indiana State Ethics Commission to leave state government and begin working immediately for Duke. But the panel later decided to take another look at Storms' case.

The ethics commission recently found probable cause that Storms had had a financial interest arising from employment or prospective employment at Duke and failed to notify his superiors of a potential conflict of interest. The panel is set to consider the matter Wednesday.

The ethics commission's initial clearance of Storms' move to Duke raised cries of foul from watchdog groups, which said the situation was a clear conflict of interest and a violation of the state ethics code.

Duke did not provide details Monday on the terminations but said it took action "after careful consideration" of the findings of an investigation conducted by an outside law firm, Gibson, Dunn & Crutcher, which the company said it received Thursday. The company did not share the law firm's report with employees or the media.

(Page 2 of 3)

"Because the report involves personnel matters, we won't be sharing it," Duke spokeswoman Angeline Protogere said. She added that the company's investigation is continuing. Duke also disclosed some of the personnel changes in a filing Monday afternoon with the Securities and Exchange Commission.

Neither Reed nor Storms could be reached for comment Monday. The two officials had been on administrative leave since Oct. 5, pending the outcome of the company investigation.

Adam Arceneaux, an attorney at Ice Miller who had represented Reed in June before the Indiana State Ethics Commission, sounded surprised by the news.

"You're the first person to tell me about this," he said. "I have no comment at all. I really don't."

Citizens Action Coalition of Indiana, which made Duke's hiring of Storms public in September, on Monday called for Duke to release the full contents of its report that led to the firings.

"The public deserves to know all the facts in this case," said Kerwin Olson, project director for the consumer watchdog group.

Another watchdog group, Common Cause/Indiana, renewed its call Monday for an outside, federal investigation into the matter.

"It looks like Duke wants to wash their hands of Reed and Storms, and given the stain they've left, it was the appropriate thing for them to do," said Julia Vaughn, policy director with the group. "But we still think there could be more to it and think an outside investigation is needed."

U.S. Attorney Joe Hogsett has referred calls for a federal investigation to the U.S. Justice Department but declined to comment further.

Concerns about a revolving door between the state regulatory agency and the utilities it oversees reached a climax in September. That's when Gov. Mitch Daniels fired the chairman of the IURC, David Lott Hardy, saying Hardy had been aware of the job conversations between Storms and Reed but did not remove Storms from presiding over Duke cases. Daniels also asked the state inspector general's office to investigate the matter for any possible violations of state law.

(Page 3 of 3)

E-mails later obtained by The Indianapolis Star showed Reed and Storms apparently had been talking as early as June about a job for Storms at Duke.

"I'm still working on the 'you' issue with Duke mgt," Reed told Storms in a June 27 e-mail. "Don't sense a concern about making this happen, rather more of an issue of when and how."

A month after that e-mail exchange, Storms signed off on a lengthy administrative order that could result in the IURC approving cost overruns for Duke's Edwardsport plant.

In recent weeks, the IURC has begun reviewing all cases involving the Edwardsport plant back to 2006, along with other Duke matters back to January 2010.

Through a spokeswoman, IURC Chairman Jim Atterholt declined to comment Monday on Duke's action. Jane Jankowski, press secretary to Daniels, also declined to comment. "It's a Duke investigation," she said.

Last week, Duke CEO Jim Rogers was called to appear before the IURC to answer questions about the company's relationship with state regulators and to defend the plant.

He told the IURC he was confident there had been no improper communication between Duke employees and the IURC regarding the Edwardsport plant. He also said the company was investigating the e-mail matter and would take decisive action at the appropriate time.

Duke has spent about \$2 billion so far on the Edwardsport plant, which is designed to serve hundreds of thousands of households and will replace several older coal plants that Duke is planning to retire. Construction on the new plant is about half-completed.

On Monday, Duke, based in Charlotte, N.C., named Doug Esamann to succeed Reed as head of its Indiana operations. Esamann began serving as interim president Oct. 11.

Duke also said it is implementing "specific guidelines" related to hiring for certain job openings. The new guidelines specify that any job candidate linked to a regulatory or oversight group is to be removed from any matter concerning the company before being considered for the jobs.

<http://www.indystar.com/article/20100922/BUSINESS/9220385/Indiana-regulator-s-move-to-Duke-Energy-criticized?odyssey=tab|topnews|text|IndyStar.com>

Consumer group criticizes Indiana regulator's move to Duke Energy

Star report

A consumer group is raising ethical questions over a state regulator's decision to take a job next week at Duke Energy, a utility he has overseen in numerous state hearings, including those regarding construction of the Edwardsport power plant in southwestern Indiana.

Citizens Action Coalition said the company's decision to hire Scott Storms as assistant general counsel, "raises serious concerns about the relationship between those who regulate utilities and the utilities themselves."

Storms currently serves as general counsel to the Indiana Utility Regulatory Commission. In that role, said Citizens Action said, he has "played a critical role and signed many of the (state's) decisions related to Edwardsport." Storms will start his new job at Duke Energy on Monday.

The group pointed to the state's ethics code, which states, in an example of post-employment restrictions for regulators who have made decision on individual public utility companies: "You may not work for this utility company for a year."

"It's disturbing that a required, one-year cooling off period so easily became less than 60 days," said Grant Smith, executive director of the Citizens Action Coalition, in a press release.

Storms could not be immediately reached for comment at his state office.

Duke Energy acknowledged hiring Storms, saying his background with nearly two decades of experience in utility and environmental law made him a good fit. But the company said in early August, Scott removed himself from Duke Energy-related cases he was working on at the commission to avoid a conflict of interest.

The company also pointed to a ruling from the Indiana state ethics commission issued this month, which said that Storms' employment with Duke Energy would not violate state law. However, the ethics panel ruled that Storms would be prohibited from representing or assisting Duke on any matter in which he was "personally or substantially involved as a regulator, including numerous hearings over the Edwardsport plant and Duke's smart grid."

The Edwardsport power plant is a gasified coal plant that is under construction in Edwardsport, Ind., on the far southwestern border of the state. Duke Energy recent said it

could complete construction of the plant for \$2.88 billion, up sharply for the original cost estimate of \$1.985 billion in 2007.

The Citizens Action Coalition has long been critical of the power plant. In a press release earlier this month, it said: "As long as Duke Energy has a blank check on ratepayers and the IURC fails to do its job, Duke Energy has no reason to control costs."

A spokesman for the coalition said that Storms has been a "key player" in regulating the plant in numerous decisions concerning its construction. "Storms is definitely a part of a commission process that we feel overwhelmingly favors industry rather than the public," said Kerwin Olson, a Citizens Action spokesman

Storms has an undergraduate degree from Indiana University in Bloomington and is a graduate of Indiana University School of Law in Indianapolis.

<http://www.indystar.com/article/20100923/BUSINESS/9230418/Watchdogs-slam-hiring-of-regulator-by-utility>

Watchdogs slam hiring of regulator by utility

General counsel for IURC had hand in oversight of new employer, Duke Energy

Indiana's largest electric supplier, Duke Energy, has hired the top lawyer away from the state commission that approves utility rates, a move that raised ethical howls from several consumer-watchdog groups.

Scott R. Storms will begin his new job Monday as a lawyer in Duke Energy's regulatory division, just days after leaving his job as general counsel of the Indiana Utility Regulatory Commission.

Several consumer groups said Storms' hiring raises serious concerns about the relationship between utilities and state regulators.

"At a minimum, it is difficult to maintain the appearance of impartiality when the person overseeing the regulatory process is either shopping for work or being courted by the utility he regulates," Grant Smith, executive director of the Citizens Action Coalition, said in a statement.

While working for the state, Storms helped manage the regulatory process over Duke Energy, including oversight of its controversial Edwardsport power plant in southwestern Indiana.

The plant, which is still under construction, has seen its construction costs climb sharply, which will result in higher electrical rates for customers. Storms also acted as an administrative law judge in the case, taking testimony and evidence and overseeing numerous proceedings about the Edwardsport plant.

Storms could not be reached for comment Wednesday. But Duke Energy said Storms had removed himself from company-related regulatory cases as soon as he applied for a job at the company last month.

The company also pointed to a recent ruling from the Indiana State Ethics Commission, which cleared Storms for employment with Duke Energy. State ethics law forbids certain state employees from taking a job with a company the state regulates for at least a year. But the panel said the prohibition didn't apply to Storms, because he never made a regulatory or licensing decision on behalf of the state affecting Duke. Nor did he negotiate or administer a contract with Duke, the ethics panel said.

"This provision would not be triggered by Mr. Storms' work at the IURC as he was neither a commissioner nor a voting member of the regulatory body that may have made license or permit decisions regarding Duke," the panel wrote in a decision issued this month.

However, the ethics panel added that Storms would be prohibited from representing or assisting Duke on any matter in which he was "personally or substantially involved as a regulator." Those include several cases involving the Edwardsport plant and Duke's "smart grid."

The IURC issued a brief statement Wednesday, saying it agreed with the ethics panel about the distinction between commissioners, as decision makers, and employees.

"That distinction is well recognized in prior ethics commission decisions, and any attempt to distort those distinctions is inappropriate," the commission said.

Duke Energy called Storms "an excellent lawyer with nearly two decades of experience in utility and environmental law." The company said it had an opening in its regulatory-legal group and was looking for well-qualified candidates.

"We needed someone with utility regulatory background, so it's not unusual that we could consider candidates at the commission," the company said in a statement.

Storms made \$93,375 a year in his state job. A Duke Energy spokeswoman declined to say how much he will make as a company employee.

Some watchdog groups said the ethics panel interpreted the law too narrowly and that Storms' move is troubling.

"An administrative law judge is extremely involved in handling all the legal evidence, procedures and details in a utility case, maybe even more so than a commissioner," said Julia Vaughn, policy director of Common Cause Indiana, a nonpartisan government watchdog group. "He or she is really the person who does the hard, hands-on day-to-day work."

She said that allowing a utility to hire a state regulator without an extended "cooling-off" period could give the impression that the corporate job was a gift offered in exchange for favorable regulatory treatment.

The local chapter of the Sierra Club, the nation's largest environmental group, said it found Storms' move and the ethics commission's decision deeply troubling.

"I think that decision casts a shadow over the ethics commission," said Bowden Quinn, the group's conservation program coordinator.

Several consumer groups have long fought Duke Energy's plant in Edwardsport, which is

designed to convert coal into a synthetic gas, which will be burned in turbines to produce electricity. The plant's construction costs have surged since the original estimate of \$1.985 billion in 2007. Duke Energy recently said it could complete construction of the plant for \$2.88 billion, largely due to unforeseen costs of materials and design changes.

Much of the additional cost would be passed along to consumers, under an agreement reached last week among the utility, the Indiana Utility Consumer Counsel and Nucor Steel Indiana, one of the utility's largest customers. The agreement capped the costs that could be passed along to consumers at \$2.975 billion.

That would have the effect of raising rates by about 14 percent over five years, the company said. That means the typical residential customer would see his monthly bill gradually increase to \$107.29 per month in 2013 from \$94.08 per month in 2009.

It remains unclear when state regulators will make a decision on the proposed settlement.

The Citizens Action Coalition has long been critical of the power plant as unnecessary and prohibitively expensive.

<http://www.indystar.com/article/20100923/BUSINESS/9230418/Watchdogs-slam-hiring-of-regulator-by-utility>

Watchdogs slam hiring of regulator by utility

General counsel for IURC had hand in oversight of new employer, Duke Energy

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Duke Energy called Storms "an excellent lawyer with nearly two decades of experience in utility and environmental law." The company said it had an opening in its regulatory-legal group and was looking for well-qualified candidates.

"We needed someone with utility regulatory background, so it's not unusual that we could consider candidates at the commission," the company said in a statement.

Storms made \$93,375 a year in his state job. A Duke Energy spokeswoman declined to say how much he will make as a company employee.

Some watchdog groups said the ethics panel interpreted the law too narrowly and that Storms' move is troubling.

"An administrative law judge is extremely involved in handling all the legal evidence, procedures and details in a utility case, maybe even more so than a commissioner," said Julia Vaughn, policy director of Common Cause Indiana, a nonpartisan government watchdog group. "He or she is really the person who does the hard, hands-on day-to-day work."

She said that allowing a utility to hire a state regulator without an extended "cooling-off" period could give the impression that the corporate job was a gift offered in exchange for favorable regulatory treatment.

The local chapter of the Sierra Club, the nation's largest environmental group, said it found Storms' move and the ethics commission's decision deeply troubling.

"I think that decision casts a shadow over the ethics commission," said Bowden Quinn, the group's conservation program coordinator.

Several consumer groups have long fought Duke Energy's plant in Edwardsport, which is

designed to convert coal into a synthetic gas, which will be burned in turbines to produce electricity. The plant's construction costs have surged since the original estimate of \$1.985 billion in 2007. Duke Energy recently said it could complete construction of the plant for \$2.88 billion, largely due to unforeseen costs of materials and design changes.

Much of the additional cost would be passed along to consumers, under an agreement reached last week among the utility, the Indiana Utility Consumer Counsel and Nucor Steel Indiana, one of the utility's largest customers. The agreement capped the costs that could be passed along to consumers at \$2.975 billion.

That would have the effect of raising rates by about 14 percent over five years, the company said. That means the typical residential customer would see his monthly bill gradually increase to \$107.29 per month in 2013 from \$94.08 per month in 2009.

It remains unclear when state regulators will make a decision on the proposed settlement.

The Citizens Action Coalition has long been critical of the power plant as unnecessary and prohibitively expensive.

<http://www.courier-journal.com/article/20100922/NEWS02/309220099/Environmental+group+cries+foul+as+Indiana+official+takes+utility+job>

Environmental group cries foul as Indiana official takes utility job

Lesley Stedman Weidenbener • lstedman@courier-journal.com • September 22, 2010

[Previous Page](#)

INDIANAPOLIS – An environmental group is raising questions about a state administrative judge’s decision to go to work for a utility that had cases before him as recently as this summer.

The Indiana Ethics Commission approved the job change by Scott Storms, but the Citizens Action Coalition of Indiana says that was a bad decision.

The coalition – a self-described consumer and environmental rights group – charges the move by Storms from chief administrative law judge at the Indiana Utility Regulatory Commission to the legal department at Duke Energy is a violation of a state ethics law. The law requires a one-year cooling off period before state employees can go to work for companies they’ve regulated.

“This certainly brings into question every Duke-specific commission order signed by Mr. Storms in recent months,” said Grant Smith, executive director of the Citizens Action Coalition. “At a minimum it is difficult to maintain the appearance of impartiality when the person overseeing the regulatory [process](#) is either shopping for work or being courted by the utility he regulates.”

But the ethics commission said the one-year rule didn’t apply to Storms because “he was neither a commissioner nor a voting member of the regulatory body that may have made license or permit decisions regarding Duke.” It cleared him to take the job – with some restrictions – even though he acknowledged he was “personally and substantially involved” in five Duke Energy cases, including a controversial proceeding about construction of a power plant in Edwardsport.

The ethics commission did ban Storms from participation in any of those five cases once he moves to Duke Energy.

Storms did not return a call Wednesday seeking comment. But the regulatory [commission’s](#) spokeswoman, Danielle McGrath, said any attempt to apply the one-year

rule to Storms is “inappropriate.” Storms serves only in an “advisory role to best inform the commissioners, who make the decisions,” she said.

The ethics commission, at its September meeting, based its approval of Storms’ move on a state law that says IURC’s members – and not staff – make final decisions in cases, said the agency’s inspector general, David Thomas

Storms, who is to start working at Duke on Monday, had presided over Duke matters as recently as July 23 when he set the procedural schedule for the Edwardsport case, which has since been settled.

Administrative law judges submit proposed orders for review by the regulatory agency’s commissioners, who then approve, reject or modify those orders. The judges also review filings in cases and help determine which parties or evidence are permitted.

For example, on June 14, Storms signed an order – which was also signed by one of the agency’s commissioners – granting a petition by the Wabash Valley Power Association to become part of the Edwardsport power plant proceedings.

Those kinds of decisions are crucial parts of a company’s regulation, said Julia Vaughn, policy director for the government watchdog group Common Cause/Indiana.

“An ALJ is a really key person at the commission,” said Vaughn, who does consulting work on non-energy issues at the Citizens Action Coalition. “They do the heavy lifting in a case. They’re the ones who are intimately knowledgeable about the details of these regulated entities.”

She said the law requiring the cooling-off period was intended in part to remove any suspicion of impropriety.

“This just doesn’t look good,” Vaughn said. “I think the (ethics) commission is taking a much too narrow view.”

Duke spokeswoman Angeline Protegere said Storms removed himself from Duke-related cases in August when he applied for the Duke position and sought guidance from the IURC’s [ethics](#) officer. He asked for an opinion from the ethics commission “out of an abundance of caution,” she said.

Protegere said Duke hired Storms because he was well-qualified with the experience the company was seeking.

“We needed someone with utility regulatory background, so it’s not unusual that we would consider candidates at the commission,” Protegere said. “Scott is an excellent lawyer with nearly two decades of experience in utility and environmental law.”

In June, the company hired then-IURC Executive [Director](#) Michael Reed to serve as president of Duke Energy Indiana.

Reed also sought an opinion from the ethics commission, which issued a similar decision and ruled that the cooling-off period did not apply because Reed did not make regulatory decisions.

Those decisions by the ethics commission raise “serious concerns about the relationship between those who regulate utilities and the utilities themselves,” the coalition said.

<http://www.indystar.com/apps/pbcs.dll/article?AID=2010311030001>

1:21 PM, Nov 3, 2010

The top executive at Duke Energy Corp. told Indiana regulators today that he was unaware of any improper or secret communications between company officials and state officials over the company's massive coal-gasification plant in Southern Indiana.

"I don't believe there have been any inappropriate ex parte communication with this commission with respect to this plant," said James Rogers, chief executive of Duke, based in Charlotte, N.C.

He added that the company is conducting two investigations into ethical issues that have embroiled the plant, based in Edwardsport, Ind., and said the company would take "decisive and appropriate" actions if two investigations, conducted by Duke and an outside law firm, revealed any misconduct.

• **MORE COVERAGE:** [Get a roundup of Indianapolis-area business news and state updates.](#)

Rogers made the comments this morning before the Indiana Utility Regulatory Commission, which had called a special conference to discuss the need for the plant and its cost overruns

Commission Chairman Jim Atterholt began the questioning by saying he wanted to discuss the "elephant in the room," a reference to a recent shakeup at the commission by Gov. Mitch Daniels two months ago that has grown into a major ethics scandal. In September, Daniels fired the previous IURC chairman, David Hardy, saying that a state investigation had shown Hardy had known about improper communication between a high-ranking IURC official and Duke.

The high-ranking official, Scott Storms, had been talking to Duke Indiana president Mike Reed about a job at Duke while continuing to preside over cases affecting the company, including the Edwardsport plant, the governor's office said.

In September, Storms took a job in the regulatory affairs office of Duke's Indiana office. After the controversy erupted, he was placed on administrative leave, along with Reed, pending the outcome of Duke's investigation.

"Do you have any knowledge that undue influence was exerted (concerning Edwardsport)?" Atterholt asked.

Rogers said he had no knowledge, but promised swift action once the company's investigation is completed.

Storms is scheduled to appear before the Indiana State Ethics Commission on Nov. 11 to

answer charges that he had an improper financial interest arising from employment or prospective employment at Duke while presiding over Duke cases.

Rogers spent several hours this morning defending the plant, despite the ballooning costs. The price tag was raised from \$1.6 billion to \$2.9 billion since construction started in 2008. Rogers said that completing the plant is the best option to meeting the needs of customers, as the company prepares to shut down aging, old-generation coal plants.

Earlier today on IndyStar.com

By Tom Spalding

tom.spalding@indytar.com

State regulators will discuss the need for a coal-gasification plant Duke Energy is building in southwestern Indiana.

The Indiana Utility Regulatory Commission will hold a technical conference today in Indianapolis.

One of the largest and most expensive projects in Indiana history, it has a price tag that has ballooned to \$2.9 billion, up from an original estimate of \$1.6 billion. As the Star's John Russell reported in a profile, [Much of the expense will be passed along to customers in the form of higher electric bills.](#)

And the issue is sure to come up today when Duke's chief executive, James Rogers, appears before state regulators in the wake of an ethics flap.

• **MORE COVERAGE:** [Ethics flap puts spotlight back in Duke Energy.](#)

Two months ago, the utility placed two top officials on leave amid conflict-of-interest concerns [over the relationship](#) between the company and state regulators.

The same day, Gov. Mitch Daniels fired the chairman of the Indiana Utility Regulatory Commission, David Hardy, saying he knew about the conflict and failed to address it.

Reach Star reporter Tom Spalding at www.twitter.com/SpaldoBusiness or contact him at (317) 444-6202.

Call Star reporter John Russell at (317) 444-6283.

Public Meeting
 9-9-10 (11:03 am)
 Verbatim

Members present included Clare Kraegel Nuechterlein, Chairperson; Priscilla D. Keith (arrived at 12:22 pm), James N. Clevenger, Bob Jamison, and Daryl Yost. Staff present included David O. Thomas, Inspector General; Cynthia Carrasco, Director, State Ethics Commission; Darrell Boehmer, Director of Field Investigations; Dhiann Kinsworthy, Director of Finance and Government Affairs; Kristi Shute, Staff Attorney; Amanda Lufkin, Staff Attorney; Todd Shumaker, Staff Attorney; and Joann Flynn, Program Coordinator, Office of the Inspector General.

Others present included Ryan Kitchell, Director, Office of Management and Budget; Kendra York, General Counsel and Chief Operating Officer, Indiana Finance Authority; Jennifer Alvey, Public Finance Director, Indiana Finance Authority; Shawn Peterson, Vice President and General Counsel, Indiana Economic Development Corporation; Scott Storms, General Counsel, Indiana Utility Regulatory Commission; Philip Sicuso, General Counsel, Indiana Gaming Commission; Kari Evans Bennett, Chief Legal Counsel and Ethics Officer, Department of Natural Resources; James Arthur, Land Buyer, Division of Land Acquisition, Department of Natural Resources; and Adam VanOsdol, Indiana Legislative Insight.

Adoption of Agenda and Approval of Minutes of July 8, 2010

Nuechterlein: Good morning everybody. We have a large gathering today. The September 9, 2010 meeting of the Indiana State Ethics Commission will come to order. Our first item is the adoption of our agenda which we've all had a chance to preview.

Clevenger: I move for approval.

Nuechterlein: Is there a second?

Jamison: Second

Nuechterlein: All those in favor of adopting the agenda as presented signify by saying aye (4-0). That carries. The next item is the approval of the minutes of our most recent meeting which was held on July 8, 2010. We've all had an opportunity to review those extensive minutes. We did a lot in July. Are there any changes, amendments, edits, if not . . .

Yost: I move for approval.

Jamison: I'll second it.

Nuechterlein: Okay. All those in favor of adopting the minutes of the July 8th, 2010 meeting as presented signify by saying aye (4-0). And that carries.

Formal Advisory Opinions

Nuechterlein: We have requests for five formal advisory opinions this month. So we'll be really working hard.

**1) 10-I-10 Ryan Kitchell, Director
Office of Management and Budget**

Nuechterlein: Our first comes from Mr. Ryan Kitchell who is currently the Director of the Office of Management and Budget for the state of Indiana. Would you please approach the witness stand? Good morning.

Kitchell: Good morning.

Nuechterlein: And Miss Flynn would you please swear in the witness.

Flynn: Raise your right hand please. Do you swear or affirm that the testimony you are about to give is the truth, the whole truth, and nothing but the truth?

Kitchell: I do.

Nuechterlein: Good morning Mr. Kitchell.

Kitchell: Good morning.

Nuechterlein: Thanks for coming over to see us today. We have before us here a request for a formal advisory opinion as well as the resolutions dealing with your contacts with Clarian Health Services. Would you give us a short narrative of your request please?

Kitchell: Sure. I joined the administration in January of 2005. My first position was the Public Finance Director for the state. And essentially what we did then there are a number of different governmental issuers of tax exempt bonds that we consolidated and one of my initial roles there and in addition to running the agency was to kind of consolidate these. I was a board member of one of these entities that is relevant here the Health and Educational Facility Financing Authority. To step back, tax exempt bonds obviously have advantages if you were borrowing money, borrowing tax exempt gets you a lower interest rate. The IRS allows that but has a certain criteria. One of those being is that you have to issue through the governmental entity. There is no cap on much of that activity can take place but there are certain legal requirements that have to be met to do that. And so the various entities that were ultimately consolidated into the Indiana Finance Authority would see things like charter schools, private colleges and universities, hospitals, and not for profit organizations. All of those meet IRS requirements and so our rule was very narrow in that if an issuer coming before us filled out our form documents appropriately, had a project that met IRS guidelines as far as what projects qualified and had a public hearing then we would issue them a tax exempt bonds (inaudible). And so again in that first rule I was the Vice Chairman of the Health and Educational Facility Financing Authority which we did three Clarian deals. We also did deals with multiple other hospitals. And then in my current OMB role I'm the Chairman of the Indiana Finance Authority which is the entity that

with the health facility (inaudible). And so in both capacities and my role as a board member and we would as we do each meeting grant exempt bonds to entities that meet those (inaudible).

Nuechterlein: In your role with regard to these bonds, I understand from your submission was largely administrative, its form (inaudible) work in the resolutions is that a correct characterization?

Kitchell: Yes.

Nuechterlein: And you are seeking the formal advisory opinion today . . .

Kitchell: I am.

Nuechterlein: Because . . . yes . . . and the reason for that?

Kitchell: I guess . . . I got an informal from Cyndi and we worked on this once I got the offer but just wanted that I guess clarity and certainty that this was okay.

Nuechterlein: Good, we appreciate your coming before us. Thank you for taking the time to do so. Your request brings to mind three of the statutes that the State Ethics Commission has authority to enforce. And they include the use of confidential information, well, the bar on using confidential information that you gained while in state employment; conflicts of interest; and then the post employment which is two parts, the 365 day rule and then the particular matters, bar on particular matters with which you worked directly while a state employee would be barred from working the other side of the aisle so to speak. And your submissions, you articulate a clear understanding and compliance with those. And we do know that you've working previously with our staff director, Miss Carrasco too, to clarify all of this. Just give us a moment to review things.

Carrasco: Commissioners, if I may.

Nuechterlein: Please.

Carrasco: I would like to share that Ryan did, you know, seek out our advice from the very get-go and we worked together through a lot of the questions and as included in your analysis here really the main issue is the post-employment statute. And specifically with regard to negotiating or administering contracts and that really is basically the main question here before you -- whether those negotiations or administration of a contract based on his participation on the board and the statutory requirements for his participation process.

Clevenger: It seems like his only contact is with the bond resolutions. His position with Clarian is suppose sometime in the future could lead him, could lead him back to another request for tax exempt bonds with the same authority that he's leaving is that any way a problem or do you see anything problematic with that?

Carrasco: That's a really good question and there's really two parts to that. The first being the resolutions that are already in place and that brings into play the particular matter restriction. And for that restriction to apply there has to be personal and substantial participation. And based on what Ryan and I have discussed, it appears the personal and substantial participation is really not there since the only interaction that he had and Ryan please correct me if I'm wrong was voting on the matter at the day of the meeting. Now if new matters come up those would be matters that would be new and would be things that come up afterwards. So really the particular matter wouldn't be a worry at that point.

Nuechterlein: So long as it had nothing to do with the, with the five resolutions that we have in our packet.

Carrasco: Right. And like I said with the five resolutions in order for that particular matter to apply he'd have to have participated personally and substantially. And certainly it's within your discretion to determine whether his vote was personal and substantial. Though in a previous opinion, you opined that that wouldn't rise to the level of personal and substantial participation. With respect to just those five resolutions that are already in place.

Nuechterlein: Let me ask you then for the record Mr. Kitchell. Did you . . . were you involved in the negotiations of any of these resolutions?

Kitchell: I don't deem the resolutions as being negotiated. I was not, you know for the record, but I guess I'd go on to say I don't feel like those are negotiated by anyone. They're standard resolutions. They'd look the same if you pulled the Clarian resolution or the St. Vincent's resolution or the Wabash College resolution. And so the only negotiation and it's a little bit of a stretch would just be the timing of when they get there. If you get our materials by this date, you get to this board meeting, just like you guys I'm sure operate. And so you know occasionally somebody will come in a day late you might talk about what meeting they go to but beyond that, it's a very kind of boilerplate you know resolution process.

Nuechterlein: So there's no negotiation over that but the legal language the parameters of them . . .

Kitchell: There's a lot of negotiation between the borrower and the lender.

Nuechterlein: Yes.

Kitchell: JP Morgan and Wabash College will negotiate a lot. Our specific piece of it just saying you can issue tax exempt bonds (inaudible) form documents.

Nuechterlein: Okay. And were you involved in the administration of any of these resolutions. Again I'm tracking the language of the statute.

Kitchell: I guess I'd let . . . I'm probably the only non lawyer in the room so I don't know what administration means but . . .

Nuechterlein: Making sure things get done.

Kitchell: My role is limited to you know a three-minute segment in a board meeting where somebody came before us and presented, you know, we voted, I signed the documents. So that's what I did.

Nuechterlein: And after that they never came before you or questions on (inaudible).

Kitchell: Only if they had another transaction.

Nuechterlein: Okay.

Kitchell: But nothing that specific.

Nuechterlein: Okay.

Clevenger: Your office was just a conduit by which . . .

Kitchell: Conduit is the exact word that we use actually . . . (inaudible). And actually I asked the Clarian folks you know what if, what if we would have arbitrarily voted no. It hasn't happened in my time there with any issue or vote what would have happened. And they simply said that they would go to the local, there's an Indianapolis bond bank. And so they would go to the Indianapolis bond bank instead of us. They like dealing with us because we have state wide regions so they could do projects in Kokomo or Indianapolis.

Clevenger: I don't have any problem with the draft analysis and I would move that we approve the request and adopt the analysis.

Nuechterlein: Is there a second?

Jamison: Second.

Nuechterlein: I would concur with Commissioner Clevenger. Are there any further comments or questions to the witness? If not, I'll call the question, all those in favor of adopting the draft formal advisory opinion to be the formal advisory opinion of the Commission signify by saying aye (4-0). Opposed and that carries. Best wishes to you.

Kitchell: Thank you very much.

Carrasco: I'll forward the opinion next week.

**2) 10-I-12, Shawn Peterson, Vice President and General Counsel
Economic Development Corporation**

Nuechterlein: Okay, our next formal advisory opinion, 10-I-12 comes from Shawn Peterson who is the Vice President and General Counsel of the State Economic Development Corporation. You're Mr. Peterson I take it?

Peterson: Yes, I am.

Nuechterlein: Good morning, thank you for coming in.

Peterson: Good morning.

Nuechterlein: Would you swear the witness please.

Flynn: Raise your right hand please. Do you swear or affirm that the testimony you are about to give is the truth, the whole truth, and nothing but the truth?

Peterson: I do.

Nuechterlein: And you are here Mr. Peterson on behalf of three of the employees of your agency, correct?

Peterson: Correct.

Nuechterlein: Could you again we have your submission and the draft formal advisory opinion before us. We all reviewed them ahead of today's meeting but would you kindly give us a short narrative?

Peterson: Sure. The IEDC is seeking formal guidance from the State Ethics Commission with related to an innovation entrepreneurial initiative that we hope to launch. And this requires though that a portion of our Twenty-First Century Fund team potentially leave state government and take position with a central Indiana partnership which we have not negotiated agreements yet but desire that formal guidance before we do so. And so as the IEDC determine that over the next few years the entrepreneurial sector will be a leader in the job creation sector. And so our hope is provide additional services to entrepreneurs throughout the state. And our Twenty-First Century Fund team has developed policies over the course of the year that have proved very helpful to entrepreneurs. And so our goal is to be able to expand upon those services in partnership with CICP to allow entrepreneurs throughout the state to participate in this fashion. You know we started talking with economic development partners like the Economic Development Agency for the United States government, local foundations, national foundations. They all came to us and said we like what you're doing, we want to support what you're doing but we cannot do it in the structure that you currently have. And so we have, I had initial conversations with CICP about this opportunity and have sought at this time to end that until we get formal guidance from both your Commission as well as our Board. And then move forward

and allow folks to in the right way to negotiate with CICIP and allow our employees should they desire to negotiate with CICIP for their employment.

Nuechterlein: Good, thank you. And again we have our three statutes of the Commission enforces with reference to your and they are again the same three as with Mr. Kitchell, the prohibition against using confidential information with outside employment; conflicts of interest and post employment prohibitions, the 365 day rule and then the particular matters rule. So the analysis will proceed, has proceeded in our draft opinion along those same lines. So just give us a moment to look at that please, thanks.

Peterson: Okay.

Carrasco: And Commissioners again if I may.

Nuechterlein: Please.

Carrasco: Really the focus here on this particular opinion is on the post employment question for the three individuals that Shawn, IEDC has identified are Mr., you're going to have to help me out with the last names, Hourigan.

Peterson: Yes.

Carrasco: Gootee.

Peterson: Yes.

Carrasco: And Dr. Koehler.

Peterson: Yes.

Carrasco: Okay, great.

Nuechterlein: Perfect.

Carrasco: It's their post employment with respect to CICIP. If IEDC chooses to proceed with this plan and whether or not they would be allowed to go work for CICIP so the analysis is focused on their post employment with CICIP.

Clevenger: Is IEDC . . . it sounded to me like they are or will or could provide grants or loans to CICIP in the future?

Carrasco: That's also a very good question and I think that's one that Shawn and I discussed being it's my understanding and Shawn you can correct me if I'm incorrect, but it's my understanding that CICIP would actually go out and recruit and assist I suppose folks throughout the state who would be actually submitting the applications. And CICIP would be working with

those applicants to I guess help move along the process so that the applicants present those applications to IEDC. So if I'm correct no grants or anything like that or money or any application would be between IEDC and CICP.

Peterson: Well let's clarify on this point, the Twenty-First Century fund provides loans and grants to companies. And so to date, we provide those grants to individual companies that will continue on. We do anticipate that's why we're coming here, entering into a professional services agreement with CICP to allow them to be able to advise us like our current employees are advising us with regards to providing these services to entrepreneurs, advising us with technical and due diligence process of potential applicants. And then we then the staff of IEDC would take their advice and formulate recommendations and go to our Board for those grants and loans. So there's really two . . . when you talk about grants and loans, there's really two things I need to think about. With the Twenty-First Century Fund we would be investing it. And then what the IEDC through either administration or other grant funds will be using to help expand this initiative. I don't know if that makes sense or not but there's two separate funding sources there.

Nuechterlein: So is it correct to say a number of the functions that are now done in-house will be then so called privatized I don't know if state government uses that word but . . .

Peterson: Well I think in a way that's true. The opportunity is for us to be able to take those individuals in the confines of non-profit attract other funding sources to increase the capacity. And that's really the desire of why we're doing this.

Nuechterlein: Your three employees will be doing essentially the same function in the outside agency that they're doing now with the Development Corporation?

Peterson: To a degree. I think obviously their rules will be expanded because the service will be expanded. But we do anticipate that CICP will provide the same services that those employees are providing our team right now to make decisions on funding.

Clevenger: And their wages could be expanded?

Peterson: That's within the guidelines of CICP. It's not . . . we have not proceeded down the negotiation of that path. I think our desire is not, you know, to do that but again they have to weigh determine the approach going with another entity than us.

Clevenger: Well it bothers me just depend by the fact that you've got an employee of state government that's encouraging this arrangement with a non-for-profit and then going to work for them for that non-for-profit. It strikes me just . . . it bothers me just a bit. In other words, how do we know that the employees that were going to set this up so as to make themselves have a better position to go to, you know. If that's the case, is that an ethical violation?

Peterson: The employees to date have not . . . have not negotiating anything with CICP.

Clevenger: I understand that.

Peterson: The CICIP leadership . . .

Clevenger: It sounds like they've got pretty well paid though.

Peterson: Hopefully. In fact when we came for an opinion we had to notify them that this is an opportunity we're looking to do to help. And they consented to the application knowing that we needed approval before they could actually go (inaudible) with CICIP with opportunities.

Nuechterlein: So they have not yet approached?

Peterson: No. No. We've talked, the executive director Steve Morgan has talked conceptionally about what the Twenty-First Century does with I think one or two board members of CICIP. Our Secretary of Commerce has talked with the CEO of CICIP about this potential opportunity but we have held off doing anything until we get firm guidance both on you know whether this is acceptable in the rule as well as what method should we put in place to prevent the best scenario. And so we do anticipate following consistent with section 9 a firewall if you will to where (inaudible) will negotiate leadership with CICIP. And then those employees could work with them. They may choose not to go with them. That's a fact. There are some folks that may choose to stay with the (inaudible) but when we look at it what we're trying to do this is really the only way we can do to expand the ability for the state to offer resources in a different climate of environment. And if national foundations (inaudible) are wanting to help to support that then you know we believe that's the best for the state to go ahead and move forward and find a mechanism to do this.

Clevenger: CICIP is governed by an independent board?

Peterson: Yes.

Clevenger: There's no mutual board members?

Peterson: No. We may have one of our board members may be on the board of CICIP. I'll double check that. But by a large it's a corporate board that's appointed but its entities are officials that are represent corporate entities that they comprise of CICIP. But I can double check that and confirm if there is anyone that crosses the two boards. Our board is appointed by the Governor with guidelines on the state statute that play to party affiliation and their experience. So again there may be one, I have in mind that maybe on both but by and large . . .

Clevenger: You're the ethics officer for the Indiana Department of Economic Corporation, right?

Peterson: Yes.

Clevenger: You don't have a problem with it?

Peterson: No. At the end of the day they're providing the same services for the state and from our prospective. We need to increase the entrepreneurial system throughout the state. This is the only way we can accomplish that effectively.

Nuechterlein: And you're aware the prohibition against particular matters?

Peterson: Yes.

Nuechterlein: In the state ethics code.

Peterson: And I think it's clear the IEDC does have a relationship with CICP through other grants that are completely unrelated to the Twenty-First Century Fund.

Nuechterlein: Yeah.

Peterson: So but this team does not have any other interaction with CICP with regard to any outstanding grants or contracts.

Nuechterlein: They're not negotiated?

Peterson: No.

Nuechterlein: Have any . . .

Peterson: Again the Twenty-First Century Fund has provided grants and loans to businesses, early stage companies. In its early stage it was actually, universities as well but the fund has not had anybody (inaudible) directly with the CICP. And now (inaudible) actually we have Twenty-First Century Fund team which is pretty distinct and insular from the rest of our economic activities because those are related to job attraction projects which is completed unrelated to the mission of the Twenty-First Century Fund.

Nuechterlein: So they are that particular matter and that prohibition goes on indefinitely, never ending. Questions for the witness?

Yost: I do not have a question for the witness (inaudible).

Clevenger: Do you participate in other IEDC fund Twenty-First Fund employees taking employment with other non-for-profit corporations with a similar arrangement?

Peterson: No these three individuals are our Twenty-First Century Fund team.

Clevenger: That's it.

Nuechterlein: They're everyone.

Peterson: We have one administrative individual.

Clevenger: I'm assuming though you may replace them with somebody?

Peterson: Well, obviously they're going the CICP will provide (inaudible) services. So that may not occur. So right now there's three individuals which is why it's a problem for us. If we're going to provide these services to additional entrepreneurs we don't have the resources nor the, you know, the human or financial to do that. And if an entity like CICP can attract additional resources for us then we have the ability to expand that and expand our services. And so that's really the, really the intent. We do anticipate providing dollars through help with this process. There's no doubt about that. But we'll have a professional services agreement. And then we'll have (inaudible) to provide additional services and hopefully (inaudible) other services to do that.

Clevenger: What's to keep the cap on the professional services agreement to reasonable fees?

Peterson: Yes.

Clevenger: What is to keep the cap?

Peterson: We'll happy to do that. I mean our internal discussions and I don't want to talk about internal negotiations is too limited to . . .

Clevenger: IEDC internal discussions with CICP is to make sure that professional services agreement doesn't get crazy.

Peterson: Right.

Clevenger: My well advised legal jargon.

Nuechterlein: That's good. Turn a phrase.

Yost: Madam Chair I do have a question. Did I hear you say that three are presently serving the IEDC in administrative capacities and that you don't intend to replace the by the CICP (inaudible) provide the services?

Peterson: Right. There's no contact right now with CICP.

Yost: As Director of the Indiana Innovation Park Industry and also one who works with clients in our Park for resources from the Twenty-First Century Fund, I don't know, I guess I'm asking for clarification here.

Peterson: We would enter into an agreement with CICP to provide us the same services as they are currently provided to Twenty-First Century Fund.

Yost: They're understood in Central Indiana, is it not, CICP.

Peterson: In the all that's the name they have initiatives that expand beyond central Indiana.

Yost: Also.

Peterson: Well our initiative is to be a statewide . . .

Yost: I know IEDC is.

Peterson: About (inaudible) crossroads has (inaudible) up in Warsaw. They have relationships with Notre Dame as well as you know the affiliations across the state. I mean TechPoint has provided has tried to do statewide initiatives before. So, while again CICP was created in 1999, its mission has expanded to be more of a statewide than just a (inaudible) in central Indiana. In fact one of the reasons why we're doing this is to provide more resources outside of the region because it's pretty easy for three staff members to do things around here when you start taking them on the road across the entire state, Evansville to New Albany to (inaudible) Indiana to Ft. Wayne. You just can't do with the same resources so we have to find a way to increase the resources to provide these services beyond the central Indiana area.

Yost: So that leaves me to a question that I was going to ask you Madam Chair because I'm the Director of the Northeast Indiana Innovation Park (inaudible) Twenty First Century money, do I have a conflict here?

Carrasco: There would be a conflict that would require your recusal if you were, you're employer would have a financial gain.

Nuechterlein: Yes.

Carrasco: I'm not sure if there would be a financial gain by . . .

Yost: My clients would have a financial gain.

Nuechterlein: Yes.

Yost: Not the employer. Not my employer.

Carrasco: Not your employer.

Yost: But indirectly they pay their fees to us for rental of space.

Carrasco: So long as your particular employer would not have a financial interest in the outcome of whether these individuals would go to work for CICP there would be no conflict. However,

there would be, you would have the option if you feel that this is a close situation to go ahead and recuse yourself if you choose. We still have a quorum with three (inaudible).

Yost: I think it's up to the Chair.

Nuechterlein: I concur too with Miss Carrasco's analysis. I don't believe you have a on its face conflict of interest but you may wish to recuse yourself just out of an abundance of caution and the three of us will constitute a quorum.

Yost: I will recuse myself.

Nuechterlein: Okay, thank you. Okay, any further questions of Mr. Peterson? We have before us the draft formal advisory opinion from Miss Carrasco that's guided us through these three parts of the state ethics statutes. And we focus in particular on the particular matter prohibition which I understand that you have a good working knowledge of and have discussed and understand the ramifications for your three employees. What do you think?

Clevenger: Well I had some trouble with this and I'm not and I still do to some degree. I'm bother by the fact that the three people (inaudible) other thing sounds like there is some (inaudible) you know, maybe it's not a problem. And I don't know that I point to anything in particular that just really says that I shouldn't go along with this. It just rubs me a bit the wrong way. Maybe I can live with that. What do you think?

Nuechterlein: You're asking me?

Clevenger: Yeah.

Nuechterlein: It's potentially problematic. I don't believe necessarily it will be but there's a potential problem there. Could you speak to that?

Peterson: Sure.

Nuechterlein: I know we've asked that question.

Peterson: That's why we chose to come today versus coming you know at some point in time before we started these discussions in earnest. I think there's one aspect, one it is a non-profit they do have guidelines, IRS guidelines (inaudible) should provide some comfort here. Secondly, the IEDC is willing to follow whatever guidelines you guys set forth is the appropriate guidelines here. The process you know the terms and we're willing to consider that. We're asking for guidance so we know how to proceed in the right manner here. Because we believe you know that this is the right thing for the state and it needs to happen for us to effectuate our mission here for these entrepreneurs. But that's why we're here. So we're willing to work through the issues that you have. As I see it the you know the executive team would negotiate the CACP executive team, the employees will then have the opportunity to go talk to CACP and they may or may not choose to leave which you know would be consistent (inaudible) they may not

choose to leave and that's fine. But it's their decision to at least have that option to do that. So we're trying to do this up front.

Nuechterlein: We appreciate that.

Peterson: Before we start that.

Nuechterlein: Sure.

Peterson: So that's our interest of trying to move this forward.

Nuechterlein: Were they to choose not to leave would CICP hire into those potential positions or would it be duplicative?

Peterson: It would . . . it would depend I mean I think like our technical specialist Carl Koehler, he is really the one who's led the team. CICP then they will hire some technical folks to assist some of the other entrepreneurs but we may not need to do that twice. I think that from our end it was very neat and clean to say have these folks leave state employment (inaudible) not have to worry about you know the relationship ongoing from that you know the mesh between the two. Our entrepreneurs do need those expertise, the question is how do we offer that in a different environment. So we wanted to make neat and clean in that regard.

Nuechterlein: What if they say no?

Peterson: Well if he does say no then we have something that we would have to work through. And maybe the business team could go and the technical team stay and we figure out how to support each other. But obviously those are discussions we have to have. And our hope is to have a firm guidance so we know how we can proceed in these discussions. And then have those conversations with them.

Clevenger: Here in your request you may mention in your last paragraph that IEDC hereby expresses its intent to waive application of those provisions in the event that the Commission find that they apply. Would that still be your intentions?

Peterson: That would be our intent. Again we see it as the right approach. We see it it's the right thing for . . . the state in our opinion to do. We would have looked at other options (inaudible) and wouldn't require us to play this line. But we think that Carl Koehler's expertise and technical review, Steve Hourigan's background, his expertise and Steve Gootee's expertise on the business review has elevated that the Twenty-First Century Fund to a level, you know, that if we can pride those services to other entrepreneurs then we would be doing them a great service. And that's why we are taking this approach.

Nuechterlein: Well, I think so long as we craft our opinion with particular emphasis on particular matter implications under the statute.

Jamison: The three do not accept or one of the three . . .

Clevenger: Pardon me.

Jamison: Do we make a conditional that the advise just for those three individuals?

Nuechterlein: Well that's . . .

Clevenger: I don't think so.

Nuechterlein: I don't think so because you've said were they've speculatively not to accept there might be other people. So I don't think we need to tailor as specifically to the three names before us.

Carrasco: Commissioners, if I may. I do think that it's important to note that the in the analysis and in the request the particular matter is so fact sensitive that it does depend on what individuals interactions were with CICIP. So I think that's something for you to factor into if IEDC were to choose other employees or other individuals who would want to go to work for CICIP it really does matter what they did at IEDC and whether or not they had any interaction with CICIP.

Nuechterlein: And they would then have to come before the Commission were that to happen.

Carrasco: Exactly.

Clevenger: Does that reflect well enough in your draft analysis?

Carrasco: I can incorporate that in there this particular matter, oh, I'm sorry, this post-employment restriction is dependent on the representations contained in the request.

Nuechterlein: As to Mr. Hourigan, Mr. Gootee, and Dr. Koehler.

Carrasco: Certainly.

Clevenger: If we make those adjustments I move to approve the request and adopt the analysis as amended.

Nuechterlein: Second.

Jamison: Second.

Nuechterlein: Okay, is there any further discussion or questions for the witness?

Carrasco: Commissioners one more thing I would add and I would like to highlight and make sure that the language is as you like is that and I think this speaks to Commissioner Clevenger's concern about these three particular employees and their involvement in the negotiation with

CICP or not. And this the conflict of interest provision to highlight the fact that these employees would not be participating in anything that would have to do with CICP from this point forward.

Nuechterlein: Yes.

Clevenger: Do I need to amend my motion to include that modification to your analysis?

Carrasco: The analysis, so long as what the analysis is contained in here reflects what you would like then it should be fine, unless you want to change anything.

Nuechterlein: I think the analysis pretty well, that's been presented to us covers our concerns. So we have a motion and a second, any further questions or comments. If not, I'll call the question, all those in favor of Commissioner Clevenger's motion signify by saying aye (3-0). Opposed and that carries. Good luck to you and the Commission.

Clevenger: IEDC will make me feel a lot better if you develop a lot of jobs.

Nuechterlein: Yeah, lots of jobs. We want see that in . . .

Peterson: (inaudible).

Nuechterlein: Thank you for coming in.

**3) 10-I-11, Scott Storms, General Counsel
Utility Regulatory Commission**

Nuechterlein: Our next request is 10-I-13, Request for formal advisory opinion, from Philip Sicuso, who's going to help me pronounce his last name Sicuso, who is the General Counsel of the Indiana Utility Regulatory Commission.

Sicuso: I'm with the Gaming Commission.

Nuechterlein: Pardon.

Sicuso: I'm with the Gaming Commission

Nuechterlein: Oh, the Gaming, well, okay, sorry I skipped over. Actually Scott Storms is next. I'm sorry, I jumped ahead. I apologize.

Sicuso: That's okay.

Nuechterlein: Okay, yes, Mr. Scott Storms who is the General Counsel of the IURC, Indiana Utility Regulatory Commission, sorry. Good morning.

Storms: Good morning.

Nuechterlein: Thanks for coming in. And if you will swear the witness please.

Flynn: Raise your right hand please. Do you swear or affirm that the testimony you are about to give is the truth, the whole truth, and nothing but the truth?

Storms: I do.

Nuechterlein: Good morning Mr. Storms. We have before us your request for a formal advisory opinion as well as the draft formal advisory opinion. We've all had a chance to go over it and we ask that you just give us a short narrative please.

Storms: Okay. I am currently the General Counsel with the IURC. And I report to the Chairman. And I have a proposal from Duke Energy Indiana to accept a position with them. It's an informal position at this point. What I have done was obtain an opinion from my ethics officer with respect to my ability to initially pursue the position to accept the position. And she has put together a memo on my behalf that spelled out her view of the potential issues that need to be addressed. And there are particular matters that I have been involved in with Duke Energy Indiana. And as it says in her memorandum once I applied with Duke Energy Indiana I immediately screened myself from any of these proceedings. These cases have all been reassigned. And it's my understanding that I can have no further participation in any of these proceedings if I were to accept the position with Duke Energy Indiana.

Nuechterlein: That's correct.

Storms: My Ethics Officer also attached to her memorandum a recent decision of the Ethics Commission that she felt was on point 10-I-6 that was issued in June of this year. And it was applicable to an executive director which is in fact what my position is with the Commission. I report directly to the Chairman of the Commission. But I also do cases. I also hear cases that are assigned to the Commission and that's why I have the need to screen myself off of these current proceedings with Duke Energy Indiana. So that's the one difference based on her advise she did not think I needed a formal opinion but out of an abundance of caution I wanted to present to the Ethics Commission to gain confirmation with respect to the opinion I received from my Ethics Officer.

Nuechterlein: And we appreciate your coming before us today. Thank you. Just give us a moment to review please.

Clevenger: How long have you been with the IURC?

Storms: Ten years.

Nuechterlein: You've been in a counsel position that whole time?

Storms: I have. I started with the Commission as administrative law judge. I was promoted to chief administrative law judge and then I think it was two or three years ago, we combined our

legal offices. We used to have a General Counsel and a judge side. And that was then consolidated to a large legal office and I was made the head of that legal office. That's probably been I think three years ago.

Nuechterlein: Do you still act occasionally as an ALJ?

Storms: Yes. And that's why it was necessary to screen myself from those particular matters with Duke Energy Indiana and I still have a few other cases (inaudible) Duke Energy, other utilities.

Clevenger: You understand that particular matter rule is kind of like a lifetime rule not just the 365 rule?

Storms: Absolutely, absolutely.

Nuechterlein: Well again we're looking at the same three ethics laws then we've looked at. And the gentleman who appeared before us so far this morning confidential, the bar from confidential information, the conflicts of interest and then the post employment, in particular, the particular matters rule on prohibiting you from ever working on particular matters that you worked on while with the Commission. And you understand that prohibition?

Storms: Yes, I understand.

Nuechterlein: This one seems to be pretty straight forward at least on the (inaudible). Am I missing something? I think our formal or the draft formal advisory opinion lays things out very well particularly focusing on the particular matters prohibition which you've assured us you are aware of and will abide by.

Clevenger: I move for approval of the request and adoption of the draft analysis.

Nuechterlein: And a second?

Yost: So moved.

Nuechterlein: Dr. Yost. Okay, are there any further questions of the witness? If not, all those in favor of adopting the draft formal advisory opinion as submitted to us signify by saying aye (4-0). Opposed and that carries. Best wishes to you.

Storms: Thank you very much.

Clevenger: Tell my friend Mr. Reed we should of in June no stealing of state employee's talent.

(Laughter.)

Storms: I'll pass that along.

Nuechterlein: I'll pass that along, will you?

Clevenger: I know that's what happened here.

Nuechterlein: Thanks.

**4) 10-I-13, Philip Sicuso, General Counsel
Indiana Gaming Commission**

Nuechterlein: Okay, now Mr. Sicuso.

Sicuso: Yes.

Nuechterlein: Am I saying your name correctly?

Sicuso: Sicuso, yes.

Nuechterlein: Sicuso, sorry about . . .

Sicuso: No problem.

Nuechterlein: Next item is request for formal advisory opinion 10-I-13 from Mr. Philip Sicuso who is the General Counsel of the Indiana Gaming Commission. And we have before us a copy of your request and the correspondence with the Commission as well as the draft advisory opinion. Would you please swear the witness?

Flynn: Raise your right hand please. Do you swear or affirm that the testimony you are about to give is the truth, the whole truth, and nothing but the truth?

Sicuso: I do.

Nuechterlein: Okay. Would you kindly give us a short narrative of your request?

Sicuso: Absolutely, sure. I've been the General Counsel for the Gaming Commission since February of 2005. I've held that position the entire time. I report directly to the Executive Director of the Commission. I worked on a number of matters advising him and other executive staff as well as the Commissioners on a number of decisions that they've rendered over the years. And what I'm doing today is I've accepted a position at a local law firm. At the time I submitted my letter I have not identified the firm but its Bingham McHale. And the purpose for the request is to clarify not whether I can work the law firm because I anticipate that my practice would be very broad but if I were to attempt to have some portion of that practice include gaming issues before the Gaming Commission or on behalf of some licensees who currently or did hold licenses with the Commission, I just sought some clarity to scope my involvement and the timing. The first would be can I do that within 365 days, acting as counsel as opposed to

being an employee of the licensee. And the second issue that I identified was the particular reference to the word license and the definition of particular matter because gaming licenses obviously lasts sometimes dozens of years or they could. And because the licenses will continue on until the future I wanted to make sure that if I were to eventually work on behalf of the licensee that my participation in the past licenses do not preclude me from working on future issues.

Nuechterlein: Do we anticipate in doing any lobbying for your future clients with the firm.

Sicuso: Potentially with the legislature.

Nuechterlein: Okay, any executive branch lobbying?

Sicuso: No, I'm going to be very careful about that. I guess it could happen but I would not do that within 365 days. I'm well aware of that.

Nuechterlein: Just give us a moment to review our papers.

Sicuso: Sure.

Clevenger: When you were at the Gaming Commission, did your work duties include denying licenses?

Sicuso: I would have been a participant in that but I did not have the authority to deny licenses, if I don't believe we did ever deny a license since I've been there. But if the Commission were to do that they certainly would have asked my opinion, legal opinion of whether we could or whether we should. I would have provided that. So I've been a part of granting licenses on several occasions and part of negotiations for disciplinary actions, settlements, fines, suspensions, things of that nature.

Clevenger: What my concern was is that you're now in the private sector and the person that applied or the entity that applied for license you're now representing or should affect going against maybe your own advice that your (inaudible) with the Commission.

Sicuso: Yeah.

Clevenger: That doesn't sound like (inaudible).

Sicuso: No. I think in that regard I'd be precluded anyway from the particular matter.

Clevenger: Exactly.

Sicuso: So I'd be very careful about that.

Clevenger: It was kind of noted that you weren't just giving legal advice but I'm not too sure I mean I you know probably his advice is relied on by the Commission. Isn't Judge Yelton is he the Commissioner?

Sicuso: Yes, he's the Executive Director.

Clevenger: He's pretty knowledgeable in his own right but still good legal advice he might be inclined to . . .

Nuechterlein: But you understand the life time prohibition?

Sicuso: I do.

Nuechterlein: About working the other side.

Sicuso: I do.

Nuechterlein: Okay. These particular matters. And you understand the prohibition against well basically the ethics laws prohibit working the other side when you go out to the private sector which you've expressed an understanding to us today. I think our draft opinion guides us well and analyzes all the issues well. Gentlemen do you have any further questions for our witness, any further comments you'd like to make?

Sicuso: I'd just like to thank the staff actually. I worked with Kristi Shute a lot and David Thomas who's given me some help in other issues and he's been very helpful in the last couple of years (inaudible) few things.

Nuechterlein: Well, thank you. They help us a lot too. Thank you. With that we can entertain a motion.

Jamison: I'll move that we accept the draft opinion as our finding.

Nuechterlein: Is there a second?

Yost: Second.

Nuechterlein: Okay, any further comments, questions? If not, I'll call for the question, all those in favor of Commissioner Jamison's motion signify by saying aye (4-0). Opposed and that carries. Best wishes to you.

Sicuso: Thanks.

Nuechterlein: Thanks for coming in.

Carrasco: I'll forward a copy of the opinion early next week.

Sicuso: Thanks.

Nuechterlein: We're moving right along here.

**5) 10-I-9, Kari Evans Bennett, Chief Legal Counsel and Ethics Officer
James Arthur, Land Buyer, Division of Land Acquisition
Department of Natural Resources**

Nuechterlein: Okay. Our next, fifth and final request for formal advisory opinion comes 10-I-9 comes from Kari Evans Bennett, who is the Chief Legal Counsel and Ethics Officer on behalf of Mr. James Arthur who is employed by the Division of Land Acquisition, in the Indiana Department of Natural Resources. Good morning.

Bennett: Good morning.

Arthur: Good morning.

Nuechterlein: Good morning. Would you kindly swear the witnesses?

Flynn: Raise your right hands please. Do you swear or affirm that the testimony you are about to give is the truth, the whole truth, and nothing but the truth?

Bennett & Arthur: I do.

Nuechterlein: We have before a copy of the request that you have submitted on behalf of Mr. Arthur on as well as the . . . our staff has prepared for us a draft formal advisory opinion. But would you kindly give us a short narrative?

Bennett: Absolutely.

Nuechterlein: Thank you.

Bennett: I feel like saying and now for something completely different.

(Laughter.)

Nuechterlein: Yes, I know.

Bennett: Different area (inaudible) for the first time. We own some property in Steuben County. It is used as a fish and wildlife area. At certain points of the year, we flood some of that property to enhance water fowl hunting (inaudible). As a result of flooding that property, we have also historically periodically unintentionally but nevertheless flooded the property, some of the adjacent property. This is a situation in which we would normally offer, make an offer to the adjacent property owner to purchase to acquire a flood easement. In this situation we wanted to

come to the Ethics Commission because the person who owns the adjacent property also happens to be an employee of the Department of Natural Resources. I feel that this request is a little bit awkward because rather than the employee requesting an opinion the agency itself we are requesting the opinion because we are the ones that take the action to flood the property and we are the ones that would approach this individual about doing the flood easement if its determined that this allowable thing for us to do. The reason that I think it's awkward is because the ethics code speaks to it more from the employee's standpoint. And this is just sort of the inverse of that situation. My gut feel which I know doesn't answer everything, my gut feel is that this seems like it's something that ought to be allowable but because it doesn't neatly fit in I didn't feel comfortable making that call and I certainly didn't want to put the Department and just as importantly the employee in any sort of a difficult situation. So I wanted to seek advice before we even get to that point of making an offer to this employee. And I have Jim here with me to hear any specific questions about how our land acquisition process works. That's his area of expertise.

Nuechterlein: What a flood easement provides payment when the adjoining land inadvertently floods?

Bennett: Yes.

Nuechterlein: On the order of the Natural Resources Department.

Bennett: Yes. It would not actually be purchasing the property outright but instead purchasing, but essentially purchasing permission to be able to flood it under certain circumstances, paying just compensation for flooding that property.

Jamison: How is that determined?

Arthur: We use fee appraisers in the area to determine that value. Be like if easement (inaudible) use of the land.

Nuechterlein: Is there one payment up front or is payment per flooding event?

Arthur: It would be one payment up front.

Clevenger: How long have you owned the land?

Arthur: How long has he owned the land?

Bennett: I'm sorry let me . . .

Clevenger: How long has the employee owned the land?

Arthur: Since the 90s I think.

Bennett: Yes, as best as we could tell his ownership dates back to 1990.

Clevenger: Was it flooded back then?

Arthur: We have flooded it and I work for the Division of Fish and Wildlife which manages the area and they, the county put up the dam and we operate it and raise the water periodically in the water fowl season. And we have well intentionally or whatever flooded his, killed his trees and have ignored him since he's already a DNR employee.

Bennett: I will tell you if we didn't go through this process of making an offer to him to acquire flood easement or if we made an offer and he rejected that he would have other legal recourse that I think he would be able to take as an owner of this property. We felt that this was the best way to try to approach the situation to you know own up to the situation and try to take care of it.

Nuechterlein: Are these flood easements common . . . are there other flood easements around the state in similar circumstances?

Bennett: Sure.

Clevenger: How many you got?

Bennett: How many flood easements? Do you have any clue?

Arthur: I have no idea.

Bennett: We own hundreds probably thousands of properties not all of them with flood easements.

Clevenger: And are there other property owners adjacent to the employee's property that have flood easements?

Arthur: No.

Clevenger: Are there other properties that are flooded?

Arthur: No. Not to my knowledge, let's put it that way. I'm not involved with management. Oh of a sudden, you know, I could just request that you know hey we're flooding this guy's property you know. If there are other people (inaudible) recommend to the division that they you know (inaudible) flood easements (inaudible).

Yost: So the employee has been flooded in the past and I think he received compensation for it.

Arthur: Right.

Yost: And has he brought this to your attention?

Bennett: I think he's probably periodically complained about it but he's not done anything official beyond you know just saying hey you guys are still flooding. I think it was the Division of Fish and Wildlife that decided that this was the best way to resolve the situation.

Nuechterlein: Do you approach other landowners that way too when whose private property (inaudible) approach them to negotiate a flood easement?

Bennett: Yes.

Clevenger: What's the process for determining the value of the flood easement?

Arthur: We hire an independent field appraiser.

Clevenger: Just one.

Arthur: Yes.

Bennett: I think in this situation what we would do is go through our standard process is what we do an appraisal we make an offer if the person who we make the offer to doesn't believe that that's a fair offer they can come back and it's a negotiated process. It's not, it's not a take it or leave it kind of an offer. It is a negotiated process. We would need to have some objective evidence that the initial appraisement that we got wasn't accurate in some sort of way for us to feel comfortable going much above that. Ultimately if this person rejected the offer or if we are told that we can't make an offer one of their . . . one of the things that they can do is bring an inverse condemnation which gets you into that three appraisers, you know, or if that (inaudible) kind of process. We're hoping it doesn't get to that.

Clevenger: Have you had to do that?

Bennett: Yes, we have had to go through that process.

Nuechterlein: So when people have refused a flood easement or when one hasn't been offered or . . . when would that inverse condemnation process?

Bennett: Either if they refused an offer and decide that they want to take that action they can certainly do that or I guess in a circumstance where rather than us making an offer they just decided . . .

Nuechterlein: To go ahead on their own.

Bennett: Same way it would have to happen with any property that's being effective by a governmental entity.

Nuechterlein: What are the duties of the employee whose land is at issue here?

Bennett: He's a conservation officer. And he's assigned to a district in this region of the state. He does not have any contracting responsibilities for DNR at all, certainly not for Division of Land Acquisition or for the Fish and Wildlife Division that owns the property but he doesn't generally do any . . . do anything that requires him to approve contracts for the state.

Yost: Is any of the land that's under consideration here tilled land if it's not flooded?

Arthur: No, that's (inaudible) if you're familiar with that area up there by Fremont.

Yost: (inaudible). I know where Fremont's at.

Arthur: Okay.

Clevenger: (inaudible) county.

Jamison: Being from the southern part of the state, isn't James Dean from there?

Nuechterlein: No.

Clevenger: No.

Nuechterlein: No, he's (inaudible).

Bennett: Fairmont.

Nuechterlein: You can go through Fairmont.

Jamison: Fairmont, okay.

Nuechterlein: Sorry, we digress.

Carrasco: Commissioners if I may.

Nuechterlein: Sure.

Carrasco: In this draft analysis you're see a rule that we don't usually see too often and that rule pertains to excess compensation for sales or lease as you will see in the analysis here. It doesn't seem to be a problem. However with respect to the conflict of interest in 4-2-6-10.5 that being familiar with real estate or land acquisition and things of those nature, of that nature, I wasn't sure if this was going to involve a contract or if it was just an outright sale and to the extent that it would be a sale then this rule wouldn't apply but if it's a contract procedure then, then the 10.5 analysis would be relevant.

Bennett: And I think that follows a contract.

Arthur: We would have a sign up offer to purchase which is considered a contract.

Nuechterlein: Okay.

Arthur: And then consummate the sale according to that contract or purchase of the flood easement in this case.

Nuechterlein: So there is a contract that's executed between land owner and the Department.

Arthur: Yes.

Carrasco: And so having determined that then the analysis under 10.5 would apply and being that the employee does not have official or contracting responsibilities for the agency so long as he would fulfill the four requirements. The only issue I can publicly identify for the employee is the notice requirement. This is a flood easement so I don't think that DNR would have notice requirements for these types of proceedings but that would really be the only potential issue there.

Bennett: We don't go through a formalized public notice process like we do with a certain amount of our activities just simply because it is a private property transaction. He's the only person that we can talk to about this.

Clevenger: I move that we approve the request.

Nuechterlein: Yeah, good, any further comments or questions? If not I'll call for the question to call for the question on Commissioner Clevenger's motion to accept the draft formal advisory opinion as that of the Commission, all those in favor signify by saying aye (4-0). Opposed, that carries. And best wishes.

Bennett: Thank you.

Arthur: Thank you.

Nuechterlein: Thanks for coming in today.

(Commissioners speaking among themselves very quietly.)

**Consideration of Final Report
In the Matter of Larry Estes
Case Number 2007-10-0240**

Nuechterlein: Our next item . . . that concludes our five formal advisory opinions this month. Our next item is the consideration of the final report in the matter of Larry Estes, case number

2007-10-0240. We have that before us. It's pretty straight-forward. Mr. Estes used a state gas card for gas in his private vehicle and the sanction is the bar against future state employment.

Clevenger: You guys talked about this at the last meeting.

Jamison: Yeah.

Nuechterlein: Yeah. So just if there are any last minute comments. If not, we'll entertain a motion to adopt.

Jamison: So moved.

Yost: Second.

Nuechterlein: Okay. All those in favor of adopting the final report of the State Ethics Commission in re the Matter of Larry E. Estes signify by saying aye (4-0). Opposed and that carries. And we'll sign off on that right now.

(Commissioners signed the Final Report.)

Director's Report

Nuechterlein: Next is our Director's Report, Cyndi.

Carrasco: Well after your five advisory opinions, what a meeting.

Nuechterlein: Yeah, we were thinking hard.

A) Ghosh Matter

Carrasco: We have just a few brief announcements. And I'll start off with the first item which is regarding Mr. Ghosh. Mr. Ghosh filed a motion for a rehearing and we were working with the Attorney General's Office and responded. We're still waiting to hear from the Supreme Court on that matter but certainly we'll keep you updated in case anything happens there.

Nuechterlein: Is he represented by counsel?

Carrasco: He is.

Clevenger: Good luck with that.

Nuechterlein: Sure, come on in.

B) Administrative Matter

Carrasco: The second item we have to report is just an administrative matter regarding your deposit forms. Joann was going to pass around for your signature deposit forms. The state is

keeping up with the times and will be giving you your deposit statements electronically and so we just need your signature so that you can receive that document.

Nuechterlein: So they'll email them to us.

Carrasco: They'll email it to you and Joann will get a copy so she'll know that you received it and confirm that got everything you need.

Nuechterlein: Okay.

C. Legal & Ethics Conference

Carrasco: And being that it's September we are already planning the Legal Ethics Conference and wanted to give you the date, November 30th which is a Tuesday. And if necessary we would like to schedule your December meeting for December 1st as opposed to December 9th.

Nuechterlein: That's good, it works for me.

Carrasco: And just like last year, we'll be able to make accommodations for you if you're available for the Legal Ethics Conference on that Tuesday.

Clevenger: Where's that going to be?

Carrasco: It will be here at the Government Center South. We're looking at the Conference Rooms that we used last year. And we'll be giving you more details as the day approaches.

Yost: It's just the one day.

Carrasco: It's the one day is the entire day of the conference and then if necessary then the next day we'll have an Ethics Commission meeting.

Nuechterlein: Who do we hope to get for a keynote? Or do we have a keynote?

Carrasco: We're still working on that. We hope to finalize speakers and topics by the end of next week.

Nuechterlein: That's great. You'll find us another great issue for our meeting.

Carrasco: Absolutely. And if you have any suggestions, please by all means.

Nuechterlein: We're on a roll (inaudible).

Carrasco: They appreciate it.

Nuechterlein: Something along those lines.

D. Informal Advisory Opinions

Carrasco: And last but not least, I have the number of informal advisory opinions to report to you. We issued 55 informal advisory opinions. The numbers are certainly on a rise and Todd, Amanda, and Kristi are just issuing advisory opinions left and right. The top of the list is conflicts of economic interest. It seems people are really aware of the conflict of interest provision and they're really making sure that they cover all their bases in requesting advice. Outside employment is also on the rise and third is post employment. We're starting to see a rise of post employment advice being sought out as people begin to leave us illustrated in the four out of the five advisory opinions being post employment

Nuechterlein: That's good.

Yost: (inaudible).

Carrasco: It's usually is the ethics officers from state agencies who have general counsels, state attorneys, and we do invite attorneys from the public. And we get people who work with state agencies or companies that do business with state agencies. They also attend our conference. This will be our third year.

Nuechterlein: We usually get several hundred people there. It's a big gathering.

Carrasco: Pretty popular fortunately.

Nuechterlein: That's great.

Carrasco: Unless you have any other questions for me that concludes the report.

Yost: Did you decide where it's going to be at?

Carrasco: It will be here in the Government Center Conference Rooms A, B, and C.

Nuechterlein: You'll send us a map.

Carrasco: Absolutely.

Nuechterlein: When I go in there . . .

Carrasco: I get lost every day.

Nuechterlein: It's like going into an alternate universe. Well then I feel better.

Carrasco: It's amazing I make it to work.

Nuechterlein: It's just confusing worse than an airport.

Carrasco: That concludes my report. And if you'd like to take a break or we can go straight into executive session.

Adjournment

Nuechterlein: I think I'd like to go straight in just because I have about fifteen minutes left on my car. Do you guys want to take a break?

Jamison: I'm good.

Clevenger: How long is it going to last?

Carrasco: It should be rather brief.

Nuechterlein: Okay, we'll talk fast. Okay so we're adjourned.

The public meeting was adjourned at 12:15 p.m.

<http://www.law.com/jsp/cc/PubArticleCC.jsp?id=1202473515674>

Indiana Ethics Chief Pursuing Case Against Duke Energy's Assistant General Counsel

Sue Reisinger
Corporate Counsel
October 19, 2010

Assistant general counsel Scott Storms, of [Duke Energy Indiana, Inc.](#), is facing ethics charges for allegedly seeking a job with the utility while he served as general counsel of [the state's regulatory commission](#).

The Indiana inspector general's office accused Storms of breaking state ethics law by "having a financial interest in the outcome of matters involving" the utility while still working at the state, according to [the complaint \(pdf\)](#) released Friday by the state ethics commission.

The complaint accuses Storms of "failing to notify his appointing authority of a potential conflict of interest" and of failing "to make full disclosure of any related financial interest" in matters before the commission.

Storms couldn't be reached for comment. The Associated Press said [he didn't return messages](#).

Duke Energy, the state's largest power company, has already suspended Storms pending state and company investigations.

The ethics panel last month had cleared Storms to join Duke despite a state law requiring a one-year cooling off period before state employees can work for companies they've regulated. At the time, it found Storms exempt from the law based on what it was told.

When Storms appeared before the ethics commission last month, he said he had recused himself from Duke cases after applying for the in-house counsel job, according to the AP.

But the *Indianapolis Star* disputed Storms' statement.

The newspaper reported that [e-mails show](#) Storms was seeking the job in April, if not before. It also said that in July Storms [approved a controversial Duke Energy request](#) to have its customers pay for cost overruns on a \$2.9 billion coal-gasification plant being built in southwest Indiana.

After citizens' groups protested Storms' job switch, Gov. Mitch Daniels last week [fired regulatory commission Chairman David Lott Hardy](#) for not removing Storms from

handling matters related to the utility. That's when Daniels asked the inspector general's office to investigate.

If found guilty, the ethics commission could fine Storms up to three times the value of any benefit he received from the ethics violation and bar him from future state employment.

Sue Reisinger can be contacted at sreisinger@alm.com.

STATE OF INDIANA)
 (SS: INDIANA STATE ETHICS COMMISSION
COUNTY OF MARION) CASE: 2010-09-0233

IN RE THE MATTER OF SCOTT STORMS
Respondent



ETHICS COMPLAINT

The undersigned alleges and says that Respondent, a former employee of the Indiana Utility Regulatory Commission (IURC), between April of 2010 through September of 2010:

- 1) Violated IC 4-2-6-9(a) when he participated in a decision or vote in which he had knowledge that:
 - a. he had a financial interest in the outcome of the matter(s), TO WIT: participated in matter(s) involving Duke Energy Indiana, Inc. (Duke) before the IURC when he had a financial interest arising from employment or prospective employment at Duke for which negotiations had begun; or
 - b. a person or organization with whom he was negotiating or had an arrangement concerning prospective employment had a financial interest in the outcome of the matter(s); TO WIT: participated in matter(s) involving Duke before the IURC when he was negotiating or had an arrangement concerning prospective employment with Duke, when Duke had a financial interest in the outcome of the matter(s);

OR

- 2) Violated IC 4-2-6-9(b) by failing to notify his appointing authority of a potential conflict of interest and/or seeking an advisory opinion from the State Ethics Commission (SEC) by filing a written description detailing the nature and circumstances of the particular matter and making full disclosure of any related financial interest in the matter.

Dated this 14th day of October, 2010.



Todd Shumaker, Staff Attorney
Office of the Inspector General

Approved by:



David O. Thomas, Inspector General

STATE OF INDIANA)
) SS: THE INDIANA ETHICS COMMISSION
COUNTY OF MARION) CASE NUMBER: 2010-03-0071

IN RE THE MATTER OF JAMES J. FISCHER
Respondent.

REPORT OF THE INDIANA STATE ETHICS COMMISSION

Comes now the Ethics Commission for the State of Indiana, and hereby reports its findings of fact, conclusions of law, and sanctions in the above captioned matter.

FINDINGS OF FACT

1. The Respondent and the Inspector General have entered into a Proposed Settlement Agreement which was accepted by the Ethics Commission at the September 9, 2010 meeting.

2. Pursuant to that agreement, the Respondent admitted to violating 42-IAC 1-5-12, in that on and before February 1, 2010, Respondent improperly made use of state property and equipment by using his assigned state cell phone to send pornographic pictures and text messages, when there is not a written policy that allows an employee to send such messages, all in violation of the use of state property rule.

CONCLUSIONS OF LAW

Said conduct, admitted and acknowledged by Respondent, constitutes a violation of the use of state property rule specified at 42 IAC 1-5-12.

SANCTIONS

The Commission hereby sanctions the Respondent a fine in the amount of two hundred and fifty dollars (\$250.00) to be paid to the "Indiana State Ethics Commission" within ninety (90) days of the issuance of this final report.

Approved on October 14, 2010.

Not in Attendance
Clare K. Nuechterlein, Chairperson

Priscilla D. Keith
Priscilla D. Keith

James N. Clevenger
James N. Clevenger

Daryl B. Yost
Daryl Yost

Bob Jamison
Bob Jamison

INDIANA
STATE ETHICS COMMISSION

315 WEST OHIO STREET, ROOM 104, INDIANAPOLIS, IN 46202 317.232.3850

September 2010
No. 10-I-11

The Indiana State Ethics Commission (Commission) issues the following advisory opinion concerning the State Code of Ethics pursuant to I.C. 4-2-6-4(b)(1).

BACKGROUND

Scott Storms is the General Counsel for the Indiana Utility Regulatory Commission (IURC). Mr. Storms has been offered an employment opportunity by Duke Energy Indiana (Duke). Duke is Indiana's largest electric supplier, providing electric service to approximately 780,000 customers in sixty-nine of Indiana's ninety-two counties. It is a utility regulated by the IURC.

During his tenure with the IURC, Mr. Storms neither negotiated nor administered a contract with Duke. In addition, Mr. Storms has never made a regulatory or licensing decision on behalf of the IURC affecting Duke. Mr. Storms discloses that he was assigned to proceedings filed with the IURC and "personally and substantially" participated in the following cases involving Duke:

- Cause No. 43501 (Duke Smart Grid);
- Cause Nos. 43114 IGC 4, 43114 IGCC 4-S-1, and 43114 IGCC 5 (Duke Edwardsport Ongoing Review Proceedings);
- Cause No. 42693 S-1 (DSM Implementation Subdocket Proceeding);
- Cause No. 43743 (Duke Deferred Accounting\Storm Damage); and
- Cause No. 43653 (Duke Carbon Storage Proceeding).

Upon submitting his resume to Duke, Mr. Storms screened himself from pending proceedings involving Duke to which he was assigned and reassigned the cases to other Administrative Law Judges. Mr. Storms' intended employment with Duke would not involve employment as a lobbyist.

ISSUE

What rules in the Code of Ethics apply to Mr. Storms' intended employment opportunity with Duke, and would his acceptance of the offered position subject him to any post-employment restrictions under I.C. 4-2-6-11?

RELEVANT LAW

I.C. 4-2-6-6

Present or former state officers, employees, and special state appointees; compensation resulting from confidential information

Sec. 6. No state officer or employee, former state officer or employee, special state appointee, or former special state appointee shall accept any compensation from any employment, transaction, or investment which was entered into or made as a result of material information of a confidential nature.

I.C. 4-2-6-9 (42 IAC 1-5-6)

Conflict of economic interests

Sec. 9. (a) A state officer, an employee, or a special state appointee may not participate in any decision or vote if the state officer, employee, or special state appointee has knowledge that any of the following has a financial interest in the outcome of the matter:

- (1) The state officer, employee, or special state appointee.
- (2) A member of the immediate family of the state officer, employee, or special state appointee.
- (3) A business organization in which the state officer,

employee, or special state appointee is serving as an officer, a director, a trustee, a partner, or an employee.

(4) Any person or organization with whom the state officer, employee, or special state appointee is negotiating or has an arrangement concerning prospective employment.

(b) A state officer, an employee, or a special state appointee who identifies a potential conflict of interest shall notify the person's appointing authority and seek an advisory opinion from the commission by filing a written description detailing the nature and circumstances of the particular matter and making full disclosure of any related financial interest in the matter. The commission shall:

(1) with the approval of the appointing authority, assign the particular matter to another person and implement all necessary procedures to screen the state officer, employee, or special state appointee seeking an advisory opinion from involvement in the matter; or

(2) make a written determination that the interest is not so substantial that the commission considers it likely to affect the integrity of the services that the state expects from the state officer, employee, or special state appointee.

(c) A written determination under subsection (b)(2) constitutes conclusive proof that it is not a violation for the state officer, employee, or special state appointee who sought an advisory opinion under this section to participate in the particular matter. A written determination under subsection (b)(2) shall be filed with the appointing authority.

I.C. 4-2-6-11 (42 IAC 1-5-14)

One year restriction on certain employment or representation; advisory opinion; exceptions

Sec. 11. (a) As used in this section, "particular matter" means:

- (1) an application;
- (2) a business transaction;
- (3) a claim;

- (4) a contract;
- (5) a determination;
- (6) an enforcement proceeding;
- (7) an investigation;
- (8) a judicial proceeding;
- (9) a lawsuit;
- (10) a license;
- (11) an economic development project; or
- (12) a public works project.

The term does not include the proposal or consideration of a legislative matter or the proposal, consideration, adoption, or implementation of a rule or an administrative policy or practice of general application.

(b) This subsection applies only to a person who served as a state officer, employee, or special state appointee after January 10, 2005. A former state officer, employee, or special state appointee may not accept employment or receive compensation:

- (1) as a lobbyist;
- (2) from an employer if the former state officer, employee, or special state appointee was:
 - (A) engaged in the negotiation or the administration of one (1) or more contracts with that employer on behalf of the state or an agency; and
 - (B) in a position to make a discretionary decision affecting the:
 - (i) outcome of the negotiation; or
 - (ii) nature of the administration; or
- (3) from an employer if the former state officer, employee, or special state appointee made a regulatory or licensing decision that directly applied to the employer or to a parent or subsidiary of the employer; before the elapse of at least three hundred sixty-five (365) days after the date on which the former state officer, employee, or special state appointee ceases to be a state officer, employee, or special state appointee.

(c) A former state officer, employee, or special state appointee may not represent or assist a person in a particular matter involving the state if the former state officer, employee, or special state appointee personally and substantially participated in the matter as a state officer, employee, or special state appointee, even if the former state officer, employee, or special state appointee receives no compensation for the representation or assistance.

(d) A former state officer, employee, or special state appointee may not accept employment or compensation from an employer if the circumstances surrounding the employment or compensation would lead a reasonable person to believe that:

- (1) employment; or
- (2) compensation;

is given or had been offered for the purpose of influencing the former state officer, employee, or special state appointee in the performance of his or her duties or responsibilities while a state officer, an employee, or a special state appointee.

(e) A written advisory opinion issued by the commission certifying that:

- (1) employment of;
- (2) representation by; or
- (3) assistance from;

the former state officer, employee, or special state appointee does not violate this section is

conclusive proof that a former state officer, employee, or special state appointee is not in violation of this section.

(f) Subsection (b) does not apply to a special state appointee who serves only as a member of an advisory body.

(g) An employee's or a special state appointee's state officer or appointing authority may waive application of subsection (b) or (c) in individual cases when consistent with the public interest. Waivers must be in writing and filed with the commission. The inspector general may adopt rules under I.C. 4-22-2 to establish criteria for post employment waivers.

ANALYSIS

Mr. Storms' intended employment with Duke invokes consideration of the provisions of the Code of Ethics pertaining to confidential information, conflicts of interest, and post-employment. The application of each provision to Mr. Storms is analyzed below.

A. Confidential Information

I.C. 4-2-6-6 prohibits Mr. Storms from accepting any compensation from any employment, transaction, or investment which was entered into or made as a result of material information of a confidential nature. Based on the information Mr. Storms provided, it appears that Duke's offer of employment did not result from information of a confidential nature. Accordingly, the Commission finds that Mr. Storms' acceptance of Duke's employment offer would not be in violation of I.C. 4-2-6-6.

B. Conflicts of Interest

I.C. 4-2-6-9 prohibits Mr. Storms from participating in any decision or vote if he has knowledge that various persons may have a "financial interest" in the outcome of the matter, including a potential employer. In this case, Mr. Storms has an arrangement for prospective employment with Duke. Accordingly, Mr. Storms is prohibited from participating in any decision or vote during the remainder of his state employment in which Duke has a financial interest in the outcome of the matter. Mr. Storms indicates that he has screened himself from matters involving Duke and has not participated in any decision or vote affecting Duke since he submitted his resume to the utility. To the extent that Mr. Storms continues to observe this provision and abstains from participation in any decision or vote affecting Duke, the Commission finds that Mr. Storms would not be in violation of I.C. 4-2-6-9.

C. Post-Employment

I.C. 4-2-6-11 consists of two separate limitations: a "cooling off" period and a particular matter restriction. The first prohibition, commonly referred to as the cooling off period, prevents Mr. Storms from accepting employment for 365 days from the date that he leaves state government under various circumstances.

First, Mr. Storms is prohibited from accepting employment as a lobbyist for the entirety of the cooling off period. Based on the information provided, it would not appear that

this provision would apply to Mr. Storms. Specifically, he indicates that the position with Duke does not involve employment as a lobbyist pursuant to I.C. 4-2-7-1(5).

Second, Mr. Storms is prohibited from accepting employment from an employer with whom 1) he engaged in the negotiation or administration of a contract on behalf of his state agency and 2) was in a position to make a discretionary decision affecting the outcome of the negotiation or nature of the administration of the contract. In this case, Mr. Storms discloses that he has never negotiated nor administered a contract with Duke on behalf of the IURC. To the extent that he has never negotiated or administered a contract with Duke during his tenure with the State, this restriction would not apply to Mr. Storms.

Third, Mr. Storms is prohibited from accepting employment from an employer for whom he made a regulatory or licensing decision that directly applied to the employer or its parent or subsidiary. This provision would not be triggered by Mr. Storms' work at the IURC as he was neither a commissioner nor a voting member of the regulatory body that may have made license or permit decisions regarding Duke.

Fourth, Mr. Storms is also prohibited from accepting employment from an employer if the circumstances surrounding the hire suggest the employer's purpose is to influence him in his official capacity as a state employee. None of the facts presented to the Commission suggest that Duke's offer of employment to Mr. Storms was done in an attempt to influence him in his capacity as General Counsel of the IURC.

Finally, Mr. Storms is subject to the Postemployment rule's "particular matter" prohibition in his potential employment with Duke. This restriction prevents him from working on any of the following twelve matters if he personally and substantially participated in the matter as a state employee: 1) an application, 2) a business transaction, 3) a claim, 4) a contract, 5) a determination, 6) an enforcement proceeding, 7) an investigation, 8) a judicial proceeding, 9) a lawsuit, 10) a license, 11) an economic development project, or 12) a public works project. The particular matter restriction is not limited to 365 days but instead extends for the entire life of the matter at issue, which may be indefinite.

In this case, Mr. Storms discloses that he was personally and substantially involved in the following docketed proceedings that would qualify as "particular matters" regarding Duke:

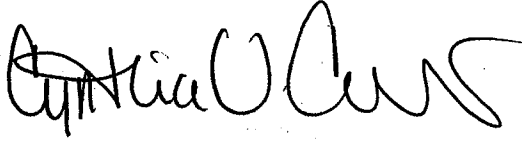
- Cause No. 43501 (Duke Smart Grid);
- Cause Nos. 43114 IGC 4, 43114 IGCC 4-S-1, and 43114 IGCC 5 (Duke Edwardsport Ongoing Review Proceedings);
- Cause No. 42693 S-1 (DSM Implementation Subdocket Proceeding);
- Cause No. 43743 (Duke Deferred Accounting\Storm Damage); and
- Cause No. 43653 (Duke Carbon Storage Proceeding).

Accordingly, Mr. Storms would be prohibited from representing or assisting Duke on any of the above listed pending proceedings.

CONCLUSION

The Commission finds that Mr. Storms' intended employment opportunity with Duke would not violate I.C. 4-2-6-6 or I.C. 4-2-6-9. The Commission further finds that, subject to the particular matters identified, Mr. Storm's intended employment with Duke would not violate I.C. 4-2-6-11.

Respectfully Submitted,

A handwritten signature in black ink, appearing to read 'Cynthia Carrasco', with a stylized flourish at the end.

Cynthia Carrasco
Director

Carrasco, Cynthia (Cyndi)

From: Flynn, Joann
Sent: Friday, July 09, 2010 4:04 PM
To: Carrasco, Cynthia (Cyndi)

Cyndi,

Here are the draft letters for the FAOs.

Thanks,
Joann



FAO Letter
Final.doc



FAO Letter Final
Gov.doc

Flynn, Joann

From: Flynn, Joann
Sent: Friday, September 03, 2010 3:31 PM
To: Storms, Scott
Subject: State Ethics Commission Meeting

Dear Mr. Storms,

Your request for a formal advisory opinion is on the agenda for the September 9, 2010, meeting of the State Ethics Commission. The meeting will be held at the Indiana State Library, 315 West Ohio Street, Room 401. The meeting begins at 11:00 a.m. Please attend the meeting to answer any questions the Commissioners may have. Attached is a copy of the agenda for the meeting.

Note: Meeting attendees should stop at the circulation desk to sign in and get a visitor's badge.

Thank you,

Joann Flynn (for Cyndi Carrasco, Director)
State Ethics Commission
Office of Inspector General



Agenda 9-9-10.doc

State Ethics Commission

September 9, 2010

Agenda

Public Meeting

- 11:00 a.m. - Adoption of Agenda
- Approval of Minutes of July 8, 2010
- 11:05 a.m. - 10-I-10, Request for Formal Advisory Opinion
 Ryan Kitchell, Director
 Office of Management and Budget
- 10-I-12, Request for Formal Advisory Opinion
 Shawn Peterson, Vice President & General Counsel
 Economic Development Corporation
- 10-I-11, Request for Formal Advisory Opinion
 Scott Storms, General Counsel
 Indiana Utility Regulatory Commission
- 10-I-13, Request for Formal Advisory Opinion
 Philip Sicuso, General Counsel
 Indiana Gaming Commission
- 10-I-9, Request for Formal Advisory Opinion
 Kari Evans Bennett, Chief Legal Counsel & Ethics Officer
 James Arthur, Land Buyer, Division of Land Acquisition
 Department of Natural Resources
- 12:00 p.m. - Consideration of Final Report
 In the Matter of Larry Estes
 Case Number 2007-10-0240
- 12:05 p.m. - Director's Report

Executive Session

- 12:15 p.m. - Complaint filed by the Inspector General
- Reports

Carrasco, Cynthia (Cyndi)

From: Carrasco, Cynthia (Cyndi)
Sent: Friday, September 17, 2010 12:18 PM
To: Seyfried, Loraine
Subject: Advisory Opinion

Loraine,

Thanks for your call. An opinion was forwarded to Mr. Storms and Chairman Hardy earlier this morning via interdepartmental mail. We would be happy to forward a scanned copy to Mr. Storms via email if he needs the opinion sooner.

Sincerely,

Cyndi Carrasco, Director
Indiana State Ethics Commission

Carrasco, Cynthia (Cyndi)

From: Carrasco, Cynthia (Cyndi)
Sent: Friday, September 17, 2010 12:19 PM
To: Flynn, Joann
Subject: FW: Advisory Opinion

FYI

From: Carrasco, Cynthia (Cyndi)
Sent: Friday, September 17, 2010 12:18 PM
To: Seyfried, Loraine
Subject: Advisory Opinion

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Sincerely,

Cyndi Carrasco, Director
Indiana State Ethics Commission

Carrasco, Cynthia (Cyndi)

From: Carrasco, Cynthia (Cyndi)
Sent: Friday, September 17, 2010 12:51 PM
To: Flynn, Joann
Subject: FW: Advisory Opinion

Joann,

Could you please forward a scanned copy of the opinion to Mr. Storms?

Thank you,
Cyndi

From: Seyfried, Loraine
Sent: Friday, September 17, 2010 12:48 PM
To: Carrasco, Cynthia (Cyndi)
Subject: FW: Advisory Opinion

Cyndi,

Please see below. Thank you.

Loraine L. Seyfried
Deputy General Counsel
Indiana Utility Regulatory Commission

From: Storms, Scott
Sent: Friday, September 17, 2010 12:43 PM
To: Seyfried, Loraine
Subject: RE: Advisory Opinion

A scanned copy would be very helpful.

Scott R. Storms
General Counsel
Indiana Utility Regulatory Commission
101 W. Washington Street
Suite 1500E
Indianapolis, Indiana
Tel. (317) 232-2102
Fax. (317) 232-6758
Email. ssstorms@urc.in.gov

From: Seyfried, Loraine
Sent: Friday, September 17, 2010 12:19 PM
To: Storms, Scott
Subject: FW: Advisory Opinion

See below.

Loraine L. Seyfried
Deputy General Counsel
Indiana Utility Regulatory Commission

Exhibit CAC-KLO-17

From: Carrasco, Cynthia (Cyndi)
Sent: Friday, September 17, 2010 12:18 PM
To: Seyfried, Loraine
Subject: Advisory Opinion

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Sincerely,

Cyndi Carrasco, Director
Indiana State Ethics Commission

Flynn, Joann

From: Flynn, Joann
Sent: Friday, September 17, 2010 12:58 PM
To: Storms, Scott
Cc: Carrasco, Cynthia (Cyndi)
Subject: Formal Advisory Opinion

Mr. Storms,

Attached is a scanned copy of your Formal Advisory Opinion that you requested.

Thank you,
Joann Flynn (for Cyndi Carrasco, Director)
State Ethics Commission



10-I-11 Storms
FAO.pdf

INDIANA
STATE ETHICS COMMISSION

315 WEST OHIO STREET, ROOM 104. INDIANAPOLIS, IN 46202 317.232.3850

September 2010
No. 10-I-11

The Indiana State Ethics Commission (Commission) issues the following advisory opinion concerning the State Code of Ethics pursuant to I.C. 4-2-6-4(b)(1).

BACKGROUND

Scott Storms is the General Counsel for the Indiana Utility Regulatory Commission (IURC). Mr. Storms has been offered an employment opportunity by Duke Energy Indiana (Duke). Duke is Indiana's largest electric supplier, providing electric service to approximately 780,000 customers in sixty-nine of Indiana's ninety-two counties. It is a utility regulated by the IURC.

During his tenure with the IURC, Mr. Storms neither negotiated nor administered a contract with Duke. In addition, Mr. Storms has never made a regulatory or licensing decision on behalf of the IURC affecting Duke. Mr. Storms discloses that he was assigned to proceedings filed with the IURC and "personally and substantially" participated in the following cases involving Duke:

- Cause No. 43501 (Duke Smart Grid);
- Cause Nos. 43114 IGC 4, 43114 IGCC 4-S-1, and 43114 IGCC 5 (Duke Edwardsport Ongoing Review Proceedings);
- Cause No. 42693 S-1 (DSM Implementation Subdocket Proceeding);
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- Cause No. 43653 (Duke Carbon Storage Proceeding).

Upon submitting his resume to Duke, Mr. Storms screened himself from pending proceedings involving Duke to which he was assigned and reassigned the cases to other Administrative Law Judges. Mr. Storms' intended employment with Duke would not involve employment as a lobbyist.

ISSUE

What rules in the Code of Ethics apply to Mr. Storms' intended employment opportunity with Duke, and would his acceptance of the offered position subject him to any post-employment restrictions under I.C. 4-2-6-11?

- (4) a contract;
- (5) a determination;
- (6) an enforcement proceeding;
- (7) an investigation;
- (8) a judicial proceeding;
- (9) a lawsuit;
- (10) a license;
- (11) an economic development project; or
- (12) a public works project.

The term does not include the proposal or consideration of a legislative matter or the proposal, consideration, adoption, or implementation of a rule or an administrative policy or practice of general application.

(b) This subsection applies only to a person who served as a state officer, employee, or special state appointee after January 10, 2005. A former state officer, employee, or special state appointee may not accept employment or receive compensation:

- (1) as a lobbyist;
- (2) from an employer if the former state officer, employee, or special state appointee was:
 - (A) engaged in the negotiation or the administration of one (1) or more contracts with that employer on behalf of the state or an agency; and
 - (B) in a position to make a discretionary decision affecting the:
 - (i) outcome of the negotiation; or
 - (ii) nature of the administration; or
- (3) from an employer if the former state officer, employee, or special state appointee made a regulatory or licensing decision that directly applied to the employer or to a parent or subsidiary of the employer; before the elapse of at least three hundred sixty-five (365) days after the date on which the former state officer, employee, or special state appointee ceases to be a state officer, employee, or special state appointee.

(c) A former state officer, employee, or special state appointee may not represent or assist a person in a particular matter involving the state if the former state officer, employee, or special state appointee personally and substantially participated in the matter as a state officer, employee, or special state appointee, even if the former state officer, employee, or special state appointee receives no compensation for the representation or assistance.

(d) A former state officer, employee, or special state appointee may not accept employment or compensation from an employer if the circumstances surrounding the employment or compensation would lead a reasonable person to believe that:

- (1) employment; or
 - (2) compensation;
- is given or had been offered for the purpose of influencing the former state officer, employee, or special state appointee in the performance of his or her duties or responsibilities while a state officer, an employee, or a special state appointee.

(e) A written advisory opinion issued by the commission certifying that:

- (1) employment of;
- (2) representation by; or
- (3) assistance from;

the former state officer, employee, or special state appointee does not violate this section is

this provision would apply to Mr. Storms. Specifically, he indicates that the position with Duke does not involve employment as a lobbyist pursuant to I.C. 4-2-7-1(5).

Second, Mr. Storms is prohibited from accepting employment from an employer with whom 1) he engaged in the negotiation or administration of a contract on behalf of his state agency and 2) was in a position to make a discretionary decision affecting the outcome of the negotiation or nature of the administration of the contract. In this case, Mr. Storms discloses that he has never negotiated nor administered a contract with Duke on behalf of the IURC. To the extent that he has never negotiated or administered a contract with Duke during his tenure with the State, this restriction would not apply to Mr. Storms.

Third, Mr. Storms is prohibited from accepting employment from an employer for whom he made a regulatory or licensing decision that directly applied to the employer or its parent or subsidiary. This provision would not be triggered by Mr. Storms' work at the IURC as he was neither a commissioner nor a voting member of the regulatory body that may have made license or permit decisions regarding Duke.

Fourth, Mr. Storms is also prohibited from accepting employment from an employer if the circumstances surrounding the hire suggest the employer's purpose is to influence him in his official capacity as a state employee. None of the facts presented to the Commission suggest that Duke's offer of employment to Mr. Storms was done in an attempt to influence him in his capacity as General Counsel of the IURC.

Finally, Mr. Storms is subject to the Postemployment rule's "particular matter" prohibition in his potential employment with Duke. This restriction prevents him from working on any of the following twelve matters if he personally and substantially participated in the matter as a state employee: 1) an application, 2) a business transaction, 3) a claim, 4) a contract, 5) a determination, 6) an enforcement proceeding, 7) an investigation, 8) a judicial proceeding, 9) a lawsuit, 10) a license, 11) an economic development project, or 12) a public works project. The particular matter restriction is not limited to 365 days but instead extends for the entire life of the matter at issue, which may be indefinite.

In this case, Mr. Storms discloses that he was personally and substantially involved in the following docketed proceedings that would qualify as "particular matters" regarding Duke:

- Cause No. 43501 (Duke Smart Grid);
- Cause Nos. 43114 IGC 4, 43114 IGCC 4-S-1, and 43114 IGCC 5 (Duke Edwardsport Ongoing Review Proceedings);
- Cause No. 42693 S-1 (DSM Implementation Subdocket Proceeding);
- Cause No. 43743 (Duke Deferred Accounting\Storm Damage); and
- Cause No. 43653 (Duke Carbon Storage Proceeding).

Carrasco, Cynthia (Cyndi)

From: Carrasco, Cynthia (Cyndi)
Sent: Monday, September 20, 2010 3:23 PM
To: Seyfried, Loraine
Subject: RE: Commission Opinion No. 10-I-11

Lorain,

Your assumption is correct.

Cyndi

Sincerely,

Cyndi Carrasco, Director
Indiana State Ethics Commission

From: Seyfried, Loraine
Sent: Monday, September 20, 2010 3:19 PM
To: Carrasco, Cynthia (Cyndi)
Subject: Commission Opinion No. 10-I-11

Hi Cyndi,

I have a question concerning a statement in the Commission's Ethics Opinion concerning Scott Storms. On page 5 of the opinion, second paragraph concerning regulatory or licensing decisions, it states, "This provision would not be triggered by Mr. Storms' work at the IURC as he was neither a commissioner nor a voting member of the regulatory body...."

I'm a little confused because it's my understanding that the IURC Commissioners are the voting members. IC 8-1-1-2 defines the IURC as consisting of the 5 appointed members and IC 8-1-1-5 requires the IURC to be an impartial fact-finding body and to make its orders in such cases. I am not aware of anyone, other than the 5 Commissioners, who would be considered a voting member of the IURC.

I assume the Ethics Commission was merely pointing out that Mr. Storms was not a commissioner and therefore not be a voting member of the IURC. Can you please confirm whether my assumption is correct or whether the Ethics Commission believes that someone, other than the 5 Commissioners, can be a voting member of the IURC?

Thank you.

Loraine L. Seyfried
Indiana Utility Regulatory Commission
Deputy General Counsel
101 West Washington Street
Suite 1500 East
Indianapolis, IN 46204
Tel: 317-232-2708
Fax: 317-232-6758
lseyfried@urc.in.gov

Carrasco, Cynthia (Cyndi)

From: Carrasco, Cynthia (Cyndi)
Sent: Monday, September 20, 2010 3:23 PM
To: Flynn, Joann
Cc: Thomas, David
Subject: FW: Commission Opinion No. 10-I-11

Joann, please include this along with the file for Mr. Storms' advisory opinion. Thank you,
 Cyndi

From: Carrasco, Cynthia (Cyndi)
Sent: Monday, September 20, 2010 3:23 PM
To: Seyfried, Loraine
Subject: RE: Commission Opinion No. 10-I-11

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 Indiana State Ethics Commission

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Subject: Commission Opinion No. 10-I-11

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Thank you.

Loraine L. Seyfried
 Indiana Utility Regulatory Commission

Deputy General Counsel
101 West Washington Street
Suite 1500 East
Indianapolis, IN 46204
Tel: 317-232-2708
Fax: 317-232-6758
lseyfried@urc.in.gov

Carrasco, Cynthia (Cyndi)

From: Carrasco, Cynthia (Cyndi)
Sent: Monday, September 20, 2010 3:48 PM
To: Seyfried, Loraine
Subject: RE: Commission Opinion No. 10-I-11

Loraine,

You're very welcome. I just realized I misspelled your name in my response to you. I apologize.

Cyndi

Sincerely,

Cyndi Carrasco, Director
Indiana State Ethics Commission

From: Seyfried, Loraine
Sent: Monday, September 20, 2010 3:47 PM
To: Carrasco, Cynthia (Cyndi)
Subject: RE: Commission Opinion No. 10-I-11

Thank you.

Loraine L. Seyfried
Deputy General Counsel
Indiana Utility Regulatory Commission

From: Carrasco, Cynthia (Cyndi)
Sent: Monday, September 20, 2010 3:23 PM
To: Seyfried, Loraine
Subject: RE: Commission Opinion No. 10-I-11

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Your assumption is correct.

Cyndi

Sincerely,

Cyndi Carrasco, Director
Indiana State Ethics Commission

From: Seyfried, Loraine
Sent: Monday, September 20, 2010 3:19 PM
To: Carrasco, Cynthia (Cyndi)
Subject: Commission Opinion No. 10-I-11

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I'm a little confused because it's my understanding that the IURC Commissioners are the voting members. IC 8-1-1-2 defines the IURC as consisting of the 5 appointed members and IC 8-1-1-5 requires the IURC to be an impartial fact-finding body and to make its orders in such cases. I am not aware of anyone, other than the 5 Commissioners, who would be considered a voting member of the IURC.

I assume the Ethics Commission was merely pointing out that Mr. Storms was not a commissioner and therefore not be a voting member of the IURC. Can you please confirm whether my assumption is correct or whether the Ethics Commission believes that someone, other than the 5 Commissioners, can be a voting member of the IURC?

Thank you.

Loraine L. Seyfried
Indiana Utility Regulatory Commission
Deputy General Counsel
101 West Washington Street
Suite 1500 East
Indianapolis, IN 46204
Tel: 317-232-2708
Fax: 317-232-6758
lseyfried@urc.in.gov

INDIANA STATE ETHICS COMMISSION

315 WEST OHIO STREET, ROOM 104, INDIANAPOLIS, IN 46202 317.232.3850

September 2010

No. 10-I-11

The Indiana State Ethics Commission (Commission) issues the following advisory opinion concerning the State Code of Ethics pursuant to I.C. 4-2-6-4(b)(1).

BACKGROUND

Scott Storms is the General Counsel for the Indiana Utility Regulatory Commission (IURC). Mr. Storms has been offered an employment opportunity by Duke Energy Indiana (Duke). Duke is Indiana's largest electric supplier, providing electric service to approximately 780,000 customers in sixty-nine of Indiana's ninety-two counties. It is a utility regulated by the IURC.

During his tenure with the IURC, Mr. Storms neither negotiated nor administered a contract with Duke. In addition, Mr. Storms has never made a regulatory or licensing decision on behalf of the IURC affecting Duke. Mr. Storms discloses that he was assigned to proceedings filed with the IURC and "personally and substantially" participated in the following cases involving Duke:

- Cause No. 43501 (Duke Smart Grid);
- Cause Nos. 43114 IGC 4, 43114 IGCC 4-S-1, and 43114 IGCC 5 (Duke Edwardsport Ongoing Review Proceedings);
- Cause No. 42693 S-1 (DSM Implementation Subdocket Proceeding);
- Cause No. 43743 (Duke Deferred Accounting\Storm Damage); and
- Cause No. 43653 (Duke Carbon Storage Proceeding).

Upon submitting his resume to Duke, Mr. Storms screened himself from pending proceedings involving Duke to which he was assigned and reassigned the cases to other Administrative Law Judges. Mr. Storms' intended employment with Duke would not involve employment as a lobbyist.

ISSUE

What rules in the Code of Ethics apply to Mr. Storms' intended employment opportunity with Duke, and would his acceptance of the offered position subject him to any post-employment restrictions under I.C. 4-2-6-11?

RELEVANT LAW**I.C. 4-2-6-6****Present or former state officers, employees, and special state appointees; compensation resulting from confidential information**

Sec. 6. No state officer or employee, former state officer or employee, special state appointee, or former special state appointee shall accept any compensation from any employment, transaction, or investment which was entered into or made as a result of material information of a confidential nature.

I.C. 4-2-6-9 (42 IAC 1-5-6)**Conflict of economic interests**

Sec. 9. (a) A state officer, an employee, or a special state appointee may not participate in any decision or vote if the state officer, employee, or special state appointee has knowledge that any of the following has a financial interest in the outcome of the matter:

- (1) The state officer, employee, or special state appointee.
- (2) A member of the immediate family of the state officer, employee, or special state appointee.
- (3) A business organization in which the state officer,

employee, or special state appointee is serving as an officer, a director, a trustee, a partner, or an employee.

(4) Any person or organization with whom the state officer, employee, or special state appointee is negotiating or has an arrangement concerning prospective employment.

(b) A state officer, an employee, or a special state appointee who identifies a potential conflict of interest shall notify the person's appointing authority and seek an advisory opinion from the commission by filing a written description detailing the nature and circumstances of the particular matter and making full disclosure of any related financial interest in the matter. The commission shall:

(1) with the approval of the appointing authority, assign the particular matter to another person and implement all necessary procedures to screen the state officer, employee, or special state appointee seeking an advisory opinion from involvement in the matter; or

(2) make a written determination that the interest is not so substantial that the commission considers it likely to affect the integrity of the services that the state expects from the state officer, employee, or special state appointee.

(c) A written determination under subsection (b)(2) constitutes conclusive proof that it is not a violation for the state officer, employee, or special state appointee who sought an advisory opinion under this section to participate in the particular matter. A written determination under subsection (b)(2) shall be filed with the appointing authority.

I.C. 4-2-6-11 (42 IAC 1-5-14)**One year restriction on certain employment or representation; advisory opinion; exceptions**

Sec. 11. (a) As used in this section, "particular matter" means:

- (1) an application;
- (2) a business transaction;
- (3) a claim;

- (4) a contract;
- (5) a determination;
- (6) an enforcement proceeding;
- (7) an investigation;
- (8) a judicial proceeding;
- (9) a lawsuit;
- (10) a license;
- (11) an economic development project; or
- (12) a public works project.

The term does not include the proposal or consideration of a legislative matter or the proposal, consideration, adoption, or implementation of a rule or an administrative policy or practice of general application.

(b) This subsection applies only to a person who served as a state officer, employee, or special state appointee after January 10, 2005. A former state officer, employee, or special state appointee may not accept employment or receive compensation:

- (1) as a lobbyist;
- (2) from an employer if the former state officer, employee, or special state appointee was:
 - (A) engaged in the negotiation or the administration of one (1) or more contracts with that employer on behalf of the state or an agency; and
 - (B) in a position to make a discretionary decision affecting the:
 - (i) outcome of the negotiation; or
 - (ii) nature of the administration; or

(3) from an employer if the former state officer, employee, or special state appointee made a regulatory or licensing decision that directly applied to the employer or to a parent or subsidiary of the employer;

before the elapse of at least three hundred sixty-five (365) days after the date on which the former state officer, employee, or special state appointee ceases to be a state officer, employee, or special state appointee.

(c) A former state officer, employee, or special state appointee may not represent or assist a person in a particular matter involving the state if the former state officer, employee, or special state appointee personally and substantially participated in the matter as a state officer, employee, or special state appointee, even if the former state officer, employee, or special state appointee receives no compensation for the representation or assistance.

(d) A former state officer, employee, or special state appointee may not accept employment or compensation from an employer if the circumstances surrounding the employment or compensation would lead a reasonable person to believe that:

- (1) employment; or
- (2) compensation;

is given or had been offered for the purpose of influencing the former state officer, employee, or special state appointee in the performance of his or her duties or responsibilities while a state officer, an employee, or a special state appointee.

(e) A written advisory opinion issued by the commission certifying that:

- (1) employment of;
- (2) representation by; or
- (3) assistance from;

the former state officer, employee, or special state appointee does not violate this section is

conclusive proof that a former state officer, employee, or special state appointee is not in violation of this section.

(f) Subsection (b) does not apply to a special state appointee who serves only as a member of an advisory body.

(g) An employee's or a special state appointee's state officer or appointing authority may waive application of subsection (b) or (c) in individual cases when consistent with the public interest. Waivers must be in writing and filed with the commission. The inspector general may adopt rules under I.C. 4-22-2 to establish criteria for post employment waivers.

ANALYSIS

Mr. Storms' intended employment with Duke invokes consideration of the provisions of the Code of Ethics pertaining to confidential information, conflicts of interest, and post-employment. The application of each provision to Mr. Storms is analyzed below.

A. Confidential Information

I.C. 4-2-6-6 prohibits Mr. Storms from accepting any compensation from any employment, transaction, or investment which was entered into or made as a result of material information of a confidential nature. Based on the information Mr. Storms provided, it appears that Duke's offer of employment did not result from information of a confidential nature. Accordingly, the Commission finds that Mr. Storms' acceptance of Duke's employment offer would not be in violation of I.C. 4-2-6-6.

B. Conflicts of Interest

I.C. 4-2-6-9 prohibits Mr. Storms from participating in any decision or vote if he has knowledge that various persons may have a "financial interest" in the outcome of the matter, including a potential employer. In this case, Mr. Storms has an arrangement for prospective employment with Duke. Accordingly, Mr. Storms is prohibited from participating in any decision or vote during the remainder of his state employment in which Duke has a financial interest in the outcome of the matter. Mr. Storms indicates that he has screened himself from matters involving Duke and has not participated in any decision or vote affecting Duke since he submitted his resume to the utility. To the extent that Mr. Storms continues to observe this provision and abstains from participation in any decision or vote affecting Duke, the Commission finds that Mr. Storms would not be in violation of I.C. 4-2-6-9.

C. Post-Employment

I.C. 4-2-6-11 consists of two separate limitations: a "cooling off" period and a particular matter restriction. The first prohibition, commonly referred to as the cooling off period, prevents Mr. Storms from accepting employment for 365 days from the date that he leaves state government under various circumstances.

First, Mr. Storms is prohibited from accepting employment as a lobbyist for the entirety of the cooling off period. Based on the information provided, it would not appear that

this provision would apply to Mr. Storms. Specifically, he indicates that the position with Duke does not involve employment as a lobbyist pursuant to I.C. 4-2-7-1(5).

Second, Mr. Storms is prohibited from accepting employment from an employer with whom 1) he engaged in the negotiation or administration of a contract on behalf of his state agency and 2) was in a position to make a discretionary decision affecting the outcome of the negotiation or nature of the administration of the contract. In this case, Mr. Storms discloses that he has never negotiated nor administered a contract with Duke on behalf of the IURC. To the extent that he has never negotiated or administered a contract with Duke during his tenure with the State, this restriction would not apply to Mr. Storms.

Third, Mr. Storms is prohibited from accepting employment from an employer for whom he made a regulatory or licensing decision that directly applied to the employer or its parent or subsidiary. This provision would not be triggered by Mr. Storms' work at the IURC as he was neither a commissioner nor a voting member of the regulatory body that may have made license or permit decisions regarding Duke.

Fourth, Mr. Storms is also prohibited from accepting employment from an employer if the circumstances surrounding the hire suggest the employer's purpose is to influence him in his official capacity as a state employee. None of the facts presented to the Commission suggest that Duke's offer of employment to Mr. Storms was done in an attempt to influence him in his capacity as General Counsel of the IURC.

Finally, Mr. Storms is subject to the Postemployment rule's "particular matter" prohibition in his potential employment with Duke. This restriction prevents him from working on any of the following twelve matters if he personally and substantially participated in the matter as a state employee: 1) an application, 2) a business transaction, 3) a claim, 4) a contract, 5) a determination, 6) an enforcement proceeding, 7) an investigation, 8) a judicial proceeding, 9) a lawsuit, 10) a license, 11) an economic development project, or 12) a public works project. The particular matter restriction is not limited to 365 days but instead extends for the entire life of the matter at issue, which may be indefinite.

In this case, Mr. Storms discloses that he was personally and substantially involved in the following docketed proceedings that would qualify as "particular matters" regarding Duke:

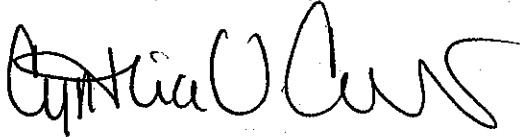
- Cause No. 43501 (Duke Smart Grid);
- Cause Nos. 43114 IGC 4, 43114 IGCC 4-S-1, and 43114 IGCC 5 (Duke Edwardsport Ongoing Review Proceedings);
- Cause No. 42693 S-1 (DSM Implementation Subdocket Proceeding);
- Cause No. 43743 (Duke Deferred Accounting\Storm Damage); and
- Cause No. 43653 (Duke Carbon Storage Proceeding).

Accordingly, Mr. Storms would be prohibited from representing or assisting Duke on any of the above listed pending proceedings.

CONCLUSION

The Commission finds that Mr. Storms' intended employment opportunity with Duke would not violate I.C. 4-2-6-6 or I.C. 4-2-6-9. The Commission further finds that, subject to the particular matters identified, Mr. Storm's intended employment with Duke would not violate I.C. 4-2-6-11.

Respectfully Submitted,

A handwritten signature in black ink, appearing to read "Cynthia Carrasco", with a stylized flourish at the end.

Cynthia Carrasco
Director

INDIANA
STATE ETHICS COMMISSION

315 WEST OHIO STREET, INDIANAPOLIS, IN 46202 317.232.3850

September 17, 2010

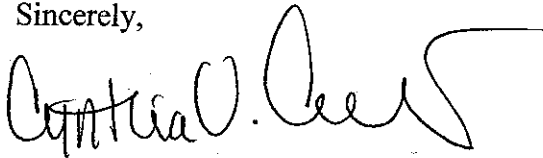
David Hardy, Chairman
Indiana Utility Regulatory Commission
101 West Washington Street, Suite 1500 East
Indianapolis, IN 46204

Re: Request for Formal Advisory Opinion

Dear Mr. Hardy,

The State Ethics Commission adopted the enclosed Formal Advisory Opinion regarding Scott R. Storms, General Counsel, Indiana Utility Regulatory Commission at its public meeting on September 9, 2010. In accordance with 40 IAC 2-2-1(g), a copy of the Formal Advisory Opinion is forwarded for your information.

Sincerely,



Cynthia Carrasco, Director
State Ethics Commission

Enclosure

INDIANA
STATE ETHICS COMMISSION

315 WEST OHIO STREET, INDIANAPOLIS, IN 46202 317.232.3850

September 17, 2010

Scott R. Storms, General Counsel
Indiana Utility Regulatory Commission
101 West Washington Street, Suite 1500 East
Indianapolis, IN 46204

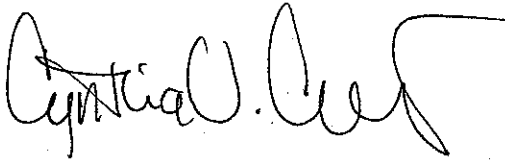
Re: Request for Formal Advisory Opinion

Dear Mr. Storms,

Please find enclosed a copy of the Formal Advisory Opinion issued by the State Ethics Commission in response to your request at its public meeting on September 9, 2010.

Please feel free to contact our office if you have any questions.

Sincerely,

A handwritten signature in black ink, appearing to read "Cynthia Carrasco", with a stylized flourish at the end.

Cynthia Carrasco, Director
State Ethics Commission

Enclosure

STATE OF INDIANA



INDIANA UTILITY REGULATORY COMMISSION
101 WEST WASHINGTON STREET, SUITE 1500 EAST
INDIANAPOLIS, INDIANA 46204-3407

<http://www.in.gov/iurc>
Office: (317) 232-2701
Facsimile: (317) 232-6758

August 27, 2010

Ms. Cynthia Carrasco
Director
State Ethics Commission
315 West Ohio Street, Room 104
Indianapolis, Indiana 46202

Re: Request for Formal Advisory Opinion.

Dear Ms. Carrasco:

The purpose of this letter is to request a Formal Advisory Opinion regarding my ability to accept a position with a utility that is regulated by the Indiana Utility Regulatory Commission ("IURC").

I received guidance on this issue from the IURC's Ethics Officer who indicated that, subject to specific prohibitions with respect to particular matters in which I was personally and substantially involved, my employment with a regulated utility would not violate any post-employment ethics restrictions. Additionally, she noted in her memorandum that this issue was recently addressed by the Ethics Commission in Opinion 10-I-6, issued in June of this year. As reflected in Opinion 10-I-6, the Ethics Commission determined that it is only through the IURC's appointed Commissioners, not IURC staff, that the IURC can make regulatory decisions regarding jurisdictional utilities in the state of Indiana. I have attached a copy of the memorandum that I received from the IURC's Ethics Officer and a copy of Opinion No. 10-I-6 for your review.

Although the IURC's Ethics Officer indicated in her memorandum that she does not believe that further action on the part of the Ethics Commission is necessary, she advised me that I could seek a Formal Advisory Opinion from the Ethics Commission in order to obtain confirmation regarding the specific guidance she provided. Accordingly, out of an abundance of caution, I hereby request to be added to the agenda of the September 9, 2010 meeting of the State Ethics Commission.

Sincerely,

Scott R. Storms
General Counsel

STATE • INDIANA



INDIANA UTILITY REGULATORY COMMISSION
101 WEST WASHINGTON STREET, SUITE 1500 EAST
INDIANAPOLIS, INDIANA 46204-3407

<http://www.in.gov/iurc>
Office: (317) 232-2701
Facsimile: (317) 232-6758

Memorandum

Date: August 25, 2010

To: Scott R. Storms
General Counsel

From: Loraine L. Seyfried 
Ethics Officer

Re: State Ethics Requirements

This memorandum is to confirm my conclusions regarding the requirements of the State Ethics Code that would govern your departure from employment as General Counsel with the Indiana Utility Regulatory Commission ("Commission" or "IURC") to accept a position with Duke Energy Indiana.

As set forth further herein, I conclude that your acceptance of employment with Duke Energy Indiana would not violate the State Ethics Code. Consequently, no waiver from the application of the state's ethics requirements is necessary from the IURC. However, you may seek conclusive proof that acceptance of the prospective employment would not violate the State Ethics Code by requesting a written advisory opinion from the Ethics Commission in accordance with Ind. Code § 4-2-6-11(e).

Specific Post Employment Restrictions with One-Year Waiting Period.

Ind. Code § 4-2-6-11 sets forth certain post-employment restrictions. Ind. Code § 4-2-6-11(b) generally provides for a one-year waiting period before a state employee may accept employment or receive compensation:

1. as a lobbyist;
2. from any employer with whom you negotiated or administered a contract on behalf of the state and was in a position to make a discretionary decision affecting the outcome of the negotiation or the nature of the administration of the contract; or
3. from any employer for whom you made a regulatory or licensing decision that directly applied to the employer or to a parent or subsidiary of the employer.

It is my understanding that the employment you are considering does not involve employment as a lobbyist and therefore, the first restriction is not an issue. With regard to the second restriction, I understand that you neither negotiated nor administered a contract with your prospective employer while at the IURC. I have reviewed the Commission's records and confirmed that there are no contracts between the IURC and your prospective employer. Finally, pursuant to Ind. Code § 8-1-1 *et seq.*, the five member Commission is the governing and decision making body of the IURC. It is these five voting Commission members, not Commission employees, who are statutorily required to decide all matters brought before the Commission. Ind. Code § 8-1-1-5(a). Therefore, as you are not a Commissioner, you were incapable of making any regulatory or licensing decisions on behalf of the IURC. This conclusion is supported by advisory opinion 10-1-6 issued by the Ethics Commission in June 2010, which specifically finds that only the Commission through its appointed Commissioners, and not its staff members, can make regulatory or licensing decisions.

Additional Post Employment Restrictions.

In addition to the foregoing, the State Ethics Code includes other post-employment restrictions for which there is no particular waiting period. Ind. Code § 4-2-6-11(c) provides that a former state employee may not represent or assist an employer or any person in a "particular matter" on which the employee worked while employed by the state if he personally and substantially participated in the matter as a state employee, even if he were to receive no compensation for the representation or assistance. A "particular matter," as applied to the IURC, would include any docketed proceeding.

As General Counsel for the Commission, you were assigned to proceedings filed with the Commission and "personally and substantially" participated in particular cases involving your prospective employer. It is my understanding that upon submission of your resume to Duke Energy Indiana you took the steps necessary to immediately screen yourself from pending Duke Energy Indiana proceedings to which you were assigned (in accordance with Ind. Code § 4-2-6-9) and to reassign the cases to other Administrative Law Judges. These docketed proceedings included:

- 1) Cause No. 43501 (Duke Smart Grid);
- 2) Cause Nos. 43114 IGCC 4, 43114 IGCC 4-S-1, and 43114 IGCC 5 (Duke Edwardsport Ongoing Review Proceedings);
- 3) Cause No. 42693 S-1 (DSM Implementation Subdocket Proceeding);
- 4) Cause No. 43743 (Duke Deferred Accounting\Storm Damage); and
- 5) Cause No. 43653 (Duke Carbon Storage Proceeding).

Screening yourself off of these proceedings allowed you to negotiate for employment. However, in the event that you accept a position with Duke Energy Indiana, pursuant to Ind. Code § 4-2-6-11(c), you may not represent or assist Duke Energy Indiana on any of these pending proceedings as they constitute "particular matters" on which you worked while employed by the state.

In addition, Ind. Code § 4-2-6-11(d) provides that a former state employee may not accept employment or receive compensation from an employer if the circumstances surrounding the employment or compensation would lead a reasonable person to believe that: (1) employment; or (2) compensation is given or had been offered for the purpose of influencing the performance of his duties or responsibilities while a state employee. Based on my review, I find no evidence that this provision has been violated or would suggest the appearance of such violation.

Finally, Ind. Code § 4-2-6-6 prohibits, among other things, a former state employee from accepting compensation "from any employment, transaction, or investment which was entered into or made as a result of material information of a confidential nature." I am not aware of any information that would suggest your prospective employment would violate this statute. However, you should be aware that you are under a continuing obligation to not disclose any confidential information to your prospective employer that was obtained during the course of your employment with the IURC.

I hope this information is helpful. If you have any questions, or need additional guidance with respect to any issue, please let me know.

cc: David Lott Hardy, Chairman

INDIANA STATE ETHICS COMMISSION

150 WEST MARKET STREET, ROOM 414, INDIANAPOLIS, IN 46204 317.232.3850

June 2010

No. 10-I-6

The Indiana State Ethics Commission (Commission) issues the following advisory opinion concerning the State Code of Ethics pursuant to I.C. 4-2-6-4(b)(1).

BACKGROUND

Michael Reed has worked for the State of Indiana (State) since 2006 and currently serves as Commissioner of the Indiana Department of Transportation (INDOT). Prior to holding this position, Mr. Reed served as the Executive Director of the Indiana Utility Regulatory Commission (IURC) from 2006 – February 2009.

Mr. Reed has been offered a position as President of Duke Energy Indiana (Duke). Duke is Indiana's largest electric supplier, providing electric service to approximately 780,000 customers in sixty-nine of Indiana's ninety-two counties. As President of Duke, Mr. Reed will be providing strategic direction and overseeing its overall operations throughout Indiana. He will not be required to register as an executive branch lobbyist for at least one year after leaving state employment.

According to Mr. Reed, he has had contact with Duke in both of the positions he has held with the State, though such contact or interaction is not of the type described by the post-employment restrictions in I.C. 4-2-6-11.

As Executive Director for the IURC, Mr. Reed directed a staff of fifty members in support of the five commissioners. He was responsible for the general oversight of the Technical Divisions and interfacing with the regulated community within the limitations of the IURC's ex parte rules. In this position, Mr. Reed neither negotiated nor administered a contract with Duke. Additionally, Mr. Reed asserts that he had no cases assigned to him. He did not direct the assignment of cases, and he had no ability to conduct a hearing, make a decision or cast a vote affecting regulated activities of any utility before the IURC.

With respect to INDOT, the only contractual relationship the agency has with Duke or any utility (other than purchasing electricity for traffic signals, lights and buildings at the metered rate charged by the utility) is the requirement that INDOT reimburse utilities for their actual expenses when road construction forces a utility to move its facilities. The relocations are both required and governed by Indiana and Federal statute, rules and regulations. INDOT's district project managers and INDOT's Utility Section negotiate the utility relocation agreements. The deputy commissioner responsible for the Utility Section provides the final INDOT signature for the relocation agreements. As the appointing authority of the agency, these staff members ultimately

- (1) The state officer, employee, or special state appointee.
- (2) A member of the immediate family of the state officer, employee, or special state appointee.
- (3) A business organization in which the state officer,

employee, or special state appointee is serving as an officer, a director, a trustee, a partner, or an employee.

(4) Any person or organization with whom the state officer, employee, or special state appointee is negotiating or has an arrangement concerning prospective employment.

(b) A state officer, an employee, or a special state appointee who identifies a potential conflict of interest shall notify the person's appointing authority and seek an advisory opinion from the commission by filing a written description detailing the nature and circumstances of the particular matter and making full disclosure of any related financial interest in the matter. The commission shall:

(1) with the approval of the appointing authority, assign the particular matter to another person and implement all necessary procedures to screen the state officer, employee, or special state appointee seeking an advisory opinion from involvement in the matter; or

(2) make a written determination that the interest is not so substantial that the commission considers it likely to affect the integrity of the services that the state expects from the state officer, employee, or special state appointee.

(c) A written determination under subsection (b)(2) constitutes conclusive proof that it is not a violation for the state officer, employee, or special state appointee who sought an advisory opinion under this section to participate in the particular matter. A written determination under subsection (b)(2) shall be filed with the appointing authority.

I.C. 4-2-6-11 (42 IAC 1-5-14)

One year restriction on certain employment or representation; advisory opinion; exceptions

Sec. 11. (a) As used in this section, "particular matter" means:

- (1) an application;
- (2) a business transaction;
- (3) a claim;
- (4) a contract;
- (5) a determination;
- (6) an enforcement proceeding;
- (7) an investigation;
- (8) a judicial proceeding;
- (9) a lawsuit;
- (10) a license;
- (11) an economic development project; or
- (12) a public works project.

The term does not include the proposal or consideration of a legislative matter or the proposal, consideration, adoption, or implementation of a rule or an administrative policy or practice of general application.

(b) This subsection applies only to a person who served as a state officer, employee, or special state appointee after January 10, 2005. A former state officer, employee, or special state

ANALYSIS

Mr. Reed's intended employment with Duke invokes consideration of the provisions of the Code of Ethics pertaining to confidential information, conflicts of interest, and post-employment. The application of each provision to Mr. Reed is analyzed below.

A. Confidential Information

I.C. 4-2-6-6 would prohibit Mr. Reed from accepting any compensation from any employment, transaction, or investment which was entered into or made as a result of material information of a confidential nature. Based on the information Mr. Reed has provided, the Commission finds that Duke's offer of employment did not result from information of a confidential nature. Accordingly, Mr. Reed's acceptance of Duke's employment offer would not be in violation of I.C. 4-2-6-6.

B. Conflicts of Interest

I.C. 4-2-6-9 prohibits Mr. Reed from participating in any decision or vote if he has knowledge that various persons may have a "financial interest" in the outcome of the matter, including a potential employer. In this case, Mr. Reed has an arrangement for prospective employment with Duke. Accordingly, Mr. Reed is prohibited from participating in any decision or vote during the remainder of his state employment in which Duke has a financial interest in the outcome of the matter. Mr. Reed indicates that he is aware of this provision and has not participated in any decision or vote affecting Duke since he became aware of the prospective employment opportunity. To the extent that Mr. Reed continues to observe this provision and abstains from participation in any decision or vote affecting Duke, the Commission finds that Mr. Reed would not be in violation of I.C. 4-2-6-9.

C. Post-Employment

I.C. 4-2-6-12 consists of two separate limitations: a "cooling off" period and a particular matter restriction. The first prohibition, commonly referred to as the cooling off period, would prevent Mr. Reed from accepting employment for 365 days from the date that he leaves state government under various circumstances.

First, Mr. Reed would be prohibited from accepting employment as a lobbyist for the entirety of the cooling off period. Based on the information provided, the Commission finds that this provision does not apply to Mr. Reed. Specifically, he indicates that he will not be required to register as an executive branch lobbyist for at least one year after leaving state employment.

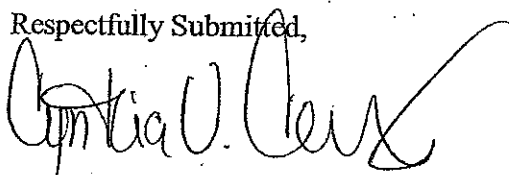
Second, Mr. Reed would be prohibited from accepting employment from an employer with whom (1) he engaged in the negotiation or administration of a contract on behalf of his state agency and (2) was in a position to make a discretionary decision affecting the

have worked while employed with the State. To the extent that Mr. Reed's future employment activities with Duke would have the potential to implicate a "particular matter" as contemplated by I.C. 4-2-6-11, Mr. Reed should request advice for review prior to representing or assisting Duke with any "particular matter."

CONCLUSION

Subject to the foregoing analysis, Mr. Reed's intended employment with Duke would not be in violation of the State Code of Ethics, including I.C. 4-2-6-6, I.C. 4-2-6-9 and I.C. 4-2-6-11.

Respectfully Submitted,

A handwritten signature in black ink, appearing to read "Cynthia Carrasco", with a large, sweeping flourish extending to the right.

Cynthia Carrasco
Director

The Indiana State Ethics Commission (Commission) issues the following advisory opinion concerning the State Code of Ethics pursuant to IC 4-2-6-4(b)(1).

SUMMARY

42 IAC 1-5-6 Conflicts of interest; decisions and voting (IC 4-2-6-9)

An ALJ with the IURC submitted his resume seeking employment with a utility regulated by his agency and sought advice on when “negotiations” began, thereby invoking the restrictions under IC 4-2-6-9 and requiring that he be screened from any cases involving the utility. SEC determined “negotiations” would commence upon the response of the utility to the ALJ’s resume submission at which point the provisions of IC 4-2-6-9 would be implicated, and the ALJ would need to be screened from matters involving the utility.

BACKGROUND

A state employee is an administrative law judge with the Indiana Utility Regulatory Commission (IURC). The administrative law judge submitted a resume seeking employment with a utility that is regulated by the IURC (Utility).

In his current position at the IURC, the administrative law judge has pending cases assigned to him involving the Utility. The administrative law judge disclosed to the agency’s Ethics Officer, out of an abundance of caution, that he had submitted his resume and screened himself from cases involving the Utility. The administrative law judge was advised by the agency’s Ethics Officer that the Commission issued a formal advisory opinion twenty years ago addressing a similar situation. He was further advised that the Indiana Office of Utility Consumer Counselor received a more recent informal opinion in 2007 indicating that the submission of a resume did not constitute “negotiations” and therefore did not create a conflict of interest.

The administrative law judge requests this advisory opinion to determine whether he is permitted to work on cases involving the Utility given that he has submitted a resume for employment with that Utility.

ISSUE

Does a conflict of interest arise for the administrative law judge if he participates in a decision or vote involving a Utility with whom he has submitted a resume to seek employment?

RELEVANT LAW

IC 4-2-6-9 (42 IAC 1-5-6): Conflict of economic interests

ANALYSIS

IC 4-2-6-9 prohibits the administrative law judge from participating in any decision or vote if he has knowledge that various persons have a “financial interest” in the outcome of the matter, including a potential employer. Specifically, IC 4-2-6-9(a)(4) prevents the administrative law judge from participating in any decision or vote in which a person or organization with whom he is negotiating or has an arrangement concerning prospective employment has a financial interest in the outcome of the matter. In this case, a conflict of interest would arise if (1) the Utility has a financial interest in the outcome of a decision(s) or vote(s) that the administrative law judge participates in, and (2) the administrative law judge is negotiating or has an arrangement concerning prospective employment with the Utility. It is undisputed that the Utility would have a financial interest in the decision(s) or votes(s) the administrative law judge would participate in as an ALJ involving the Utility. Accordingly, the application of this rule depends upon whether the administrative law judge’s mere submission of his resume to the Utility rises to the level of “negotiating or having an arrangement concerning prospective employment” with the Utility.

In this case, the Commission finds that the administrative law judge’s submission of his resume does not constitute negotiating or having an arrangement concerning prospective employment with the Utility. Specifically, the administrative law judge disclosed that while he has submitted a resume for a job opening with the Utility, the Utility has not contacted him in response to his submission. Since the Utility has not contacted the administrative law judge, the Commission finds that he does not have an arrangement for prospective employment with the Utility. With respect to negotiations, the Commission looks to the plain meaning of the term “negotiations” since the term is not defined by statute or administrative rule. The term “negotiations” is defined in the dictionary as “dealings conducted between two or more parties for the purpose of reaching an understanding.” Black’s Law Dictionary 8th Edition, 1065; <http://www.merriam-webster.com/dictionary/negotating> (defining “negotiate” as “to confer with another so as to arrive at the settlement of some matter” or “to arrange for or bring about through conference, discussion, and compromise <negotiate a treaty>”). Based upon these definitions, the Commission finds that negotiations did not commence for the administrative law judge at the time of his unilateral submission of his resume. Instead, negotiations for prospective employment would commence for the administrative law judge if, and when, the Utility contacts him in response to his resume.

CONCLUSION

The Commission finds that a conflict of interest would not arise for the administrative law judge if he participates in a decision or vote involving the Utility so long as the Utility has not contacted him in response to his resume submission. However, a conflict of interest would arise for the administrative law judge if, and when, the Utility contacts him in response to his resume.

Carrasco, Cynthia (Cyndi)

From: Carrasco, Cynthia (Cyndi)
Sent: Monday, June 14, 2010 4:58 PM
To: Wilcoxon, Cynthia
Subject: FW: Request for an informal advisory opinion
Attachments: Informal advisory opinion question.doc

FYI

From: Carrasco, Cynthia (Cyndi)
Sent: Monday, June 14, 2010 4:56 PM
To: Schmoll, Aaron
Subject: FW: Request for an informal advisory opinion

Dear Aaron,

Thank you very much for contacting our office. We received your request for an informal advisory opinion this afternoon. As Cindy Wilcoxon explained earlier, we did not receive your original submission on June 7, 2010.

We have reviewed your submission. Could you please clarify whether you are seeking ethics advice for yourself or on behalf of a third party?

Sincerely,

Cyndi Carrasco, Director
Indiana State Ethics Commission

From: Schmoll, Aaron
Sent: Monday, June 14, 2010 1:25 PM
To: IG Info
Subject: Request for an informal advisory opinion

Attached is a word version of the information I sent last week that was apparently not received. Feel free to contact me if you need any additional information.

I look forward to hearing from you.

Regards,

Aaron A. Schmoll
Administrative Law Judge
Indiana Utility Regulatory Commission
National City Center
101 West Washington Street, Suite 1500
Indianapolis, IN 46204

(317) 232-2711

Carrasco, Cynthia (Cyndi)

From: Carrasco, Cynthia (Cyndi)
Sent: Monday, June 14, 2010 4:58 PM
To: Wilcoxon, Cynthia
Subject: RE: Aaron Schmoll IAO Request

Thanks Cindy. I just sent him an email to him. I'll forward to you in case he calls you back. Thanks, Cyndi

From: Wilcoxon, Cynthia
Sent: Monday, June 14, 2010 1:31 PM
To: Carrasco, Cynthia (Cyndi)
Subject: Aaron Schmoll IAO Request

Cyndi,

Aaron Schmoll, IURC (232-2711) called to check the status of his request for an IAO that he submitted through our website on June 7, 2010. I let him know that we did not receive his request. He saved a hardcopy of it and will email that to us through the info@ig.in.gov website. He would like you to call him when we receive the request because he has a question for you.

Cindy Wilcoxon

Office of the Inspector General
315 W. Ohio Street, Room 104
Indianapolis, IN 46202
317-232-3850

Carrasco, Cynthia (Cyndi)

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Indiana Utility Regulatory Commission
National City Center
101 West Washington Street, Suite 1500
Indianapolis, IN 46204

(317) 232-2711

Carrasco, Cynthia (Cyndi)

From: Carrasco, Cynthia (Cyndi)
Sent: Tuesday, June 15, 2010 9:03 AM
To: Shumaker, Todd; Flynn, Joann
Subject: FW: Request for an informal advisory opinion

From: Schmoll, Aaron
Sent: Tuesday, June 15, 2010 8:14 AM
To: Carrasco, Cynthia (Cyndi)
Subject: RE: Request for an informal advisory opinion

Hi Cyndi,

I am seeking an informal opinion for my situation.

Aaron A. Schmoll
Administrative Law Judge
Indiana Utility Regulatory Commission
National City Center
101 West Washington Street, Suite 1500
Indianapolis, IN 46204

(317) 232-2711

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Indiana Utility Regulatory Commission
National City Center
101 West Washington Street, Suite 1500
Indianapolis, IN 46204

(317) 232-2711

Carrasco, Cynthia (Cyndi)

From: Carrasco, Cynthia (Cyndi)
Sent: Wednesday, June 16, 2010 5:45 PM
To: Schmoll, Aaron
Subject: RE: Request for an informal advisory opinion

Aaron,

We usually provide an informal advisory opinion within a few days of receiving your request. We should be forwarding an IAO to you fairly soon.

Sincerely,

Cyndi Carrasco, Director
Indiana State Ethics Commission

From: Schmoll, Aaron
Sent: Wednesday, June 16, 2010 8:46 AM
To: Carrasco, Cynthia (Cyndi)
Subject: RE: Request for an informal advisory opinion

Cyndi,

What is the typical timeframe for providing an informal advisory opinion? My supervisor is covering two of my hearings involving this utility, and wanted to know in the event she would need to continue to screen me from these cases.

Thank you.

Regards,

Aaron A. Schmoll
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101 West Washington Street, Suite 1500
Indianapolis, IN 46204

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Indiana Utility Regulatory Commission
National City Center
101 West Washington Street, Suite 1500
Indianapolis, IN 46204

(317) 232-2711

Carrasco, Cynthia (Cyndi)

From: Carrasco, Cynthia (Cyndi)
Sent: Wednesday, June 16, 2010 5:45 PM
To: Shumaker, Todd; Flynn, Joann
Subject: FW: Request for an informal advisory opinion

Todd, FYI. Joann, For the file.

From: Carrasco, Cynthia (Cyndi)
Sent: Wednesday, June 16, 2010 5:45 PM
To: Schmoll, Aaron
Subject: RE: Request for an informal advisory opinion

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Thank you.

Regards,

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Indiana Utility Regulatory Commission
National City Center
101 West Washington Street, Suite 1500
Indianapolis, IN 46204

(317) 232-2711

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Sent: Monday, June 14, 2010 4:56 PM
To: Schmoll, Aaron
Subject: FW: Request for an informal advisory opinion

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We have reviewed your submission. Could you please clarify whether you are seeking ethics advice for yourself or on behalf of a third party?

Sincerely,

Cyndi Carrasco, Director
Indiana State Ethics Commission

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I look forward to hearing from you.

Regards,

Aaron A. Schmoll
Administrative Law Judge
Indiana Utility Regulatory Commission
National City Center
101 West Washington Street, Suite 1500
Indianapolis, IN 46204

(317) 232-2711

Carrasco, Cynthia (Cyndi)

From: Carrasco, Cynthia (Cyndi)
Sent: Monday, June 21, 2010 8:53 AM
To: Shumaker, Todd; Lufkin, Amanda; Shute, Kristi
Subject: RE: Ethics Informal Advisory Opinion, Schmoll, Conflicts of interest

I think this is a good response and he needs to go before the commission, especially since the IURC and OUCC both appear to be relying on the 1990 FAO that was based on a different rule. Cyndi

From: Shumaker, Todd
Sent: Monday, June 21, 2010 8:51 AM
To: Carrasco, Cynthia (Cyndi); Lufkin, Amanda; Shute, Kristi
Subject: FW: Ethics Informal Advisory Opinion, Schmoll, Conflicts of interest

My proposed response for your review:

Aaron,

Thank you for your response. Unfortunately, under IC 4-2-6-9, the issue of whether you should be screened from working on the utility's cases is dependent upon whether your interactions with the utility rise to the level of "negotiations" and invoke the application of the rule's prohibitions. I would recommend seeking a formal advisory opinion from the State Ethics Commission which will be able to advise you on both the issues of what constitutes negotiating and whether you need to be screened from any further involvement with the utility.

From: Schmoll, Aaron
Sent: Monday, June 21, 2010 8:27 AM
To: Shumaker, Todd
Subject: RE: Ethics Informal Advisory Opinion, Schmoll, Conflicts of interest

Todd,

Thank you for the information. Would it be possible to have a more definite opinion on the issue of whether I need to be screened from working on this utility's cases upon submission of a resume?

Sincerely,

Aaron A. Schmoll
 Administrative Law Judge
 Indiana Utility Regulatory Commission
 National City Center
 101 West Washington Street, Suite 1500
 Indianapolis, IN 46204

(317) 232-2711

From: Shumaker, Todd
Sent: Monday, June 21, 2010 7:13 AM
To: Schmoll, Aaron
Subject: Ethics Informal Advisory Opinion, Schmoll, Conflicts of interest

Dear Mr. Schmoll,

Thank you for contacting our office. I understand from your inquiry that you are an administrative law judge ("ALJ") with the IURC and that you have disclosed to your agency your intent to submit your resume to a certain utility. You state that you have done this out of an abundance of caution and, in that same vein, would like clarification on whether it is also necessary to screen yourself from any cases prior to negotiating employment with this utility. Specifically, you inquire when "negotiations" have begun as set forth in IC 4-2-6-1(a)(10) that would give rise to a "financial interest" and thereby invoke the application of IC 4-2-6-9(a)(4), the rule on Conflicts of interest; decisions and voting (42 IAC 1-5-6), and its prohibition that an employee may not participate in any decision or vote in which he has a financial interest.

As you correctly note, the term "negotiations" has not been defined in 42 IAC 1-5-6, IC 4-2-6, or IC 4-2-7. Furthermore, although you identify a formal advisory opinion issued in 1990 by the State Ethics Commission ("Commission") and a more recent informal advisory opinion issued in 2007 by the Office of Inspector General, neither of these is determinative of the issue you raise. Specifically, the formal opinion issued in 1990 was based on a different set of ethics rules than exists now and the analysis may have since changed. In addition, the informal opinion issued in 2007 was specific to the person who requested the opinion and the facts presented at that time and should not be read to apply to a different set of circumstances at a different time for another person. More importantly, informal opinions of this nature are opinions of the staff of the Office of Inspector General that are communicated for the purpose of deliberation and decision-making by the person requesting advice and are not binding on the Commission.

Based on this information, I would advise you to request formal advice from the Commission which has the authority under IC 4-2-6-4 to issue official advisory opinions interpreting the rules in the Code of Ethics and definitions contained therein. You may request a formal opinion following the procedure I have copied below for your reference. If, after reviewing these guidelines, you wish to proceed with requesting a formal advisory opinion from the Commission, please respond in accordance with these submission requirements. The next Commission meeting for which you may submit a request is scheduled for July 8, 2010. If you wish to proceed with a request for a formal opinion and would like to be included on the agenda for the July meeting, a formal request and any supporting documents should be submitted to our office no later than Monday, June 28, 2010.

Thank you again for contacting our office. Please note that this response does not constitute an official advisory opinion. Only the State Ethics Commission may issue an official advisory opinion. This informal advisory opinion allows us to give you quick, written advice. The Commission will consider that an employee or former employee acted in good faith if it is determined that the individual committed a violation after receiving advice and the alleged violation was directly related to the advice rendered. Also, remember that the advice given is based on the facts as I understand them. If this e-mail misstates facts in a material way, or omits important information, please bring those inaccuracies to my attention.

Sincerely,

Todd Shumaker, Staff Attorney
Office of Inspector General & State Ethics Commission

CONFIDENTIALITY NOTICE:

This e-mail message is for the sole use of the intended recipient(s). It contains confidential and privileged information. If you are not the intended recipient, please contact the sender by replying to our e-mail administrator and destroying and deleting all copies of the original message. Any unauthorized review, use, disclosure, or distribution is prohibited. You may also reach the sender by phone at (317) 232-3850 or by fax at (317) 232-0707. To reply to the e-mail directly, send an e-mail to: info@ig.in.gov.

- Requests for an advisory opinion must be in writing and signed by the person making the request.
- The inquiry shall state the official status of the person making the request and shall state all material facts necessary for the Commission to understand the circumstances and render a complete opinion.
- The request must relate to a real set of circumstances.

- The person requesting the advisory opinion will receive notice from the staff of the time and place to appear before the Commission. The name of the person filing the inquiry will appear on the agenda of the meeting.
- The person requesting the opinion will be asked to appear before the commission at its meeting to answer questions. The commission shall decide in public meeting by vote of a majority of commission members present.
- Following the commission's decision, the commission staff shall prepare a written advisory opinion. A copy will be mailed to the person requesting an opinion. A copy of the opinion shall be sent to the state officer or appointing authority, if any.
- The advisory opinion is conditioned upon the following:
 - (1) The facts and circumstances actually exist, and
 - (2) All of the relevant facts and circumstances related to the opinion have been disclosed to the Commission.
- The Commission does not render advisory opinions to determine whether an ethics violation has occurred; rather, advisory opinions are intended to provide individuals with advice as to how a certain act they may take would implicate state ethics laws.

From: Carrasco, Cynthia (Cyndi)
Sent: Wednesday, June 16, 2010 5:45 PM
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Subject: RE: Request for an informal advisory opinion

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Cyndi Carrasco, Director
 Indiana State Ethics Commission

From: Schmoll, Aaron
Sent: Wednesday, June 16, 2010 8:46 AM
To: Carrasco, Cynthia (Cyndi)
Subject: RE: Request for an informal advisory opinion

Cyndi,

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Thank you.

Regards,

Aaron A. Schmoll
 Administrative Law Judge
 Indiana Utility Regulatory Commission
 National City Center
 101 West Washington Street, Suite 1500
 Indianapolis, IN 46204

(317) 232-2711

From: Carrasco, Cynthia (Cyndi)
Sent: Monday, June 14, 2010 4:56 PM

To: Schmoll, Aaron
Subject: FW: Request for an informal advisory opinion

Dear Aaron,

Thank you very much for contacting our office. We received your request for an informal advisory opinion this afternoon. As Cindy Wilcoxon explained earlier, we did not receive your original submission on June 7, 2010.

We have reviewed your submission. Could you please clarify whether you are seeking ethics advice for yourself or on behalf of a third party?

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Subject: Request for an informal advisory opinion

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Indianapolis, IN 46204

(317) 232-2711

Carrasco, Cynthia (Cyndi)

From: Carrasco, Cynthia (Cyndi)
Sent: Tuesday, June 22, 2010 11:05 AM
To: Shumaker, Todd
Subject: RE: Ethics Informal Advisory Opinion, Schmoll, Conflicts of interest

Yes, signed original request would work.

From: Shumaker, Todd
Sent: Tuesday, June 22, 2010 10:37 AM
To: Carrasco, Cynthia (Cyndi)
Subject: FW: Ethics Informal Advisory Opinion, Schmoll, Conflicts of interest

Cyndi,

Would it be sufficient for Mr. Schmoll to sign his original request for advice to constitute a formal request, or does he need to provide additional info?

From: Schmoll, Aaron
Sent: Tuesday, June 22, 2010 10:30 AM
To: Shumaker, Todd
Subject: RE: Ethics Informal Advisory Opinion, Schmoll, Conflicts of interest

Todd,

I will seek a formal opinion. Is what I have provided previously sufficient or should I resend a signed copy indicating that I am seeking a formal opinion?

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Subject: RE: Ethics Informal Advisory Opinion, Schmoll, Conflicts of interest

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Carrasco, Cynthia (Cyndi)

From: Flynn, Joann
Sent: Tuesday, June 29, 2010 12:44 PM
To: Carrasco, Cynthia (Cyndi); Shumaker, Todd
Subject: RE: Ethics Informal Advisory Opinion, Schmoll, Conflicts of interest

I didn't get an attachment on this.

Thanks,
Joann

From: Carrasco, Cynthia (Cyndi)
Sent: Tuesday, June 22, 2010 3:13 PM
To: Flynn, Joann
Cc: Shumaker, Todd
Subject: FW: Ethics Informal Advisory Opinion, Schmoll, Conflicts of interest

Thanks Todd. Joann, FAO for July.

From: Shumaker, Todd
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Is the body of the email the request or was there an attachment? The only attachment that I got is a link to his email address.

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We have reviewed your submission. Could you please clarify whether you are seeking ethics advice for yourself or on behalf of a third party?

Sincerely,

Cyndi Carrasco, Director
Indiana State Ethics Commission

From: Schmoll, Aaron
Sent: Monday, June 14, 2010 1:25 PM
To: IG Info
Subject: Request for an informal advisory opinion

Attached is a word version of the information I sent last week that was apparently not received. Feel free to contact me if you need any additional information.

I look forward to hearing from you.

Regards,

Aaron A. Schmoll
Administrative Law Judge
Indiana Utility Regulatory Commission
National City Center

101 West Washington Street, Suite 1500
Indianapolis, IN 46204

(317) 232-2711

Carrasco, Cynthia (Cyndi)

From: Carrasco, Cynthia (Cyndi)
Sent: Tuesday, June 29, 2010 2:19 PM
To: Flynn, Joann
Subject: RE: Ethics Informal Advisory Opinion, Schmoll, Conflicts of interest

Open the attached email and you'll see attached to that email is a PDF doc copy of the request. Let me know if you can't access and I'll print a copy out.

From: Flynn, Joann
Sent: Tuesday, June 29, 2010 1:13 PM
To: Carrasco, Cynthia (Cyndi)
Subject: RE: Ethics Informal Advisory Opinion, Schmoll, Conflicts of interest

Is the body of the email the request or was there an attachment? The only attachment that I got is a link to his email address.

Thanks,
Joann

From: Carrasco, Cynthia (Cyndi)
Sent: Tuesday, June 29, 2010 12:53 PM
To: Flynn, Joann
Subject: FW: Ethics Informal Advisory Opinion, Schmoll, Conflicts of interest

FYI

From: Shumaker, Todd
Sent: Tuesday, June 22, 2010 2:39 PM
To: Carrasco, Cynthia (Cyndi)
Subject: FW: Ethics Informal Advisory Opinion, Schmoll, Conflicts of interest

Cyndi,

Attached is Mr. Schmoll's request for formal advice.

Todd

From: Schmoll, Aaron
Sent: Tuesday, June 22, 2010 2:38 PM
To: Shumaker, Todd
Subject: RE: Ethics Informal Advisory Opinion, Schmoll, Conflicts of interest

Todd,

Please find attached a signed request for formal advice from the Ethics Commission.

Please let me know if you need any additional information.

Regards,

Aaron A. Schmoll

Administrative Law Judge
Indiana Utility Regulatory Commission
National City Center
101 West Washington Street, Suite 1500
Indianapolis, IN 46204

(317) 232-2711

From: Shumaker, Todd
Sent: Tuesday, June 22, 2010 12:20 PM
To: Schmoll, Aaron
Subject: RE: Ethics Informal Advisory Opinion, Schmoll, Conflicts of interest

Andrew,

Please resend your original request with your signature, and that will be sufficient to request formal advice from the Commission.

Thanks,
Todd

From: Schmoll, Aaron
Sent: Tuesday, June 22, 2010 10:30 AM
To: Shumaker, Todd
Subject: RE: Ethics Informal Advisory Opinion, Schmoll, Conflicts of interest

Todd,

I will seek a formal opinion. Is what I have provided previously sufficient or should I resend a signed copy indicating that I am seeking a formal opinion?

Thanks,

Aaron A. Schmoll
Administrative Law Judge
Indiana Utility Regulatory Commission
National City Center
101 West Washington Street, Suite 1500
Indianapolis, IN 46204

(317) 232-2711

From: Shumaker, Todd
Sent: Monday, June 21, 2010 9:00 AM
To: Schmoll, Aaron
Subject: RE: Ethics Informal Advisory Opinion, Schmoll, Conflicts of interest

Aaron,

Thank you for your response. Unfortunately, under IC 4-2-6-9, the issue of whether you should be screened from working on the utility's cases is dependent upon whether your interactions with the utility rise to the level of "negotiations" and invoke the application of the rule's prohibitions. I would recommend seeking a formal advisory opinion from the State Ethics Commission which will be able to advise you on both the issues of what constitutes negotiating and whether you need to be screened from any further involvement with the utility.

Todd

From: Schmoll, Aaron
Sent: Monday, June 21, 2010 8:27 AM
To: Shumaker, Todd
Subject: RE: Ethics Informal Advisory Opinion, Schmoll, Conflicts of interest

Todd,

Thank you for the information. Would it be possible to have a more definite opinion on the issue of whether I need to be screened from working on this utility's cases upon submission of a resume?

Sincerely,

Aaron A. Schmoll
Administrative Law Judge
Indiana Utility Regulatory Commission
National City Center
101 West Washington Street, Suite 1500
Indianapolis, IN 46204

(317) 232-2711

From: Shumaker, Todd
Sent: Monday, June 21, 2010 7:13 AM
To: Schmoll, Aaron
Subject: Ethics Informal Advisory Opinion, Schmoll, Conflicts of interest

Dear Mr. Schmoll,

Thank you for contacting our office. I understand from your inquiry that you are an administrative law judge ("ALJ") with the IURC and that you have disclosed to your agency your intent to submit your resume to a certain utility. You state that you have done this out of an abundance of caution and, in that same vein, would like clarification on whether it is also necessary to screen yourself from any cases prior to negotiating employment with this utility. Specifically, you inquire when "negotiations" have begun as set forth in IC 4-2-6-1(a)(10) that would give rise to a "financial interest" and thereby invoke the application of IC 4-2-6-9(a)(4), the rule on Conflicts of interest; decisions and voting (42 IAC 1-5-6), and its prohibition that an employee may not participate in any decision or vote in which he has a financial interest.

As you correctly note, the term "negotiations" has not been defined in 42 IAC 1-5-6, IC 4-2-6, or IC 4-2-7. Furthermore, although you identify a formal advisory opinion issued in 1990 by the State Ethics Commission ("Commission") and a more recent informal advisory opinion issued in 2007 by the Office of Inspector General, neither of these is determinative of the issue you raise. Specifically, the formal opinion issued in 1990 was based on a different set of ethics rules than exists now and the analysis may have since changed. In addition, the informal opinion issued in 2007 was specific to the person who requested the opinion and the facts presented at that time and should not be read to apply to a different set of circumstances at a different time for another person. More importantly, informal opinions of this nature are opinions of the staff of the Office of Inspector General that are communicated for the purpose of deliberation and decision-making by the person requesting advice and are not binding on the Commission.

Based on this information, I would advise you to request formal advice from the Commission which has the authority under IC 4-2-6-4 to issue official advisory opinions interpreting the rules in the Code of Ethics and definitions contained therein. You may request a formal opinion following the procedure I have copied below for your reference. If, after reviewing these guidelines, you wish to proceed with requesting a formal advisory opinion from the Commission, please respond in accordance with these submission requirements. The next Commission meeting for which you may submit a request is scheduled for July 8, 2010. If you wish to proceed with a request for a formal opinion and would like to be

included on the agenda for the July meeting, a formal request and any supporting documents should be submitted to our office no later than Monday, June 28, 2010.

Thank you again for contacting our office. Please note that this response does not constitute an official advisory opinion. Only the State Ethics Commission may issue an official advisory opinion. This informal advisory opinion allows us to give you quick, written advice. The Commission will consider that an employee or former employee acted in good faith if it is determined that the individual committed a violation after receiving advice and the alleged violation was directly related to the advice rendered. Also, remember that the advice given is based on the facts as I understand them. If this e-mail misstates facts in a material way, or omits important information, please bring those inaccuracies to my attention.

Sincerely,

Todd Shumaker, Staff Attorney
Office of Inspector General & State Ethics Commission

CONFIDENTIALITY NOTICE:

This e-mail message is for the sole use of the intended recipient(s). It contains confidential and privileged information. If you are not the intended recipient, please contact the sender by replying to our e-mail administrator and destroying and deleting all copies of the original message. Any unauthorized review, use, disclosure, or distribution is prohibited. You may also reach the sender by phone at (317) 232-3850 or by fax at (317) 232-0707. To reply to the e-mail directly, send an e-mail to: info@ig.in.gov.

- Requests for an advisory opinion must be in writing and signed by the person making the request.
- The inquiry shall state the official status of the person making the request and shall state all material facts necessary for the Commission to understand the circumstances and render a complete opinion.
- The request must relate to a real set of circumstances.
- The person requesting the advisory opinion will receive notice from the staff of the time and place to appear before the Commission. The name of the person filing the inquiry will appear on the agenda of the meeting.
- The person requesting the opinion will be asked to appear before the commission at its meeting to answer questions. The commission shall decide in public meeting by vote of a majority of commission members present.
- Following the commission's decision, the commission staff shall prepare a written advisory opinion. A copy will be mailed to the person requesting an opinion. A copy of the opinion shall be sent to the state officer or appointing authority, if any.
- The advisory opinion is conditioned upon the following:
 - (1) The facts and circumstances actually exist, and
 - (2) All of the relevant facts and circumstances related to the opinion have been disclosed to the Commission.
- The Commission does not render advisory opinions to determine whether an ethics violation has occurred; rather, advisory opinions are intended to provide individuals with advice as to how a certain act they may take would implicate state ethics laws.

From: Carrasco, Cynthia (Cyndi)
Sent: Wednesday, June 16, 2010 5:45 PM
To: Schmoll, Aaron
Subject: RE: Request for an informal advisory opinion

Aaron,

We usually provide an informal advisory opinion within a few days of receiving your request. We should be forwarding an IAO to you fairly soon.

Sincerely,

Cyndi Carrasco, Director
Indiana State Ethics Commission

From: Schmoll, Aaron
Sent: Wednesday, June 16, 2010 8:46 AM
To: Carrasco, Cynthia (Cyndi)
Subject: RE: Request for an informal advisory opinion

Cyndi,

What is the typical timeframe for providing an informal advisory opinion? My supervisor is covering two of my hearings involving this utility, and wanted to know in the event she would need to continue to screen me from these cases.

Thank you.

Regards,

Aaron A. Schmoll
Administrative Law Judge
Indiana Utility Regulatory Commission
National City Center
101 West Washington Street, Suite 1500
Indianapolis, IN 46204

(317) 232-2711

From: Carrasco, Cynthia (Cyndi)
Sent: Monday, June 14, 2010 4:56 PM
To: Schmoll, Aaron
Subject: FW: Request for an informal advisory opinion

Dear Aaron,

Thank you very much for contacting our office. We received your request for an informal advisory opinion this afternoon. As Cindy Wilcoxon explained earlier, we did not receive your original submission on June 7, 2010.

We have reviewed your submission. Could you please clarify whether you are seeking ethics advice for yourself or on behalf of a third party?

Sincerely,

Cyndi Carrasco, Director
Indiana State Ethics Commission

From: Schmoll, Aaron
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I look forward to hearing from you.

Regards,

Aaron A. Schmoll
Administrative Law Judge
Indiana Utility Regulatory Commission
National City Center
101 West Washington Street, Suite 1500
Indianapolis, IN 46204

(317) 232-2711

Flynn, Joann

From: Flynn, Joann
Sent: Friday, July 02, 2010 2:39 PM
To: achmoll@urc.in.gov
Subject: State Ethics Commission Meeting

Dear Mr. Schmoll,

Your request for a formal advisory opinion is on the agenda for the July 8, 2010, meeting of the State Ethics Commission. The meeting will be held at the Indiana State Library, Author's Room, 315 West Ohio Street. The meeting begins at 10:00 a.m. Please attend the meeting to answer any questions the Commissioners may have. Attached is a copy of the agenda for the meeting.

Thank you,

Joann Flynn (for Cyndi Carrasco, Director)
State Ethics Commission
Office of Inspector General



Agenda 7-8-10.doc

**State Ethics Commission
July 8, 2010
Agenda**

Public Meeting

- 10:00 a.m. - Adoption of Agenda
- Approval of Minutes of June 8, 2010
- 10:05 a.m. - 10-I-7, Request for Formal Advisory Opinion
 Aaron Schmoll, Administrative Law Judge
 Utility Regulatory Commission
- 10-I-8, Request for Formal Advisory Opinion
 Kari Evans Bennett, Chief Legal Counsel/Ethics Officer
 Department of Natural Resources
 Mitchell Zoll, Special State Appointee
 Historic Preservation Review Board
- 10:35 a.m. - Director's Report

Executive Session

- 10:45 a.m. - Complaints filed by Inspector General
- Reports

Carrasco, Cynthia (Cyndi)

From: Carrasco, Cynthia (Cyndi)
Sent: Wednesday, October 06, 2010 5:31 PM
To: Schmoll, Aaron
Subject: Ethics

Aaron,

Our office received a public records request regarding various requests for advisory opinions before the Commission, including yours. In your request for a formal advisory opinion from the Commission, you include the informal advisory opinion issued by our office. Are you okay with us producing the informal advisory opinion included in the string of emails along with your formal advisory opinion?

Look forward to hearing from you.

Thanks,

Cyndi Carrasco, Director
Indiana State Ethics Commission

Carrasco, Cynthia (Cyndi)

From: Carrasco, Cynthia (Cyndi)
Sent: Friday, October 08, 2010 9:13 AM
To: Schmoll, Aaron
Subject: RE: Ethics Informal Advisory Opinion, Schmoll, Conflicts of interest

Thank you very much Aaron. I appreciate your prompt response.

Sincerely,

Cyndi Carrasco, Director
Indiana State Ethics Commission

From: Schmoll, Aaron
Sent: Thursday, October 07, 2010 12:08 PM
To: Carrasco, Cynthia (Cyndi)
Subject: FW: Ethics Informal Advisory Opinion, Schmoll, Conflicts of interest

Cyndi,

Below is the email string I have that I sent earlier. I discovered the attachment would not work because it was vaulted.

Please let me know if you need any other assistance.

Aaron A. Schmoll
Administrative Law Judge
Indiana Utility Regulatory Commission
National City Center
101 West Washington Street, Suite 1500
Indianapolis, IN 46204

(317) 232-2711

From: Shumaker, Todd
Sent: Tuesday, June 22, 2010 2:39 PM
To: Schmoll, Aaron
Subject: RE: Ethics Informal Advisory Opinion, Schmoll, Conflicts of interest

Thank you, Aaron. I'll let you know if we need anything else.

Todd

From: Schmoll, Aaron
Sent: Tuesday, June 22, 2010 2:38 PM
To: Shumaker, Todd
Subject: RE: Ethics Informal Advisory Opinion, Schmoll, Conflicts of interest

Todd,

Please find attached a signed request for formal advice from the Ethics Commission.

Please let me know if you need any additional information.

Regards,

Aaron A. Schmoll
Administrative Law Judge
Indiana Utility Regulatory Commission
National City Center
101 West Washington Street, Suite 1500
Indianapolis, IN 46204

(317) 232-2711

From: Shumaker, Todd
Sent: Tuesday, June 22, 2010 12:20 PM
To: Schmoll, Aaron
Subject: RE: Ethics Informal Advisory Opinion, Schmoll, Conflicts of interest

Andrew,

Please resend your original request with your signature, and that will be sufficient to request formal advice from the Commission.

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Todd

From: Schmoll, Aaron
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Subject: RE: Ethics Informal Advisory Opinion, Schmoll, Conflicts of interest

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I will seek a formal opinion. Is what I have provided previously sufficient or should I resend a signed copy indicating that I am seeking a formal opinion?

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Aaron A. Schmoll
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Indiana Utility Regulatory Commission
National City Center
101 West Washington Street, Suite 1500
Indianapolis, IN 46204

(317) 232-2711

From: Shumaker, Todd
Sent: Monday, June 21, 2010 9:00 AM
To: Schmoll, Aaron
Subject: RE: Ethics Informal Advisory Opinion, Schmoll, Conflicts of interest

Aaron,

Thank you for your response. Unfortunately, under IC 4-2-6-9, the issue of whether you should be screened from working on the utility's cases is dependent upon whether your interactions with the utility rise to the level of "negotiations" and invoke the application of the rule's prohibitions. I would recommend seeking a formal advisory

opinion from the State Ethics Commission which will be able to advise you on both the issues of what constitutes negotiating and whether you need to be screened from any further involvement with the utility.

Todd

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Sincerely,

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Indiana Utility Regulatory Commission
National City Center
101 West Washington Street, Suite 1500
Indianapolis, IN 46204

(317) 232-2711

From: Shumaker, Todd
Sent: Monday, June 21, 2010 7:13 AM
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Subject: Ethics Informal Advisory Opinion, Schmoll, Conflicts of interest

Dear Mr. Schmoll,

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Sincerely,

Todd Shumaker, Staff Attorney
Office of Inspector General & State Ethics Commission

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From: Carrasco, Cynthia (Cyndi)
Sent: Wednesday, June 16, 2010 5:45 PM
To: Schmoll, Aaron
Subject: RE: Request for an informal advisory opinion

Aaron,

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Sincerely,

Cyndi Carrasco, Director
Indiana State Ethics Commission

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Sent: Wednesday, June 16, 2010 8:46 AM
To: Carrasco, Cynthia (Cyndi)
Subject: RE: Request for an informal advisory opinion

Cyndi,

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Thank you.

Regards,

Aaron A. Schmoll
Administrative Law Judge
Indiana Utility Regulatory Commission
National City Center
101 West Washington Street, Suite 1500
Indianapolis, IN 46204

(317) 232-2711

From: Carrasco, Cynthia (Cyndi)
Sent: Monday, June 14, 2010 4:56 PM
To: Schmoll, Aaron
Subject: FW: Request for an informal advisory opinion

Dear Aaron,

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Indiana State Ethics Commission

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Sent: Monday, June 14, 2010 1:25 PM
To: IG Info
Subject: Request for an informal advisory opinion

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I look forward to hearing from you.

Regards,

Aaron A. Schmoll
Administrative Law Judge
Indiana Utility Regulatory Commission
National City Center
101 West Washington Street, Suite 1500
Indianapolis, IN 46204

(317) 232-2711

INDIANA
STATE ETHICS COMMISSION

315 WEST OHIO STREET, INDIANAPOLIS, IN 46202 317.232.3850

July 20, 2010

Aaron Schmoll, Administrative Law Judge
Indiana Utility Regulatory Commission
National City Center
101 West Washington Street, Suite 1500
Indianapolis, IN 46202

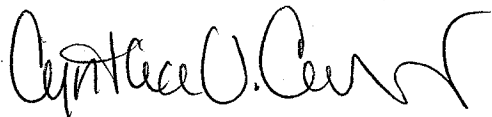
Re: Request for Formal Advisory Opinion

Dear Mr. Schmoll,

Please find enclosed a copy of the Formal Advisory Opinion issued by the State Ethics Commission in response to your request at its public meeting on July 8, 2010.

Please feel free to contact our office if you have any questions.

Sincerely,



Cynthia Carrasco, Director
State Ethics Commission

Enclosure

INDIANA
STATE ETHICS COMMISSION

315 WEST OHIO STREET, INDIANAPOLIS, IN 46202 317.232.3850

July 20, 2010

David Lott Hardy, Chairman
Indiana Utility Regulatory Commission
National City Center
101 West Washington Street, Suite 1500
Indianapolis, IN 46204

Re: Request for Formal Advisory Opinion

Dear Chairman Hardy,

The State Ethics Commission adopted the enclosed Formal Advisory Opinion regarding Aaron Schmoll, Administrative Law Judge, Utility Regulatory Commission at its public meeting on July 8, 2010. In accordance with 40 IAC 2-2-1(g), a copy of the Formal Advisory Opinion is forwarded for your information.

Sincerely,

A handwritten signature in black ink, appearing to read "Cynthia Carrasco", with a stylized flourish at the end.

Cynthia Carrasco, Director
State Ethics Commission

Enclosure

INDIANA STATE ETHICS COMMISSION

150 WEST MARKET STREET, ROOM 414, INDIANAPOLIS, IN 46204 317.232.3850

July 2010
No. 10-I-7

The Indiana State Ethics Commission (Commission) issues the following advisory opinion concerning the State Code of Ethics pursuant to IC 4-2-6-4(b)(1).

BACKGROUND

Aaron Schmoll is an administrative law judge with the Indiana Utility Regulatory Commission (IURC). Mr. Schmoll submitted a resume seeking employment with a utility that is regulated by the IURC (Utility).

In his current position at the IURC, Mr. Schmoll has pending cases assigned to him involving the Utility. Mr. Schmoll disclosed to the agency's Ethics Officer, out of an abundance of caution, that he had submitted his resume and screened himself from cases involving the Utility. Mr. Schmoll was advised by the agency's Ethics Officer that the Commission issued a formal advisory opinion twenty years ago addressing a similar situation. He was further advised that the Indiana Office of Utility Consumer Counselor received a more recent informal opinion in 2007 indicating that the submission of a resume did not constitute "negotiations" and therefore did not create a conflict of interest.

Mr. Schmoll requests this advisory opinion to determine whether he is permitted to work on cases involving the Utility given that he has submitted a resume for employment with that Utility.

ISSUE

Does a conflict of interest arise for Mr. Schmoll if he participates in a decision or vote involving a Utility with whom he has submitted a resume to seek employment?

RELEVANT LAW

IC 4-2-6-9 (42 IAC 1-5-6)

Conflict of economic interests

Sec. 9. (a) A state officer, an employee, or a special state appointee may not participate in any decision or vote if the state officer, employee, or special state appointee has knowledge that any of the following has a financial interest in the outcome of the matter:

- (1) The state officer, employee, or special state appointee.
- (2) A member of the immediate family of the state officer, employee, or special state appointee.

(3) A business organization in which the state officer, employee, or special state appointee is serving as an officer, a director, a trustee, a partner, or an employee.

(4) Any person or organization with whom the state officer, employee, or special state appointee is negotiating or has an arrangement concerning prospective employment.

(b) A state officer, an employee, or a special state appointee who identifies a potential conflict of interest shall notify the person's appointing authority and seek an advisory opinion from the commission by filing a written description detailing the nature and circumstances of the particular matter and making full disclosure of any related financial interest in the matter. The commission shall:

(1) with the approval of the appointing authority, assign the particular matter to another person and implement all necessary procedures to screen the state officer, employee, or special state appointee seeking an advisory opinion from involvement in the matter; or

(2) make a written determination that the interest is not so substantial that the commission considers it likely to affect the integrity of the services that the state expects from the state officer, employee, or special state appointee.

(c) A written determination under subsection (b)(2) constitutes conclusive proof that it is not a violation for the state officer, employee, or special state appointee who sought an advisory opinion under this section to participate in the particular matter. A written determination under subsection (b)(2) shall be filed with the appointing authority.

ANALYSIS

IC 4-2-6-9 prohibits Mr. Schmoll from participating in any decision or vote if he has knowledge that various persons have a "financial interest" in the outcome of the matter, including a potential employer. Specifically, IC 4-2-6-9(a)(4) prevents Mr. Schmoll from participating in any decision or vote in which a person or organization with whom he is negotiating or has an arrangement concerning prospective employment has a financial interest in the outcome of the matter. In this case, a conflict of interest would arise if (1) the Utility has a financial interest in the outcome of a decision(s) or vote(s) that Mr. Schmoll participates in, and (2) Mr. Schmoll is negotiating or has an arrangement concerning prospective employment with the Utility. It is undisputed that the Utility would have a financial interest in the decision(s) or votes(s) Mr. Schmoll would participate in as an ALJ involving the Utility. Accordingly, the application of this rule depends upon whether Mr. Schmoll's mere submission of his resume to the Utility rises to the level of "negotiating or having an arrangement concerning prospective employment" with the Utility.

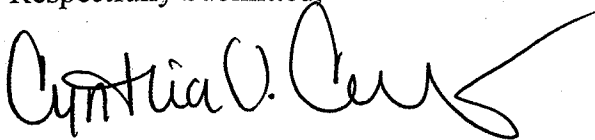
In this case, the Commission finds that Mr. Schmoll's submission of his resume does not constitute negotiating or having an arrangement concerning prospective employment with the Utility. Specifically, Mr. Schmoll disclosed that while he has submitted a resume for a job opening with the Utility, the Utility has not contacted him in response to his submission. Since the Utility has not contacted Mr. Schmoll, the Commission finds that he does not have an arrangement for prospective employment with the Utility. With respect to negotiations, the Commission looks to the plain meaning of the term "negotiations" since the term is not defined by statute or administrative rule. The term "negotiations" is defined in the dictionary as "dealings conducted between two or more parties for the purpose of reaching an understanding." Black's

Law Dictionary 8th Edition, 1065; <http://www.merriam-webster.com/dictionary/negotating> (defining "negotiate" as "to confer with another so as to arrive at the settlement of some matter" or "to arrange for or bring about through conference, discussion, and compromise <negotiate a treaty>"). Based upon these definitions, the Commission finds that negotiations did not commence for Mr. Schmoll at the time of his unilateral submission of his resume. Instead, negotiations for prospective employment would commence for Mr. Schmoll if, and when, the Utility contacts him in response to his resume.

CONCLUSION

The Commission finds that a conflict of interest would not arise for Mr. Schmoll if he participates in a decision or vote involving the Utility so long as the Utility has not contacted him in response to his resume submission. However, a conflict of interest would arise for Mr. Schmoll if, and when, the Utility contacts him in response to his resume.

Respectfully Submitted,

A handwritten signature in black ink, appearing to read "Cynthia Carrasco", with a long, sweeping horizontal stroke extending to the right.

Cynthia Carrasco
Director

Question:

When do "negotiations" begin for purposes of Indiana Code Section 4-2-6-9(a)?

Background:

Aaron Schmoll ("the employee") is an administrative law judge with the Indiana Utility Regulatory Commission and has submitted a resume for an opening with a regulated utility. Employee has pending cases assigned involving this utility. The employee has disclosed to his agency's Ethics Officer, out of an abundance of caution, that he submitted a resume and has screened himself from cases involving that utility. The employee requests clarification of whether screening from these cases is necessary prior to negotiations with the utility.

Indiana Code Section 4-2-6-9(a) provides, "A state officer, an employee, or a special state appointee may not participate in any decision or vote if the state officer, employee, or special state appointee has knowledge that any of the following has a financial interest in the outcome of the matter:

- (1) The state officer, employee, or special state appointee.

* * * * *

- (4) Any person or organization with whom the state officer, employee, or special state appointee is negotiating or has an arrangement concerning prospective employment."

The definition section, IC 4-2-6-1(10), defines "financial interest" to include "an interest arising from employment or prospective employment for which negotiations have begun." See also 40 IAC 2-1-4(j).

Although neither "negotiations" nor "negotiating" are defined by statute or administrative code, "negotiations" is defined in the dictionary as "dealings conducted between two or more parties for the purpose of reaching an understanding." Black's Law Dictionary 8th Edition, 1065; *see also* <http://www.businessdictionary.com/definition/negotiation.html> (defining "negotiation" as "[b]argaining (give and take) process between two or more parties (each with its own aims, needs, and viewpoints) seeking to discover a common ground and reach an agreement to settle a matter of mutual concern or resolve a conflict"); <http://www.merriam-webster.com/dictionary/negotiating> (defining "negotiate" as "to confer with another so as to arrive at the settlement of some matter" or "to arrange for or bring about through conference, discussion, and compromise <negotiate a treaty>"). Given these definitions, negotiations do not begin until there is a give and take discussion on the terms of employment.

Employee has spoken with his agency's Ethics Officer, who advised that the State Ethics Commission issued a formal opinion twenty years ago in 90-I-29 addressing a similar situation. While that opinion addresses the same issue, it appears to incorrectly find that submission of a resume constitutes negotiations, contrary to the plain meaning of the term. Employee was also

advised that the Indiana Office of Utility Consumer Counselor received a more recent informal opinion in 2007 indicating that the submission of a resume did not constitute "negotiations" and therefore did not create a conflict of interest.

Employee has received an informal opinion from the Office of Inspector General to seek a formal opinion from the Ethics Commission, as the legal basis for the formal opinion may have changed, and the informal opinion only applies to the individual's specific fact set provided to the Office of Inspector General. Accordingly, employee hereby requests a formal advisory opinion from the Ethics Commission.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Aaron Schmoll", written in a cursive style.

Aaron Schmoll

Flynn, Joann

From: Carrasco, Cynthia (Cyndi)
Sent: Tuesday, June 22, 2010 3:13 PM
To: Flynn, Joann
Cc: Shumaker, Todd
Subject: FW: Ethics Informal Advisory Opinion, Schmoll, Conflicts of interest
Attachments: Message from "RNPFC76B5"

Thanks Todd. Joann, FAO for July.

From: Shumaker, Todd
Sent: Tuesday, June 22, 2010 2:39 PM
To: Carrasco, Cynthia (Cyndi)
Subject: FW: Ethics Informal Advisory Opinion, Schmoll, Conflicts of interest

Cyndi,

Attached is Mr. Schmoll's request for formal advice.

Todd

From: Schmoll, Aaron
Sent: Tuesday, June 22, 2010 2:38 PM
To: Shumaker, Todd
Subject: RE: Ethics Informal Advisory Opinion, Schmoll, Conflicts of interest

Todd,

Please find attached a signed request for formal advice from the Ethics Commission.

Please let me know if you need any additional information.

Regards,

Aaron A. Schmoll
 Administrative Law Judge
 Indiana Utility Regulatory Commission
 National City Center
 101 West Washington Street, Suite 1500
 Indianapolis, IN 46204

(317) 232-2711

aschmoll@urc.in.gov

From: Shumaker, Todd
Sent: Tuesday, June 22, 2010 12:20 PM
To: Schmoll, Aaron
Subject: RE: Ethics Informal Advisory Opinion, Schmoll, Conflicts of interest

Andrew,

Please resend your original request with your signature, and that will be sufficient to request formal advice from the Commission.

Thanks,
Todd

From: Schmoll, Aaron
Sent: Tuesday, June 22, 2010 10:30 AM
To: Shumaker, Todd
Subject: RE: Ethics Informal Advisory Opinion, Schmoll, Conflicts of interest

Todd,

I will seek a formal opinion. Is what I have provided previously sufficient or should I resend a signed copy indicating that I am seeking a formal opinion?

Thanks,

Aaron A. Schmoll
Administrative Law Judge
Indiana Utility Regulatory Commission
National City Center
101 West Washington Street, Suite 1500
Indianapolis, IN 46204

(317) 232-2711

From: Shumaker, Todd
Sent: Monday, June 21, 2010 9:00 AM
To: Schmoll, Aaron
Subject: RE: Ethics Informal Advisory Opinion, Schmoll, Conflicts of interest

Aaron,

Thank you for your response. Unfortunately, under IC 4-2-6-9, the issue of whether you should be screened from working on the utility's cases is dependent upon whether your interactions with the utility rise to the level of "negotiations" and invoke the application of the rule's prohibitions. I would recommend seeking a formal advisory opinion from the State Ethics Commission which will be able to advise you on both the issues of what constitutes negotiating and whether you need to be screened from any further involvement with the utility.

Todd

From: Schmoll, Aaron
Sent: Monday, June 21, 2010 8:27 AM
To: Shumaker, Todd
Subject: RE: Ethics Informal Advisory Opinion, Schmoll, Conflicts of interest

Todd,

Thank you for the information. Would it be possible to have a more definite opinion on the issue of whether I need to be screened from working on this utility's cases upon submission of a resume?

Sincerely,

Aaron A. Schmoll
Administrative Law Judge
Indiana Utility Regulatory Commission
National City Center

101 West Washington Street, Suite 1500
Indianapolis, IN 46204

(317) 232-2711

From: Shumaker, Todd
Sent: Monday, June 21, 2010 7:13 AM
To: Schmoll, Aaron
Subject: Ethics Informal Advisory Opinion, Schmoll, Conflicts of interest

Dear Mr. Schmoll,

Thank you for contacting our office. I understand from your inquiry that you are an administrative law judge ("ALJ") with the IURC and that you have disclosed to your agency your intent to submit your resume to a certain utility. You state that you have done this out of an abundance of caution and, in that same vein, would like clarification on whether it is also necessary to screen yourself from any cases prior to negotiating employment with this utility. Specifically, you inquire when "negotiations" have begun as set forth in IC 4-2-6-1(a)(10) that would give rise to a "financial interest" and thereby invoke the application of IC 4-2-6-9(a)(4), the rule on Conflicts of interest; decisions and voting (42 IAC 1-5-6), and its prohibition that an employee may not participate in any decision or vote in which he has a financial interest.

As you correctly note, the term "negotiations" has not been defined in 42 IAC 1-5-6, IC 4-2-6, or IC 4-2-7. Furthermore, although you identify a formal advisory opinion issued in 1990 by the State Ethics Commission ("Commission") and a more recent informal advisory opinion issued in 2007 by the Office of Inspector General, neither of these is determinative of the issue you raise. Specifically, the formal opinion issued in 1990 was based on a different set of ethics rules than exists now and the analysis may have since changed. In addition, the informal opinion issued in 2007 was specific to the person who requested the opinion and the facts presented at that time and should not be read to apply to a different set of circumstances at a different time for another person. More importantly, informal opinions of this nature are opinions of the staff of the Office of Inspector General that are communicated for the purpose of deliberation and decision-making by the person requesting advice and are not binding on the Commission.

Based on this information, I would advise you to request formal advice from the Commission which has the authority under IC 4-2-6-4 to issue official advisory opinions interpreting the rules in the Code of Ethics and definitions contained therein. You may request a formal opinion following the procedure I have copied below for your reference. If, after reviewing these guidelines, you wish to proceed with requesting a formal advisory opinion from the Commission, please respond in accordance with these submission requirements. The next Commission meeting for which you may submit a request is scheduled for July 8, 2010. If you wish to proceed with a request for a formal opinion and would like to be included on the agenda for the July meeting, a formal request and any supporting documents should be submitted to our office no later than Monday, June 28, 2010.

Thank you again for contacting our office. Please note that this response does not constitute an official advisory opinion. Only the State Ethics Commission may issue an official advisory opinion. This informal advisory opinion allows us to give you quick, written advice. The Commission will consider that an employee or former employee acted in good faith if it is determined that the individual committed a violation after receiving advice and the alleged violation was directly related to the advice rendered. Also, remember that the advice given is based on the facts as I understand them. If this e-mail misstates facts in a material way, or omits important information, please bring those inaccuracies to my attention.

Sincerely,

Todd Shumaker, Staff Attorney
Office of Inspector General & State Ethics Commission

CONFIDENTIALITY NOTICE:

This e-mail message is for the sole use of the intended recipient(s). It contains confidential and privileged information. If you are not the intended recipient, please contact the sender by replying to our e-mail administrator and destroying and deleting all copies of the original message. Any unauthorized review, use, disclosure, or distribution is prohibited. You may also reach the sender by phone at (317) 232-3850 or by fax at (317) 232-0707. To reply to the e-mail directly, send an e-mail to: info@ig.in.gov.

- Requests for an advisory opinion must be in writing and signed by the person making the request.
- The inquiry shall state the official status of the person making the request and shall state all material facts necessary for the Commission to understand the circumstances and render a complete opinion.
- The request must relate to a real set of circumstances.
- The person requesting the advisory opinion will receive notice from the staff of the time and place to appear before the Commission. The name of the person filing the inquiry will appear on the agenda of the meeting.
- The person requesting the opinion will be asked to appear before the commission at its meeting to answer questions. The commission shall decide in public meeting by vote of a majority of commission members present.
- Following the commission's decision, the commission staff shall prepare a written advisory opinion. A copy will be mailed to the person requesting an opinion. A copy of the opinion shall be sent to the state officer or appointing authority, if any.
- The advisory opinion is conditioned upon the following:
 - (1) The facts and circumstances actually exist, and
 - (2) All of the relevant facts and circumstances related to the opinion have been disclosed to the Commission.
- The Commission does not render advisory opinions to determine whether an ethics violation has occurred; rather, advisory opinions are intended to provide individuals with advice as to how a certain act they may take would implicate state ethics laws.

From: Carrasco, Cynthia (Cyndi)
Sent: Wednesday, June 16, 2010 5:45 PM
To: Schmoll, Aaron
Subject: RE: Request for an informal advisory opinion

Aaron,

We usually provide an informal advisory opinion within a few days of receiving your request. We should be forwarding an IAO to you fairly soon.

Sincerely,

Cyndi Carrasco, Director
 Indiana State Ethics Commission

From: Schmoll, Aaron
Sent: Wednesday, June 16, 2010 8:46 AM
To: Carrasco, Cynthia (Cyndi)
Subject: RE: Request for an informal advisory opinion

Cyndi,

What is the typical timeframe for providing an informal advisory opinion? My supervisor is covering two of my hearings involving this utility, and wanted to know in the event she would need to continue to screen me from these cases.

Thank you.

Regards,

Aaron A. Schmoll
Administrative Law Judge
Indiana Utility Regulatory Commission
National City Center
101 West Washington Street, Suite 1500
Indianapolis, IN 46204

(317) 232-2711

From: Carrasco, Cynthia (Cyndi)
Sent: Monday, June 14, 2010 4:56 PM
To: Schmoll, Aaron
Subject: FW: Request for an informal advisory opinion

Dear Aaron,

Thank you very much for contacting our office. We received your request for an informal advisory opinion this afternoon. As Cindy Wilcoxon explained earlier, we did not receive your original submission on June 7, 2010.

We have reviewed your submission. Could you please clarify whether you are seeking ethics advice for yourself or on behalf of a third party?

Sincerely,

Cyndi Carrasco, Director
Indiana State Ethics Commission

From: Schmoll, Aaron
Sent: Monday, June 14, 2010 1:25 PM
To: IG Info
Subject: Request for an informal advisory opinion

Attached is a word version of the information I sent last week that was apparently not received. Feel free to contact me if you need any additional information.

I look forward to hearing from you.

Regards,

Aaron A. Schmoll
Administrative Law Judge
Indiana Utility Regulatory Commission
National City Center
101 West Washington Street, Suite 1500
Indianapolis, IN 46204

(317) 232-2711

Public Meeting
Verbatim
July 8, 2010 (10:00 a.m.)

Commissioners present were Clare Kraegel Nuechterlein, Chairperson; Priscilla D. Keith, Bob Jamison, and Daryl Yost. Staff present were Cyndi Carrasco, Director, State Ethics Commission; Amanda Lufkin, Staff Attorney; Kristi Shute, Staff, Attorney; Todd Shumaker, Staff Attorney; Alan McElroy, Assistant Director of Investigations; Mark Mitchell, Special Agent; Dave Clark, Special Agent; and Joann Flynn, Program Coordinator, Office of Inspector General.

Others present were Aaron Schmoll, Administrative Law Judge, Utility Regulatory Commission; Kari Evans Bennett, Chief Legal Counsel and Ethics Officer; Department of Natural Resources; Ron McAhron, Deputy Director, Department of Natural Resources; Mitchell K. Zoll, Special State Appointee, Historic Preservation Review Board; and R. Douglas Smith, citizen of Zionsville.

Call to Order

Nuechterlein: The July 2010 meeting of the State Ethics Commission will come to order. We first welcome our new Commissioner, Dr. Daryl Yost from Ft. Wayne. Welcome.

Yost: Thank you.

Nuechterlein: And Miss Flynn could you please swear in Commissioner Yost.

Carrasco: You don't need to swear in a Commissioner.

Nuechterlein: Oh, okay. I'm sorry, I stand corrected. Well then welcome officially welcome.

Adoption of Agenda and Approval of Minutes

Nuechterlein: Our first item on the agenda is the adoption of the agenda which has been conveyed to us. Is there a motion to adopt the agenda?

Jamison: I so move.

Keith: I second.

Nuechterlein: Okay. All those in favor of adopting the agenda as submitted to the Commission signify by saying aye (4-0). Opposed, carried. Next is the approval of the minutes of our most recent meeting on June 8, 2010. Those minutes have been forwarded to us for review. And are there any amendments, changes, corrections?

Keith: None that I can see.

Nuechterlein: Does it look okay to you Bob?

Jamison: I wasn't here.

Keith: I think I was the only one here.

Nuechterlein: Oh, that's right. The two of us were here. Well the two of us that were here have reviewed them and see that no changes need to be made. So I will entertain a motion for the adoption of the minutes.

Keith: I make a motion that the minutes be adopted.

Nuechterlein: And is there a second?

Jamison: I'll second.

Nuechterlein: Okay. All those in favor of adopting the minutes as presented to us of the June 8, 2010 Ethics Commission meeting signify by saying aye (4-0). Opposed and that carries.

Requests for Formal Advisory Opinion

**1) 10-I-7, Aaron Schmoll, Administrative Law Judge
Utility Regulatory Commission**

Nuechterlein: The next item is a request for a formal advisory opinion brought to us from Aaron Schmoll who is an administrative law judge with the Indiana Utility Regulatory Commission. Would you please approach? And Miss Flynn if you would please swear the witness.

Flynn: Raise your right hand please. Do you swear or affirm that the testimony you are about to give is the truth, the whole truth, and nothing but the truth?

Schmoll: I guess.

Nuechterlein: Thank you, good morning.

Schmoll: Good morning.

Nuechterlein: We have before us a copy of the request that you submitted to Commission staff as well as the staff's analysis but what we typically do is ask the witness to give just a short narrative of your request.

Schmoll: Sure. I'm interested in applying for a job with Duke Energy which is a regulated utility regulated by the IURC. Current . . . and actually I have applied already. I talked to our Commission's Ethics Officer and I have screened myself from working on Duke matters in general but I was interested in getting a formal opinion on whether that was appropriate or not given that there's no conflict of interest unless negotiations begin for pending for future employment.

Nuechterlein: And when you say with reference to that, with reference to the screening that has already been put in place is that what you're asking for guidance on?

Schmoll: Well whether I need to be screened at all pending negotiations.

Nuechterlein: Have negotiations begun?

Schmoll: I don't believe so. The only thing that I've done is submitted a resume.

Nuechterlein: So you've not heard back from them. They've not called you in for an interview.

Schmoll: Correct.

Nuechterlein: Okay. And again the operative part of the Indiana ethics code is section 4-2-6-9(a) which states in pertinent part that a state officer or employee of which you are an administrative law judge may not participate in any decision or vote if that person is negotiating or has an arrangement concerning prospective employment in this situation with Duke Energy which the IURC regulates.

Schmoll: Correct.

Nuechterlein: That's the issue before the Commission. And Mr. Schmoll has testified today that he's sent in his resume but so far no negotiations, no contact has been made.

Keith: Right.

Nuechterlein: About his application from Duke.

Schmoll: I would say that Duke . . . there is a prior ethics opinion, formal ethics opinion from I believe 1990.

Nuechterlein: Yes.

Schmoll: Involving a similar situation which I do believe was correct. That was the reason . . . basically that was the reason for the screening and so forth. I was interested in seeing if that truly was the Commission, Ethics Commission opinion today.

Nuechterlein: Your question involves more around whether you need to be screened at this juncture where you have sent in your application but you've not yet begun negotiations, is that correct?

Schmoll: Correct. I don't believe there's . . . I don't believe there's any . . . I don't have an argument with being screened subsequent to negotiations but I think . . . and I think the other thing is when that negotiations is a term that isn't defined.

Nuechterlein: Yes.

Schmoll: So it may be helpful to define when negotiations begin and therefore when screening should occur.

Nuechterlein: And as you pointed out the statute does contains the term negotiations it's not defined in the statute.

Keith: Right.

Nuechterlein: So we look to as courts do the plain meaning and staff has provided us with the definition of negotiations from every lawyer favorite book Black's Law Dictionary which defines negotiations as and I quote "bargaining (give and take) process between two or more parties seeking to discover common ground and reach an agreement, etc." So it sounds from your testimony that so far you have sent in your resume but you've not heard anything back from Duke.

Schmoll: Correct.

Nuechterlein: Which does not fit the common meaning, plain meaning of the term negotiations in my view.

Keith: Right.

Nuechterlein: Now once Duke . . . once negotiations begin you understand that the screening need take place.

Schmoll: Yes.

Nuechterlein: That you need to recuse yourself from any matter whatsoever dealing with Duke Energy.

Schmoll: Correct.

Nuechterlein: Since your agency regulates them. I would say that . . . go ahead Priscilla.

Keith: I just had a question. Do you often hear cases with regard to Duke utility before you currently?

Schmoll: I do hear cases.

Keith: Okay.

Schmoll: With Duke.

Nuechterlein: Are they the largest energy company in Indiana? One of the most . . .

Schmoll: They have the most customers.

Keith: Okay. What were you going to say?

Nuechterlein: It would appear to me that the screening at this juncture where Judge Schmoll has sent in his resume but no negotiations, no contact has taken place, may not happen at this juncture but as soon as Duke would have any contact with you about your interest of being employed at that moment the screening would need to take place which would involve you recusing yourself, you understand?

Schmoll: Correct.

Nuechterlein: The parameters there.

Yost: (inaudible) satisfied with his answer.

Keith: I agree as well

Nuechterlein: Okay, well would someone make a motion please to that effect.

Keith: Madam Chairman I submit a motion that at this point in time since negotiations have not taken place that screening should not occur at this time but once he has been contacted and negotiations began then screening with regard to cases before him particularly with Duke Energy should proceed should begin.

Nuechterlein: Thank you Commissioner Keith.

Yost: I'll support that motion.

Nuechterlein: Okay second. Is there any further discussion? Okay with that said all those in favor with Commissioner Keith's motion before the Commission signify by saying aye (4-0). Opposed and that carries. Best wishes to you.

Schmoll: Thank you.

Carrasco: Mr. Schmoll we'll be forwarding a copy of the advisory opinion to you early next week.

Schmoll: Okay, great, thank you.

Carrasco: Thank you.

**2) 10-I-8, Kari Evans Bennett, Chief Legal Counsel/Ethics Officer
 Department of Natural Resources
 Mitchell Zoll, Special State Appointee
 Historic Preservation Review Board**

Nuechterlein: Okay, our next item on the agenda is a request for another formal advisory opinion brought to us by Miss Kari Evans Bennett, who is the Chief Legal Counsel and Ethics Officer for the Department of Natural Resources. And she is here on behalf of Mitchell Zoll who is a special state appointee to the Historic Preservation Review Board. Please approach. And Miss Flynn if you could swear the witnesses.

Flynn: Raise your right hands, please. Do you swear or affirm that the testimony you are about to give is the truth, the whole truth, and nothing but the truth?

Bennett & Zoll: Yes.

Nuechterlein: Good morning.

Bennett: Good morning.

Nuechterlein: Whichever of you two would like to make the narrative statement?

Bennett: I will start out and then Mitch can answer any questions that may come up during the agenda item. I'm Kari Evans Bennett. I'm the Department of Natural Resources Ethics Officer and Chief Legal Counsel. We submitted a request for a formal opinion regarding certain voting matters that could come before the Historic Preservation Review Board. It's a statutorily created board. It performs certain duties having to do with state and federal historic preservation laws. Mitch was appointed to the board earlier this year. And he serves as the prehistoric and historic archeology in that position that's on the board. There are certain projects that are undertaken by the Indiana Department of Transportation that do come before this Historic Preservation Review Board. And so our questions have to do with the fact that there are occasions where Mitch is doing work as a sub contractor for INDOT projects. We think based on the type of work that he does and the type of projects that come before the review board for INDOT it is extremely unlikely that he would be . . . that he would be working on any of the projects that come before the review Board. However, we did take a look at it closely and determined that there is at least a remote possibility that that would happen. It has not come up since he has been appointed. So there's not any cost action that we're concerned with. But on a going forward basis I think we want to understand two things and like an opinion concerning two things. First of all if there is a project that Mitch has been hired as a sub contractor to do work on an INDOT project, if that were to come before the Historic Preservation Review Board, would he need to recuse himself from taking part in that decision and voting. Our second question is more broad which is is he able to take part in a decision in voting on any INDOT projects. Specifically INDOT projects that he has not been hired as a sub contractor for. So those are the two questions. We're happy to answer any questions that you may have.

Nuechterlein: Are the contracts with INDOT on a case-by-case basis? Are you under kind of a general retainer with INDOT?

Zoll: They're case-by-case (inaudible)

Nuechterlein: But those case-by-case specifically for (inaudible) but they're building . . . they need to build a bridge and they find (inaudible) something like that?

Zoll: (inaudible).

Nuechterlein: How many contracts . . . let's say in a typical year might you be called in on?

Zoll: With Department of Transportation?

Nuechterlein: Yeah, with INDOT projects.

Zoll: Fifty, that's just a guess. It changes year to year.

Nuechterlein: And each one is very specific to that individual bridge, building?

Zoll: (inaudible)

Nuechterlein: Okay.

Yost: Who would actually make contact with you to do that type of service?

Zoll: Usually the environmental department (inaudible) would contact me.

Yost: Would you actually be called on the project by the contractor for that particular job?

Zoll: (inaudible).

Yost: But that particular environmental assessment is being requested by an independent contractor, a construction company?

Zoll: Yes.

Nuechterlein: And you're not on any retainer anything like that with any of these engineering firms that you contract with? You're paid per job?

Zoll: Yes.

Nuechterlein: Any further questions.

Keith: I don't have any.

Nuechterlein: Bob do you have any further questions?

Jamison: No.

Nuechterlein: Okay. We have two specific questions and we have again been briefed by our staff which is always very helpful. The first question involves a conflict of interest. Whether . . . am I pronouncing your name correctly? Zoll.

Zoll: Yes.

Nuechterlein: Okay. If there were a conflict of interest arise from Mr. Zoll if he was to participate in a decision or vote of the board on which he serves concerning INDOT projects on which you have been hired to perform architectural services.

Zoll: Archeological.

Nuechterlein: I'm sorry, okay, archeological services. And I would say the answer to that question in my view would be yes. You cannot be contracted through the contractors with INDOT and then also vote on these . . . that would present a classic conflict of interest in that specific situation. I'll make that motion to that effect.

Keith: Okay. And I'll second that motion.

Nuechterlein: Okay. And any further discussion or do you wish to say anything further on the motion.

Keith: There is none from me.

Nuechterlein: No, no. Okay. Well then all those in favor of the motion signify by saying yes (4-0). Opposed.

Keith: Okay.

Nuechterlein: The next question would a conflict arise if you participate in a decision or vote of the board concerning INDOT projects for which you have not been hired to do archeological services. That's the second question, the boarder question. Is there a conflict in that situation? I think the answer to that is no. This is like a law school (inaudible).

Keith: Madam Chairman I make a motion that there would be no conflict of interest if he participated in a decision or vote concerning INDOT projects on which he has not been hired for.

Nuechterlein: Okay and is there a second to the motion?

Jamison: I'll second.

Nuechterlein: Okay. Any further questions or comments?

Keith: No.

Nuechterlein: If not, I'll call for the question all those in favor of Commissioner Keith's motion signify by saying aye (4-0). Opposed and that carries. So it's yes, no. Okay, anything further?

Bennett: Is it appropriate for me to ask a question for clarification?

Keith: Yes.

Nuechterlein: Please.

Bennett: The first one if it were to be a situation where a project in which he has been hired to work on as a sub contractor (inaudible) is the appropriate way for him to handle that to disclose it at the beginning and recuse himself from taking part in the decision and the voting on a case-by-case basis as things come up?

Nuechterlein: I think the . . . because of the nature of his contract on a case-by-case basis each time there's a hire there would need to be a recusal.

Bennett: Okay.

Nuechterlein: Yeah, any time you've been hired by the contractor with for INDOT you would then need to recuse yourself from any vote on the board on which you sit.

Bennett: Okay.

Nuechterlein: Okay. But short of that if you're not hired to do work on that project you may continue voting and participating.

Bennett: Thank you very much.

Nuechterlein: Okay. Good, thank you for coming in today. Best wishes.

Carrasco: Mr. Zoll we'll forward a copy of the opinion to you early next week.

Zoll: Thank you.

Director's Report

Nuechterlein: Okay, we next have the Director's Report and I bet I know what the first item is going to be.

Carrasco: Well Madam Chair thank you very much for all of you for being here this morning. I do also want to take an opportunity to welcome Commissioner Yost to the Commission. It certainly is a pleasure to have you here. And we look forward to working with you for some years. So welcome. The second item, Commissioners, that I have to report, is great news. I forwarded a copy of the Supreme Court's opinion in the matter of Subhen Ghosh. I hope you've all had an opportunity to review that opinion. A brief synopsis of the opinion is that the Supreme Court ruled in favor of upholding the Commission's decision in finding a violation of the code of ethics and upheld the fine that was imposed. If you have any questions please feel free to contact us but after a little over four years is the calculation that we made this case went from inception until the Supreme Court issued their opinion. It's good to have this behind us.

Nuechterlein: I would concur to it. We could not have asked for a more favorable opinion in my view that clearly enunciated again that the Ethics Commission is the agency with the jurisdiction to interpret and enforce the ethics code. That was important. And then upheld our action in particular our fine was held to have been reasonable. So good news all around. It took a while but ultimately a good decision.

Carrasco: Another item of good news to report is that our second (inaudible) of ethics training is complete. And I'd like to take a moment to thank Todd Shumaker from our office. He certainly went way above and beyond in working with all the different agencies and working with special state appointees and employees throughout the state as well as everyone in our office to make this a successful training event. We had over 32,000 employees and special state appointees who completed the online ethics training.

Yost: How many?

Carrasco: So over 32,000 and that includes employees and special state appointees and state officers, of course. We're following up with some of the people who may have been on leave or got missed but hopefully we hope to report close to 100 percent completion early next month.

Nuechterlein: That's wonderful. Good work Todd. Keep it going.

Carrasco: And finally the last item I have to report is the informal advisory opinions that were issued by the office since our last meeting. Twenty three informal advisory opinions were issued. At the top of the list was post employment restriction and compensation resulting from confidential information; conflict of economic interest, of course, we issued advised on, gifts, ghost employment, outside employment, use of state property, additional compensation, political activity, financial interest in contract, donor restrictions and benefiting from confidential information were the topics that we issued advisory opinions on this past month.

Nuechterlein: Excellent.

Carrasco: Unless you have any other questions for me that concludes my report.

Keith: No other questions.

Nuechterlein: Okay, then I would . . . is there anything further from the Commission in our general meeting?

Keith: No.

Adjournment

Nuechterlein: If not, I will move to adjourn.

Keith: Do you need a motion Madam Chairperson?

(Laughter.)

Nuechterlein: Yeah, well, I'll declare us in adjournment. How's that?

Keith: That's good.

Nuechterlein: Thank you. This concludes our general public meeting.

The regular meeting adjourned at 10:20 am.

<http://www.ibj.com/duke-energy-puts-ceo-on-leave-after-state-probe/PARAMS/article/22676>

Duke Energy puts local CEO on leave amid state probe

Chris O'Malley

October 5, 2010

Duke Energy Corp. placed Mike Reed, CEO of its Indiana operations, on administrative leave Tuesday afternoon amid a state investigation that involves the company and resulted in the dismissal of the chairman of the Indiana Utility Regulatory Commission.

Duke Energy Corp. placed Mike Reed, president and CEO of its Indiana operations, on administrative leave Tuesday afternoon in the wake of a state investigation that involves the company and resulted in the dismissal of the chairman of the Indiana Utility Regulatory Commission.

Earlier in the day, Gov. Mitch Daniels fired IURC chief David Lott Hardy for allegedly allowing an agency official to continue presiding over a Duke Energy case even after talking with the utility about a job opportunity.

The governor in an announcement Tuesday morning said he was immediately replacing Hardy with Jim Atterholt as chairman of the IURC. Atterholt serves on the IURC and is the state's former insurance commissioner.

The firing of Hardy follows the recent departure to Duke's Plainfield office of Scott Storms, who had been administrative law judge for the IURC. Storms was presiding over a handful of cases involving Duke, including matters involving cost overruns at Duke's Edwardsport generating plant.

Duke said Tuesday it was also putting Storms on administrative leave from his position in Duke's legal-regulatory department. Reed and Storms will be on leave "pending the completion of a full evaluation," Duke said in an announcement.

Storms and Duke previously sought an advisory opinion from the state ethics commission on whether Storms would be subject to a one-year cooling-off period from employment at Duke. The ethics commission said the cooling-off period didn't apply to Storms, but rather to IURC commissioners involved in direct decision-making.

Critics, including the Citizens Action Coalition, said Storms, even as an administrative law judge, made critical decisions, such as whether or not to admit key evidence in utility cases.

David Phippen, Daniels' general counsel, said an internal review found that Storms was communicating with Duke about a job even while he was presiding over administrative hearings concerning Duke.

"Additionally, the agency head (Hardy) was aware of the communications and did not remove the lawyer from matters for which the lawyer was now conflicted," Phippen told agency heads.

He added: "I wrote a letter to the IURC explaining the governor's interpretation of the spirit and intention of the ethics reform he spearheaded when he came to office."

Moreover, Daniels has directed that administrative opinions over which Storms presided will be reopened and reviewed "to ensure no undue influence was exerted in the decisions."

It was not immediately clear which Duke cases those involved. "In short, he [Daniels] will not tolerate even the appearance of impropriety," Phippen said in a memo to state agency heads.

Daniels also directed that a one-year cooling off period for decision makers is to be considered for those at the administrative law judge level, as well.

Further, the administration said it has referred the matter to the inspector general to determine if any laws were broken or whether misinformation was presented to the Ethics Commission.

The blowup is a potential embarrassment for the Daniels administration because Reed was Daniels' former commissioner of the Indiana Department of Transportation until leaving for Duke in June. Reed also was former executive director of the IURC under Daniels from 2006 to 2009.

Hardy, an attorney from Fort Wayne, was appointed to the IURC by Daniels in 2005 and was reappointed last year. His term was to have expired in 2014.

Until the mid-1980s, Hardy was an attorney for Public Service Indiana, the predecessor of North Carolina-based Duke's operations in Indiana.

When Hardy was appointed to the commission five years ago the consumer group Citizens Action Coalition, which intervenes in utility regulation, warned that naming a former PSI lawyer was like "the chicken guarding the hen house."

A Daniels administration spokeswoman at the time downplayed the affiliation, saying the commission needed someone who was experienced in utility industry matters.

Hardy could not be reached for comment Tuesday afternoon.

Julia Vaughn, policy director for Common Cause of Indiana, said she applauded the governor for removing Hardy, saying the situation involving Storms and Hardy appeared to be a clear violation of the state's ethics policy.

Vaughn said she hopes the inspector general's office can conduct a fair and far reaching investigation of the IURC, although she said it would be a difficult task for another branch of the executive branch of state government. An independent set of eyes wouldn't hurt, she added.

"Perhaps the U.S. attorney could launch an investigation, as well. There's been a serious breach of the public trust," Vaughn said.

The Indiana State Ethics Commission (“Commission”) issues the following advisory opinion concerning the State Code of Ethics pursuant to IC 4-2-6-4(b)(1).

Summary

42 IAC 1-5-14 Postemployment restrictions (IC 4-2-6-11)

An INDOT Commissioner and former Executive Director of the IURC was offered the position of President of Indiana’s largest electric supplier (“Supplier”) and sought advice on whether he would be prohibited by the Code of Ethics from accepting such employment. SEC examined confidential information, conflict of interest and postemployment provisions and determined none of those rules would prohibit the Commissioner from accepting employment with the Supplier immediately upon leaving his employment with the State.

Background

A state employee has worked for the State of Indiana (State) since 2006 and currently serves as Commissioner of the Indiana Department of Transportation (INDOT). Prior to holding this position, the Commissioner served as the Executive Director of the Indiana Utility Regulatory Commission (IURC) from 2006 – February 2009.

The Commissioner has been offered a position as President of Indiana’s largest electric supplier, providing electric service to approximately 780,000 customers in sixty-nine of Indiana’s ninety-two counties. As President of the electric supplier, the Commissioner will be providing strategic direction and overseeing its overall operations throughout Indiana. He will not be required to register as an executive branch lobbyist for at least one year after leaving state employment.

According to the Commissioner, he has had contact with the electric supplier in both of the positions he has held with the State, though such contact or interaction is not of the type described by the post-employment restrictions in I.C. 4-2-6-11.

As Executive Director for the IURC, the Commissioner directed a staff of fifty members in support of the five commissioners. He was responsible for the general oversight of the Technical Divisions and interfacing with the regulated community within the limitations of the IURC’s ex parte rules. In this position, the Commissioner neither negotiated nor administered a contract with the electric supplier. Additionally, the Commissioner asserts that he had no cases assigned to him. He did not direct the assignment of cases, and he had no ability to conduct a hearing, make a decision or cast a vote affecting regulated activities of any utility before the IURC.

With respect to INDOT, the only contractual relationship the agency has with the electric supplier or any utility (other than purchasing electricity for traffic signals, lights and buildings at the metered rate charged by the utility) is the requirement that INDOT reimburse utilities for their actual expenses when road construction forces a utility to move its facilities. The relocations are both required and governed by Indiana and

Federal statute, rules and regulations. INDOT's district project managers and INDOT's Utility Section negotiate the utility relocation agreements. The deputy commissioner responsible for the Utility Section provides the final INDOT signature for the relocation agreements. As the appointing authority of the agency, these staff members ultimately report to the Commissioner through the INDOT management chain of command. However, the Commissioner asserts that he has not been involved personally with any particular contract which INDOT has had with any utility, including the electric supplier.

With respect to permits, INDOT will occasionally issue a permit to allow a utility to place its facilities in INDOT's highway right of way. The INDOT staff closest to the actual right of way in question negotiates and executes these permits after consideration of traffic, safety, and other issues. The Commissioner indicates that he has not negotiated, signed or made a decision with respect to a permit for any utility, including the electric supplier.

Currently, INDOT's Railroad Section is considering a petition from the electric supplier for permits to allow a rail line to cross five local and one state road. Because INDOT regulates some 6, 000 rail crossings in Indiana, the electric supplier is required to obtain an INDOT permit to cross the roads in question in order to provide rail service to the rail line facility. INDOT's Railroad Section is examining the crossings, line of sight, traffic patterns and counts, any safety issues and the need, if any, for crossing protection. INDOT's Railroad Section will make the determination and issue any crossing permit. The Commissioner has not and will not participate in this permit decision.

INDOT also works with the electric supplier and other utilities on matters of general applicability. Representatives from the electric supplier attend a monthly "Team Indiana" meeting along with representatives from the highway construction, engineering, consulting, and design industries. The purpose of Team Indiana is to exchange policy suggestions and ideas between the industries that are instrumental in building Indiana highways and INDOT staff. The electric suppliers' representatives also participated in the development of INDOT's utility relocation rule, 105 IAC 13. However, INDOT promulgated this rule prior to the Commissioner's appointment as INDOT's Commissioner.

Issue

What rules in the Code of Ethics would apply to the Commissioner's employment opportunity to serve as President of the electric supplier, and would his acceptance of the offered position subject him to any post-employment restrictions under I.C. 4-2-6-11?

Relevant Law

IC 4-2-6-11: One year restriction on certain employment or representation; advisory opinion; exceptions

I.C. 4-2-6-6

Present or former state officers, employees, and special state appointees; compensation resulting from confidential information

I.C. 4-2-6-9 (42 IAC 1-5-6): Conflict of economic interests**Analysis**

The Commissioner's intended employment with the electric supplier invokes consideration of the provisions of the Code of Ethics pertaining to confidential information, conflicts of interest, and post-employment. The application of each provision to the Commissioner is analyzed below.

Confidential Information

I.C. 4-2-6-6 would prohibit the Commissioner from accepting any compensation from any employment, transaction, or investment which was entered into or made as a result of material information of a confidential nature. Based on the information the Commissioner has provided, the Commission finds that the electric supplier's offer of employment did not result from information of a confidential nature. Accordingly, the Commissioner's acceptance of the electric supplier's employment offer would not be in violation of I.C. 4-2-6-6.

Conflicts of Interest

I.C. 4-2-6-9 prohibits the Commissioner from participating in any decision or vote if he has knowledge that various persons may have a "financial interest" in the outcome of the matter, including a potential employer. In this case, the Commissioner has an arrangement for prospective employment with the electric supplier. Accordingly, the Commissioner is prohibited from participating in any decision or vote during the remainder of his state employment in which the electric supplier has a financial interest in the outcome of the matter. The Commissioner indicates that he is aware of this provision and has not participated in any decision or vote affecting the electric supplier since he became aware of the prospective employment opportunity. To the extent that the Commissioner continues to observe this provision and abstains from participation in any decision or vote affecting the electric supplier, the Commission finds that the state employee would not be in violation of I.C. 4-2-6-9.

Post-Employment

I.C. 4-2-6-12 consists of two separate limitations: a "cooling off" period and a particular matter restriction. The first prohibition commonly referred to as the cooling off period, would prevent the Commissioner from accepting employment for 365 days from the date that he leaves state government under various circumstances.

First, the Commissioner would be prohibited from accepting employment as a lobbyist for the entirety of the cooling off period. Based on the information provided, the Commission finds that this provision does not apply to the Commissioner. Specifically,

he indicates that he will not be required to register as an executive branch lobbyist for at least one year after leaving state employment.

Second, the Commissioner would be prohibited from accepting employment from an employer with whom (1) he engaged in the negotiation or administration of a contract on behalf of his state agency and (2) was in a position to make a discretionary decision affecting the outcome of the negotiation or nature of the administration of the contract. In this case, the Commissioner disclosed that INDOT has or has had contract(s) with the electric supplier. As Commissioner of INDOT, it would appear that the Commissioner could meet the second prong of this restriction. Namely, that as the appointing authority of the agency, he is in a position to make a discretionary decision affecting the outcome of the negotiation or nature of the administration of a contract. However, the application of this restriction to the Commissioner depends upon whether he engaged in the negotiation or administration of a contract on behalf of INDOT with the electric supplier. The Commissioner explains that while he was Commissioner for the agency, he was not personally involved with or engaged in the negotiation or administration of any contract with the electric supplier on behalf of INDOT. Also, the Ethics Officer and Prequalification's Director for INDOT, and the Chief Legal Counsel and Deputy Commissioner for INDOT, testified and filed a written opinion with the Commission stating that the Commissioner did not engage in the negotiation or administration of any contract(s) with the electric supplier on behalf of INDOT, and instead, the negotiation and/or administration of such contract(s) occurred at lower levels. The Commission accordingly finds that the Commissioner did not engage in the negotiation or administration of contracts on behalf of INDOT with the electric supplier and this provision would therefore not apply to the Commissioner.

Third, the Commissioner would be prohibited from accepting employment from an employer for whom he made a regulatory or licensing decision that directly applied to the employer or its parent or subsidiary. While the Commissioner's last day of employment with the IURC was over a year ago, he maintained his status as a state employee. Consideration of the post-employment rule is invoked when an employee leaves the state's employ, not when the employee moves from one agency to the next. Also, the Deputy General Counsel and Ethics Officer for IURC testified and filed an opinion with the Commission that the Commissioner was not in violation of this provision. Accordingly, the Commission finds that this provision would not be triggered by the Commissioner's work at the IURC as he was neither a commissioner nor a voting member of the regulatory body that may have made license or permit decisions regarding the electric supplier.

Fourth, the Commissioner would also be prohibited from accepting employment from an employer if the circumstances surrounding the hire suggest the employer's purpose is to influence him in his official capacity as a state employee. The Commission finds that none of the facts provided suggest that the electric supplier's offer of employment to the Commissioner was done in an attempt to influence him in his capacity as INDOT Commissioner or in his former capacity as Executive Director of the IURC.

Finally, the Commissioner may be subject to the Postemployment rule's "particular matter" prohibition in his potential employment. This restriction prevents him from working on any of the following twelve matters for an employer if he personally and substantially participated in the matter as a state employee: 1) an application, 2) a business transaction, 3) a claim, 4) a contract, 5) a determination, 6) an enforcement proceeding, 7) an investigation, 8) a judicial proceeding, 9) a lawsuit, 10) a license, 11) an economic development project, or 12) a public works project. The particular matter restriction is not limited to 365 days but instead extends for the entire life of the matter at issue, which may be indefinite. The Commissioner does not disclose any "particular matters" on which he may have worked while employed with the State. To the extent that the Commissioner's future employment activities with the electric supplier would have the potential to implicate a "particular matter" as contemplated by I.C. 4-2-6-11, the Commissioner should request advice for review prior to representing or assisting the electric supplier with any "particular matter."

Conclusion

Subject to the foregoing analysis, the Commissioner's intended employment with the electric supplier would not be in violation of the State Code of Ethics, including I.C. 4-2-6-6, I.C. 4-2-6-9 and I.C. 4-2-6-11.

Carrasco, Cynthia (Cyndi)

From: Gonso, Harry [Harry.Gonso@icemiller.com]
Sent: Thursday, June 03, 2010 4:36 PM
To: Carrasco, Cynthia (Cyndi)
Cc: mwr1968@gmail.com; Ahearn, Mark; Seyfried, Loraine; Thomas, David; Mulligan, Tiffany; Arceneaux, Adam
Subject: M. Reed request for EC Hearing
Attachments: Nuechterlein Correspondence.pdf; Ahearn Mulligan Letter.pdf; Seyfried Letter.pdf

Follow Up Flag: Follow Up
Flag Status: Completed

Cyndi, in accordance with our conversation and on behalf of Michael Reed, attached please find Mr. Reed's request for a formal advisory opinion on I.C. 4-2-6-11 at the State Ethics Commission hearing on June 10, 2010. Please confirm receipt of this request and scheduling of the hearing. Thank you. hlg

Harry L. Gonso

Ice Miller LLP
 One American Square, Suite 3100
 Indianapolis, IN 46282-0200
 Telephone: 317-236-2325
 Fax: 317-592-4669

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ICE MILLER LLP

Carrasco, Cynthia (Cyndi)

From: Gonso, Harry [Harry.Gonso@icemiller.com]
Sent: Thursday, June 03, 2010 4:00 PM
To: Carrasco, Cynthia (Cyndi)

Time for a quick call? hlg

Harry L. Gonso

Ice Miller LLP
One American Square, Suite 3100
Indianapolis, IN 46282-0200
Telephone: 317-236-2325
Fax: 317-592-4669

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ICE MILLER LLP

Flynn, Joann

From: Carrasco, Cynthia (Cyndi)
Sent: Tuesday, June 15, 2010 11:51 AM
To: Flynn, Joann
Subject: FW: SEC Advisory Opinion

For the file

From: Gonso, Harry [mailto:Harry.Gonso@icemiller.com]
Sent: Monday, June 14, 2010 5:43 PM
To: Carrasco, Cynthia (Cyndi)
Subject: RE: SEC Advisory Opinion

Thanks for your assistance and good advice. hlg

Harry L. Gonso

Ice Miller LLP
 One American Square, Suite 3100
 Indianapolis, IN 46282-0200
 Telephone: 317-236-2325
 Fax: 317-592-4669

From: Carrasco, Cynthia (Cyndi) [mailto:ccarrasco@ig.IN.gov]
Sent: Monday, June 14, 2010 5:30 PM
To: Gonso, Harry
Subject: SEC Advisory Opinion

Dear Mr. Gonso,

Attached is a copy of the advisory opinion issued by the Indiana State Ethics Commission to Mr. Reed. A hard copy will be mailed to your office.

It was pleasure seeing you last week. Please let us know if we can be of further assistance.

Sincerely,

Cyndi

Cyndi Carrasco, Director
 Indiana State Ethics Commission

CIRCULAR 230 DISCLOSURE: Except to the extent that this advice concerns the qualification of any qualified plan, to ensure compliance with U.S. Treasury Department Regulations, we are now required to advise you that, unless otherwise expressly indicated, any federal tax advice contained in this communication, including any attachments, is not intended or written by us to be used, and cannot be used, by anyone for the purpose of avoiding federal tax penalties that may be imposed by the federal government or for promoting,

INDIANA
STATE ETHICS COMMISSION

315 WEST OHIO STREET, INDIANAPOLIS, IN 46202 317.232.3850

June 15, 2010

David Pippen, General Counsel
Office of the Governor
206 State House
Indianapolis, IN 46204

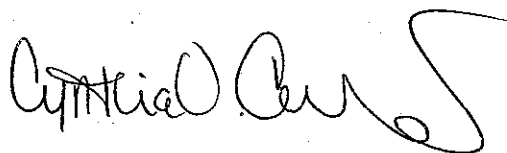
Re: Request for Formal Advisory Opinion

Dear Mr. Pippen,

Please find enclosed a copy of the Formal Advisory Opinion issued by the State Ethics Commission in response to INDOT's former Commissioner Michael Reed's request at its public meeting on June 8, 2010.

Please feel free to contact our office if you have any questions.

Sincerely,

A handwritten signature in dark ink, appearing to read "Cynthia Carrasco", with a stylized flourish at the end.

Cynthia Carrasco, Director
State Ethics Commission

Enclosure

INDIANA
STATE ETHICS COMMISSION

315 WEST OHIO STREET, INDIANAPOLIS, IN 46202 317.232.3850

June 15, 2010

Harry Gonso, Attorney
Ice Miller
One American Square, Suite 2900
Indianapolis, IN 46282

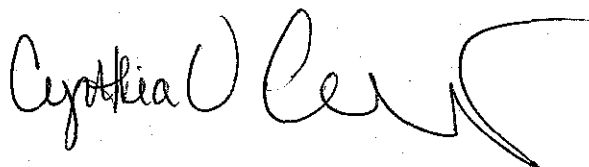
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Sincerely,

A handwritten signature in black ink, appearing to read "Cynthia Carrasco", with a large, stylized flourish extending to the right.

Cynthia Carrasco, Director
State Ethics Commission

Enclosure

INDIANA STATE ETHICS COMMISSION

150 WEST MARKET STREET, ROOM 414, INDIANAPOLIS, IN 46204 317.232.3850

June 2010

No. 10-I-6

The Indiana State Ethics Commission (Commission) issues the following advisory opinion concerning the State Code of Ethics pursuant to I.C. 4-2-6-4(b)(1).

BACKGROUND

Michael Reed has worked for the State of Indiana (State) since 2006 and currently serves as Commissioner of the Indiana Department of Transportation (INDOT). Prior to holding this position, Mr. Reed served as the Executive Director of the Indiana Utility Regulatory Commission (IURC) from 2006 – February 2009.

Mr. Reed has been offered a position as President of Duke Energy Indiana (Duke). Duke is Indiana's largest electric supplier, providing electric service to approximately 780,000 customers in sixty-nine of Indiana's ninety-two counties. As President of Duke, Mr. Reed will be providing strategic direction and overseeing its overall operations throughout Indiana. He will not be required to register as an executive branch lobbyist for at least one year after leaving state employment.

According to Mr. Reed, he has had contact with Duke in both of the positions he has held with the State, though such contact or interaction is not of the type described by the post-employment restrictions in I.C. 4-2-6-11.

As Executive Director for the IURC, Mr. Reed directed a staff of fifty members in support of the five commissioners. He was responsible for the general oversight of the Technical Divisions and interfacing with the regulated community within the limitations of the IURC's ex parte rules. In this position, Mr. Reed neither negotiated nor administered a contract with Duke. Additionally, Mr. Reed asserts that he had no cases assigned to him. He did not direct the assignment of cases, and he had no ability to conduct a hearing, make a decision or cast a vote affecting regulated activities of any utility before the IURC.

With respect to INDOT, the only contractual relationship the agency has with Duke or any utility (other than purchasing electricity for traffic signals, lights and buildings at the metered rate charged by the utility) is the requirement that INDOT reimburse utilities for their actual expenses when road construction forces a utility to move its facilities. The relocations are both required and governed by Indiana and Federal statute, rules and regulations. INDOT's district project managers and INDOT's Utility Section negotiate the utility relocation agreements. The deputy commissioner responsible for the Utility Section provides the final INDOT signature for the relocation agreements. As the appointing authority of the agency, these staff members ultimately

report to Mr. Reed through the INDOT management chain of command. However, Mr. Reed asserts that he has not been involved personally with any particular contract which INDOT has had with any utility, including Duke.

With respect to permits, INDOT will occasionally issue a permit to allow a utility to place its facilities in INDOT's highway right of way. The INDOT staff closest to the actual right of way in question negotiates and executes these permits after consideration of traffic, safety, and other issues. Mr. Reed indicates that he has not negotiated, signed or made a decision with respect to a permit for any utility, including Duke.

Currently, INDOT's Railroad Section is considering a petition from Duke for permits to allow the Edwardsport rail line to cross five local and one state road. Because INDOT regulates some 6,000 rail crossings in Indiana, Duke is required to obtain an INDOT permit to cross the roads in question in order to provide rail service to its Edwardsport facility. INDOT's Railroad Section is examining the crossings, line of sight, traffic patterns and counts, any safety issues and the need, if any, for crossing protection. INDOT's Railroad Section will make the determination and issue any crossing permit. Mr. Reed has not and will not participate in this permit decision.

INDOT also works with Duke and other utilities on matters of general applicability. Representatives from Duke attend a monthly "Team Indiana" meeting along with representatives from the highway construction, engineering, consulting, and design industries. The purpose of Team Indiana is to exchange policy suggestions and ideas between the industries that are instrumental in building Indiana highways and INDOT staff. Duke representatives also participated in the development of INDOT's utility relocation rule, 105 IAC 13. However, INDOT promulgated this rule prior to Mr. Reed's appointment as INDOT's Commissioner.

ISSUE

What rules in the Code of Ethics would apply to Mr. Reed's employment opportunity to serve as President of Duke, and would his acceptance of the offered position subject him to any post-employment restrictions under I.C. 4-2-6-11?

RELEVANT LAW

I.C. 4-2-6-6

Present or former state officers, employees, and special state appointees; compensation resulting from confidential information

Sec. 6. No state officer or employee, former state officer or employee, special state appointee, or former special state appointee shall accept any compensation from any employment, transaction, or investment which was entered into or made as a result of material information of a confidential nature.

I.C. 4-2-6-9 (42 IAC 1-5-6)

Conflict of economic interests

Sec. 9. (a) A state officer, an employee, or a special state appointee may not participate in any decision or vote if the state officer, employee, or special state appointee has knowledge that any of the following has a financial interest in the outcome of the matter:

- (1) The state officer, employee, or special state appointee.
- (2) A member of the immediate family of the state officer, employee, or special state appointee.
- (3) A business organization in which the state officer,

employee, or special state appointee is serving as an officer, a director, a trustee, a partner, or an employee.

(4) Any person or organization with whom the state officer, employee, or special state appointee is negotiating or has an arrangement concerning prospective employment.

(b) A state officer, an employee, or a special state appointee who identifies a potential conflict of interest shall notify the person's appointing authority and seek an advisory opinion from the commission by filing a written description detailing the nature and circumstances of the particular matter and making full disclosure of any related financial interest in the matter. The commission shall:

(1) with the approval of the appointing authority, assign the particular matter to another person and implement all necessary procedures to screen the state officer, employee, or special state appointee seeking an advisory opinion from involvement in the matter; or

(2) make a written determination that the interest is not so substantial that the commission considers it likely to affect the integrity of the services that the state expects from the state officer, employee, or special state appointee.

(c) A written determination under subsection (b)(2) constitutes conclusive proof that it is not a violation for the state officer, employee, or special state appointee who sought an advisory opinion under this section to participate in the particular matter. A written determination under subsection (b)(2) shall be filed with the appointing authority.

I.C. 4-2-6-11 (42 IAC 1-5-14)

One year restriction on certain employment or representation; advisory opinion; exceptions

Sec. 11. (a) As used in this section, "particular matter" means:

- (1) an application;
- (2) a business transaction;
- (3) a claim;
- (4) a contract;
- (5) a determination;
- (6) an enforcement proceeding;
- (7) an investigation;
- (8) a judicial proceeding;
- (9) a lawsuit;
- (10) a license;
- (11) an economic development project; or
- (12) a public works project.

The term does not include the proposal or consideration of a legislative matter or the proposal, consideration, adoption, or implementation of a rule or an administrative policy or practice of general application.

(b) This subsection applies only to a person who served as a state officer, employee, or special state appointee after January 10, 2005. A former state officer, employee, or special state

appointee may not accept employment or receive compensation:

- (1) as a lobbyist;
- (2) from an employer if the former state officer, employee, or special state appointee was:
 - (A) engaged in the negotiation or the administration of one (1) or more contracts with that employer on behalf of the state or an agency; and
 - (B) in a position to make a discretionary decision affecting the:
 - (i) outcome of the negotiation; or
 - (ii) nature of the administration; or
- (3) from an employer if the former state officer, employee, or special state appointee made a regulatory or licensing decision that directly applied to the employer or to a parent or subsidiary of the employer; before the elapse of at least three hundred sixty-five (365) days after the date on which the former state officer, employee, or special state appointee ceases to be a state officer, employee, or special state appointee.

(c) A former state officer, employee, or special state appointee may not represent or assist a person in a particular matter involving the state if the former state officer, employee, or special state appointee personally and substantially participated in the matter as a state officer, employee, or special state appointee, even if the former state officer, employee, or special state appointee receives no compensation for the representation or assistance.

(d) A former state officer, employee, or special state appointee may not accept employment or compensation from an employer if the circumstances surrounding the employment or compensation would lead a reasonable person to believe that:

- (1) employment; or
 - (2) compensation;
- is given or had been offered for the purpose of influencing the former state officer, employee, or special state appointee in the performance of his or her duties or responsibilities while a state officer, an employee, or a special state appointee.

(e) A written advisory opinion issued by the commission certifying that:

- (1) employment of;
 - (2) representation by; or
 - (3) assistance from;
- the former state officer, employee, or special state appointee does not violate this section is conclusive proof that a former state officer, employee, or special state appointee is not in violation of this section.

(f) Subsection (b) does not apply to a special state appointee who serves only as a member of an advisory body.

(g) An employee's or a special state appointee's state officer or appointing authority may waive application of subsection (b) or (c) in individual cases when consistent with the public interest. Waivers must be in writing and filed with the commission. The inspector general may adopt rules under I.C. 4-22-2 to establish criteria for post employment waivers.

ANALYSIS

Mr. Reed's intended employment with Duke invokes consideration of the provisions of the Code of Ethics pertaining to confidential information, conflicts of interest, and post-employment. The application of each provision to Mr. Reed is analyzed below.

A. Confidential Information

I.C. 4-2-6-6 would prohibit Mr. Reed from accepting any compensation from any employment, transaction, or investment which was entered into or made as a result of material information of a confidential nature. Based on the information Mr. Reed has provided, the Commission finds that Duke's offer of employment did not result from information of a confidential nature. Accordingly, Mr. Reed's acceptance of Duke's employment offer would not be in violation of I.C. 4-2-6-6.

B. Conflicts of Interest

I.C. 4-2-6-9 prohibits Mr. Reed from participating in any decision or vote if he has knowledge that various persons may have a "financial interest" in the outcome of the matter, including a potential employer. In this case, Mr. Reed has an arrangement for prospective employment with Duke. Accordingly, Mr. Reed is prohibited from participating in any decision or vote during the remainder of his state employment in which Duke has a financial interest in the outcome of the matter. Mr. Reed indicates that he is aware of this provision and has not participated in any decision or vote affecting Duke since he became aware of the prospective employment opportunity. To the extent that Mr. Reed continues to observe this provision and abstains from participation in any decision or vote affecting Duke, the Commission finds that Mr. Reed would not be in violation of I.C. 4-2-6-9.

C. Post-Employment

I.C. 4-2-6-12 consists of two separate limitations: a "cooling off" period and a particular matter restriction. The first prohibition, commonly referred to as the cooling off period, would prevent Mr. Reed from accepting employment for 365 days from the date that he leaves state government under various circumstances.

First, Mr. Reed would be prohibited from accepting employment as a lobbyist for the entirety of the cooling off period. Based on the information provided, the Commission finds that this provision does not apply to Mr. Reed. Specifically, he indicates that he will not be required to register as an executive branch lobbyist for at least one year after leaving state employment.

Second, Mr. Reed would be prohibited from accepting employment from an employer with whom (1) he engaged in the negotiation or administration of a contract on behalf of his state agency and (2) was in a position to make a discretionary decision affecting the

outcome of the negotiation or nature of the administration of the contract. In this case, Mr. Reed disclosed that INDOT has or has had contract(s) with Duke. As Commissioner of INDOT, it would appear that Mr. Reed could meet the second prong of this restriction. Namely, that as the appointing authority of the agency, he is in a position to make a discretionary decision affecting the outcome of the negotiation or nature of the administration of a contract. However, the application of this restriction to Mr. Reed depends upon whether he engaged in the negotiation or administration of a contract on behalf of INDOT with Duke. Mr. Reed explains that while he was Commissioner for the agency, he was not personally involved with or engaged in the negotiation or administration of any contract with Duke on behalf of INDOT. Also, Tiffany Mulligan, Ethics Officer and Prequalification's Director for INDOT, and Mark Ahearn, Chief Legal Counsel and Deputy Commissioner for INDOT, testified and filed a written opinion with the Commission stating that Mr. Reed did not engage in the negotiation or administration of any contract(s) with Duke on behalf of INDOT, and instead, the negotiation and/or administration of such contract(s) occurred at lower levels. The Commission accordingly finds that Mr. Reed did not engage in the negotiation or administration of contracts on behalf of INDOT with Duke and this provision would therefore not apply to Mr. Reed.

Third, Mr. Reed would be prohibited from accepting employment from an employer for whom he made a regulatory or licensing decision that directly applied to the employer or its parent or subsidiary. While Mr. Reed's last day of employment with the IURC was over a year ago, he maintained his status as a state employee. Consideration of the post-employment rule is invoked when an employee leaves the state's employ, not when the employee moves from one agency to the next. Also, Loraine Seyfried, Deputy General Counsel and Ethics Officer for IURC testified and filed an opinion with the Commission that Mr. Reed was not in violation of this provision. Accordingly, the Commission finds that this provision would not be triggered by Mr. Reed's work at the IURC as he was neither a commissioner nor a voting member of the regulatory body that may have made license or permit decisions regarding Duke.

Fourth, Mr. Reed would also be prohibited from accepting employment from an employer if the circumstances surrounding the hire suggest the employer's purpose is to influence him in his official capacity as a state employee. The Commission finds that none of the facts provided suggest that Duke's offer of employment to Mr. Reed was done in an attempt to influence him in his capacity as INDOT Commissioner or in his former capacity as Executive Director of the IURC.

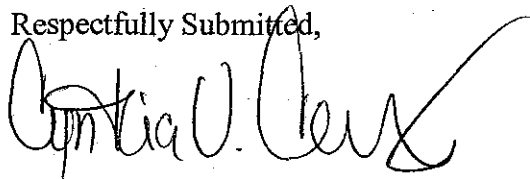
Finally, Mr. Reed may be subject to the Postemployment rule's "particular matter" prohibition in his potential employment. This restriction prevents him from working on any of the following twelve matters for an employer if he personally and substantially participated in the matter as a state employee: 1) an application, 2) a business transaction, 3) a claim, 4) a contract, 5) a determination, 6) an enforcement proceeding, 7) an investigation, 8) a judicial proceeding, 9) a lawsuit, 10) a license, 11) an economic development project, or 12) a public works project. The particular matter restriction is not limited to 365 days but instead extends for the entire life of the matter at issue, which may be indefinite. Mr. Reed does not disclose any "particular matters" on which he may

have worked while employed with the State. To the extent that Mr. Reed's future employment activities with Duke would have the potential to implicate a "particular matter" as contemplated by I.C. 4-2-6-11, Mr. Reed should request advice for review prior to representing or assisting Duke with any "particular matter."

CONCLUSION

Subject to the foregoing analysis, Mr. Reed's intended employment with Duke would not be in violation of the State Code of Ethics, including I.C. 4-2-6-6, I.C. 4-2-6-9 and I.C. 4-2-6-11.

Respectfully Submitted,

A handwritten signature in black ink, appearing to read 'Cynthia Carrasco', with a large, sweeping flourish extending to the right.

Cynthia Carrasco
Director



June 3, 2010

WRITER'S DIRECT NUMBER: (317) 236-2325
DIRECT FAX: (317) 592-4669
INTERNET: Harry.Gonso@icemiller.com

**VIA HAND DELIVERY AND
ELECTRONIC TRANSMITTAL**

Ms. Clare Kraegel Nuechterlein, Chair
Indiana State Ethics Commission
150 West Market Street, Room 414
Indianapolis, IN 46204

RE: Request for a formal advisory opinion on I.C. 4-2-6-11

Dear Ms. Nuechterlein:

As counsel for Michael Reed, please accept this letter as a request to appear before the State Ethics Commission at its June 10, 2010 meeting to request a formal advisory opinion allowing Mr. Reed to accept a position as President of Duke Energy Indiana (Duke). Subject to the conditions described below, Mr. Reed knows of no conflict or circumstances that would preclude him from accepting the position of President of Duke under I.C. 4-2-6-11.

As Commissioner of the Indiana Department of Transportation (INDOT) and former Executive Director of the Indiana Utility Regulatory Commission (IURC), Mr. Reed worked for the State of Indiana since 2006. In both of these positions, he had contact with Duke but no contact or interaction of the type described by the post-employment restrictions in I.C. 4-2-6-11. Both positions with the State of Indiana and the position with Duke have or will have substantial public exposure; therefore, in the best interest of all parties, Mr. Reed seeks conclusive proof in the form of a formal written advisory opinion to confirm that his potential employment as President of Duke would not violate the post-employment restriction in I.C. 4-2-6-11 before accepting the position.

Duke is Indiana's largest electric supplier, providing electric service to approximately 780,000 customers in sixty-nine of Indiana's ninety-two counties. As President of Duke, Mr. Reed will be providing strategic direction and overseeing its overall operations throughout Indiana.

According to INDOT's Chief Legal Counsel and to the best of Mr. Reed's knowledge, the only contractual relationship INDOT has with Duke or with any utility (other than purchasing electricity for traffic signals, lights and buildings at the metered rate charged by the utility) is the requirement that INDOT reimburse utilities for their actual expenses when road construction forces a utility to move its facilities (for example its poles, lines, buried cable, and pipes). These relocations are both required and governed by Indiana and Federal statute, rules and regulations.

Ms. Clare Kraegel Nuechterlein, Chair
Indiana State Ethics Commission
June 3, 2010
Page 2

INDOT's district project managers and INDOT's Utility Section negotiate the utility relocation agreements because of the detail involved in these agreements and the differences in every construction site. The deputy commissioner responsible for the Utility Section (Dave Holtz) provides the final INDOT signature for the relocation agreements. As head of the agency, these staffs ultimately report to Mr. Reed through the INDOT management chain of command, but he has not been involved personally with any particular contract INDOT has had with any utility, including Duke.

Occasionally INDOT will issue a permit to allow a utility to place its facilities in INDOT highway right of way. The INDOT staff closest to the actual right of way in question negotiates and executes these permits after consideration of traffic, safety, and other issues. An example might be an electric company needing to cross a highway with power lines. As with the relocation agreements, Mr. Reed has not negotiated, signed or made a decision with respect to a permit for any utility, including Duke.

INDOT's Railroad Section currently is considering a petition from Duke for permits to allow the Edwardsport rail line to cross five local and one state road. Because INDOT regulates some 6,000 rail crossings in Indiana, Duke is required to obtain an INDOT permit to cross the roads in question in order to provide rail service to its Edwardsport facility. INDOT's Railroad Section is examining the crossings, line of sight, traffic patterns and counts, any safety issues and the need, if any, for crossing protection. INDOT's Railroad Section will make the determination and issue any crossing permit. Mr. Reed has not and will not participate in this permit decision.

INDOT also works with Duke and other utilities on matters of general applicability. Representatives from Duke attend a monthly "Team Indiana" meeting (started by Commissioner Sharp) along with representatives from the highway construction, engineering consulting and design industries. The purpose of Team Indiana is to exchange policy suggestions and ideas between the industries that are instrumental in building Indiana highways and INDOT staff. Duke representatives also participated in the development of INDOT's utility relocation rule, 105 IAC 13; however, INDOT promulgated this rule prior to Mr. Reed's appointment as INDOT's Commissioner.

Prior to serving at INDOT, Mr. Reed was the Executive Director of the IURC. There he directed a staff of some fifty members in supporting the five commissioners. He was neither a commissioner nor an administrative law judge. He had no cases assigned to him. He did not direct the assignment of cases, and Mr. Reed had no ability to conduct a hearing, make a decision or cast a vote affecting regulated activities of any utility before the IURC.

It is Mr. Reed's understanding that he will not be violating I.C. 4-2-6-11(b), the one year restriction on certain post-employment, by accepting the position with Duke. First, he will not be serving as an executive branch lobbyist for at least one year after leaving state employment. Given the nature of Duke's business and the scope of his responsibilities at Duke, Mr. Reed will not be required to register as an executive branch lobbyist under the Indiana Department of Administration's executive branch lobbying rules for the first year of employment with Duke. Second, as described herein, he has not been personally involved with or engaged in the

Ms. Clare Kraegel Nuechterlein, Chair
Indiana State Ethics Commission
June 3, 2010
Page 3

negotiation or administration of any contract with Duke on behalf of INDOT or the IURC. Third, as described herein, Mr. Reed has not made a regulatory or licensing decision that directly applied to Duke or a parent or subsidiary of Duke.

Also, pursuant to I.C. 4-2-6-11(c), the particular matter restriction, Mr. Reed understands he cannot "represent or assist" Duke or others on a "particular matter" if he "personally or substantially" participated in the matter for the lifetime of that matter. To his knowledge, Mr. Reed has not "personally or substantially participated" in a "particular matter" of interest to Duke while with INDOT or while with the IURC. Should Duke have an interest in a particular matter that falls under this section that Mr. Reed is not now anticipating, he will recuse himself from representing or assisting Duke and others on the matter.

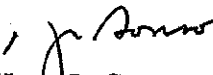
Mr. Reed does not believe his potential employment or compensation with Duke violates I.C. 4-2-6-11(d). He had an extensive career with private utilities prior to entering into government service in 2006 and believes anyone looking at his potential employment with Duke would understand his career makes him well qualified for the position with Duke. Furthermore, Mr. Reed believes no circumstances exist that would lead a reasonable person to believe that the employment or compensation is offered to influence him as INDOT Commissioner or in his former capacity as Executive Director of the IURC.

Finally, Mr. Reed is aware of the conflict of interest provisions in I.C. 4-2-6-9 and appreciates his obligation not to participate in any decision or vote involving Duke while he is discussing potential employment with Duke. Mr. Reed has not participated in any decision or vote affecting Duke since he became aware of this opportunity, and will continue to avoid any such decision.

Again, Mr. Reed respectfully requests an appearance before the Commission on June 10, 2010 to discuss his potential employment with Duke in more detail and secure a formal written advisory opinion that his potential employment with Duke will not violate I.C. 4-2-6-11. To further assist the Commission, also submitted herewith are the letters of: (i) Mark Ahearn and Tiffany Mulligan of INDOT to you and (ii) Loraine Seyfried of the IURC to Mr. Reed, each dated June 3, 2010. Mr. Reed, Mr. Ahearn and Ms. Seyfried will be present at the hearing to answer any questions. Should you have any questions regarding this request, please contact the undersigned. Thank you for your consideration.

Very truly yours,

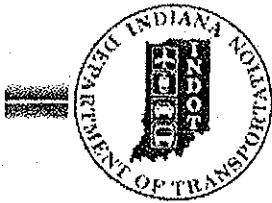
ICE MILLER LLP


Harry L. Gonso

HLG/eac
Enclosures

Ms. Clare Kraegel Nuechterlein, Chair
Indiana State Ethics Commission
June 3, 2010
Page 4

cc: Michael Reed
David Thomas, Inspector General
Cynthia Carrasco, Director, State Ethics Commission
Mark G. Ahearn, Chief Legal Counsel and Deputy Commissioner, INDOT
Tiffany Mulligan, Attorney/Ethics Officer, INDOT
Loraine Seyfried, Deputy General Counsel, IURC
Adam Arceneaux, Ice Miller LLP



INDIANA DEPARTMENT OF TRANSPORTATION

Driving Indiana's Economic Growth

100 North Senate Avenue
Room N758
Indianapolis, Indiana 46204

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FAX: (317) 232-0268

Mitchell E. Daniels, Jr., Governor
Michael W. Reed, Commissioner

June 3, 2010

Ms. Clare Kraegel Nuechterlein, Chair
Indiana State Ethics Commission
150 West Market Street, Room 414
Indianapolis, IN 46204

Dear Ms. Neuchterlein and Members of the Indiana State Ethics Commission:

You recently received a request from Commissioner Michael Reed of the Indiana Department of Transportation (INDOT) for a formal advisory opinion on his post-employment opportunity with Duke Energy of Indiana (Duke). Commissioner Reed asked that we write to offer both facts and our professional opinions with respect to INDOT management, operations and structure in case they are helpful in evaluating Commissioner Reed's request. Sections B and C below provide general information about INDOT to give you an understanding of the size, responsibilities, and structure of INDOT. Sections D and E provide a summary of INDOT's involvement with utilities in general and with Duke specifically. Finally Section F provides our joint conclusion as to how these facts might apply to Commissioner Reed's post-employment opportunity. Of necessity some of the numbers cited in this letter are estimates or are rounded, but they are in no manner intended to be misleading. Should you need additional information or if we can clarify any of the information below, please contact one or both of us at the contacts listed below.

A. Professional History and Status

I, Mark Ahearn, have served as the Chief Legal Counsel and Deputy Commissioner for INDOT since January 18, 2005. Five INDOT departments report to me: Legal, Contract Administration, Economic Opportunity, Prequalifications and Internal Affairs/Audit – about 80 people. I was INDOT's first ethics officer in the Daniels' administration transferring those responsibilities to Tiffany Mulligan in June of 2007.

I, Tiffany Mulligan, have served as an Attorney with INDOT since August of 2006. I have assisted with ethics matters since starting with INDOT and have been designated as the ethics officer since June of 2007.

B. INDOT

Employees: INDOT has approximately 4,000 employees (payroll of approximately \$220,000,000) in some 260 separate buildings in six geographical districts (Vincennes, Greenfield, Seymour, Fort Wayne, LaPorte and Crawfordsville). In addition to these 260 buildings, INDOT has another 600 buildings, such as salt domes, storage facilities, rest stops, radio buildings and other facilities. The nature of INDOT work requires that in most cases employees need to be located near the roads they service and have first-hand knowledge of the conditions under which their decisions are made.

Construction/Maintenance: INDOT spends almost \$1,000,000,000 per year designing, constructing and repairing approximately 12,000 centerline miles of Indiana roads through some 400 construction contracts and approximately 300 consultant agreements (design/engineering and other professional services). In addition, INDOT purchases and applies some 275,000 tons of salt and chemicals per year in winter operations.

Permits: INDOT issues literally thousands of permits every year for billboards, driveways, railroad crossings, rights of way, and airports. The INDOT department reviewing and making decisions on permit applications depends on the type of and often the location of the permit.

Right of Way: Each year INDOT acquires approximately 1500 parcels of land for highway construction. In almost 95% of these acquisitions, the seller and INDOT come to agreement on price and timing and enter into an agreement to effectuate the transfer. Approximately 5% become involved in condemnation. Although INDOT commissioners are aware of the INDOT land acquisition process as one of the many INDOT functions, a commissioner is only rarely, if ever, involved in a land acquisition decision.

C. INDOT Management Structure/Delegations/Commissioner Responsibilities.

Commissioner Reed has eight deputy commissioners, who are direct reports, in the following areas:

- Design, Project Management and Technical Support
- Operations (the six District Deputy Commissioners report to Operations)
- Chief of Staff
- Major Programs Management
- Planning, Asset Management and Research and Development
- Finance
- Legal
- Human Resources

All commissioners delegate responsibility for executing the great majority of INDOT work to their deputies, who in turn and in degree delegate to directors and managers. This puts the technical elements of the work at the technical level.

For example, design experts develop and oversee design work; construction experts manage construction; airport and railroad staff inspect and issue permits with respect to airports and rail, and so forth.

D. Utilities

INDOT enters into transactions with utilities, in only two circumstances:

1. Relocation. INDOT often is forced to require a utility to move its facilities (lines, poles, pipes, cable, etc.) as part of INDOT road construction. INDOT reimburses utilities for their out of pocket costs incurred in moving their facilities. 105 IAC 13 establishes the procedure by which INDOT, utilities and construction companies must plan, negotiate and execute utility relocation. Other federal and state laws apply to utility reimbursements also.

2. INDOT Right of Way Permit. On occasion, a utility will need to cross a state highway. This crossing requires a permit from INDOT.

INDOT negotiates relocation agreements and right of way permits at the District and the project engineer levels. The INDOT District Offices execute right of way permits. The deputy commissioner (currently David Holtz) responsible for INDOT's Utility Section is the final signature on relocation agreements.

In the event a utility refuses to cooperate and move its facilities, a commissioner could issue an order demanding the utility to move. In the case of a recalcitrant utility, INDOT would need to go to court to enforce the order. Commissioner Reed has never issued such an order nor has either of his predecessors in this Administration, Commissioner Browning or Commissioner Sharp. We have no knowledge of any of the last three commissioners, Mike Reed included, even participating (negotiating or administering) in a utility relocation agreement.

INDOT certainly has entered into relocation agreements with Duke as it has with most other utilities in the State; however, we know of no Duke relocation agreement that ever got to Commissioner Reed's desk, much less required his negotiation or administrative efforts.

E. One Duke Energy Matter.

Duke has applied to INDOT for permits to allow trains to cross six roads in Knox County to service Duke's Edwardsport power generation facility. INDOT's Railroad Section is currently reviewing this application. INDOT is responsible by statute for more than 6,000 rail crossings. The technical analysis (traffic, line of sight, number of crossings blocked, train and vehicle speeds, need, if any, for crossing protection, etc.) is all conducted by Mike Riley in INDOT's Railroad Section. Like any other railroad permit, Mr. Riley will either deny or grant (and sign) the permit. Mr. Riley reports to Jeff Spalding, who reports to Joe Gustin, who reports to Commissioner Reed. Three

management levels below the Commissioner make and execute the permit decision. We have no reason to believe that Commissioner Reed has or will ever be involved in this decision.

F. Conclusion:

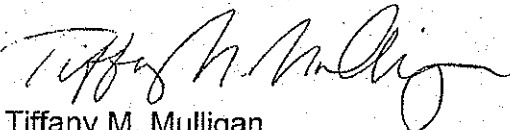
Due to the size, amount of activity and complexity of INDOT, it is reasonable and even practical that INDOT staff would make many decisions, execute many contracts, and issue or deny many permits every day, and Commissioner Reed (or any commissioner) could be completely unaware of and completely removed from any aspect of those activities.

With respect to Commissioner Reed's involvement in any particular matter related to Duke, we have no knowledge and no reason to think he was involved in any manner in a particular matter that Duke might be interested in. It is more likely he would not even know of a decision specifically pertaining to Duke – or any other specific utility. Upon learning of Commissioner Reed's employment discussions with Duke, we both counseled him to avoid any participation with a Duke matter before INDOT; however, we have no reason to believe a decision involving Duke would get to the Commissioner and still believe the possibility of such a decision reaching his desk is remote. We appreciate your consideration of this information with regard to Commissioner Reed's request.

Sincerely,



Mark G. Ahearn,
Chief Legal Counsel and Deputy Commissioner
Indiana Department of Transportation
100 N. Senate Avenue, Room N758
Indianapolis, IN 46204-2216
Email: mahearn@indot.in.gov
Phone: 317-232-5012
Fax: 317-232-0238



Tiffany M. Mulligan
Attorney, Ethics Officer, and Prequalification's Director
Indiana Department of Transportation
100 N. Senate Avenue, Room N700
Indianapolis, IN 46204-2216
Email: tmulligan@indot.in.gov
Phone: 317-233-3428
Fax: 317-233-1481

Cc: David Thomas; Inspector General
Cynthia Carrasco; Director, State Ethics Commission

STATE OF INDIANA



INDIANA UTILITY REGULATORY COMMISSION
101 WEST WASHINGTON STREET, SUITE 1500 EAST
INDIANAPOLIS, INDIANA 46204-3407

<http://www.in.gov/iurc>
Office: (317) 232-2701
Facsimile: (317) 232-6758

June 3, 2010

Mr. Mike Reed
72 Forest Hollow Drive
Cicero, IN 46034

Re: State Ethics Requirements

Dear Mr. Reed,

This letter is to follow-up on our earlier conversation concerning your possible departure from state employment and the applicability of any requirements of the State Ethics Code based upon your past employment as Executive Director for Technical Operations with the Indiana Utility Regulatory Commission ("IURC"). It is my understanding that you are considering possible employment with an Indiana regulated utility.

As we discussed, Ind. Code § 4-2-6-11 sets forth certain post-employment restrictions. Three of these restrictions apply for a period of one (1) year "after the date on which the former state...employee ceases to be a state...employee." Ind. Code § 4-2-6-11(b). While I understand that it has been more than one year since you were employed with the IURC (i.e., you left the IURC in February 2009), I considered the applicability of these post-employment restrictions without regard to this one-year waiting period. In addition, my review of the applicable state ethics requirements is limited to your employment at the IURC and does not consider any subsequent employment.

As set forth further below, I do not believe that your acceptance of the prospective employment would violate the State Ethics Code based upon your past employment as Executive Director of the IURC. Consequently, no waiver from the application of the state's ethics requirements would be necessary from the IURC. However, you may seek conclusive proof that acceptance of the prospective employment would not violate the State Ethics Code by requesting a written advisory opinion from the Ethics Commission in accordance with Ind. Code § 4-2-6-11(e).

Ind. Code § 4-2-6-11(b) generally provides for a one-year waiting period before a state employee may accept employment or receive compensation:

1. as a lobbyist;

2. from any employer with whom you negotiated or administered a contract on behalf of the state and was in a position to make a discretionary decision affecting the outcome of the negotiation or the nature of the administration of the contract; or
3. from any employer for whom you made a regulatory or licensing decision that directly applied to the employer or to a parent or subsidiary of the employer.

It is my understanding that the employment you are considering does not involve employment as a lobbyist and therefore, the first restriction would not be an issue. With regard to the second restriction, I understand that you neither negotiated nor administered a contract with your prospective employer while at the IURC. I have also reviewed our agency records and could find no contract between the IURC and your prospective employer. Finally, as Executive Director at the IURC, you were responsible for the general oversight of the Technical Divisions and interfacing with the regulated community within the limitations of the Commission's ex parte rules. Pursuant to Ind. Code § 8-1-1 *et seq.*, the five member Commission is the governing and decision making body of the IURC. It is these five voting Commission members, not Commission employees, who are statutorily required to decide all matters brought before the Commission. Ind. Code § 8-1-1-5(a). While the Commission staff serves to provide technical and legal advice to the Commission, it is a quorum vote of the Commissioners that constitutes a decision of the Commission. Therefore, as you were not a Commissioner, you were incapable of making any regulatory or licensing decisions while at the IURC. This conclusion is supported by an Informal Advisory Opinion of the Office of Inspector General that the IURC received on May 22, 2007 addressing the applicability of this provision and finding that only the Commission, and not its staff members, can make a regulatory or licensing decision.

We also discussed that the State Ethics Code includes other post-employment restrictions for which there is no particular waiting period. First, Ind. Code § 4-2-6-11(c) provides that a former state employee may not represent or assist an employer or any person in a "particular matter" on which the employee worked while employed by the state if he personally and substantially participated in the matter as a state employee, even if he were to receive no compensation for the representation or assistance. A "particular matter," as applied to the IURC, would include any docketed proceeding. As Executive Director, it is my understanding that you were never assigned to any specific proceeding before the IURC and had no direct responsibility with respect to individual proceedings. It is further my understanding that because your position required general oversight of the Technical Divisions, whose members were specifically assigned to cases, your participation on individual proceedings, if any, including those related to your prospective employer, was extremely limited. However, to the extent you believe you may have "personally and substantially" participated in a matter before the Commission involving your prospective employer, you should take all necessary steps to appropriately screen yourself from further participation in those matters that may remain pending before the Commission, which based upon my review consist of only three proceedings.

Second, Ind. Code § 4-2-6-11(d) provides that a former state employee may not accept employment or receive compensation from an employer if the circumstances surrounding the

employment or compensation would lead a reasonable person to believe that: (1) employment; or (2) compensation is given or had been offered for the purpose of influencing the performance of his duties or responsibilities while a state employee. As you are no longer an employee of the IURC, and haven't been for some time, I do not believe this provision would be applicable with respect to your prior employment at the IURC.

Finally, Ind. Code § 4-2-6-6 prohibits, among other things, a former state employee from accepting compensation "from any employment, transaction, or investment which was entered into or made as a result of material information of a confidential nature." I am not aware of any information that would suggest your prospective employment would violate this statute. However, you should be aware that you are under a continuing obligation to not disclose any confidential information to your prospective employer which was obtained during the course of your employment with the IURC.

I hope this information is helpful and if you should have any further questions, please do not hesitate to call me.

Sincerely,



Loraine L. Seyfried
Deputy General Counsel
IURC Ethics Officer

cc: David Lott Hardy, Chairman

Public Meeting
June 8, 2010 (10:02 am)
Verbatim

Members present were Clare Kraegel Nuechterlein, Chairperson; Priscilla D. Keith, and James N. Clevenger.

Staff present were David O. Thomas, Inspector General; Cyndi Carrasco, Director, State Ethics Commission; Darrell Boehmer, Director of Field Investigations; Kristi Shute, Staff Attorney; Todd Shumaker, Staff Attorney; and Joann Flynn, Program Coordinator, Office of Inspector General.

Others present were Michael Reed, Commissioner, Department of Transportation; Mark Ahearn, Chief Legal Counsel and Deputy Commissioner, Department of Transportation; Tiffany Mulligan, Attorney/Prequalification's Director/Ethics Officer, Department of Transportation; Loraine Seyfried, Deputy General Counsel/Ethics Officer, Utility Regulatory Commission; Harry Gonso, Attorney for Michael Reed, Ice Miller, LLP; Adam Arceneaux, Attorney for Michael Reed, Ice Miller, LLP; and Adam VanOsdol, Reporter

Call to Order/Adoption of the Agenda

Nuechterlein: Okay, the June 8th, 2010 meeting of the State Ethics Commission will come to order. Good morning everybody. I'd like first to thank my fellow commissioners for accommodating my schedule. I'm the reason the meeting is today rather than our usually scheduled meeting which would have been Thursday this week. So thank you both. Second our first item on our agenda is the adoption of the agenda which has been previously submitted to us. We adopt that by acclimation.

Clevenger: I thought there were revisions.

Carrasco: Madam Chair, there . . .

Nuechterlein: Oh, there are revisions, yes, I'm sorry.

Carrasco: Madam Chair, there are a couple of revisions to the agenda. The first revision being that the request from the former Commissioner of the Department of Workforce has withdrawn.

Nuechterlein: Okay.

Carrasco: The second being that the two public hearings that were scheduled for the agenda have been continued to July.

Nuechterlein: Okay, thank you and with those changes is there a motion to adopt the agenda as amended.

Keith: I make the motion.

Clevenger: Second.

Approval of Minutes-April Meeting

Nuechterlein: Okay, all those in favor signify by saying aye (3-0). Opposed, that carries. Second item on the agenda is the approval of the minutes of our April 8th, 2010 meeting. Those have been submitted to us electronically for our review.

Clevenger: I reviewed those minutes and found them in order and would move for approval.

Keith: I'll second that.

Nuechterlein: Okay. All those in favor of the approval of the minutes as submitted of the April 8th, 2010 meeting signify by saying aye (3-0). Opposed, that carries.

Request for Formal Advisory Opinion

10-I-5, Michael Reed, Commission

Department of Transportation

Nuechterlein: Next we have a request for a formal advisory opinion presented by Michael Reed who is the Commissioner of the Department of Transportation. He is represented by Mr. Harry Gonso. Would you gentlemen please approach?

Gonso: Good morning and thank you. My name is Harry Gonso and beside me here is Michael Reed the Commissioner of INDOT, and one of my law partners Adam Arceneaux. Also in the audience that we will briefly call upon are representatives of IURC, Lorraine Seyfried and Tiffany Mulligan and Mark Ahearn. Both Loraine and Tiffany are the Chief Ethics Officers of their two respective agencies.

Nuechterlein: Thank you Mr. Gonso. Before we begin testimony, Miss Flynn would you swear the witnesses in please?

Flynn: Raise your right hands please. Do you swear or affirm that the testimony you are about to give is the truth, the whole truth and nothing but the truth?

Reed, Mulligan, Ahearn, Seyfried: I do.

Nuechterlein: Good, thank you. Okay.

Gonso: We assumed that you have had an opportunity to review the rather thick filing that Mr. Reed has made. In a few minutes, we will call upon the four authors of the documents that we have sent to you in advance of this hearing, be called very briefly to verify the facts set forth in those, in those documents. We made this extensive filing to you for several reasons. First, this hearing involves two very complex agencies of state government, the IURC and INDOT. That each has their very own unique way of doing business and we thought it was important for you to have that kind of background. Secondly, Mr. Reed is considering employment with Duke

Energy in a significant position. And Duke has and will in the future have business relations with both IURC and INDOT. Obviously with INDOT to much lesser degree than it will in the future with the IURC. Thirdly, Mr. Reed has played a very clear role in his capacity as executive director of the IURC over fifteen months ago and now as commissioner of INDOT. And then finally as Mr. Reed said in my letter that I said on his behalf it's in the interest of everybody to make sure that this post-employment decision with respect to Duke is fairly and openly considered by this Commission. We of course feel that the result is clear and obvious. It's supported by the two officers of the Ethics Officers of the two agencies that have been trained by your staff by the way that there is no conflict or set of circumstances that would preclude Mr. Reed from employment under the post-employment statute and the regulations. Quite simply at the IURC Mr. Reed was the executive director and not a commissioner and I did not therefore have any power or authority to decide anything with respect to any utility including obviously Duke. Moreover his work there was concluded over fifteen months ago. With respect to INDOT his most current position the contracts and contacts between Duke and the INDOT agency are for limited to utility relocations when they're building a road or permits similarly when they're doing construction. All of which are handled on a very routine basis at several levels below the Commissioner's Office. And in any event Mr. Reed has had no contact with Duke on those matters. I would now like to ask Mr. Arceneaux to introduce the witnesses in their factual presentations.

Nuechterlein: Thank you.

Arceneaux: May it please the Commission, Adam Arceneaux of Ice Miller on behalf of the petitioner Michael Reed. We call our first witness Loraine Seyfried. Miss Seyfried would you please state your name for the record?

Seyfried: Loraine Seyfried.

Arceneaux: And where are you employed?

Seyfried: With the Indiana Utility Regulatory Commission.

Arceneaux: And what is your position there?

Seyfried: I am Deputy General Counsel and Administrative Law Judge.

Arceneaux: And you've been asked to do an investigation (inaudible) with respect to Mr. Reed's prospective employment.

Seyfried: Yes, I have as my position as the agency's Ethics Officer.

Arceneaux: I'm going to hand you (inaudible).

Nuechterlein: Please.

Keith: Thank you.

Arceneaux: (inaudible).

Seyfried: Petitioner's Exhibit One is my letter of June 3rd 2010 to Mr. Michael Reed concerning my review of the issues posed by his prospective employment.

Arceneaux: And what solution did you come to as a result of your investigation (inaudible)?

Seyfried: As set forth in my letter, I don't believe that he is precluded from moving on and accepting that employment under the . . . and would not violate the ethics code.

Arceneaux: And if you were asked to testify as to all of the facts and details that are contained in Exhibit One, would your testimony be the same as it is contained in this Exhibit?

Seyfried: Yes, it would.

Arceneaux: We move to admit Exhibit One into evidence, please.

Nuechterlein: Yes.

Arceneaux: I have no further questions but you are available to answer any questions the Commission might have (inaudible) now or later in this proceeding?

Seyfried: Yes I am.

Nuechterlein: I have a question for you Miss Seyfried. First thank you for appearing today and your letter has been very helpful for our analysis. Would you briefly . . . Mr. Reed was executive director of the Commission, correct?

Seyfried: Correct.

Nuechterlein: Would you briefly describe the duties in that position?

Seyfried: In that position he would oversee the technical staff of the Commission. The technical staff consists of several divisions, the electric, the gas, the water sewer. He did not oversee the telecommunications until later after he was at the agency for a little while oversaw that division as well. But he would oversee those technical divisions and did the technical divisions reviewed the proceedings and filings that were received by the Commission.

Nuechterlein: Okay, thank you.

Clevenger: Did he have contact with the Duke representatives in his position?

Seyfried: He did have contact with Duke representatives, yes.

Clevenger: Okay. And is there anything that you've observed Mr. Reed's contact with those Duke representatives that would cause you concern that is offered position may have been because of favorable treatment by him in his capacity with the IURC while doing with Duke?

Seyfried: No, I do not believe so.

Nuechterlein: Any further questions?

Clevenger: I don't think I have anything further right now.

Keith: No.

Nuechterlein: Okay. Thank you.

Seyfried: You're welcome.

Arceneaux: Thank you. We next call Mark Ahearn. Mr. Ahearn would you please state your name for the record?

Ahearn: I'm Mark Ahearn.

Arceneaux: And where are you employed sir?

Ahearn: I'm the Chief Legal Counsel and Deputy Commissioner for the Indiana Department of Transportation. And I would add in addition the Divisions of contract administration, internal affairs and audit and prequalification for contractors also report to me.

Arceneaux: Mr. Ahearn, (inaudible) have occasion to investigate (inaudible) Mr. Reed's prospective employment?

Ahearn: Yes, I have.

Arceneaux: Mr. Ahearn (inaudible) Petitioner's Exhibit Two.

Keith: Thank you.

Clevenger: Thank you.

Arceneaux: Mr. Ahearn would you identify what Petitioner's Exhibit Two is?

Ahearn: Absolutely. It's a letter from Tiffany Mulligan who is our Ethics Officer and me to the Ethics Commission explaining the nature of the operation of INDOT as it reflects and pertains to Commissioner Reed in the matters before us today.

Arceneaux: And does this letter contain your conclusion or opinion to Mr. Reed's prospective employment?

Ahearn: It does.

Arceneaux: And what is that opinion (inaudible)?

Ahearn: The opinion is, my opinion I assume Miss Mulligan's too but she can say for herself, is that there was nothing in the management structure or in the personal contact of the Commissioner with Duke Energy that would give rise to a conflict under the post-employment rule or statute.

Arceneaux: And Mr. Ahearn if you were asked to testify today under oath as to all the details, the facts and conclusions contained in Exhibit Two would your testimony be the same as contained therein?

Ahearn: Absolutely, absolutely.

Arceneaux: We move to admit Exhibit Two.

Nuechterlein: It is admitted, thank you.

Arceneaux: And Mr. Ahearn are you available for any questions that the Commission might have?

Ahearn: Certainly.

Nuechterlein: Good morning, Mr. Ahearn, thank you for coming over today and for your letter. It's been helpful to us in our analysis.

Ahearn: Thank you.

Nuechterlein: I have the same question for you that I had for Miss Seyfried. Would you generally describe Mr. Reed's duties as Commissioner of INDOT?

Ahearn: It's an agency with 4,000 employees. And the Commissioner, Mr. Reed is the third commissioner that I've had the honor to serve in this capacity in this administration. The Commissioner provides strategic direction for the agency. The Commissioner's responsibility is to be sure the agency is staffed to have execute against the plan and the goals is to prioritize projects around the state road, projects mainly. But there are also other responsibilities that INDOT has relating to transportation. It's responsibility for the budget of the agency. We have a CFO but at the end of the day it's the Commissioner that makes the decisions about the budget. It's (inaudible) the General Assembly and the Governor's Office. It's a CEO position.

Nuechterlein: In the capacity, is the Commissioner ever the signatory to any of the contracts that INDOT has, for example, Duke Energy?

Ahearn: No, I have no knowledge that that would ever happen. And whether that has happened or that there is even a structure that that gets to the Commissioner.

Nuechterlein: So those are all signed off on at a level lower than the Commissioner, is that correct?

Ahearn: Yes, that's correct.

Nuechterlein: Thank you.

Clevenger: Kind of the same question I asked before you haven't observed anything that would even have an appearance that his offered position is a result of favorable treatment of him as an INDOT commissioner with Duke Energy?

Ahearn: No, I have not.

Clevenger: Are you familiar with the project that Duke has in I think it's in Knox County where they're asking for some I guess some permits are you familiar with that?

Ahearn: I'm mildly familiar. I haven't touched it in the last two weeks.

Clevenger: What contact did Mr. Reed had or (inaudible) has he observed that, followed that has he had anything to do with that? I mean it seems like that was something that was of some concern to folks?

Ahearn: I don't believe he has. I have no way of . . . let me say this, to my knowledge he has no contact with them nor is there anything in the structure that would cause that to get to him. When he informed me that he was talking with Duke I raised this issue with him and said you need to stay away from it. And he raised it in a context of I hear they're looking for a permit in southern Indiana. (Inaudible) realize it's hearsay and you can follow up with him if you'd like. And I said well it's actually six permits. He had no knowledge of the details of what it was about or why.

Clevenger: INDOT huge, deals with utilities all the time so it's not unlikely that he would not know the particulars of that?

Ahearn: That's correct.

Clevenger: I don't think I have anything else.

Nuechterlein: Thank you Mr. Ahearn.

Ahearn: Thank you.

Arceneaux: I call Tiffany Mulligan. Good morning. Please state your full name for the record.

Mulligan: Tiffany Mulligan.

Arceneaux: And where are you employed?

Mulligan: The Indiana Department of Transportation.

Arceneaux: What is your position with the Indiana Department of Transportation?

Mulligan: I'm the staff attorney, ethics officer and pre-qualifications director.

Arceneaux: You have before you what's been admitted as Exhibit Two, are you the co-author of that document?

Mulligan: Yes, I am.

Arceneaux: And if you were asked to testify under oath today as to the details contained in that letter would your testimony be the same as contained therein?

Mulligan: Yes, it would.

Arceneaux: And are you available for any questions that the Commission might have of you?

Mulligan: Yes, of course.

Nuechterlein: Good morning Miss Mulligan.

Mulligan: Good morning.

Nuechterlein: Thank you for coming over today to speak with us. I have a somewhat related question. In your capacity as ethics officer do you see any of the Commissioner's duties conflicting with the potential position that Mr. Reed is seeking?

Mulligan: No, I don't. It's been stated by others any of the decisions that have been made related to Duke while Commissioner Reed has been with INDOT to my knowledge, all of those decisions have been made at much lower levels than the Commissioner. And as Mr. Ahearn stated it's unlikely that those issues would even come to the Commissioner's level.

Nuechterlein: Do you see any of the before described duties of the Commissioner is conflicting with the position that Mr. Reed is seeking?

Mulligan: No.

Nuechterlein: Okay, good, thank you.

Arceneaux: Thank you. We next call Mr. Reed. Mr. Reed please state your full name for the record.

Reed: Michael W. Reed.

Arceneaux: And Mr. Reed have you prepared some remarks for the Commission today?

Reed: I have.

Arceneaux: Please proceed.

Reed: Thank you. Well good morning and thank you for allowing me the opportunity to speak today. As I thought about this yesterday, I decided to pen myself, in my words, to try to bring some clarification as to what brought me to this point and I think that would be, I think of interest to you. But more important I'm here to seek your opinion. I really do want it and this is important to me. I think it's important for the transaction that I'm contemplating. The employment opportunity I am considering is the next step in my career journey that has taken me through nearly every aspect of the public utility sector dating to 1968. That's right 1968. And if you'll indulge me for just for a moment I'd like to comment on a couple of those. I'm the son of and my father was an executive from the largest water utility holding company in the nation. He devoted his entire career to utility regulation matters. I subsequently work for a water utility through my entire four years of under-graduate school anticipating going to work for Richmond Waterworks Corporation at that time. My under-graduate degree in business at IU; I have a major in public utility, economics, finance, and management. I have a graduate degree in finance at Ball State completing the equivalent of a master's thesis devoted to Indiana public utility regulation. My career span thirty-one years in the telephone industry. I retired in 2004. Among other leadership positions I was the senior operations executive for the state of Indiana, the southern half of Texas and Kentucky at different times over a fifteen year period. It's worth noting that the job responsibilities for these three states I just mentioned were in some ways more substantial than the position I contemplate at Duke Energy. I return to the workforce post retirement as the executive director of Technical Services from the IURC in September 2006. It's worth noting that this was a newly created position by Chairman Hardy and the other four Commissioners. And I was charged with managing a diverse group of very educated and highly technical accountants, economists, engineers, etc. who produced a technical and business analysis for the five IURC Commissioners so that they can make sound conclusions and rulings. More particularly I was asked to organize, develop, train, motivate, hire, and fire this group of employees resulting in a quality of a product that all five commissioners did not have when they hired me and sought. That was background and that's what I attempted to do over the course of the two years. In February 2009, Governor Daniels asked me to take over INDOT. As you may know I had no prior transportation experience. What I did have was thirty-five years of senior level experience at managing very large and diverse organizations with multi-million dollar budgets and very, very complex processes. I took the job only because I was asked to serve by

our Governor. I had planned to serve out his term and to do the best job I knew how to execute his vision for Indiana highways and other transportation needs. In my tenure I'm happy to say we have accomplished a lot already. In late March 2010, I learned that Duke Energy state president position may become vacant through mutual friends, former colleagues. You may not know this but Duke Energy is held in very high regard in the energy sector nationally. They are the forefront of technology, renewable energy development, carbon emissions reduction, energy efficiency to name a few. This seemed like a very exciting and professionally fulfilling opportunity for someone with my extensive background in public utility management. In all honestly there are one of only two or three public utility firms in Indiana that I would consider seeking employment. After some thought I told my wife what I'm going . . . I'm going to inquiry of this job and see if I can be a candidate. I pursued Duke that did not pursue me. Over the next several weeks, I exchanged resumes and other information. I was asked to come to Charlotte to meet with many of their senior team over a two-day period of seven or eight interviews with their senior leaders in late April. I was told at that time before I'm even walking in the door there were already at least four serious candidates two of them internal. I was invited back much to my surprise in early May to meet with their General Counsel, President, and CEO. Shortly after these interviews I was made attentive offer to Duke . . . to join Duke as their state president in Indiana conditional on successful completion of background checks and drug screening. The latter was completed last week resulting in a formal written offer of employment that I received just a few days ago. I have not signed and returned it and will not until I receive this Commission's opinion and approval. The Duke job will be the last job of my career. I'm fifty-nine years old. I plan to work five to ten more years and retire in the home my wife and I just completed a year ago in Cicero, Indiana. Hopefully once I finally retire the state will invite back again, hopefully on a voluntary basis. I thank you for your time.

Nuechterlein: Thank you.

Arceneaux: Unless there are any questions from the Commission, I would then defer to my partner for some closing remarks.

Gonso: We of course would welcome any questions that you may have of Commissioner Reed at this time. Otherwise we're prepared to rest.

Clevenger: I've asked the others sort of the same question and I'll ask you the same thing. You're probably in the best position to know whether or not you had contact with those at Duke Energy that may consider your position as Commissioner at INDOT or even before as the Executive Director at IURC as providing favorable decisions.

Reed: Sure.

Clevenger: In exchange an offer to Duke. And it sounds like that's not the case but I guess if you would still confirm.

Reed: Certainly, yeah. And I'd like to elaborate if I may not to belabor the issue but within the IURC rules and regs and their ex parte laws any docket that goes through the Commission thirty

days before it's filed and thirty days after its signed off and approved by three of five commissioners no discussion can occur on any case with any party that's party to the process without public, publicly notifying it and providing all that have a prospective and a view and are part of the case to be heard and to hear. So in that regard the Commission is so limited in terms of having any discussion frankly with anyone even my staff. My staff were assigned to me . . . these are men and women who are incredibly bright. These are depreciation analysts and these are engineering analysts and these men and women forgot more about this stuff than I do. So I wouldn't have known what to ask them. I wasn't assigned to any case because there was no need for me to be assigned to a case. And they provided data. And so it just . . . it had no context for me to have information that would be relevant to any utility and based on the ex parte rules they couldn't ask other than public forum any way. I was probably the least informed and I hate to say that as a supervisor to what was going on there until it got to the hearing process. And then you begin to . . . I'll call it adjudicate it, I'm not a lawyer but you begin to in a public setting discussed the merits of the case and I would sit and listen to that because as you can tell now that I'm kind of a utility geek. Thirty-five years of experience that stuff kind of interested me so I would . . . that was a learning experience for me but I was really a student in that regard. And I apologize for a long answer but that's kind of how it works. I have nothing that any of them would have any value or utility from I guarantee you. Did I answer your question sir?

Clevenger: You did and I appreciate the answer.

Reed: I'm sorry it was so long.

Clevenger: I appreciate you coming before us today and asking for this . . .

Reed: I wouldn't have it any other way.

Clevenger: I think it's terrific that you did.

Reed: It's important for my prospective employer as much as it is for myself, my agency.

Clevenger: I know Mr. Gonso has a closing statement and you're paying for it but as far as I'm concerned . . .

Nuechterlein: (inaudible).

Clevenger: Do you have something?

Nuechterlein: I just have one short question too and again I express the thanks of the Commission for coming before us and also for the background materials. It's very helpful for our analysis to have things presented as well as they have been. Just one short question for the record, Mr. Reed. I assume that Mr. Gonso has explained to you the various post-employment restrictions that the state law entails in its ethics rules and that you understand them and of course intend to continue to abide by them.

Reed: Very much. Yes, ma'am very much so.

Nuechterlein: Thank you.

Reed: Thank you.

Clevenger: I think the offer is because the gentleman is highly qualified and doesn't have anything in, you know, that would be contradictory to our ethics rules. I think there has not been enough personal contact with Duke in the negotiation and administration of some of these items to rise to the level that would be of concern to me at least. And I would propose that we adopt the advisory draft opinion reflecting those findings and approve this gentleman's request to move on and provide his expertise to Duke Energy.

Keith: I will second that.

Nuechterlein: Okay. Are there any further comments? If not, all those in favor of adopting the proposed formal advisory opinion as per Mr. Clevenger's comments please signify by saying aye (3-0). Opposed and that carries. Best wishes to you.

Reed: Thank you very much for your time. I very much appreciate it.

Nuechterlein: Thank you gentlemen.

Carrasco: We will have a final version of that (inaudible) by the early next week.

Reed: By this evening.

Carrasco: Early next week.

(Laughter.)

Reed: Oh, I'm sorry. It's also because I'm fifty-nine years old.

Nuechterlein: Good, thank you.

Clevenger: I suppose it's going to leave a void now at the top spot for INDOT and will have to see who's in that position.

Reed: Well, as you probably know this has kind of gone on for awhile. And I purposely pushed back at the advice of counsel. I went into this really naïve and I initially got the verbal ethics opinion from both of the ladies you met this morning and was clean. And then after (inaudible) you're really visible and that's very visible so then we decided that this was the appropriate route. And so I've kind of had to put . . . the Governor has made up his mind. I think he's getting mad at me too.

Clevenger: (laughing.)

Reed: And I don't want him mad at me. Thank you very much.

Nuechterlein: Good thank you, thank you all of you.

Consideration of Final Report
In the Matter of Angela Cypress
Case Number 2008-08-0210

Nuechterlein: Okay. The next item on our agenda is consideration of the Final Report, in the Matter of Angela Cypress, Case Number 2008-08-0210. That has been submitted to us electronically.

Keith: Can you just give us some background?

Carrasco: Certainly. This case Commissioners as you may remember involved Angela Cypress and an allegation regarding the violation of the outside employment rule. Angela Cypress was an employee of the Secretary of State and you considered her probable cause affidavit in executive session since it is confidential with the facts regarding this or surrounding this circumstance approved it. And the Inspector General successfully negotiated an agreed settlement with Miss Cypress which you accepted at your April meeting. And this is the report reflecting those activities.

Nuechterlein: Remind us again what she did.

Keith: It's confidential.

Carrasco: Yes.

Nuechterlein: Oh, it's confidential. Oh, okay.

Carrasco: Yes because it was included in the PC. The information that you see here is regarding what was in the complaint which is a public document.

Nuechterlein: Okay.

Clevenger: Did the contract involve \$1,500 I think and the fine was \$1,000.

Carrasco: Yes.

Nuechterlein: Yeah.

Keith: Okay.

Clevenger: I didn't see any problems before and I don't see any problem again. I move to approve or whatever.

Keith: I'll second it.

Nuechterlein: Okay. No further comments then the motion before us is to approve the report of the State Ethics Commission in re the Matter of Angela Cypress, all those in favor signify by saying aye (3-0). Opposed, carries. And we will sign that right now.

Director's Report

Nuechterlein: And the last item is the Director's Report.

1) Thank You

Carrasco: Commissioners I know that you made arrangements to come on a day that's not typically scheduled so I keep my report very brief. But I did want to take the opportunity to thank you for making it to the meeting this morning. As you can imagine Commissioner Reed really valued the opportunity to come before you. So thank you for making arrangements and coming here on Tuesday.

2) New Commissioner

Carrasco: I do have some good news to report. We have a new Commissioner. Commissioner Daryl Yost, Dr. Daryl Yost from Ft. Wayne has been appointed and has accepted the appointment. I received word yesterday that he will be joining us in July. He . . . I spoke with him yesterday briefly. He has a higher education background. And I believe is involved with some economic development work in Ft. Wayne. He's very excited. I spoke to him briefly and he's very excited to be here and meet each one of you in July.

3) AIG Conference – Thank You

Carrasco: The second item I have to report is thank you very much for attending the conference, the National Inspector General Conference. And I'll defer to David if he has any comments about it. It was a huge success. I believe we're still receiving a lot of thank you and compliments from everyone who has attending. People were very happy and very pleased. We were absolutely glad that you were able to join us. David, if you have anything to add, please.

Thomas: (inaudible).

Clevenger: Wow, no kidding.

Nuechterlein: That's great.

Thomas: (inaudible).

Clevenger: I was impressed with those guys, that presentation, I go wow.

Carrasco: Well, thank you again for coming and I do have two more quick items.

4) Ghosh

Carrasco: One being Mr. Ghosh his opinion. It will be six months next week from the date of the oral argument. So while as you know the Supreme Court does not have any specific date on when they issue their opinion. We anticipate that next week some time maybe we'll hear from the court. Of course, we'll forward a copy of that opinion to you and be in touch if we receive it.

5) Informal Advisory Opinions

Carrasco: And finally since our last meeting we issued forty informal advisory opinions. At the top of the list was post-employment. We received twelve requests for post-employment; nine for gifts; eight for conflicts of interest; and various for ghost employment, outside employment, political activity, financial interest in contracts and honoraria.

Unless you have any other questions for us that concludes my report.

Clevenger: I want to thank you for organizing the special meeting and getting the materials out timely. And I'll reiterate you're working entirely too late.

Carrasco: Well, thank you.

Nuechterlein: And on the weekend.

Clevenger: Yeah.

Nuechterlein: Stop that.

Carrasco: Thank you.

Clevenger: Hopefully we won't have that situation again.

Nuechterlein: Yeah, this was kind of a special circumstance but it's such a good example for everybody else to . . . I mean it's important that he came and was very well represented and their submissions were really very helpful too as was yours.

Carrasco: Thank you.

Nuechterlein: So thank you for burning the midnight oil.

Carrasco: Thank you.

Nuechterlein: Once again. Okay. Any further business?

Keith: No.

Adjournment

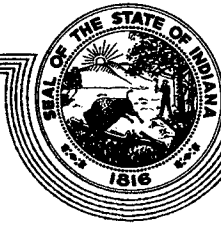
Clevenger: Move to adjourn.

Keith: Second.

Nuechterlein: Okay. All those in favor signify by saying aye (3-0). Adjourned.

Public meeting was adjourned at 10:40 a.m.

STATE OF INDIANA



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INDIANA UTILITY REGULATORY COMMISSION
MINUTES OF THE EXECUTIVE SESSION
HELD ON NOVEMBER 16, 2007

Pursuant to the provisions contained in I.C. 8-1-1-5(f), The Commission met in Executive Session for the purpose of deliberation on Friday, November 16, 2007 at 10:00 a.m. in the following cause:

43114

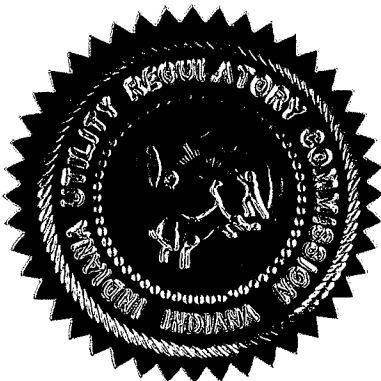
PSI Energy, Inc.
Southern Indiana Gas and Electric Company

43114 S1

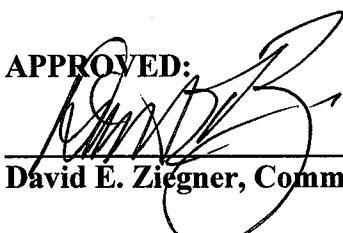
Duke Energy Indiana, Inc.

Present from the Indiana Utility Regulatory Commission were Commissioners, David E. Ziegner, Larry S. Landis and Jeffrey L. Golc, Scott R. Storms, Chief Administrative Law Judge, Mike W. Reed, Executive Director, Bob Pauley, Director of Energy Policy & Security Division, Dave Johnston, Assistant Director of Electricity Division, Dale Thomas, Senior Utility Analyst and Mario Contreras, Utility Analyst.

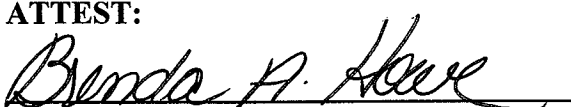
The Commission certifies that the business discussed in the Executive Session was limited only to Cause Numbers 43114 and 43114 S1 as set out in the Commission's Public Notice under the heading of "Executive Session".



APPROVED:


David E. Ziegner, Commissioner

ATTEST:


Brenda A. Howe, Secretary



INDIANA UTILITY REGULATORY COMMISSION
302 W. WASHINGTON STREET, SUITE E-306
INDIANAPOLIS, INDIANA 46204-2764

<http://www.IN.gov/iurc>
Office: (317) 232-2701
Facsimile: (317) 232-6758

April 27, 2007

Dear [REDACTED]

Thank you for contacting the Indiana Utility Regulatory Commission ("IURC") regarding the proposed construction of an integrated gasification combined cycle generating facility ("IGCC project") to be used in the provision of electric utility service to the public. The request is docketed under Cause #43114.

The IURC has encouraged utilities throughout the state to seek out alternative methods of generating electricity due to the continually increasing demand for base load. Many utilities are in search of renewable sources such as wind and water but unfortunately it does not appear these sources can keep pace with the growing demand. Additionally, technologies available to generate electricity are limited. A nuclear power plant has not been constructed in this country for thirty years. And, natural gas has become an extremely expensive alternative, leaving one of the best options in the Midwest - coal.

Coal gasification is a process by which a stream of gas is created by processing coal. The start-up costs for coal gasification may be somewhat costly but available information indicates the process produces a more efficient energy conversion - meaning less coal is needed to create a single kilowatt of electricity than is used today with traditional technologies.

The IURC understands there are environmental concerns related to this project which will be given significant consideration in the Commission's decision-making process. If this plant is allowed to be constructed, it will be subject to strict environmental guidelines imposed by the Environmental Protection Agency ("EPA"). In fact, one of the advantages of the coal gasification process is its ability to produce a relatively clean synthetic gas (composed primarily of hydrogen) significantly reducing pollutants. With additional restrictions relating to carbon dioxide looming from the EPA, the gasification process is seen by many as a means by which utilities may reduce emissions.

The IURC appreciates your comments and concerns. Your letter will be entered into a database for IURC staff to reference throughout the review of Cause #43114. If it is your desire to follow the progress of this case, please access the IURC website at www.in.gov/iurc and proceed to the Electronic Filing section of the site. Please keep the Cause number cited in this letter handy to access information related to this case.

Best regards,

Ja Deen Johnson
Ja Deen Johnson
Director, Consumer Affairs Division

CERTIFICATE OF SERVICE

The undersigned hereby certifies that the foregoing was served by electronic mail or U.S.

Mail, first class postage prepaid, this 12th day of November, 2010, to the following:

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Digitally signed by Jerome E. Polk
Date: 2010.11.12 16:41:01 -05'00'

Jerome E. Polk