TIMELINE OF EDWARDSPORT IGCC SCANDAL

9/17/10: Settlement filed between Duke, OUCC, and Industrial group

9/20/10: Duke hires Scott Storms

10/5/10: Governor Daniels fires Chairman David Lott Hardy

10/13/10: Chairman Atterholt announces investigation into Storms cases, schedules tech conference

10/21/10: CAC and Common Cause issue letter to US Attorney

11/3/10: Technical conference where Jim Rogers defends plant and actions

11/9/10: Duke fires Scott Storms and Michael Reed

11/22/10: Joint Interveners (CAC et. all) file motion for two sub-dockets

12/1/10: Judge Seyfried reassigned

12/6/10: James Turner resigns

12/7/10: IURC audit released, no wrongdoing

12/9/10: IGCC Settlement withdrawn

2/26/11: IURC denies undue influence investigation, opens investigation into concealment, fraud, and gross mismanagement

5/11/11: Storms charged by Inspector General with ethics violations

7/7/11: Phase I testimony filed, OUCC reverses position, Gov. Daniels no comment

7/14/11: Phase II testimony filed, Gov. Daniels states Duke should eat overuns

10/26/11: hearings begin and continue today

12/11/11: David Lott Hardy indicted on 3 felony counts by Marion County Prosecutor

Duke disclosures of new $2.35B cost estimate

1. **March 17, 2008**: James Turner discloses new $2.35B cost to Chairman Hardy in Santa Fe, NM

2. **March 19, 2008**: Duke Energy Indiana made the following disclosure in its 10-K filing with the SEC regarding the Edwardsport cost estimate: *"Duke Energy Indiana's estimated costs for the potential IGCC project have increased. Duke Energy Indiana's publicly filed testimony with the IURC states that industry estimates (as provided by the Electric Power Research Institute (EPRI)), of total capital requirements for a facility of this type and size are now in the range of $1.6 billion to $2.1 billion (including escalation to 2011 and owners' specific site costs). In April 2007, Duke Energy Indiana and Vectren filed a Front End Engineering and Design Study Report which included an updated estimated cost for the IGCC project of approximately $2 billion (including AFUDC)."*

3. **On April 17, 2008**: Duke Energy Indiana made a further disclosure in its Form 1 filing with the Federal Energy Regulatory Commission (FERC) by including the following sentence in its Regulatory Matters discussion of its prior Edwardsport cost estimates: *"The Company is currently reassessing the cost estimates and is considering the implications of potential cost increases." On the same date, this sentence was included in a footnote to the Financial Statements for the Cinergy Corporation posted on the Duke Energy website.*

4. **April 21, 2008**: 4:30PM – Meeting held at Indiana Statehouse, attendees: Jim Rogers, Jim Turner and Mitch Daniels, general update meeting, also provided heads-up on cost estimate increase on Edwardsport IGCC to $2.35 B.

5. **May 1, 2008**: Duke Energy Indiana made the following disclosure in a news release in conjunction with its petition to initiate ongoing regulatory review of the Edwardsport project: *"Duke Energy today filed a progress report with the Indiana Utility Regulatory Commission on its clean coal gasification power plant under construction in southwest Indiana. The update included a revised cost estimate of $2.35 billion."*

Duke's disclosure of new $2.88B cost estimate

1. **On November 24, 2009**: Duke Energy Indiana issued a news release which made the following disclosure: *"Duke Energy Indiana today said that design modifications and growth in the scope of its Edwardsport coal gasification plant under construction in southwest Indiana are projected to add approximately $150 million, or 6 percent, to the project's $2.35 billion cost. The company filed the information with the Indiana Utility Regulatory Commission (IURC) as part of its semi-annual update. Still to be determined is how much will need to be added over and above the $150 million as contingency funds necessary to complete a project of this size and type. Duke Energy Indiana is asking the commission to schedule a separate proceeding by next March, when*

most of the project's engineering will be complete, so that the company can provide a more detailed, revised cost estimate."

2. **November 25, 2009**: "*The Company filed a Form 8-K with the Securities and Exchange Commission disclosing the following: "On November 24, 2009, Duke Energy Indiana, Inc. (the "Company") filed its fourth petition with the Indiana Utility Regulatory Commission (the "Commission") related to the ongoing review of the Edwardsport clean coal gasification plant under construction in southwest Indiana. The Company is projecting that the cost estimate for the plant, which was previously approved by the Commission, is estimated to exceed the approved $2.35 billion estimate. Design modifications and growth in the scope of the project are projected to add approximately $150 million, or 6%, to the capital costs of the project, and an additional amount will also be necessary for contingency. Over the next few months, the Company will examine the costs associated with labor, final engineering, procurement and plant start-up to determine how much will be needed in contingency funds. The Company expects to provide an updated cost estimate to the Commission by March 2010. Any cost increases for the plant must be approved by the Commission. The project is scheduled to be completed in 2012."*

3. **February 24, 2010**: Meeting at Indiana Statehouse, attendees: Jim Rogers, Jim Turner, Julie Griffith meeting with Mitch Daniels at Indiana Statehouse, discussion of latest IGCC Project cost estimate.

4. **March 16, 2010**: the Company filed its Form 10-K with the Securities and Exchange Commission which included the following disclosure in Note 3 to the Company's financial statements: *"On November 24, 2009, Duke Energy Indiana filed a petition for its fourth semi-annual IGCC rider and ongoing review proceeding with the IURC. Duke Energy has experienced design modifications and scope growth above what was anticipated from the preliminary engineering design, adding capital costs to the IGCC project. Duke Energy Indiana forecasted that the additional capital cost items would use the remaining contingency and escalation amounts in the current $2.35 billion cost estimate and add approximately $150 million, or about 6.4% to the total IGCC Project cost estimate, excluding the impact associated with the need to add more contingency. Duke Energy Indiana did not request approval of an increased cost estimate in the fourth semi-annual update proceeding; rather, Duke Energy Indiana requested, and the IURC approved, a subdocket proceeding in which Duke Energy will present additional evidence regarding an updated estimated cost for the IGCC project and in which a more comprehensive review of the IGCC project could occur. The evidentiary hearing for the fourth semi-annual update proceeding is scheduled for April 6, 2010. In the cost estimate subdocket proceeding, Duke Energy Indiana will be filing a new cost estimate for the IGCC project on April 7, 2010, with its case-in-chief testimony, and a hearing is scheduled to begin August 10, 2010. Duke Energy Indiana continues to work with its vendors to update and refine the forecasted increased cost to complete the Edwardsport IGCC project, and currently anticipates that the total cost increase it submits in the cost estimate subdocket proceeding will be significantly higher than the $150 million previously identified."*

5. **April 15, 2010**: the Company filed its Form 1 with the Federal Energy Regulatory Commission, in which it made the following disclosure regarding its Edwardsport cost estimates: "*On November 24, 2009, Duke Energy Indiana filed a petition for its fourth semi-annual IGCC rider and ongoing review proceeding with the IURC. Duke Energy has experienced design modifications and scope growth above what was anticipated from the preliminary engineering design, adding capital costs to the IGCC project. Duke Energy Indiana forecasted that the additional capital cost items would use the remaining contingency and escalation amounts in the current $2.35 billion cost estimate and add approximately $150 million, or about 6.4% to the total IGCC Project cost estimate, excluding the impact associated with the need to add more contingency. Duke Energy Indiana did not request approval of an increased cost estimate in the fourth semi-annual update proceeding; rather, Duke Energy Indiana requested, and the IURC approved, a subdocket proceeding in which Duke Energy will present additional evidence regarding an updated estimated cost for the IGCC project and in which a more comprehensive review of the IGCC project could occur. The evidentiary hearing for the fourth semi-annual update proceeding is scheduled for April 6, 2010. In the cost estimate subdocket proceeding, Duke Energy Indiana will be filing a new cost estimate for the IGCC project on April 7, 2010, with its case-in-chief testimony, and a hearing is scheduled to begin August 10, 2010. Duke Energy Indiana continues to work with its vendors to update and refine the forecasted increased cost to complete the Edwardsport IGCC project, and currently anticipates that the total cost increase it submits in the cost estimate subdocket proceeding will be significantly higher than the $150 million previously identified.*"

6. **April 16, 2010**: the Company issued a news release in conjunction with its regulatory filing seeking approval of its most recent $2.88 billion cost estimate: Duke Energy Indiana today filed testimony and exhibits with the Indiana Utility Regulatory Commission increasing the cost estimate for its Edwardsport coal gasification plant under construction in southwest Indiana. The project's scale and complexity has added approximately $530 million to the previously approved $2.35 billion cost.

   That same day, the Company filed a Form 8K with the Securities & Exchange Commission with the following disclosure: "*Duke Energy Indiana, Inc. (the "Company") has updated its cost estimate for the Edwardsport clean coal gasification plant under construction in southwest Indiana. The project's scale and complexity has added approximately $530 million to the $2.35 billion estimate which was previously approved by the Indiana Utility Regulatory Commission (the "Commission"). The Company announced last November that costs would be increasing as the project's engineering progressed. Most of the design work and equipment purchasing is now done, and total project costs are estimated at $2.88 billion, including contingency and financing costs. The cost increases for the plant must be approved by the Commission before they can be phased into customer electric rates. The project is scheduled to be completed in 2012.*"

Citizens Action Coalition / Save the Valley / Valley Watch

NEWS RELEASE

For Immediate Release   Contact: Kerwin Olson (317) 702-0461
September 17, 2010   John Blair (812) 464-5663

Settlement on Edwardsport IGCC BAD for Indiana

Today, a coalition of consumer and environmental watchdog groups announced their opposition to the recently filed settlement agreement pertaining to the Edwardsport IGGC power plant currently under construction in Knox County, IN.

The settlement, which still requires approval from The Utility Regulatory Commission, is unacceptable to the intervening parties for the following reasons.

1) It allows Duke to continue construction of the problem plagued project, even though Duke's own witnesses state that cancelling the plant today is the least cost option for consumers.
2) It does not provide a "hard-cap" on the cost of the project as the settlement claims but still allows Duke to increase capital costs above their latest estimates.
3) The so-called "hard-cap" fails to include future environmental compliance costs, costs associated with governmental action, or "acts of God". Again, this allows Duke to raise costs above the so called "cap". Carbon compliance costs alone could cost additional billions of dollars.
4) Limits prudency review of costs to only those above $2.75 billion, which is even higher than the estimate previously approved by the Commission.
5) Duke's acceptance of a "reduced" return is limited to only costs above the already approved $2.35B costs estimate.
6) The self-imposed rate case moratorium until 2012 does nothing to protect consumers from the plant which will come online in 2012, which is when Duke would have filed a rate case anyway.
7) Proposed changes to depreciation and capital are short lived as they can be lost in the next rate case in 2012.

"This settlement does nothing to change the fact that this plant first and foremost is not needed by Duke to fulfill their legal obligation of providing reliable electricity to their customers and is far too expensive," stated Kerwin Olson, Program Director for the Citizens Action Coalition.

Mr. Olson continued: "The Commission should reject this settlement in its entirety, immediately halt construction, and initiate an investigation on whether or not the project is necessary to meet demand and is in the public interest."

John Blair, President of Valley Watch, asserts, "Duke and the OUCC have been complicit in misleading the public since this project was first proposed. We outlined these exact pitfalls in our testimony before the IURC in August 2007 (http://valleywatch.net/index.asp?id_nav=3). Unfortunately, the IURC and the OUCC failed to listen and now Indiana ratepayers in 69 counties will suffer needlessly for their complicity."

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Grant Smith, Executive Director for Citizens Action Coalition: 1-317-442-8802
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John Blair, President of Valley Watch: 1-812-464-5663

Citizens Action Coalition

NEWS RELEASE

For Immediate Release Contact: Kerwin Olson (317) 702-0461
September 21, 2010 Grant Smith (317) 442-8802

Duke Energy's recent hirings raise ethics questions

The recent announcement by Duke Energy Indiana that it has hired Scott Storms, the current General Counsel and Chief Administrative Law Judge at the Indiana Utility Regulatory Commission, raises serious concerns about the relationship between those who regulate utilities and the utilities themselves.

Mr. Storms currently serves as General Counsel to the Indiana Utility Regulatory Commission, a state agency that regulates Duke and other Indiana utilities, and was the presiding Judge over nearly every hearing regarding the controversial and problem-plagued Edwardsport IGCC power plant currently under construction.

Storms played a critical role and signed many of the IURC's decisions related to Edwardsport – the last as recent as July 23, 2010. "This certainly brings into question every Duke specific Commission order signed by Mr. Storms in recent months," said Grant Smith, Executive Director of 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."

This fact is especially troubling when you look at the website of the Indiana Ethics Commission for direction on the State's ethics code as it relates to post employment restrictions for State employees. An example on the website postulates: "You work for the Utility Regulatory Commission making regulatory decisions concerning a public utility company. You may not work for this utility company for a year." (http://www.in.gov/ig/2340.htm)

"It's disturbing that a required, one-year cooling off period so easily became less than 60 days," said Smith "When you add Mr. Storms hiring with Duke's recent hiring of former IURC Executive Director Michael W. Reed as the new President of Duke Energy Indiana it raises ethics questions." The current Chairman of the IURC, David Lott Hardy, also worked for one of Duke's predecessor companies, PSI Energy, several years ago.

"We are also concerned about the timing of Mr. Storm's announcement as it relates to a recent settlement agreed upon by Duke Energy Indiana and the Indiana Office of Utility Consumer Counselor pertaining to the troubled Edwardsport IGCC power plant," Mr. Smith added.

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THE INDIANAPOLIS STAR
Thursday, September 23, 2010
Page A1:

Watchdogs slam hiring of regulator by utility

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

By John Russell

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 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.

Duke Energy
What: One of the largest electric power holding companies in the U.S., serving 4 million customers. Its commercial power and international business segments own and operate power generation assets in North America and Latin America.
Headquarters: Charlotte, N.C.
Ticker: DUK.
Chief executive: James E. Rogers.
2009 operating revenues: $12.7 billion.
Total assets: $57 billion.
Employees: 18,680.
Total U.S. generating capacity: 35,000 megawatts.
Operating segments: U.S. franchised electric and gas with service in Indiana, Kentucky, North Carolina, Ohio and South Carolina.
In Indiana: Duke Energy Indiana, based in Plainfield and the state's largest utility supplier, serves 780,000 customers in a 69-county service area, including much of the metro area outside Marion County.

Edwardsport Integrated Gasification Combined Cycle Station
Where: Duke Energy's 160-megawatt Edwardsport Station in Knox County, Ind.
Details: The 618-megawatt IGCC 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: Initial cost was an estimated $1.985 billion, but the price tag has risen to $2.88 billion. The cost is expected to push residential electric rates up 14 percent.

Scott R. Storms
Who: General counsel and chief legal adviser to the Indiana Utility Regulatory Commission.

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

Citizens Action Coalition

NEWS RELEASE

For Immediate Release Contact: Kerwin Olson (317) 702-0461
September 25, 2010 Grant Smith (317) 442-8802

Old Questions Remain, New Questions Arise in Duke's hiring of Judge Storms

New information from the Ethics Commission adds to an already lengthy list of questions yet to be addressed by either Duke Energy or Judge Storms himself pertaining to the utilities hiring of the now former State Regulator.

An opinion issued by the Ethics Commission regarding an unnamed Administrative Law Judge in July was originally believed to be requested by Judge Storms. However, documents obtained by the Citizens Action Coalition show that the opinion actually was issued at the request of one of Judge Storm's colleagues and subordinates, who evidently applied for a position with Duke Energy. It appears Judge Storms himself may not have gone before the Ethics Commission until September 9, 2010.

"What we do know is that someone Judge Storms supervised had the foresight to request an opinion from the State's Ethics Commission prior to beginning any verbal negotiations with Duke Energy," states Kerwin Olson, Program Director at CAC. "Conversely, it is apparent that Duke Energy did not see fit to seek the advice of the State's Ethics Commission until after offering the job to Judge Storms."

The questions of when Judge Storms submitted his resume to Duke Energy and when someone from Duke first expressed interest in Judge Storms is yet to be answered. The documents obtained by CAC relative to Judge Storms' subordinate show a date of July 8, 2010. Grant Smith, Executive Director at CAC added: "This means someone working under Judge Storms applied for the same opening with Duke Energy prior to July 8th. Judge Storms issued at least four orders relative to Duke Energy cases pending before the Utility Regulatory Commission after that date. Did Judge Storms apply at the same time? Why did he not seek a preliminary opinion from the Ethics Commission prior to negotiating with Duke Energy regarding employment?"

Those four orders issued by Judge Storms after July 8th all related to the controversial and problem plagued Edwardsport coal gasification power plant currently under construction by Duke Energy. The Edwardsport project is currently estimated to cost at least $2.88 Billion to complete and would be the largest capital project ever built by Duke Energy. A settlement, which still requires IURC approval, was recently reached between Duke Energy and the Indiana Office of the Utility Consumer Counselor regarding the IGCC project.

"It's alarming to CAC that the Judge who presided over the docket pertaining to the largest capital project in the history of Duke Energy Indiana apparently applied for work with that utility, while issuing orders and officiating hearings!" says Mr. Smith. On September 9, 2010, Judge Storms admitted to the Ethics Commission that he reported directly to the Chairman of the Commission and also heard cases that are assigned to the Commission, including cases involving Duke Energy. In fact, Judge Storms has written and signed many orders, including the order dated July 28th that allowed Duke Energy to recover costs from ratepayers and continue earning incentives while the plant is not producing any electricity and is experiencing further schedule delays and soaring costs.

"Not only is Duke Energy recovering costs from ratepayers for a power plant that hasn't produced, and may never produce a single kilowatt hour of electricity, those monies being recovered from consumers includes hefty profits for Duke Energy. Again, we raise concerns over the legitimacy of those orders. Especially considering the Judge who issued the orders is now employed by the utility who will realize windfall profits as a result of those decisions," says Mr. Smith.

Mr. Olson concludes: "The hubris by Duke Energy and those involved in this hiring decision is horrid. The ethics rules in State statute clearly mandate a one year cooling off period. Those laws were put in place to remove the appearance of impropriety on the part of the State employee seeking employment and the corporation doing the hiring. Evidently, Duke Energy feels those rules just don't apply to them. It is also highly troubling that the State Ethics Commission ignored those orders and the role that Judge Storms played as General Counsel and lead hearing officer at the Utility Commission on critical cases related to regulating new employer, Duke Energy. What's the point of the law if the State doesn't enforce it?"

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The Indianapolis Star

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Ethics controversy erupts

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

By Jeff Swiatek and Tim Evans

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 matters 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 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 verbal 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 Angeline 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 Pippen, 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 violations 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 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 appointees 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, Protogere, 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.

THE INDIANAPOLIS STAR
Tuesday, October 12, 2010
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E-mails show clubby IURC, Duke

Correspondence between energy exec and lawyer for state regulator went on for months

By John Russell

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 financing costs 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.

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.

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.

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.

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.

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.

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TIMELINE OF EVENTS
Aug. 31: Duke Energy offers a job to Scott R. Storms, general counsel for the Indiana Utility Regulatory Commission.

Sept. 9: Indiana Ethics Commission rules that Storms can take the job without a one-year cooling-off period typically required for utility regulators.

Sept. 22: Consumer groups, including the Citizens Action Coalition, raise serious concerns about Storms' hiring and the relationship between utilities and state regulators.

Sept. 24: Duke Energy says it will impose stricter limits on Storms' work for Duke, saying it won't let him do any work for Duke with the IURC for a year or work internally for Duke on any regulatory cases involving Duke pending with the state.

Sept. 27: Storms begins working for Duke.

Oct. 5: Gov. Mitch Daniels terminates and replaces David Lott Hardy as chairman of the IURC, citing the violation of an ethics policy. As a result, Duke announces it has put its Indiana president, Michael W. Reed, on paid leave as he played a role in hiring Storms away from the IURC. In addition, Reed himself was a former IURC executive director.

Oct. 6: State Rep. Ed Delaney, D-Indianapolis, says he is drafting legislation requiring the Senate and House to approve nominees to the IURC -- a process similar to those used in more than 30 other states.

Oct. 7: Democratic lawmakers seek a federal investigation of the dealings between the IURC and Duke Energy Indiana.

THE INDIANAPOLIS STAR
Tuesday, November 2, 2010
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Ethics flap puts spotlight back on new Duke plant

Questions reappear about coal gasification and $2.9 billion cost

By John Russell

EDWARDSPORT, Ind. -- More than 20 cranes soar high above this former cornfield, hoisting steel beams and heavy pipes. Horns blast and diesel engines roar as heavy trucks rumble through the 115-acre site. More than 2,000 workers in hard hats scurry between buildings or ride construction elevators hundreds of feet into the sky.

It's a blur of activity at Duke Energy's coal-gasification power plant, one of the largest and most expensive projects in Indiana history.

But with a price tag that has ballooned to $2.9 billion, up from an original estimate of $1.6 billion, is the project worth all the expense -- much of which will be passed along to customers in the form of higher electric bills?

The issue is sure to come up Wednesday when Duke's chief executive, James Rogers, appears before state regulators in Indianapolis to justify the project in the wake of an ethics flap.

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.

The ethics issue has cast a shadow over the state's regulatory decisions regarding the Edwardsport plant. Now the state is conducting an audit of those decisions dating to 2006.
In the meantime, the review is reigniting a larger debate over whether the plant is needed, whether the technology is proven, and what the final price tag will be.

A parade of witnesses is set to testify during Wednesday's meeting, which begins at 9 a.m. at the PNC Center Downtown, 101 W. Washington St.

Debate over need

The utility, based in Charlotte, N.C., says the plant is sorely needed to keep up with growing energy needs.

The average age of Duke's Indiana coal-fired power plants is 47 years, and the company said it hasn't built a major new plant here in three decades.

The company said its forecasts show it will need 388 to 438 megawatts by 2013 as it retires older plants, including a 92-year-old plant less than a mile from the new plant.

"The need is clearly there, based on the age of our overall fleet and from the electric energy needs of our customers," said Doug Esamann, interim president of Duke's Indiana operations.

But some say the nation doesn't need a sharp increase in power generation. In January, analysts at the State Utility Forecasting Group, housed at Purdue University, released a study predicting that the recession and more efficient appliances would lower overall demand. Electricity consumption dropped 2.4 percent over the past two years.

Citizens Action Coalition of Indiana, a consumer watchdog group, said the nation has an adequate supply of electrical power, due in part to growing energy efficiency and supplies of alternative energy. The group wants the plant halted.

"Our ultimate goal is to stop this thing and get ratepayers a full refund," said Kerwin Olson, the group's project manager.

Is technology proven?

Duke said the sprawling, 618-megawatt plant will generate electricity far cleaner than the last generation of coal-fired plants.

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.

The company said the plant will produce 10 times as much power as its smaller, existing coal-fired plants but emit 70 percent less sulfur dioxide, nitrogen oxide and particulates, such as small dust particles.

Nevertheless, the new Edwardsport plant will emit about 4 million tons of carbon dioxide a year, the company acknowledged. Carbon dioxide is a major contributor to the greenhouse effect, which many scientists say affects the planet's temperature.

Duke is building the plant 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 carbon dioxide emissions.

That's been a long-running criticism for Duke, which is already one of the largest corporate emitters of carbon dioxide in the U.S. But Duke downplays the carbon issue, saying the plant is still much cleaner than most existing coal-fired plants.

Plant Manager John Stultz walked around the construction site last week, saying he expects the project to wrap up on schedule by August 2012.

He dismissed concerns that the technology is experimental, saying that coal gasification has been around for decades and is a proven way to generate power. Two smaller coal-gasification plants -- a 262-megawatt plant near Terre Haute and a 250-megawatt plant in Tampa, Fla. -- have been providing electricity since the mid-1990s.

"This is a way to utilize the vast coal reserves that are in this country and make it environmentally friendly, make it efficient and make it something reliable and workable," Stultz said.

He said coal gasification has been used for decades for such things as making diesel fuel during World War II. What's different is the huge scale of the plant, far larger than any other coal-gasification plant in the world for purposes of providing electricity.

Opponents say the technology is experimental, unproven and not very clean. They say the plant will fill the air with millions of tons of greenhouse gases a year by burning dirty Indiana coal, when the utility should be focusing on cleaner, renewable energy.

"This technology is far from proven on this scale," said Olson of Citizens Action Coalition. "It's a science project. No one knows if it will ever work."

Even Duke officials, in previous testimony to regulators, have used phrases to suggest the plant is breaking new ground. "This is unique technology and a first-of-its-kind plant of this size," Richard Haviland, a Duke senior vice president, told the IURC in April.

Some environmental groups support the plant. The Clean Air Task Force, a Boston-based group dedicated to reducing atmospheric pollution, said that as long as the nation depends on coal as a major source of electricity, utilities should be encouraged to use cleaner technology, such as coal gasification.

Soaring costs

The plant's massive size has confounded early engineering projections and resulted in numerous cost overruns. Company officials have been hauled in front of state regulators several times to explain why the tab keeps rising. They responded that the early engineering studies didn't take the plant's huge, unprecedented size into account.

Some environmental and citizens groups say the technology's challenges, cost overruns and pollution issues have convinced them the plant should be stopped.

"We think it is a real boondoggle for ratepayers, and it's throwing good money after bad," said

Steve Francis, chairman of the Sierra Club's Indiana chapter.

The plant is coming under fire for rising costs, much of which would be passed along to consumers, under an agreement reached among the utility, the Indiana Office of Utility Consumer Counselor 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.

Gov. 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 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 last year.

THE INDIANAPOLIS STAR
Tuesday, November 9, 2010
Page A1

Duke fires 2 after scandal

By John Russell

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.

"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.

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.

Michael W. Reed
Age: 59.
Position: Former president, Duke Energy Indiana. Started job in June.
Previous: Commissioner, Indiana Department of Transportation, February 2009 to June; executive director, Indiana Utility Regulatory Commission, 2006-09; previously held various positions at GTE/Verizon.
Annual salary at IURC: $98,996.
Education: Bachelor's, business, Indiana University; master's, finance and management, Ball State University.

Scott R. Storms
Age: 50.
Position: Previously was general counsel and chief legal adviser to the IURC. He left in September to work as a lawyer in Duke Energy's regulatory division.
Career: Joined the 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.
Annual salary at IURC: $93,375.
Education: Indiana University School of Law-Indianapolis.

Citizens Action Coalition/Sierra Club Hoosier Chapter
Valley Watch/Save the Valley

For Immediate Release **Contact: Kerwin Olson (317) 702-0461**
November 22, 2010

Groups Press Regulators on Duke's Debacle in Edwardsport

Today the Citizens Action Coalition, Sierra Club Hoosier Chapter, Save the Valley and Valley Watch called for critical consumer protections against cost overruns at the scandal-plagued Edwardsport coal gasification project caused by misdeeds of Duke Energy and State of Indiana officials. Specifically, the groups called on the Indiana Utility Regulatory Commission to open two separate investigations to assess the economic impacts on the project of:

1) Fraud, concealment or gross mismanagement in the planning, design, engineering and construction of the project by Duke Energy Indiana, its affiliates and contractors; and
2) Improper communications, conflicts of interest, undue influence, or other misconduct relating to the regulatory oversight of the project on the part of past and present officials of Duke Energy and the State of Indiana

Currently, there are five ongoing investigations pertaining to potential criminal, civil, and/or ethical misconduct with respect to the Edwardsport IGCC; including one being conducted by the Department of Justice.

According to CAC Program Director Kerwin Olson," It is absolutely critical that the Commission timely and fully investigate the economic impacts on Edwardsport of all criminal, civil and ethical misconduct uncovered by the ongoing investigations of other agencies and organizations. However, it must be understood that only the Commission has the authority to set the rates that Duke Customers pay. In addition, only the Commission can return any illegally confiscated dollars to ratepayers. Therefore, we are asking the Commission to launch those investigations in order to assure the protection of Duke Customers against Edwardsport cost overruns attributable to misconduct by the Company, its affiliates, contractors or State regulators."

Construction costs have skyrocketed from an original estimate of $1.2 billion to Duke Energy's current estimate of $2.88 billion. If the plant is ever completed and operational, which remains uncertain, the Edwardsport IGCC would be the first large scale IGCC ever constructed, as well as the most expensive fossil fuel power plant ever built.

"We said from the start that this plant was a science project that ratepayers should not be forced to finance," added Mr. Olson. "Ratepayers pay for the delivery of electricity, nothing more, and nothing less. Ratepayers are not obligated to insure investor risk, nor should ratepayers be paying for something Wall Street will not," concluded Mr. Olson.

David Schlissel, a consultant for the coalition of organizations, points out in testimony filed last week with the IURC that Duke Energy "clearly knew, even before beginning to build Edwardsport, the significant technology risks and potential for additional construction costs that a large scale, first-of-a-kind IGCC project necessarily presented."

Mr. Schlissel continued: “However, [Duke Energy] refused to acknowledge and analyze those risks and costs in its testimony before the IURC…Instead [Duke Energy] reported to the IURC at every stage that the project risks were manageable and that its costs were under control.” Mr. Schlissel concluded that “this course of conduct represents gross mismanagement.”

Steve Francis, Chairperson of the Hoosier Chapter of Sierra Club, stated: “the IURC has a statutory responsibility to investigate whether any gross mismanagement of the costs of the Edwardsport plant has occurred and to fulfill its mission of balancing the interests of ratepayers and citizens of Indiana with those of the regulated parties. It is time for the IURC to exercise that regulatory responsibility in relation to the environmental and ratepayer consequences of proceeding with Edwardsport rather than viable alternatives.”

Richard Hill, President of Save the Valley added: “If things proceed along their present course, Duke Energy customers, who are already paying for this boondoggle, can expect even more dramatic increases in their monthly electric bills. In our opinion, an investigation should be initiated into whether these costs are legitimate.”

"Edwardsport was a mistake from the beginning and informed people knew it. Now with scandal racking the IURC, it has become evident that Duke and the IURC have been cronies in a grand scheme to rob Duke's customers of hard earned money,” stated John Blair, President of Valley Watch. “Duke has either completely mismanaged the Edwardsport fiasco or this was their plan all along. But the IURC's complicity is unforgivable."

The motions filed at the IURC from the groups are attached.

Mr. Schissel’s testimony can be viewed at:
https://myweb.in.gov/IURC/eds/Modules/IURC/CategorySearch/viewfile.aspx?contentid=0900b6318014fd85

Mr. Olson’s testimony can be viewed at:
https://myweb.in.gov/IURC/eds/Modules/IURC/CategorySearch/viewfile.aspx?contentid=0900b6318014fe31

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John Blair, President, Valley Watch: 1-812-480-8193

Richard Hill, President, Save the Valley 1-812-273-6015

THE INDIANAPOLIS STAR
Sunday, November 28, 2010
Page A1

IURC chief and Duke exec were pals, e-mails show

Regulator, utility power player discussed a lot -- including Duke's hiring process

By John Russell

James L. Turner, the second-highest-paid executive at Duke Energy Corp., liked keeping in touch with Indiana regulators, even on a long holiday weekend when he was riding in a boat.

On July 2, Turner sent an e-mail to David Lott Hardy, then chairman of the Indiana Utility Regulatory Commission, telling him he was heading out on a channel to Lake Michigan.

"Would the ethics police have a cow if you and the woman came up some weekend?" he wrote.

Hardy wrote back: "Probably -- we might 'be in the area' some afternoon, but I won't be doing this forever."

A few minutes later, he added that driving to the lake would be a fun outing in a high-performance BMW M5. "It would be a nice run in the M5 and a cheaper [Michigan] journey as usually we only go to [Michigan] so the woman can go to Nieman Marcus."

In dozens of e-mails, obtained by The Indianapolis Star under an open records request, the two men schmoozed and joked over all sorts of personal topics, sometimes trading messages eight or 10 times a day. At one point, Hardy offered advice on what kind of BMW Turner should buy. Another time, they talked about Butler University's basketball championship games. Several times, they had frank discussions on private personnel matters involving Duke officials and job candidates.

Taken together, the e-mails paint a picture of a cozy relationship that extended far beyond a professional association between a utility executive and a powerful state regulator.

They also show that the friendly relationship between Duke and Indiana regulators, which resulted in the firing of Duke's Indiana president, Mike Reed, in an ethics scandal earlier this month, extended all the way to Duke's headquarters in North Carolina.

Turner is one of Duke Energy's top executives, responsible for the company's regulated business segment, which is Duke's largest, and for legislative and regulatory strategy and rates. He oversees a vast portfolio, with responsibility for power delivery, gas distribution, customer service and several other functions.

Last year, Turner earned a salary of $650,000, plus stock awards, cash incentives and other compensation worth a total of $4.35 million. That made him second in total compensation only to Chairman and CEO James Rogers, whose package was valued at $6.93 million, according to the company's proxy filing.

That made him far better paid than Hardy, the man he spent hours cajoling by e-mail. Hardy made $109,000 as chairman of the Indiana Utility Regulatory Commission. He was fired in October by Gov. Mitch Daniels in what has become a major ethics scandal for the state, after the IURC's general counsel, Scott Storms, accepted a job to work for Duke as a regulatory lawyer.

Daniels' office said at the time of the firing that an internal review showed Storms continued to preside over Duke Energy matters even as he was discussing taking a job with the company. Hardy, who was Storms' boss, knew of the situation but failed to do anything about it, Daniels said.

The FBI is investigating, according to the IURC, and Daniels has ordered an investigation into all Duke cases that might have been tainted by Storms' activities.

Earlier this month, Duke fired Storms and the president of the company's Indiana division but declined to say why.

Now, with the release of hundreds of new e-mails between the company and the IURC, questions are sure to arise about who else was involved in the deception and what relationship other Duke officials had with the ousted Hardy.

Turner, once Indiana's utility consumer counselor, did not return a call made to his cell phone Friday to discuss his e-mails or his close relationship with Hardy.

A spokeswoman for Duke Energy Indiana released a brief statement: "Our internal investigation is ongoing. We continue to take this issue very seriously."

The e-mails raise questions about whether Turner had special access to Hardy that was unavailable to utility customers, grass-roots groups and everyday citizens in matters of rate increases and electricity regulation.

"It adds up to a picture of a pretty cozy relationship between the regulator and the regulated," said Kerwin Olson, program director at the Citizens Action Coalition of Indiana, a watchdog group that long has been critical of Duke and the IURC. "There's a lot of schmoozing going on behind the scenes that most people would find distasteful."

Turner's relationship with Hardy appears to have been a deeply close one that gave him freedom to crack jokes that might have earned an ordinary citizen a rebuke from a state regulator.

One day in July, Hardy e-mailed Turner and several other people that he was relaxing by a pool and contemplating breakfast: "There is a blue, cloudless sky, punctuated with the brilliant color explosions of the hot air balloons arcing across my field of vision. In front of me is the reflecting pool bubbling away whilst I drink artisanally roasted coffee and try to decide when I should go in for breakfast. Thoughts appreciated. Oh, do any of you know a good breakfast wine."

Turner replied to Hardy and the group: "Does anyone know if a desire to 'bitch slap a chairman' violates any state's hate crime laws?"

In May, Hardy sent an e-mail to Turner, apparently declining a helicopter ride to an unmentioned place. "My purity cannot allow riding in the helicopter, unless, of course, I have a heart attack and you paint LIFEFLIGHT or some such on the side."

Turner joked back: "We could simply boot you out over Indy so no one would ever know how you got there."

During Butler University's basketball championship games last spring, Hardy wrote that Turner should come to Indiana to see one of the games. Turner, apparently still in North Carolina, agreed. "I know. Although the pressure of watching it on TV almost killed me. Wow. Hope they get a chance to stomp Duke."

Several times, they traded e-mails about getting together for dinner and drinks. One time, they quoted lines from Monty Python comedy skits. Another time, Turner joked that one of Hardy's written orders on a regulatory matter seemed "surprisingly lucid."

And the two frequently discussed Storms and Reed, as those two went through job interviews and were hired away from the IURC by Duke earlier this year. Hardy wanted constant reports on the hiring process.

"How real is the interest in Mike (Reed)," Hardy asked on March 13. "I think it's a marriage made in heaven. Is this decision yours and I don't need to sell Jim [Rogers, CEO of Duke], or is his buy-in pivotal?"

Reed and Hardy were friends, having worked together for several years at the IURC. Reed held the title of executive director for three years before leaving last year to become commissioner of the Indiana Department of Transportation. About a year into that job, he applied for a job as president of Duke's Indiana division, which had opened up.

Turner replied that Rogers had been in China during the past week, "so all he knows is that Mike's name is in the ring."

Turner added, "I'm supposed to talk with him tomorrow morning. At this point, he's probably leaning toward [another candidate], but I may work on that in the morning. I'll try to let you know before he gets out there whether a sell is necessary."

Whether it was proper for Turner to disclose to an outsider the decision-making process behind a high-level executive hiring remains unclear. But some human-relations experts said the whole discussion raises questions.

"This is an ethics question at its core," said Karl Ahlrichs, a human-relations consultant at Gregory & Appel in Indianapolis. "What do Duke's policies and handbooks say about a situation like this? What's appropriate conversation with outside parties? My feeling is that people in leadership posts are supposed to act professionally."

How far the cozy relationships with Duke executives extended into state government is unclear. But the subject of Storms' hiring by Duke was raised with Daniels' chief of staff, Earl Goode, nearly two months before Storms left the IURC.

The Star reported last week that Reed was concerned by comments Goode made to him about Storms during a golf game Aug. 1.

According to e-mails, Reed told Hardy he had run into Goode, who said he would be surprised if the state's ethics panel cleared Storms, because of his role in presiding over Duke's $2.9 billion coal-gasification plant in Edwardsport.

Goode said last week that his comments to Reed meant only that Storms would have to go before the state ethics panel, as would any state administrator considering a private sector job offer. He said he had no opinion on Storms at that time. Only later would Daniels' office issue findings that Storms had a conflict of interest.

Asked why he was golfing with Reed, Goode said they were playing together in an event for GTE workers. He and Reed previously worked for GTE.

Reed apparently was worried about Storms' possible difficulties with the ethics commission. Later that same day, he sent Hardy an e-mail suggesting a way to address those difficulties. He urged Hardy to have the IURC's ethics officer, Loraine Seyfried, "clearly spell out how [Storms] would be walled off from Edwardsport, and therefore meet the test."

A few weeks later, Seyfried sent a three-page memo to Storms, stating her opinion that his prospective employment with Duke would not violate the state ethics code. Storms presented that opinion to the ethics panel Sept. 9, when he asked for approval to take the Duke job. The ethics panel gave him the green light in a ruling that largely mirrored Seyfried's memo.

Storms and Hardy later joked by e-mail that they were impressed that no one laughed during the ethics hearing. Later, after Storms went to work for Duke, Hardy offered his old job as administrative law judge to Seyfried, presiding over Duke's Edwardsport project.

Daniels' office later found Storms had not walled himself off from Duke cases while discussing career options there.

E-mails between Duke and the IURC in recent months span hundreds of pages, many of them between Hardy and Turner.

In February, Turner asked Hardy to breakfast. The two had to juggle schedules to set a date. Hardy wrote: "Don't tell the utilities I'm being accommodating -- bad for my reputation."

"Don't worry," Turner wrote back. "Your reputation in this regard is unalterable."

James L. Turner

Title: Group executive of Duke Energy Corp. and president and chief operating officer of its U.S. Franchised Electric and Gas Business.

Career: Attorney, Indianapolis law firm of Bingham Summers Welsh & Spilman, 1984-91. Indiana utility consumer counselor, 1991-93. Principal, Indianapolis law firm of Lewis & Kappes, representing industrial customers in state utility commission proceedings. Joined utility company Cinergy in 1995, serving as chief financial officer and president. (Cinergy later merged with Duke Energy.)

Education: Bachelor of science degree from Ball State University. Law degree from the Indiana University School of Law-Indianapolis.

Compensation: 2009 salary: $650,000; total compensation (including stock awards, cash incentives and other compensation): $4.3 million.

Family: Wife, Leah, and three children.

THE INDIANAPOLIS STAR
Tuesday, December 7, 2010
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SCANDAL TOPPLES A TOP DUKE EXEC

Turner quits over e-mails to regulator

By John Russell

A top executive at Duke Energy Corp. has resigned after writing hundreds of compromising e-mails to a former Indiana regulator, the latest development in a widening ethics scandal that already has ensnared two other Duke officials and two high-ranking state employees.

Duke said Monday that James L. Turner, its second-highest-paid executive, is leaving the company due to "concerns about recently published e-mail communications" with David Lott Hardy, then chairman of the Indiana Utility Regulatory Commission.

The e-mails were published last week by The Indianapolis Star and showed that Turner had offered Hardy boat rides, discussed sensitive personnel issues and bantered about sports and luxury cars.

"Would the ethics police have a cow if you and the woman came up some weekend?" Turner wrote on July 2, while riding a boat on Lake Michigan. Hardy wrote back: "Probably -- we might 'be in the area' some afternoon, but I won't be doing this forever."

The e-mails, obtained under an open-records request, showed the two men had exchanged hundreds of messages in recent months while the state was overseeing matters related to a $2.9 billion coal-gasification plant the utility is building near Edwardsport in southwestern Indiana. The plant has had huge cost overruns and technical setbacks, which could bring higher electricity bills for customers.

What impact the scandal may have on Duke and its plans at Edwardsport -- and on the state's utility review process -- is in dispute. Duke's supporters call the plant, which is about half-built, an engineering wonder that will use "clean coal technology" to power hundreds of thousands of Indiana homes. Opponents have described it as a boondoggle that is unnecessary and prohibitively expensive.

Some suggest the project should be abandoned. Duke said it still supports the plant and calls it a necessary step to generate power for Indiana. At least one analyst, however, questioned whether the scandal might cause state regulators to distance themselves from Duke, making it more difficult for the company to win rate increases to cover costs.

One answer to that question may come later this month when Indiana regulators decide how much of the cost overruns will be borne by ratepayers.

The e-mails between Turner and Hardy painted a picture of a cozy relationship between a utility executive and a powerful state regulator -- a relationship not available to ordinary citizens who will have to pay the bills for the plant.

Duke has not disputed the contents of the e-mails as reported by The Star.

Turner could not be reached for comment Monday. In a statement, he took blame for adverse publicity over the e-mails.

"As a leader, I have a duty to exercise the highest level of professionalism at all times in my communications," he said. "In certain e-mails to a former commissioner in Indiana, I fell short of this standard. I am choosing to step away at this time so that our company and our employees can begin to move on from this distraction."

A Duke spokeswoman, Angeline Protogere, declined to say whether Turner would receive a severance package and, if so, how much. "It's still being worked out," she said.

Duke, based in Charlotte, N.C., is the largest electric utility in Indiana, with 780,000 customers in 69 of the state's 92 counties. James Rogers, chairman and chief executive officer of Duke, said Monday that Turner had not exercised undue influence with Indiana regulators but resigned because "he felt like it put the company in a bad place."

"He made a decision on his own that he felt like those e-mails were embarrassing and inappropriate," Rogers told the Charlotte Observer. "If you read through them, it showed a very close relationship between the two of them. Quite frankly, as I've said before, many of them were very sophomoric and didn't reflect the professionalism that's really important."

Rogers brushed aside concerns that Duke's Edwardsport plant is at risk.

"My view is that Edwardsport stands on its own," he said. "It is a plant that is needed, and we've gotten proof for that and we've presented uncontroverted evidence it's the most viable choice."

But some local watchdog groups who are pushing for a reform of how the state regulates utilities said Turner's e-mails indicated inappropriate access to state regulators. They said the two should not have been having such a close friendship while the state was making decisions on major issues concerning Duke, including its Edwardsport plant.

Citizens Action Coalition of Indiana, which has repeatedly called for the project to be shut down, on Monday renewed its call for the state to take tougher measures with Duke. It said the state should reject a proposed settlement on cost overruns at Edwardsport that Duke recently reached with large electricity users and the state's utility consumer counselor.

The proposal 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 increase to $107.29 per month in 2013 from $94.08 a month last year.

"How can (the state) possibly approve charging ratepayers another dime considering that four key people have lost their jobs as a result of this scandal?" said Kerwin Olson, program director of Citizens Action.

Common Cause/Indiana said Turner's e-mails revealed an inappropriately close relationship with state officials that calls into question rulings about the Edwardsport plant.

"Turner obviously sought to ingratiate himself with Hardy, offering him gifts and friendship and things of value," said Julia Vaughn, policy director of Common Cause/Indiana. "These guys were buddies, and at the same time, the IURC bent over backwards to pave the way for the Edwardsport project."

Turner, 51, had served as a senior executive of Duke Energy since 2006, when the company merged with Cinergy. Turner had worked for Cinergy since 1995. He had earlier served stints as a utility lawyer in Indianapolis and as Indiana's utility consumer counselor.

Wall Street viewed him as a rising star and perhaps the next CEO of Duke Energy.

"He was very highly positioned in Duke, and very influential," said Paul Franzen, an energy analyst at Edward Jones and Co. in St. Louis. "He was moving up very fast. My read on this is that company is very sensitive about doing the right thing, and this whole (ethics) issue has had an impact it couldn't ignore."

Hugh Wynne, an energy analyst at Sanford Bernstein & Co. in New York, said Duke could face growing business pressures if regulators begin distancing themselves from the company as a result of the scandal. He said utilities depend on close relationships with regulators to ensure that their requests for rate increases are approved, which helps pay for the cost of investing in new plants.

He called the scandal "troubling but not permanently crippling" for Edwardsport but added that the company has a tough job selling the plant's merits.

"The fundamental issue at Edwardsport is that Duke is deploying an expensive and unconventional technology for limited environmental benefit, and whose costs are being borne by ratepayers," Wynne said.

Turner is just the latest casualty in the ethics scandal. Gov. Mitch Daniels fired Hardy in October, saying Hardy was aware of job discussions Duke was having with top utility commission attorney Scott Storms but didn't stop Storms from handling Duke cases.

THE INDIANAPOLIS STAR
Friday, April 15, 2011
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Storms testifies: 'This hasn't been pleasant at all'

Ex-IURC counsel tells ethics panel he thought he followed the law

By John Russell

The man at the center of an ethics scandal at the Indiana Utility Regulatory Commission has broken his long public silence, saying he did nothing wrong last year when he took a job with the state's largest utility.

Scott Storms, whose decision to take a job at Duke Energy Corp. touched off a cascading ethics scandal that cost four people their jobs, told the Indiana State Ethics Commission he handled all potential conflicts according to the law.

The ethics panel is weighing civil charges that Storms had a conflict of interest when he negotiated a job with Duke while signing regulatory orders on numerous matters affecting the utility.

Storms repeatedly said he followed state law, did not mislead his supervisors or the ethics panel and did not compromise his duties. He choked up while saying the publicity over the matter, getting fired from Duke in November and being subjected to a state investigation had taken a toll on his family.

"This hasn't been pleasant at all," Storms said.

The scandal stemming from the case has resulted in firings or resignations of several top people at Duke and the IURC. It also has raised questions of undue influence over state regulation of a $3 billion power plant Duke is constructing in Edwardsport.

Storms ruled on several issues affecting the plant's costs and its effect on ratepayers -- a fact that has consumer groups and Duke's large industrial users crying foul and questioning how much of the plant's cost should be shouldered by customers.

The ethics case against Storms hinges in large part on when he applied for the Duke job and began negotiating an offer. The Indiana inspector general's office said Storms applied for the job in April 2010, four months before he disclosed his interest in the job to the state and screened himself from Duke matters.

Investigators pointed to a cover letter, resume and application dated April 20, 2010, in which

Storms wrote "to express interest" in the position of senior counsel with Duke Energy Indiana and said he was "uniquely suited" for the job because of his extensive experience in utility regulation.

But Storms said he didn't send the letter at that time. He said that when he told his boss at the IURC, former Chairman David Lott Hardy, that he wanted to apply for the job and screen himself from Duke matters, he was told to forget the whole thing.

"He said it was not an opportune time," Storms said. "I was surprised and disappointed."

Storms said he later talked the matter over with his wife, who encouraged him to apply anyway. He said he filled out the online application on the Duke Energy website and updated his resume and cover letter "to placate my wife and feel better. . . . But I didn't push the 'submit' button."

He said that four months later, when Hardy gave the OK, he did screen himself from Duke matters and submit the application. He said the Duke computer apparently did not update the application date.

But Inspector General Dave Thomas outlined a much different scenario. He said Storms contacted Duke's hiring attorney, Kelley Karn, at least 10 times to talk about the job from March through August. He said Storms had an influential friend at Duke, Michael Reed, president of the company's Indiana operations, who was pushing Storms' candidacy to his superiors at the corporate headquarters in North Carolina.

Thomas showed the commission a raft of emails between Reed, Storms and Hardy, in which the subject of Storms' hiring is brought up numerous times during those months. Many of those emails were first reported last year by The Indianapolis Star.

In late June, Reed sent an email to Storms that said he was working the "you issue" with Duke management.

Storms, who said he was on vacation at Yosemite National Park when he got that email from Reed, said he didn't have any idea what it meant. Still, he acknowledged writing back: "Thanks for the update."

"I think that says everything," Thomas told the ethics panel during Thursday's hearing, which lasted more than seven hours.

Hardy did not testify Thursday and could not be reached for comment.

Reed testified that the "you issue" meant only that he was trying to help his friend, who he thought was qualified for the job, not that he was making any promises to get Storms a job in return for Storms' earlier help in coaching him for his interviews for the Duke Indiana president's position.

Both men worked together for three years at the IURC and acknowledged they became good friends.

Storms' attorney, Thomas Farlow, said there were no secret negotiations between his client and anyone at Duke. To think otherwise, he said, was "to believe a nefarious conspiracy."

He said the emails might seem damaging but were actually filled with joking, banter and light talk that should not be taken seriously, such as when Hardy and Storms emailed each other after Storms' earlier appearance before the ethics panel, in which they congratulated each other for keeping a "straight face."

Storms' salary jumped from $93,000 at the IURC to $135,000 at Duke after he changed jobs in late September.

Duke later fired Storms and Reed after the scandal erupted. Gov. Mitch Daniels fired Hardy, saying he was convinced the IURC chairman knew about Storms' conflict of interest and did nothing to stop it.

James Turner, the second-highest-paid executive at Duke, resigned in December after The Star printed some of the hundreds of compromising emails he had exchanged with Reed and Hardy.

What's next?

The Indiana State Ethics Commission said it expects to issue a ruling on Scott Storms' conflict-of-interest charges by its next public meeting May 12.

Look closer: Go to the online version of this story at IndyStar.com to read Scott Storms' full cover letter to Duke Energy.

Last month, Duke fired Storms and his boss, Mike Reed, Indiana president of Duke Energy, without giving details.

And last week, the IURC reassigned Loraine Seyfried, its chief administrative law judge and ethics officer, who had written an ethics review that allowed Storms to take a job in industry without a standard one-year cooling-off period. The IURC reassigned all ethics duties to its newly hired general counsel, Doug Webber, and reassigned certain Duke cases to another administrative law judge.

The FBI and the Indiana inspector general are continuing to probe the entire matter. No one has been charged with a crime.

In earlier e-mails, Turner and Hardy talked frequently about Storms and Reed, as those two state employees went through job interviews and were hired by Duke earlier this year. Hardy wanted constant reports on the hiring process.

"How real is the interest in Mike (Reed)?" Hardy asked on March 13. "I think it's a marriage made in heaven. Is this decision yours and I don't need to sell Jim (Rogers, CEO of Duke), or is his buy-in pivotal?"

Turner replied that Rogers had been in China and didn't know much about Reed's candidacy.

"I'm supposed to talk with him tomorrow morning," he said. "At this point, he's probably leaning toward (another candidate), but I may work on that in the morning. I'll try to let you know before he gets out there whether a sell is necessary."

RESIGNED
JAMES TURNER
The FBI and the Indiana inspector general are continuing to probe the entire matter. No one has been charged with a crime.Resigned Monday as Duke Energy's second-highest-paid executive after writing hundreds of chummy e-mails to a state regulator. His total compensation in 2009 was $4.3 million.

FIRED
MICHAEL REED
Fired in November as Indiana president of Duke Energy for unspecified reasons. He was instrumental in hiring Scott Storms away from the Indiana Utility Regulatory Commission.

FIRED
SCOTT STORMS
Fired in November as assistant general counsel of Duke Energy Indiana for unspecified reasons. He had come under fire for seeking a job with Duke while presiding over company

cases as a judge at the IURC.

FIRED
DAVID HARDY
Fired in October as IURC chairman by Gov. Mitch Daniels. E-mails show he knew about Storms working on Duke cases for the IURC while negotiating a job with the utility.

REASSIGNED
LORAINE SEYFRIED
Chief administrative law judge and ethics officer for the IURC; was removed from certain Duke cases, and her ethics duties were given to a newly hired general counsel.

How it unfolded

Aug. 31: Duke Energy offers a job to Scott R. Storms, general counsel for the Indiana Utility Regulatory Commission.

Sept. 9: The Indiana Ethics Commission rules that Storms can take the job without a one-year cooling-off period typically required for utility regulators.

Sept. 22: Consumer groups, including the Citizens Action Coalition, object to Storms' quick move, noting that he presided over Duke matters while concerns were raised about cost overruns for the construction of Duke's power plant in Edwardsport; costs have ballooned to $2.9 billion.

Sept. 24: Duke Energy says it will bar Storms from representing Duke in any IURC-related matters for a year.

Oct. 5: Gov. Mitch Daniels ousts David Lott Hardy as chairman of the IURC, saying Hardy knew Storms handled Duke regulatory matters while he negotiated for a plum job at the utility. Meanwhile, Duke puts its Indiana president, Michael W. Reed, on paid leave for his role in hiring Storms away from the IURC. Duke also puts Storms on administrative leave.

Oct. 14: The Indiana ethics panel files a complaint against Storms for improperly having a financial interest in the outcome of matters involving Duke Energy Indiana. Meanwhile, the IURC says it will conduct a sweeping investigation into any cases involving Duke Energy Indiana and Storms.

Oct. 20: Two citizens groups -- Common Cause/Indiana and Citizens Action Coalition -- call for U.S. Attorney Joe Hogsett to launch an outside investigation. Hogsett says he will refer the request to federal authorities.

Nov. 8: Duke Energy fires Reed and Storms.

Nov. 24: E-mails obtained by The Indianapolis Star between Duke Energy's Indiana division and the IURC suggest there were early concerns in the governor's office about Duke hiring Storms.

Nov. 28: More e-mails obtained by The Star show James L. Turner, the second-highest-paid executive at Duke, and Hardy, then chairman of the IURC, often talked about personal matters, vacations and their favorite cars -- not work.

Nov. 29: Loraine L. Seyfried, ethics officer at the IURC, is removed from all cases connected to Duke.

Dec. 6: Turner resigns from Duke over the ethics flap.

Duke Energy
What: One of the largest electric power holding companies in the U.S., serving 4 million customers. Its commercial power and international business segments own and operate power generation assets in North America and Latin America.
Headquarters: Charlotte, N.C.
Ticker: DUK.
Chief executive: James E. Rogers.
2009 operating revenues: $12.7 billion.
Total assets: $57 billion.
Employees: 18,680.
Total U.S. generating capacity: 35,000 megawatts.
Operating segments:
Duke Energy Indiana, based in Plainfield and the state's largest utility supplier, serves 780,000 customers in a 69-county service area, including much of the metro area outside Marion County.
Duke Energy Kentucky: 135,000 electric customers, 100,000 gas customers.
Duke Energy Carolinas: 2.4 million electric customers.
Duke Energy Ohio: 685,000 electric customers, 400,000 gas customers.
Source: Duke Energy

James L. Turner

Former title: Group executive of Duke Energy Corp. and president and chief operating officer of its U.S. Franchised Electric and Gas Business.
Career: Attorney, Indianapolis law firm of Bingham Summers Welsh & Spilman, 1984-91. Indiana utility consumer counselor, 1991-93. Principal, Indianapolis law firm of Lewis & Kappes, representing industrial customers in state utility commission proceedings. Joined utility company Cinergy in 1995, serving as chief financial officer and president. (Cinergy later merged with Duke Energy.)
Education: Bachelor of science degree from Ball State University. Law degree from Indiana

University School of Law-Indianapolis.
Compensation: 2009 salary: $650,000; total compensation (including stock awards, cash incentives and other compensation): $4.3 million.
Family: Wife, Leah, and three children.

Storms drafted ethics memo on own case at IURC

Associated Press
April 14, 2011
Former Indiana Utility Regulatory Commission counsel Scott Storms spoke out for the first time publicly on ethics charges brought against him, denying allegations that there was a conflict of interest in how he handled cases involving Duke Energy.

Former Indiana Utility Regulatory Commission counsel Scott Storms spoke out for the first time publicly on ethics charges brought against him, denying allegations that there was a conflict of interest in how he handled cases involving Duke Energy as he sought a job with the company.

The Indianapolis utilities attorney told the Indiana Ethics Commission Thursday that he drafted a memo regarding his possible conflict of interest in handling cases that involved Duke but only plugged in what utility cases he would have to resign to other attorneys. He said he used the template of a similar memo that former IURC ethics officer Loraine Seyfried submitted for former IURC executive director Michael Reed when he was applying to become president of Duke's Indiana operations.

Seyfried signed off on Storms' draft and was removed from all cases connected to Duke's $2.9 billion coal-gasification plant in southwestern Indiana late last year.

The commission did not vote on the case after closing arguments Thursday, and said they will vote during their meeting next month.

Indiana's inspector general David Thomas has accused Storms of negotiating an entry-level attorney position with Duke while presiding over numerous cases involving the company, including cost overruns at the Edwardsport coal-gasification plant.

Storms told the commission he did not apply for the position until late July or early August, but had begun showing interest in the job as early as mid-April, after Duke's deputy general counsel Kelly Karn informed him of the job opening in late March.

Storms said he consulted David Hardy, chairman of the IURC at the time, who told him not to apply and not screen off his cases with Duke.

Thomas presented the commission with subpoenaed evidence showing Storms had dated his online application cover letter for late April, but Karn later said she did not receive the application until early August, well past the April 20 deadline that Duke executives extended for him.

Storms said he doesn't equate filling out forms on online application platforms with actually applying for the position because he did not hit the "submit" button until August — a defense he's using against Thomas' claim that he was seeking the position without handing off his Duke cases.

Karn said she and Storms maintained correspondence regarding the position over several months and discussed the matter about 10 times, including one lunch outing where they talked about job requirements. Karn said Storms called her to discuss the job, but she's the one who initiated the lunch meeting.

Storms said no negotiations were made during those conversations and that he was just trying to learn more about the company.

"Talking with Kelly Karn is not a noteworthy event in my mind," Storms told the commission.

Duke eventually hired Storms at a salary of $135,000 per year, or $42,000 more than he had earned with the state.

Duke fired Storms in November.

State panel fines Storms, citing ethics violations

Ruling also bars former IURC lawyer from future employment with state

12:57 AM, May. 13, 2011 | 2 Comments

Written by
John Russell
john.russell@indystar.com

FILED UNDER

Communities
Duke Energy
Mitch Daniels

A former top lawyer at the Indiana Utility Regulatory Commission broke state ethics laws when he participated in cases involving Duke Energy Corp. while talking to the company about a job, a state panel has ruled.

The Indiana State Ethics Commission on Thursday concluded that Scott Storms committed three violations of state law for his role in a scandal that has cast a shadow over a state agency that is supposed to impartially decide the utility rates paid by millions of Indiana residents and businesses.

The panel fined Storms $12,120 and barred him from future state employment.

Related Links

PDF: Ethics report on Scott Storms

Indiana Inspector General David Thomas, who filed the civil charges against Storms, declined to say whether he would bring charges against others implicated in the scandal, or to confirm whether the investigation is continuing.

"We'll continue to speak through our evidence and public filings," Thomas said.

In a six-page ruling, the ethics commission said Storms, while general counsel and chief administrative law judge at the IURC, was negotiating for a job or "had an arrangement" concerning prospective employment with Duke as he took part in cases involving the company's Edwardsport plant and its proposed digital electrical network.

In both cases, Duke was seeking state approval to pass along costs to customers. Storms did not have a vote on those matters but advised the commissioners and made procedural rulings.

The panel also concluded that Storms violated state law by failing to notify his supervisors of a potential conflict of interest or seeking an advisory ethics opinion.

Thursday's decision followed an all-day hearing last month before the commission, during which Storms repeatedly denied he had done anything wrong when he accepted a job with Duke while working for the IURC. Storms said he followed state law, did not mislead his supervisors or the ethics panel and did not compromise his duties.

Duke fired Storms in November after The Indianapolis Star reported that Duke executives had been talking to Storms about a job before he closed himself off from Duke cases at the IURC.

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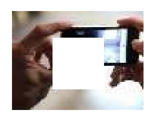

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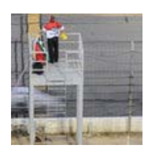

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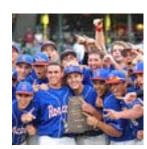

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Several other high-ranking people at Duke also lost their jobs. Michael Reed, the president of Duke's Indiana operations, was fired in November, and James Turner, the second-highest-paid executive at Duke, resigned in December after The Star printed some of the hundreds of compromising emails he had exchanged with Reed and others.

Gov. Mitch Daniels fired Storms' former boss, IURC Chairman David Lott Hardy, in October for knowing about the conflict but not taking any steps to address it.

Some consumer groups urged the state to bring charges against others who played a part.

"Scott Storms was just one player, and we hope this is not the end of the case," said Kerwin Olson, program director for Citizens Action Coalition of Indiana.

The ethics commission also pointed a finger at Duke, concluding that the company had a financial interest in the outcome of the Edwardsport case as it negotiated a job for Storms.

Tim Stewart, a lawyer at Lewis & Kappes, which represents large industrial customers of Duke, said the company should take some blame for the situation.

"The finding that Duke had a financial interest in cases presided over by Storms, after he had received an employment offer from Duke, clearly places the wrongdoing where it belongs, at the feet of Duke's upper management," Stewart said in an email.

Storms left the IURC in September to take a job as a regulatory lawyer with Duke. His salary jumped from $93,000 at the IURC to $135,000 at Duke.

Storms attended Thursday's meeting of the ethics panel but did not speak before the ruling was announced. Afterward, he left without speaking to reporters.

His attorney, Thomas Farlow, said Storms might appeal. He said Storms did not break the law and remains unemployed, six months after losing his job at Duke. He denied that Storms conducted secret negotiations with Duke.

"He is a bright, experienced lawyer who was sought after because of his expertise in utility law," Farlow said. "But we maintain he did nothing wrong."

The ethics case against Storms hinged in large part on when he applied for the Duke job and began negotiating an offer. The inspector general's office said Storms applied for the job in April 2010, four months before he disclosed his interest in the job to the state and screened himself from Duke matters.

Investigators pointed to a cover letter, resume and application dated April 20, 2010, in which Storms wrote "to express interest" in the position of senior counsel with Duke Energy Indiana and said

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he was "uniquely suited" for the job because of his extensive experience in utility regulation.

But Storms had said he didn't formally apply until August and immediately screened himself from Duke matters.

The ethics panel found that communications between Storms and Reed, the president of the company's Indiana operations, culminated with an email Reed sent to Storms and Hardy on July 27, confirming that Storms would be getting a job at Duke. Storms acknowledged the email July 28, and later that day, he conducted a hearing for Duke's Edwardsport case. The next day, he participated in another case involving Duke's proposed "smart grid" technology.

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

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Grand jury indicts former state utilities chief Hardy

IBJ Staff December 12, 2011

A Marion County grand jury has indicted David Lott Hardy, the state's former utilities chief, on three counts of official misconduct.

Hardy was fired from his job as chairman of the Indiana Utility Regulatory Commission by Gov. Mitch Daniels in October 2010. Hardy allegedly allowed IURC administrative law judge Scott Storms to preside over cases involving Duke Energy Corp. even while Storms was talking with the utility about a job.

"We look forward to vigorously prosecuting this case to its conclusion," Marion County Prosecutor Terry Curry, a Democrat, said Monday in a prepared statement.

The grand jury indicted Hardy on Friday. Official misconduct is a class D felony.

The indictment states that Hardy "knowingly" aided and abetted Storms by communicating with employees of Duke Energy regarding Storms' prospective employment "while allowing Storms to continue to participate in proceedings involving Duke Energy."

The two other indictments accuse Hardy of failing to disclose "ex-parte," or private, communication with top Duke officials about cost overruns at Duke's Edwardsport coal-gasification plant, which is under construction. The communications came as ratepayer groups were fighting Duke's request to recover additional money from ratepayers to cover cost escalations.

The indictment cites three incidents in which Hardy allegedly received communications from Duke about Edwardsport in 2008 and 2010, including discussions with Duke Chairman James E. Rogers and with former Duke Indiana head James Turner.

The ethics scandal cost both Hardy and Storms their jobs—Storms was fired after later accepting a job at Duke. The case also presented a public relations challenge to Daniels, a Republican, who appointed Hardy as chairman of the commission and has publicly supported the Duke Edwardsport plant. Initially projected to cost $1.8 billion, the plant's price tag has risen to $3 billion.

Watchdog groups, including Citizens Action Coalition, want Duke to absorb the cost of overruns rather than tapping ratepayers for the increased expenses.

A review of e-mails showed that Hardy coached Storms into getting a job at Duke. The e-mails also showed that Hardy met with top Duke officials about cost overruns at Edwardsport, in what CAC complained amounted to ex parte communication.

The ethics scandal has already come back to bite the state’s biggest electric utility.

The IURC last October reversed a ruling made by Storms. It would have allowed Duke at its next rate case to seek to recover from ratepayers $12 million in costs the utility incurred during a 2009 ice storm.

Also, the commission dismissed a case handled by Storms in which Duke sought permission to tap ratepayers to install "smart" electric meters in central Indiana to help better regulate loads. That project was estimated to cost $22 million.

The case in which Duke sought to collect storm damage costs is most notable. It was the only Scott Storms case the commission decided to reopen for further review after the ethics scandal came to light last year.

It was also the only proceeding involving Storms in which one of the parties—the Indiana Office of Utility Consumer Counselor—had appealed to the state Court of Appeals.

The OUCC argued that Duke’s attempts to recover the ice storm damages during a future rate case amounted to retroactive ratemaking, which is permitted only in the case of extraordinary financial events. Charlotte, N.C.-based Duke reported 2010 revenue of $14.2 billion.