

# IURC News Release

Indiana Utility Regulatory Commission

101 W. Washington St.

Suite 1500 E.

Indianapolis, IN 46204

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### Contact Information:

Danielle McGrath

Office: (317) 232-2297

E-mail: [dmcgrath@urc.in.gov](mailto:dmcgrath@urc.in.gov)

## The IURC Concludes Internal Investigation and Announces Next Steps

### *Commission to reopen "Duke storm damage" case*

**INDIANAPOLIS** – The Indiana Utility Regulatory Commission (IURC) publicly released its "Internal Audit Report of Duke Energy Cases Presided over by Former Administrative Law Judge Scott Storms," finding one of the Duke Energy cases requires more analysis. The Internal Audit found that in the remaining cases, Administrative Law Judge (ALJ) Storms did not deviate in his rulings or decisions from Commission procedure or standard legal practice.

The Internal Audit was conducted following the Governor's directive to analyze whether any "undue influence" was exerted in Duke Energy proceedings overseen by former General Counsel Scott Storms presiding as Administrative Law Judge. The Internal Audit Report concludes the IURC's internal investigation. The remaining ethical issues will be addressed by the Inspector General.

After analyzing the legal procedures used by ALJ Storms and comparing that with technical staff analysis and reports, the Commission will formally reopen the "Duke storm damage" case, Cause No. 43743. The decision in this case was written by ALJ Storms and issued on July 14, 2010. The technical staff report was more neutral in its conclusions than was the decision written by ALJ Storms. Although the audit of the case showed no anomalies with regard to procedure, this was the only Order in the Internal Audit to be recently appealed to the Indiana Court of Appeals.

The challenge to the Court of Appeals was made by the Office of Utility Consumer Counselor (OUCC), the state's consumer advocate. Because of these concerns, the Commission formally issued a ruling today to reopen the case to ensure that the decision is sound and that it was not unduly influenced in any way. In its original Order, the Commission granted Duke the ability to seek cost recovery for storm damages incurred during the January 27, 2009 ice storm, in its next rate case.

"If we find the Duke storm damage case was flawed in any way, we will not hesitate to reverse the Commission's decision," said Chairman Jim Atterholt.

Since the start of the Commission's investigation on October 5, 2010, Chairman Atterholt has acted by taking the following steps:

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1. Today, the Commission reopened Cause No. 43743, which is also known as the "Duke storm damage" case.
2. The Commission reassigned the Duke Edwardsport Integrated Gasification Combined Cycle (Edwardsport IGCC) cases to Administrative Law Judge David Veleta.
  - a. The formal assignment was approved at Conference today. Judge Veleta has never previously rendered an ethics opinion involving Duke, made application for employment with Duke or served on an Edwardsport IGCC case.
3. All four Commissioners were assigned on October 14, 2010 to the Edwardsport IGCC case involving the revised construction cost estimate (43114 IGCC 4 S1).
  - a. Normally, only one Commissioner presides over the hearings and assists with drafting an Order to present to fellow Commissioners for their review. Having all four commissioners participate fully in the case will increase oversight, provide additional scrutiny for interim rulings and lend further expertise to the process. Although this is highly unusual procedurally, the Commission deems this action appropriate because of the seriousness of the concerns surrounding this case.
4. On November 3, 2010, the Commission held a six-hour Technical Conference to determine the continued need for the Edwardsport IGCC project.
  - a. This was the first Commission proceeding ever to be broadcast live over the Internet to the general public. Numerous questions were asked by all parties of witnesses, under oath, who both opposed and supported the plant. The archived webcast is available on the Commission's website. The public still has the opportunity to provide input and comment on the pending case by contacting the OUCC.
5. The Commission has determined that no final decisions will be rendered on the pending Duke cases that are detailed in the Internal Audit until the Inspector General's Office (IG) has concluded its investigation.
  - a. The Commission will continue to move the proceedings forward by holding hearings, receiving evidence and hearing testimony regarding the case while awaiting the IG's decision. If the results of these investigations adversely impact any of the cases under review, the Commission will aggressively take corrective action.
6. The IURC's legal division was restructured to reflect two separate principal legal positions, a General Counsel and a Chief Administrative Law Judge.
  - a. The new General Counsel position will handle day-to-day legal responsibilities as well as serve as the Ethics Officer for the Commission and will report directly to the Chairman and fellow Commissioners. The Chief

Administrative Law Judge position will be insulated from outside influence, as this position will solely oversee the management of individual cases and the Administrative Law Judge (ALJ) staff. This position will also report directly to the Chairman and fellow Commissioners. This was the successful legal model used for many years by the Commission prior to changes made during the tenure of the former chairman, David Lott Hardy.

“The Governor’s directive was clear that the Commission was to determine if any of the work product between ALJ Storms and Duke Energy was compromised,” said Chairman Atterholt.

The review goes back to January 1, 2010. With respect to the cases involving the Edwardsport IGCC power plant, the Commission looked back to the inception of the project in 2006.

The Commission reviewed decisions as well as documents that include, but were not limited to, the following: transcripts of the hearings, rulings on motions and technical staff reports.

“The IURC’s system of checks and balances in the decision-making process has successfully served the citizens of Indiana,” said Chairman Atterholt.

Over the course of the last five years, the Commission has issued 1,688 final Orders of which 27 Orders have been appealed to the Indiana Court of Appeals. Of the 27 Orders, currently 20 have been sustained, 1 has been reversed and 6 remain pending. The Order overturned was Cause No. 43007, involving South Haven Sewer Works, Inc. The petition was filed with the Commission on March 24, 2006.

The Internal Audit Report was provided today to the Governor and his General Counsel David Phippen as well as the Inspector General. Documents related to these cases as well as the final report can be found on the Commission’s website at:  
<http://www.in.gov/iurc/2586.htm>.

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*The Commission is a fact-finding body that hears evidence in cases filed before it and makes decisions based on the evidence presented in those cases. An advocate of neither the public nor the utilities, the IURC is required by state statute to make decisions that balance the interests of all parties to ensure the utilities provide adequate and reliable service at reasonable prices.*