

By Electronic Delivery

October 12, 2010
Mitch Daniels, Governor
State of Indiana

Re. Recent Events at the Indiana Utility Regulatory Commission

Dear Governor Daniels:

The Citizens Action Coalition has followed with significant interest your response to the recent events at the Indiana Utility Regulatory Commission (IURC). The Coalition applauds the prompt and decisive action you have taken to date to investigate wrongdoing and to identify and remove wrongdoers at this important state agency.

However, like the Indianapolis Star in its lead editorial on Sunday, the Coalition is concerned by your recent comments which appear to pre-judge the results of the further investigations which you have requested Inspector General David Thomas and new Indiana Utility Regulatory Commission Chair Jim Atterholt to conduct and to suggest that the actions taken to date are sufficient to address the issues posed by the recent events at the IURC.

Specifically, the Coalition is concerned by the following report in the October 7, 2010 Indianapolis Star:

Taking questions after addressing a real estate group Wednesday in Seymour, Daniels defended his record on ferreting out bad apples in state government. He said his administration has cracked down on the revolving door between regulators and industry, and created the office of inspector general. . . .

He also stressed that he doesn't think what happened is indicative of any larger systemic problem.

Daniels went on to say that changing the way members are selected to the IURC would have had no bearing on the issues driving the current controversy.

"It wouldn't have prevented this. This is bad judgment on two people's parts," he said.

Daniels also said he sees no need to shake up the state Ethics Commission, which approved Storms' move to Duke without a one-year "cooling off" period. . . .

. . . Daniels said that while the state will review Duke-related IURC decisions in which Storms was involved, he has seen no evidence that any of those decisions should be thrown out.

"Nothing we've seen suggests a wrong decision," Daniels said, "only that the wrong person was participating in it."

In regard to this report of your comments, the Coalition has four concerns.

First, the Coalition would respectfully suggest that you and your office should review and reflect on the process which led to Chairman Hardy's initial appointment and subsequent reappointment as Chair of the Indiana Utility Regulatory Commission. Why was Mr. Hardy the person chosen to Chair the Commission initially over the other candidates available? Did Mr. Hardy really have the qualifications and experience to be the top leader and manager of an agency as large and important as the IURC? Was there information available at the time that he was selected to indicate that certain personal traits and/or past behavior of his raised questions regarding his suitability for such a position? If such information was not available at the time of his initial appointment, why not? If such information was not available at the time of his initial appointment, had additional information become available by the time of his reappointment which should have raised questions about it? What does this review and reflection suggest to you and your staff about deficiencies in the current nominating and appointment process?

Second, the Coalition would respectfully suggest that there are issues raised by recent events at the IURC which go well beyond "bad judgment on two people's part." In particular, Coalition sources indicate that whistleblowers at the IURC have previously brought information to the attention of both the Ethics Commission and the Governor's Office which raises at least the following additional issues:

1. Did Mr. Storms and potentially others present materially incomplete information to the Ethics Commission in the course of soliciting Formal Advisory Opinions?
2. Did Mr. Hardy promise positive and/or threaten negative regulatory actions in order to solicit offers of employment from Duke Energy Indiana for Messrs. Storms and Reed? If so, was this an isolated incident or part of a larger pattern of conduct involving the solicitation of other desired actions by regulated utilities by Mr. Hardy?
3. Did Mr. Hardy and Mr. Storms take or withhold regulatory actions in response to compliance or non-compliance by Duke Energy Indiana or other utilities with solicitations for offers of employment or other desired actions by regulated utilities?
4. Did a close relative of Mr. Hardy use for private purposes on a regular and ongoing basis IURC offices, equipment, and services?

Third, based on the information it has received, the Coalition respectfully suggests that information previously provided to state officials by IURC whistleblowers raises serious questions as to whether Commission regulatory action/inaction relating to Duke Energy Indiana warrants review to determine whether Mr. Hardy or any other person or persons exercised undue influence for ulterior motives in at least the following cases in which Mr. Storms served as the Presiding Administrative Law Judge: Cause No. 43114 (Edwardsport Cost Recovery) and Cause No. 43743 (Storm Damage). This list is not intended to be exhaustive and diligent investigations of these two cases may well lead to others warranting similar review, e.g. Cause No. 43501 (Smart Grid). It is the Coalition's understanding that the IURC whistleblowers would cooperate

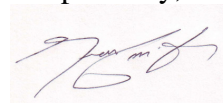
with the Inspector General in his investigation provided they are subpoenaed and otherwise protected against retaliation for coming forward and testifying truthfully regarding their knowledge of these matters.

Finally, the Coalition would respectfully suggest that the Ethics Commission should review and reflect on its own procedures and decisions in regard to its recent actions relating to former IURC employees Reed, Schmoll and Storms. The Coalition's review of information available regarding these matters suggests that at least the following issues are raised:

1. What was the legal and factual basis for the Commission's assumption or interpretation that, simply because they were not members of an agency governing board, Msrs. Reed, Schmoll and Storms could not make a regulatory decision which would trigger the 12-month "cooling off period" on their employment by Duke Energy Indiana irrespective of their specific duties and responsibilities with respect to Duke during their employ by the IURC?
2. With respect to Mr. Storms, why was the information provided by IURC whistleblowers regarding the context and timing of Mr. Storms' negotiations with Duke not considered or investigated prior to a Formal Advisory Opinion being issued?
3. Was there information provided by Mr. Schmoll in the course of his request for a Formal Advisory Opinion in July which should have alerted the Ethics Commission or its staff to the possibility that it had not been provided with all of the relevant information regarding the context and timing of Mr. Storms' negotiations with Duke?
4. Why did the Ethics Commission assume that communications between Mr. Storms and Duke regarding prospective employment did not occur prior to his submittal of a resume? Why did the Ethics Commission not ask Mr. Storms to detail the nature and timing of all of his communications with Duke regarding prospective employment, before or after he submitted a resume?
5. Given the colloquy among Ethics Commission Member Clevenger, Chair Nuechterlein, and Mr. Storms regarding the role Mr. Reed had played in Mr. Storms offer of employment from Duke, why did the Commission not ask Mr. Storms to detail the nature and timing of all of Mr. Storms communications with Mr. Reed regarding prospective employment, before or after he submitted a resume?

Thank you for your continuing attention to these vitally important matters. Please advise if the Coalition may provide further assistance.

Respectfully,

A handwritten signature in black ink, appearing to read "Grant Smith", is written over a light pink rectangular background.

Grant Smith
Executive Director

cc: David Thomas, Inspector General
Electronically delivered
State of Indiana
315 W. Ohio St., Room 104
Indianapolis, IN 46202