

Citizens Action Coalition

NEWS RELEASE

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?"