

DOCKETED  
USNRC

December 21, 2004 (8:48am)

OFFICE OF SECRETARY  
RULEMAKINGS AND  
ADJUDICATIONS STAFF

Docket Nos. 50-413/414-OLA

RAS 9028

**From:** "Wetterhahn, Mark" <MWetterhahn@winston.com>  
**To:** "Ann Young (E-mail)" <AMY@nrc.gov>, "Anthony J. Baratta (E-mail)" <AJB5@nrc.gov>, "Thomas Elleman (E-mail)" <elleman@eos.ncsu.edu>  
**Date:** Mon, Dec 20, 2004 5:10 PM  
**Subject:** BREDL's December 20, 2004 Motion for Leave to File Testimony Out of Time

In your consideration of Blue Ridge Environmental Defense League's Motion for Leave to File Prefiled Written Testimony Out of Time, please consider the following:

1. As counsel for Duke, I told Ms. Curran that I would not consent to her request in advance, not that Duke opposed the request.
2. The motion does not state why Dr. Lyman or other staff could not have finished proofreading and assembling the testimony.
3. Ms. Curran made no offer to make the testimony available to Duke before Monday morning.
4. Ms. Curran is experienced counsel and should have anticipated last minute issues arising. Earlier in the day, she had told me she anticipated leaving the office before 4:00 p.m. on Friday.
5. Duke was prejudiced in that, because of the delayed service, its witnesses would not see the testimony before Tuesday instead of the previous Saturday. Because of the holidays and the unavailability of witnesses, any delay makes it more difficult to respond to BREDL's testimony.

Mark J. Wetterhahn

The contents of this message may be privileged and confidential. Therefore, if this message has been received in error, please delete it without reading it. Your receipt of this message is not intended to waive any applicable privilege. Please do not disseminate this message without the permission of the author.

**CC:** "Cash, Mike" <mtcash@duke-energy.com>, "Curran, Diane (E-mail)"

<dcurran@harmoncurran.com>, "Fernandez, Antonio (E-mail)" <axf2@nrc.gov>, "Nesbit, Steve (E-mail)" <spnesbit@duke-energy.com>, "Office of the Secretary (E-mail)" <HEARINGDOCKET@nrc.gov>, "Shana Zipkin (E-mail)" <SCZ@nrc.gov>, "Timika Shafeek-Horton Esq. (E-mail)" <tshafeek@duke-energy.com>, "Uttal, Susan (E-mail)" <slu@nrc.gov>, "Vaughn, Lisa (E-mail)" <lfvaughn@duke-energy.com>

**Mail Envelope Properties** (41C74DD2.7E5 : 20 : 51173)

**Subject:** BREDL's December 20, 2004 Motion for Leave to File Testimony Out of Time

**Creation Date:** Mon, Dec 20, 2004 5:09 PM

**From:** "Wetterhahn, Mark" <MWetterhahn@winston.com>

**Created By:** MWetterhahn@winston.com

**Recipients**

nrc.gov

owf5\_po.OWFN\_DO  
SLU CC (Susan Uttal)  
HearingDocket CC (Office of the Secretary)  
AXF2 CC (Antonio Fernandez)

nrc.gov

TWGWPO02.HQGWDO01  
SCZ CC (Shana Zipkin)

nrc.gov

twf2\_po.TWFN\_DO  
AJB5 (Anthony Baratta)  
AMY (Ann Young)

duke-energy.com

lfvaughn CC (Lisa (E-mail) Vaughn)  
tshafeek CC (Timika Shafeek-Horton Esq. (E  
spnesbit CC (Steve (E-mail) Nesbit)  
mtcash CC (Mike Cash)

harmoncurran.com

dcurran CC (Diane (E-mail) Curran)

eos.ncsu.edu

elleman (Thomas Elleman (E-mail))

**Post Office**

owf5\_po.OWFN\_DO  
TWGWPO02.HQGWDO01  
twf2\_po.TWFN\_DO

**Route**

nrc.gov  
nrc.gov  
nrc.gov  
duke-energy.com  
harmoncurran.com  
eos.ncsu.edu

**Files**

MESSAGE

**Size**

1386

**Date & Time**

Monday, December 20, 2004 5:09 PM

Mime.822 3312

**Options**

<b>Expiration Date:</b>	None
<b>Priority:</b>	Standard
<b>Reply Requested:</b>	No
<b>Return Notification:</b>	None

<b>Concealed Subject:</b>	No
<b>Security:</b>	Standard