

UNITED STATES
NUCLEAR REGULATORY COMMISSION

In re:

U.S. Department of Energy's Application
for Authorization to Construct a Geologic
Repository at Yucca Mountain, Nevada

Docket No. 63-001

TIMBISHA SHOSHONE TRIBE'S REQUEST
FOR EXTENSION OF TIME TO REPLY TO
NRC STAFF ANSWER TO INTERVENTION
PETITIONS AND DOE ANSWER TO TIMBISHA
SHOSHONE TRIBE PETITION TO
INTERVENE

INTRODUCTION

The Timbisha Shoshone Tribe (“Tribe”) submits this request for an extension of time pursuant to 10 C.F.R. § 2.1026(b)(1) for 20 days (until March 16, 2009) to file its Reply to the NRC Staff Answer to Intervention Petitions (“NRC Answer”) and the Department of Energy Answer to the Timbisha Shoshone Tribe Petition to Intervene (“DOE Answer”). This request is submitted by the duly recognized representatives of the Timbisha Shoshone Tribe and is filed on behalf of the Tribe.

On December 22, 2008, two petitions for leave to intervene in the hearing were filed with the Nuclear Regulatory Commission, seeking leave to intervene in the Yucca Mountain Oversight Hearing and License Application. One petition, filed on behalf of the Timbisha Shoshone Tribe entitled Timbisha Shoshone Tribe’s Petition for Leave to Intervene in the Hearing (“Petition”), is the Petition filed at the direction of the tribal leaders recognized by the Department of the Interior (“Department”) as the tribal leaders for government-to-government purposes. See attached letter issued by Superintendent Troy Burdick dated November 10, 2008 (“November 10, 2008 Letter”), and the Decision by Regional Director Dale Morris as to the appeal filed by Ed Beaman dated February 17, 2009 (“Beaman Decision”). The second petition, filed by Joe Kennedy entitled Timbisha Shoshone Yucca Mountain Oversight Program Non-Profit Corporation Petition to Intervene as a Full Party (“Kennedy Petition”) was filed at the direction of tribal members not recognized by the Department as the Tribal Council for government-to-government purposes and was not filed on behalf of the Tribe.

The Nuclear Regulatory Commission Staff (“NRC Staff”) filed its NRC Staff Answer to Intervention Petitions on February 9, 2009 (“NRC Answer”). In the NRC Answer, the NRC Staff stated its position that the Tribe is entitled to party status as a matter of right, given the certification of affected Indian tribe status by the Department. The NRC Staff stated that standing was not an issue, however it did raise concerns as to the confusion over the appropriate entity to represent the interest of the affected Indian tribe in these proceedings. Following a brief

discussion of the Tribe's leadership dispute, the NRC Staff concluded each petitioner should be required to specifically establish its authorization to represent the Tribe or address whether as a non-governmental entity it meets the standing requirements. See NRC Answer at 32.

The DOE Answer also raises an issue as to what entity has standing to represent the Tribe in these proceedings. See DOE Answer at 29-33. The DOE Answer also raises issues as to the Tribe's Licensing Support Network (LSN) certification, and the contentions filed by the Tribe. See DOE Answer at 33-112. Due to the confusion created by the leadership, and the Tribe's limited resources these issues will be discussed in the Reply filed on March 16, 2009 with the approval of the Atomic Licensing and Safety Board. The DOE Answer is over 130 pages long and requires a detailed complete response with assistance from the Tribe's consultants. The Tribe has yet to receive any resources as promised from DOE, therefore further exasperating an already difficult situation. The Tribe does not wish to contribute further in complicating matters, and believes it will be more efficient to file a full and complete response at one time, which includes the confirmation of the entity authorized to represent the Tribe for purposes of standing in this proceeding.

As the NRC Answer and DOE Answer articulated, the Tribe is embroiled in a leadership dispute that has led to two unresolved lawsuits currently before the United States District Court for the Eastern District of California, concerning who comprises the Timbisha Shoshone Tribal Council and who is duly authorized to speak on behalf of the Tribe. See *Timbisha Shoshone Tribe v. Salazar*, Case No. 2:09-cv-00246-LKK-EFB. A court hearing has been set for February 26, 2009 that seeks preliminary relief from the Department, requesting that it recognize an interim Tribal Council of the Timbisha Shoshone Tribe, that is vested with all authority granted to it under the Timbisha Shoshone Constitution, pending resolution of the lawsuit. The Tribe anticipates the resolution of the application for a preliminary injunction will resolve the

leadership concerns articulated by the Commission in its Answer as to who and what petition is in fact filed on behalf of the Tribe.

In addition to the scheduled Court hearing, the Department has decided one of two pending appeals as to this leadership dispute. See attached Beaman Decision. The Beaman Decision, consistent with the November 10, 2008 Letter, continues to recognize the Tribal Council consisting of Ed Beaman, Lyle Casey, Joe Kennedy, Virginia Beck, and Margret Armitage.

Accordingly, the Tribe respectfully requests leave from the Commission for an extension of time until March 16, 2009 for filing of its Reply to the NRC Staff's Answer and the DOE Answer. The leadership dispute has caused confusion as to the legitimate entity that may represent the Tribe as an affected Indian tribe in this proceeding. The Tribe will be able to more fully address all concerns raised in both the NRC Answer and the DOE Answer in its Reply once the Department has finally resolved the matter as to the legitimate representatives of the Tribe for purposes of standing. Further, the Tribe anticipates the Department will resolve the second outstanding appeal within two weeks of February 24, 2009 (the date that briefing will be completed and the matter submitted to the Regional Director).

For the foregoing reasons the Tribe respectfully requests that an extension of time for filing its Reply to both the NRC Answer and the DOE Answer until March 16, 2009 be granted.

February 24, 2009

FREDERICKS PEEBLES & MORGAN LLP

By: /s/ Darcie L. Houck
Attorney for Timbisha Shoshone Tribe

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CERTIFICATE OF SERVICE

I hereby certify that the forgoing "Request for Extension of Time" has been served via the Nuclear Regulatory Commission Electronic Information Exchange (EIE) upon those on the service list maintained by the EIE for the above captioned Proceeding.

Respectfully Submitted,

/s/ Darcie L Houck

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