

March 23, 2009

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

BEFORE THE PRE-LICENSE APPLICATION PRESIDING OFFICER BOARD

In the Matter of	)	Docket No. PAPO-00
	)	
U.S. DEPARTMENT OF ENERGY	)	ASLBP No. 04-829-01-PAPO
	)	
(High Level Waste Repository:	)	
Pre-Application Matters)	)	

THE DEPARTMENT OF ENERGY'S OPPOSITION TO MARCH 11, 2009 MOTION OF  
THE TIMBISHA SHOSHONE TRIBE FOR CERTIFICATION OF  
LICENSING SUPPORT NETWORK OUT OF TIME FOR GOOD CAUSE

On March 11, 2009, the Timbisha Shoshone Tribe (Tribe) filed identical copies of the instant motion with both this Board and the Construction Authorization Boards (CAB) in Docket 63-001-HLW. The U.S. Department of Energy (DOE) opposes the motion, and has today filed an opposition with the CABs that responds to the motion's substantive arguments. This Board should dismiss the motion before it, without ruling on its merits, for lack of jurisdiction.

The Commission's order designating the Pre-Application Presiding Officer (PAPO) provided that the "jurisdiction of the PAPO shall terminate at the time that an Atomic Safety and Licensing Board has been appointed to preside over the high-level waste repository licensing proceeding," except for those disputes pending before it when a Licensing Board has been appointed. *U.S. Dep't of Energy* (High Level Waste Repository: Pre-Application Matters), CLI-04-20, 60 NRC 15, 18 (2004). On January 16, 2009, the Chief Administrative Judge of the Atomic Safety and Licensing Board Panel established the three CABs. [HLW] Establishment of Atomic Safety and Licensing Boards, 74 Fed. Reg. 4477 (Jan. 26, 2009). CAB Case Management Order (CMO) #1 states that the CABs have been established to, *inter alia*, "preside over the proceeding involving the United States Department of Energy's (DOE) application for

construction authorization of a high-level waste repository at Yucca Mountain in Nye County, Nevada.” CAB Case Management Order (Jan. 29, 2009) (unpublished).

The Tribe’s motion was not a dispute pending before this Board when the CABs were appointed. Accordingly, this Board does not have jurisdiction over the Tribe’s motion.

Respectfully submitted,

**U.S. DEPARTMENT OF ENERGY**

By Original Signed by Michael R. Shebelskie

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THE TIMBISHA SHOSHONE TRIBE FOR CERTIFICATION OF  
LICENSING SUPPORT NETWORK OUT OF TIME FOR GOOD CAUSE  
CERTIFICATE OF SERVICE**

I certify that copies of the foregoing the **THE DEPARTMENT OF ENERGY'S  
OPPOSITION TO MARCH 11, 2009 MOTION OF THE TIMBISHA SHOSHONE TRIBE  
FOR CERTIFICATION OF LICENSING SUPPORT NETWORK OUT OF TIME FOR  
GOOD CAUSE** in the above-captioned proceeding have been served on the following persons  
on March 23, 2009 through the Electronic Information Exchange.

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