

September 6, 2011

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of)	
)	
U. S. DEPARTMENT OF ENERGY)	Docket No. 63-001-HLW
)	
(High-Level Waste Repository))	ASLBP No. 09-892-HLW-CAB04
)	

NRC STAFF RESPONSE TO
THE TIMBISHA SHOSHONE TRIBE'S AUGUST 26, 2011 MOTION

Pursuant to 10 C.F.R. § 2.323(c), the U.S. Nuclear Regulatory Commission (NRC) staff (Staff) answers the Timbisha Shoshone Tribe's (Tribe) August 26, 2011, motion requesting the Atomic Safety and Licensing Board (Board) to (1) recognize the Timbisha Shoshone Tribal Council (Council) as the authorized representative of the Tribe in this proceeding and cease recognition of the Joint Timbisha Shoshone Tribal Group (JTS), and (2) direct the U.S. Department of Energy (DOE) to confer with the Council regarding federally-appropriated funds. See Timbisha Shoshone Tribe's Motion for Recognition of the Timbisha Shoshone Tribal Council as the Legitimate Representative of the Timbisha Shoshone Tribe, dated August 26, 2011 at 1-2, 7 (Motion).

The Staff does not object to the Board recognizing the Council as the Tribe's authorized representative. The Board previously recognized the JTS as the Tribe's representative in this proceeding. See Order (Accepting Joint Representation of the Timbisha Shoshone Tribe), dated April 22, 2009, at 1-2. The motion shows that the Department of Interior recently certified tribal election results, recognizing the Council as the Tribe's new representative. See Motion at 2 and Exhibit C.

The Tribe's second request asks the Board to direct DOE to confer with the Council regarding payment of federal funds to affected Indian tribes under the Nuclear Waste Policy Act,

42 U.S.C. § 10101 *et. seq.* (2006) (NWPA). The Tribe states that the funds are needed to “adequately participate in the proceeding and present witnesses.” Motion at 7. The Tribe, however, has neither addressed whether, nor demonstrated that, this request is within the Board’s jurisdiction or within the scope of this licensing proceeding.

This Board was designated “to preside over matters concerning discovery, Licensing Support Network compliance, new or amended contentions, grouping or consolidation of contentions, scheduling, case management matters relating to any of the foregoing, and all other matters the Chief Administrative Judge may assign.” See Establishment of Atomic Safety and Licensing Board, dated June 19, 2009. See also 10 C.F.R. § 2.319 (setting forth the powers of the presiding officer). The Tribe has not shown that the Board has the authority to direct DOE to confer with the Council regarding federally-appropriated funds.

Furthermore, the scope of this proceeding is limited to findings of fact and conclusions of law on material issues related to DOE’s request for authorization to construct a geologic repository at Yucca Mountain, Nevada. See U.S. Department of Energy (High-Level Waste Repository); Notice of Hearing and Opportunity to Petition for Leave to Intervene on an Application for Authority to Construct a Geologic Repository at a Geologic Repository Operations Area at Yucca Mountain, 73 Fed. Reg. 63,029, 63,031 (Oct. 22, 2008). See also Board Memorandum and Order (Granting Intervention to Petitioners and Denying Withdrawal Motion), LBP-10-11, 71 NRC __, __ (slip op. at 46) (June 29, 2010). The NWPA includes financial assistance provisions for affected Indian tribes to engage in activities such as monitoring and testing during site characterization. 42 U.S.C. § 10138(b)(2). The Tribe has not shown, however, that the NWPA provides financial assistance for litigation expenses in this proceeding, and how such financial assistance is within the scope of a proceeding on

authorization to construct a geologic repository at Yucca Mountain, Nevada.

Thus, it is not clear that the Tribe's request is within the Board's jurisdiction or within the scope of this licensing proceeding.

Respectfully submitted,

/Signed (electronically) by/

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Dated at Rockville, Maryland
this 6th day of September, 2011

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CERTIFICATE OF SERVICE

I hereby certify that copies of the "NRC STAFF RESPONSE TO THE TIMBISHA SHOSHONE TRIBE'S AUGUST 26, 2011 MOTION" in the above-captioned proceeding have been served on the following persons this 6th day of September, 2011, by Electronic Information Exchange.

CAB 04

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