March 13, 2009

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARDS

In the Matter of     )  Docket No. 63-001
 )
U.S. DEPARTMENT OF ENERGY )  ASLBP Nos.  09-876-HLW-CAB-01
 )  09-877-HLW-CAB-02
)               09-878-HLW-CAB-03
(High-Level Waste Repository) )

NRC STAFF ANSWER TO THE TIMBISHA SHOSHONE TRIBE’S MOTION FOR
CERTIFICATION OF LICENSING SUPPORT NETWORK OUT OF TIME FOR GOOD CAUSE

On March 11, 2009, the Timbisha Shoshone Tribe (TIM) requested permission to file its initial Licensing Support Network (LSN) certification, alleging it has good cause for late filing. See “Motion for Certification of Licensing Support Network Out of Time for Good Cause” (Motion) at 2. TIM also appended its LSN certification signed by Loreen Pitchford and Darcie L. Houck. See “Certification of Timbisha Shoshone Tribe LSN Document Collection,” Mar. 11, 2009, at 1-2.

In support of its assertion of good cause, TIM describes interactions with the U.S. Department of Energy regarding the adequacy of TIM’s implementation of its LSN program. See Motion at 4-5. The NRC staff (Staff) recognizes that the Commission expects it “to refrain from becoming involved in procedural disputes between other parties in which the staff does not have an interest, unless the Presiding Officer specifically requests the staff’s views on the matter.” See Procedures Applicable to Proceedings for the Issuance of Licenses for the Receipt of High-Level Radioactive Waste at a Geologic Repository, 56 Fed. Reg. 7787, 7794 (Feb. 26, 1991). Consistent with this expectation, the Staff takes no position on whether the reasons cited by TIM in its Motion represent good cause for non-timely compliance with 10 C.F.R. §§ 2.1003 and 2.1009.
The Staff does not object to TIM’s late-filed LSN certification. As the Staff has previously noted, “TIM has made documentary material available on the LSN. . [and] should be required to file a certification of compliance with [10 C.F.R. §] 2.1003 before it is permitted to participate in this proceeding, in the event that its petition is found to be otherwise in compliance with [10 C.F.R. §] 2.309.” “NRC Staff Answer to Intervention Petitions,” Feb. 9, 2009, at 34. However, the Staff takes no position on the adequacy of the TIM LSN certification.

Respectfully submitted,

/Signed (electronically) by/

Kevin C. Roach
Counsel for the NRC Staff
U.S. Nuclear Regulatory Commission
Office of the General Counsel
Mail Stop O-15 D21
Washington, DC 20555-0001
(301) 415-2779
Kevin.Roach@nrc.gov

Dated at Rockville, Maryland
this 13th day of March, 2009
UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARDS

In the Matter of ) Docket No. 63-001-HLW
U.S. DEPARTMENT OF ENERGY ) ASLBP Nos. 09-876-HLW-CAB01
(High-Level Waste Repository) ) 09-877-HLW-CAB02
) 09-878-HLW-CAB03

CERTIFICATE OF SERVICE

I hereby certify that copies of the “NRC STAFF ANSWER TO THE TIMBISHA SHOSHONE TRIBE’S MOTION FOR CERTIFICATION OF LICENSING SUPPORT NETWORK OUT OF TIME FOR GOOD CAUSE” in the above-captioned proceeding have been served on the following persons this 13th of March, 2009, by Electronic Information Exchange.

CAB 01
William J. Froehlich, Chairman
Thomas S. Moore
Richard E. Wardwell
Atomic Safety and Licensing Board Panel
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555-0001
E-mail: wjf1@nrc.gov
        tsm2@nrc.gov
        rew@nrc.gov

Office of the Secretary
ATTN: Docketing and Service
Mail Stop: O-16C1
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555
E-mail: HEARINGDOCKET@nrc.gov

CAB 02
Michael M. Gibson, Chairman
Alan S. Rosenthal
Nicholas G. Trikouros
Atomic Safety and Licensing Board Panel
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555-0001
E-mail: mmg3@nrc.gov
        axr@nrc.gov
        ngt@nrc.gov

Charles J. Fitzpatrick, Esq.
John W. Lawrence, Esq.
Egan, Fitzpatrick & Malsch, PLLC
12500 San Pedro Avenue, Suite 555
San Antonio, TX 78216
E-mail: cfitzpatrick@nuclearlawyer.com
        lawrence@nuclearlawyer.com

Martin G. Malsch, Esq.
Egan, Fitzpatrick & Malsch, PLLC
1750 K Street, N.W. Suite 350
Washington, D.C. 20006
E-mail: mmalsch@nuclearlawyer.com

CAB 03
Paul S. Ryerson, Chairman
Michael C. Farrar
Mark O. Barnett
Atomic Safety and Licensing Board Panel
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555-0001
E-mail: psr1@nrc.gov
        mcf@nrc.gov
        mob1@nrc.gov
        mark.barnett@nrc.gov

Brian W. Hembacher, Esq.
Deputy Attorney General
California Attorney General’s Office
300 South Spring Street
Los Angeles, CA 90013
E-mail: brian.hembacher@doj.ca.gov
Susan L. Durbin, Esq.
Deputy Attorney General
1300 I Street
P.O. Box 944255
Sacramento, CA 94244-2550
E-mail: susan.durbin@doj.ca.gov

Frank A. Putzu
Naval Sea Systems Command Nuclear Propulsion Program
1333 Isaac Hull Avenue, S.E.
Washington Navy Yard, Building 197
Washington, DC 20376
E-mail: frank.putzu@navy.mil

John M. Peebles
Darcie L. Houck
Fredericks Peebles & Morgan LLP
1001 Second Street
Sacramento, CA 95814
E-mail: jpeebles@ndnlaw.com

Ellen C. Ginsberg
Michael A. Bauser
Anne W. Cottingham
Nuclear Energy Institute, Inc.
1776 I Street, N.W., Suite 400
Washington, D.C. 20006
E-mail: ecg@nei.org
  mab@nei.org
  awc@nei.org

David A. Repka
William A. Horin
Rachel Miras-Wilson
Winston & Strawn LLP
1700 K Street N.W.
Washington, D.C. 20006
E-mail: drepka@winston.com
  whorin@winston.com
  rwilson@winston.com

Jay E. Silberg
Timothy J.V. Walsh
Pillsbury Winthrop Shaw Pittman LLP
2300 N Street, N.W.
Washington, D.C. 20037-1122
E-mail: jay.silberg@pillsburylaw.com
  timothy.walsh@pillsburylaw.com

John H. Huston, Esq.
6722 Running Colors Avenue
Las Vegas, NV 89131
E-mail: johnhhuston@gmail.com

Gregory L. James
710 Autumn Leaves Circle
Bishop, California 93514
Email: gljames@earthlink.net

Arthur J. Harrington
Godfrey & Kahn, S.C.
780 N. Water Street
Milwaukee, WI 53202
E-mail: aharrin@gklaw.com

Steven A. Heinzen
Douglas M. Poland
Godfrey & Kahn, S.C.
One East Main Street, Suite 500
P.O. Box 2719
Madison, WI 53701-2719
E-mail: sheinzen@gklaw.com
  dpoland@gklaw.com

Robert F. List, Esq.
Jennifer A. Gores, Esq.
Armstrong Teasdale LLP
1975 Village Center Circle, Suite 140
Las Vegas, NV 89134-6237
E-mail: rlist@armstrongteasdale.com
  jgores@armstrongteasdale.com

Diane Curran
Harmon, Curran, Spielberg, & Eisenberg, L.L.P.
1726 M Street N.W., Suite 600
Washington, D.C. 20036
E-mail: dcurran@harmoncurran.com

Ian Zabarte, Board Member
Native Community Action Council
P.O. Box 140
Baker, NV 89311
E-mail: mrizabarte@gmail.com
Richard Sears  
District Attorney No. 5489  
White Pine County District Attorney’s Office  
801 Clark Street, Suite 3  
Ely, NV 89301  
E-mail: rwsears@wpcda.org

Donald P. Irwin  
Michael R. Shebelskie  
Kelly L. Faglioni  
Hunton & Williams LLP  
Riverfront Plaza, East Tower  
951 East Byrd Street  
Richmond, VA 23219-4074  
E-mail: dirwin@hunton.com  
mshebelskie@hunton.com  
kfaglioni@hunton.com

Curtis G. Berkey  
Scott W. Williams  
Rovianne A. Leigh  
Alexander, Berkey, Williams, & Weathers LLP  
2030 Addison Street, Suite 410  
Berkley, CA 94704  
E-mail: cberkey@abwwlaw.com  
swilliams@abwwlaw.com  
rleigh@abwwlaw.com

Bret O. Whipple  
1100 South Tenth Street  
Las Vegas, Nevada 89104  
E-mail: bretwhipple@nomademail.com

Gregory Barlow  
P.O. Box 60  
Pioche, Nevada 89043  
E-mail: icda@lcturbonet.com

Connie Simkins  
P.O. Box 1068  
Caliente, Nevada 89008  
E-mail: icciac@co.lincoln.nv.us

Robert F. List  
Jennifer A. Gores  
Armstrong Teasdale, LLP  
1975 Village Center Circle  
Suite 140  
Las Vegas, NV 89134  
E-mail: rlist@armstrongteasdale.com  
jgores@armstrongteasdale.com

Dr. Mike Baughman  
InterTech Services Corporation  
P.O. Box 2008  
Carson City, Nevada 89702  
E-mail: bigoff@aol.com

/Signed (electronically) by/  
Kevin C. Roach  
Counsel for NRC Staff  
U.S. Nuclear Regulatory Commission  
Office of General Counsel  
Mail Stop O-15D21  
Washington, DC 20555-0001  
(301) 415-2779  
Kevin.Roach@@nrc.gov