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/

Megan A. Wright
Counsel for NRC Staff
U.S. Nuclear Regulatory Commission
Office of the General Counsel
Mail Stop O-15D21
Washington, DC 20555-0001
(301) 415-2314
Megan.Wright@nrc.gov

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

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
Thomas S. Moore, Chairman
Paul S. Ryerson
Richard E. Wardwell
Atomic Safety and Licensing Board Panel
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001
E-mail: tsm2@nrc.gov
  psr1@nrc.gov
  rew@nrc.gov

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

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

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

Timothy E. Sullivan, Esq.
Deputy Attorney General
California Department of Justice
1515 Clay Street. 20th Flr.
P.O. Box 70550
Oakland, CA 94612-0550
E-mail: timothy.sullivan@doj.ca.gov

Kevin W. Bell, Esq.
Senior Staff Counsel
California Energy Commission
1516 9th Street
Sacramento, CA 95814
E-mail: kwbell@energy.state.ca.us

Charles J. Fitzpatrick, Esq.
John W. Lawrence, Esq.
Egan, Fitzpatrick, Malsch & Lawrence PLLC
1777 N.E. Loop 410, Suite 600
San Antonio, TX 78217
E-mail: cfitzpatrick@nuclearlawyer.com
  jlawrence@nuclearlawyer.com
Alan I. Robbins, Esq.
Debra D. Roby, Esq.
Alan J. Rukin, Esq.
Jennings Strouss & Salmon, PLC
1350 I Street, NW Suite 810
Washington, DC 20005-3305
E-mail: 

Donald J. Silverman, Esq.
Thomas A. Schmutz, Esq.
Thomas C. Poindexter, Esq.
Paul J. Zaffuts, Esq.
Alex S. Polonsky, Esq.
Lewis Csedrik, Esq.
Raphael P. Kuyler, Esq.
Morgan, Lewis & Bockius LLP
1111 Pennsylvania Avenue, N.W.
Washington, DC 20004
E-mail: 

Malachy R. Murphy, Esq.
18160 Cottonwood Rd. #265
Sunriver, OR 97707
E-mail: 

Susan L. Durbin, Esq.
Deputy Attorney General
1300 I Street
P.O. Box 944255
Sacramento, CA 94244-2550
E-mail: 

Ross D. Colburn
2020 L Street, Suite 250
Sacramento, CA 95811
E-mail: 

Shane Thin Elk
Fredericks Peebles & Morgan, LLP
3610 North 163rd Plaza
Omaha, Nebraska 68116
E-mail: 

Martha S. Crosland, Esq.
Angela M. Kordyak, Esq.
Nicholas P. DiNunzio
James Bennett McRae, Esq.
Sean A. Lev
U.S. Department of Energy
Office of the General Counsel
1000 Independence Avenue, S.W.
Washington, DC 20585
E-mail: 

George W. Hellstrom
U.S. Department of Energy
Office of General Counsel
1551 Hillshire Drive
Las Vegas, NV 89134-6321
E-mail: 

Robert M. Andersen
Akerman Senterfitt LLP
750 9th N.W., Suite 750
Washington, DC 20001
E-mail: 

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: 

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

Ellen C. Ginsberg
Anne W. Cottingham
Jerry Bonanno
Nuclear Energy Institute, Inc.
1776 I Street, N.W., Suite 400
Washington, DC 20006
E-mail: ecg@nei.org
awc@nei.org
jxb@nei.org

Kelly Brown
District Attorney
White Pine County District Attorney's Office
801 Clark Street
Ely, NV 89301
E-mail: kbrown@mwpower.net

David A. Repka
William A. Horin
Rachel Miras-Wilson
Winston & Strawn LLP
1700 K Street N.W.
Washington, DC 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, DC 20037-1122
E-mail: jay.silberg@pillsburylaw.com
timothy.walsh@pillsburylaw.com

Gregory L. James
712 Owens Gorge Road
HC 79, Box 11
Mammoth Lakes, California 93546
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
Hannah L. Renfro
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
hrenfro@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, DC 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

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
James Bradford Ramsay  
National Association of Regulatory Utility Commissioners  
1101 Vermont Avenue NW, Suite 200  
Washington, DC 20005  
E-mail: jramsay@naruc.org

Don L. Keskey  
Public Law Resource Center PLLC  
505 N. Capitol Avenue  
Lansing, MI 48933  
E-mail: donkeskey@publiclawresourcecenter.com

/Signed (electronically) by/

Megan A. Wright  
Counsel for the NRC Staff  
U.S. Nuclear Regulatory Commission  
Office of the General Counsel  
Mail Stop O-15D21  
Washington, DC 20555-0001  
(301) 415-2314  
E-mail: Megan.Wright@nrc.gov