This adjudicatory proceeding concerns the application of the Department of Energy (DOE) for authorization to construct a national high-level nuclear waste repository at Yucca Mountain, Nevada.

On March 3, 2010, DOE moved to withdraw the application with prejudice.¹ On June 29, 2010, this Board denied the motion on the ground that the Nuclear Waste Policy Act of 1982, as amended, does not permit DOE to withdraw the application.² On June 30, 2010, the Secretary of the Commission invited participants to submit briefs on an expedited schedule as to whether it should review, and reverse or uphold, the Board’s decision.³

¹ U.S. Department of Energy’s Motion to Withdraw (Mar. 3, 2010).
² LBP-10-11, 71 NRC __, __ (slip op. at 20) (June 29, 2010).
³ Secretary Order (June 30, 2010) at 1 (unpublished).
On September 9, 2011, the Commission announced that it was evenly divided on whether to take the affirmative action of overturning or upholding the Board’s decision. The Board’s decision to deny DOE’s motion to withdraw, LBP-10-11, therefore stands.

The seven-year history of this adjudicatory proceeding has involved the work of six Licensing Boards in three phases: (1) preliminary document discovery and case management matters before the Pre-License Application Presiding Officer Board and the Advisory Pre-License Application Presiding Officer Board; (2) consideration of initial petitions and identification of participants and admitted contentions by three separate Construction Authorization Boards (i.e., CAB-01, CAB-02, CAB-03); and (3) consideration of additional proffered contentions, new petitions, and various case management matters by this Board (the fourth Construction Authorization Board — CAB-04 ). The full history of the adjudicatory proceeding is contained in the principal substantive and procedural rulings of the six Licensing Boards and of the Commission, as well as in certain key pleadings of the parties, as set forth in the attached Appendix.

As of this date, fourteen parties have been permitted to intervene in the proceeding: (1) the State of Nevada; (2) the Nuclear Energy Institute; (3) Nye County, Nevada; (4) the four Nevada Counties of Churchill, Esmeralda, Lander, and Mineral (jointly); (5) the State of California; (6) Clark County, Nevada; (7) the County of Inyo, California; (8) White Pine County, Nevada; (9) the Joint Timbisha Shoshone Tribal Group; (9) the Native Community Action Council; (10) the State of Washington; (11) the State of South Carolina; (12) Aiken County, South Carolina; (13) the Prairie Island Indian Community; and (14) the National Association of Regulatory Utility Commissioners. Two Nevada counties — Eureka County and Lincoln County — have been permitted to participate as interested governmental bodies pursuant to 10 C.F.R. § 2.315(c), and the Florida Public Service Commission was permitted to participate as

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4 CLI-11-07, 74 NRC __, __ (slip op. at 1) (Sept. 9, 2011).
amicus curiae. Two hundred eighty-eight admitted contentions are pending. They would be ripe for adjudication at evidentiary hearings after deposition discovery, issuance by the NRC Staff of applicable Safety Evaluation Reports and (in the case of contentions arising under the National Environmental Policy Act) any necessary supplementation by the NRC Staff of DOE’s Environmental Impact Statement.

Although we have been informed that the agency has current appropriated Fiscal Year 2011 Nuclear Waste Funds (NWFs) that could be carried over into the next fiscal year, there are no Full-Time Equivalent (FTE) positions (i.e., federal employee positions) requested in the President’s Fiscal Year 2012 Budget for Yucca Mountain High-Level Waste activities. Therefore, because both future appropriated NWF dollars and FTEs for this proceeding are uncertain, and consistent with the Commission’s Memorandum and Order of September 9, 2011, this proceeding is suspended.

It is so ORDERED.

THE ATOMIC SAFETY AND LICENSING BOARD

/RA/

Thomas S. Moore, Chairman
ADMINISTRATIVE JUDGE

/RA/

Paul S. Ryerson
ADMINISTRATIVE JUDGE

/RA/

Richard E. Wardwell
ADMINISTRATIVE JUDGE

Rockville, Maryland
September 30, 2011
APPENDIX

1. Pre-License Application Presiding Officer (PAPO)/Advisory Pre-License Application Presiding Officer (APAPO)

<table>
<thead>
<tr>
<th>Date</th>
<th>Entity</th>
<th>Citation</th>
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<tr>
<td>1/24/2005</td>
<td>PAPO Board</td>
<td>(unpublished)</td>
<td>First Case Management Order Regarding Preparation of Privilege Logs</td>
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<tr>
<td>7/8/2005</td>
<td>PAPO Board</td>
<td>(unpublished)</td>
<td>Second Case Management Order Regarding Pre-License Application Phase Document Discovery and Dispute Resolution</td>
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<tr>
<td>2/16/2006</td>
<td>PAPO Board</td>
<td>(unpublished)</td>
<td>Memorandum and Order Regarding Deletions of Documents From the LSN</td>
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<tr>
<td>7/6/2007</td>
<td>PAPO Board</td>
<td>(unpublished)</td>
<td>Revised Second Case Management Order Regarding Pre-License Application Phase Document Discovery and Dispute Resolution</td>
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<td>Order/Case Management Order</td>
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<tr>
<td>8/16/2007</td>
<td>PAPO Board (unpublished)</td>
<td>Order Amending Appendix H of the Revised Second Case Management Order</td>
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<tr>
<td>8/30/2007</td>
<td>PAPO Board (unpublished)</td>
<td>Third Case Management Order Concerning Procedures Regarding Official Use Only Information, Naval Nuclear Propulsion Information, and Unclassified Controlled Nuclear Information</td>
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<tr>
<td>8/31/2007</td>
<td>PAPO Board (unpublished)</td>
<td>Memorandum Alerting Commission to the Possibility of Significant Delays in the High-Level Waste Proceeding Because of the Months It Will Take Potential Parties to the Proceeding to Gain Access to Safeguards Information</td>
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<tr>
<td>10/5/2007</td>
<td>PAPO Board (unpublished)</td>
<td>Fourth Case Management Order Concerning Electronic Filing, the Digital Data Management System (DDMS), Safeguards Information, and Other Items</td>
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<tr>
<td>3/31/2008</td>
<td>APAPO Board (unpublished)</td>
<td>Memorandum Requesting that the Commission Grant Additional Authority to Issue Binding Case Management Orders</td>
<td></td>
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<tr>
<td>6/17/2008</td>
<td>Commission CLI-08-12, 67 NRC 386 (2008)</td>
<td>Memorandum and Order Affirming APAPO Board’s Decision in LBP-08-01 Denying Nevada’s Motion to Strike DOE’s LSN Document Collection Certification</td>
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<tr>
<td>Date</td>
<td>Agency/Panel</td>
<td>Citation</td>
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<td>6/20/2008</td>
<td>APAPO Board</td>
<td>LBP-08-10, 67 NRC</td>
<td>APAPO Case Management Order Concerning Petitions To Intervene, Contentions, Responses and Replies, Standing Arguments, and Referencing or Attaching Supporting Materials</td>
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<td>8/13/2008</td>
<td>Commission</td>
<td>CLI-08-18, 68 NRC</td>
<td>Memorandum and Order Modifying Schedule in 10 C.F.R. Part 2, Appendix D to Allow Filing of Petitions to Intervene within Sixty Days of Notice of Hearing</td>
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<td>246 (2008)</td>
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<td>9/8/2008</td>
<td>Commission</td>
<td>CLI-08-22, 68 NRC</td>
<td>Memorandum and Order Affirming PAPO Board’s Decision in LBP-08-05 Denying DOE’s Motion to Strike Nevada’s LSN Document Collection Certification</td>
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<td>10/17/2008</td>
<td>Commission</td>
<td>CLI-08-25, 68 NRC</td>
<td>Notice of Hearing and Opportunity to Petition for Leave to Intervene on DOE Application for Authority to Construct a Geologic Repository at Yucca Mountain, Nevada</td>
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<tr>
<td></td>
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<td>497 (2008); 73 Fed.</td>
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<td>Reg. 63,029 (Oct. 22, 2008)</td>
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2. Construction Authorization Boards 01, 02, 03 (CAB-01, CAB-02, CAB-03) and Pertinent Pleadings

<table>
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<th>Date</th>
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<tr>
<td>12/19/2008</td>
<td>Nye County, Nevada</td>
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<td>Nye County, Nevada Petition to Intervene and Contentions</td>
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<td>12/19/2008</td>
<td>State of Nevada</td>
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<td>State of Nevada’s Petition to Intervene as a Full Party</td>
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<td>12/19/2008</td>
<td>Nuclear Energy Institute</td>
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<td>The Nuclear Energy Institute’s Petition to Intervene</td>
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<td>12/20/2008</td>
<td>State of California</td>
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<td>State of California’s Petition for Leave to Intervene in the Hearing</td>
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<td>12/22/2008</td>
<td>Native Community Action Council</td>
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<td>Native Community Action Council Petition to Intervene as a Full Party</td>
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<tr>
<td>12/22/2008</td>
<td>Clark County, Nevada</td>
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<td>Clark County, Nevada’s Request for Hearing, Petition to Intervene and Filing of Contentions</td>
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<td>12/22/2008</td>
<td>White Pine County, Nevada</td>
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<td>White Pine County’s Request for Hearing and Petition for Leave to Intervene Including Supporting Contentions on the Application by the U.S. Department of Energy for Authority to Construct a Geologic Repository at a Geologic Repository Operations Area at Yucca Mountain</td>
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<tr>
<td>12/22/2008</td>
<td>Timbisha Shoshone Tribe</td>
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<td>Timbisha Shoshone Tribe’s Petition for Leave to Intervene in the Hearing</td>
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<tr>
<td>12/22/2008</td>
<td>County of Inyo, California</td>
<td></td>
<td>Petition for Leave to Intervene by the County of Inyo, California on an Application by the U.S. Department of Energy for Authority to Construct a Geologic High-Level Waste Repository at a Geologic Repository Operations Area at Yucca Mountain, Nevada</td>
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<tr>
<td>Date</td>
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<td>12/22/2008</td>
<td>TSO</td>
<td>Timbisha Shoshone Yucca Mountain Oversight Program Non-Profit Corporation (TSO)</td>
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<tr>
<td>1/16/2009</td>
<td>ASLBP Chief Administrative Judge</td>
<td>Establishment of Three Atomic Safety and Licensing Boards (CABs 01, 02, and 03) to Preside over Petitions to Intervene and Requests to Participate in the High-Level Waste Repository Construction Authorization Application Proceeding</td>
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<tr>
<td>1/29/2009</td>
<td>CAB-01, CAB-02, CAB-03</td>
<td>Joint CABs’ Case Management Order #1 Adopting Prior PAPO and APAPO Case Management Orders and Setting Times for Filing New and Amended Contentions</td>
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<td>3/5/2009</td>
<td>TSO</td>
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<tr>
<td>5/11/2009</td>
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<td>Joint CABs Memorandum and Order Rulings on Intervention Petitions (Identifying Participants) and Admitting Contentions</td>
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<tr>
<td>5/12/2009</td>
<td>State of Nevada</td>
<td>State of Nevada’s New Contentions Based on Final NRC Rule</td>
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<td>6/8/2009</td>
<td>State of Nevada</td>
<td>State of Nevada’s New Contentions Based on DOE’s February 19, 2009 License Application Update</td>
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<tr>
<td>6/10/2009</td>
<td>Clark County, Nevada</td>
<td>Clark County, Nevada’s New Contention Arising from the Department of Energy’s February 19, 2009 License Application Update</td>
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<tr>
<td>6/30/2009</td>
<td>Commission</td>
<td>Memorandum and Order Reversing CABs’ Ruling in LBP-09-06 on the Admissibility of Four Contentions</td>
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3. Construction Authorization Board 04 (CAB-04) and Pertinent Pleadings

<table>
<thead>
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<th>Entity</th>
<th>Citation</th>
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<tbody>
<tr>
<td>6/19/2009</td>
<td>ASLBP Chief</td>
<td>74 Fed. Reg. 30,644 (June</td>
<td>Establishment of Atomic Safety and Licensing Board Construction Authorization Board 4 (CAB-04) to Preside Over Matters Regarding Discovery, LSN Compliance, New or Amended Contentions, Grouping or Consolidation of Contentions, Scheduling, and Case Management Matters</td>
</tr>
<tr>
<td></td>
<td>Administrative</td>
<td>26, 2009)</td>
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<tr>
<td></td>
<td>Judge</td>
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<tr>
<td>7/21/2009</td>
<td>CAB-04</td>
<td>(unpublished)</td>
<td>Order Concerning Phased Schedule for Deposition Discovery due to NRC Staff’s Announcement of Serial Issuance of Safety Evaluation Reports (SERs) over Three Years and the NRC Staff’s Inability to Comply with 10 C.F.R. Part 2, Appendix D</td>
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<tr>
<td>12/30/2009</td>
<td>CAB-04</td>
<td>(unpublished)</td>
<td>Order Consolidating and Grouping Certain Contentions</td>
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<td>2/1/2010</td>
<td>CAB-04</td>
<td>(unpublished)</td>
<td>Case Management Order #3 Extending Phase I Deposition Discovery Through January 31, 2011 due to NRC Staff’s Announced Delay for Issuance of SER Volume 3 from September 2010 to November 2010</td>
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<tr>
<td>2/16/2010</td>
<td>CAB-04</td>
<td>(unpublished)</td>
<td>Order Granting DOE’s Motion for Stay of Proceeding Until Resolution of DOE’s Expected Motion to Withdraw License Application</td>
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<tr>
<td>Date</td>
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<td>2/26/2010</td>
<td>State of South Carolina</td>
<td>Petition of the State of South Carolina to Intervene</td>
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<td>3/4/2010</td>
<td>Aiken County, South Carolina</td>
<td>Petition of Aiken County, South Carolina, to Intervene</td>
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<td>3/15/2010</td>
<td>National Association of Regulatory Utility Commissioners</td>
<td>National Association of Regulatory Utility Commissioners Petition to Intervene</td>
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<td>3/15/2010</td>
<td>Prairie Island Indian Community</td>
<td>Petition to Intervene of the Prairie Island Indian Community</td>
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<tr>
<td>4/6/2010</td>
<td>CAB-04</td>
<td>Memorandum and Order Suspending Briefing and Consideration of DOE’s Withdrawal Motion Pending Guidance from U.S. Court of Appeals for District of Columbia Circuit in Actions Challenging DOE’s Authority to Withdraw its License Application</td>
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<tr>
<td>4/23/2010</td>
<td>Commission</td>
<td>Memorandum and Order Vacating CAB-04’s April 6, 2010 Suspension Order and Directing Board to Decide DOE’s Motion to Withdraw Application</td>
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<tr>
<td>6/29/2010</td>
<td>CAB-04</td>
<td>Memorandum and Order Granting Intervention to Five New Petitioners and Denying DOE’s Withdrawal Motion</td>
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<tr>
<td>6/30/2010</td>
<td>Secretary of the Commission</td>
<td>Order Setting Expedited Briefing Schedule on Whether Commission Should Review, and Reverse or Uphold, LBP-10-11 Denying DOE’s Motion to Withdraw Application</td>
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<tr>
<td>7/15/2010</td>
<td>Commissioner Apostolakis</td>
<td>Notice of Recusal by Commissioner George Apostolakis in High-Level Waste Adjudicatory Proceeding</td>
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<tr>
<td>8/11/2010</td>
<td>Commissioner Magwood</td>
<td>Commissioner William D. Magwood, IV Decision Refusing Recusal on the Motion of the State of Washington, the State of South Carolina, Aiken County, South Carolina, and White Pine County, Nevada for Recusal/Disqualification</td>
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<tr>
<td>8/11/2010</td>
<td>Commissioner Ostendorff</td>
<td>(unpublished)</td>
<td>Commissioner William C. Ostendorff Decision Refusing Recusal on the Motion of the State of Washington, the State of South Carolina, Aiken County, South Carolina, and White Pine County, Nevada for Recusal/Disqualification</td>
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<td>12/14/2010</td>
<td>CAB-04</td>
<td>LBP-10-22, 72 NRC</td>
<td>Memorandum and Order Deciding Phase I Legal Issues and Denying Rule Waiver Petitions</td>
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<td>12/14/2010</td>
<td>CAB-04</td>
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<td>2/25/2011</td>
<td>CAB-04</td>
<td>(unpublished)</td>
<td>Memorandum and Order Denying DOE’s Motion to Renew Temporary Suspension of the Proceeding</td>
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<td>4/11/2011</td>
<td>CAB-04</td>
<td>(unpublished)</td>
<td>Order Directing all Parties to Preserve LSN Collections in PDF Format and to Submit LSN Document Collections Together with Associated Bibliographic Files to the Secretary of the Commission on Optical Storage Media for Inclusion into the Docket</td>
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<tr>
<td>5/13/2011</td>
<td>CAB-04</td>
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<td>Order Granting DOE’s Motion for Clarification of Board’s April 11, 2011 Order, Allowing DOE to Submit LSN Collection on External Hard Drives, and Exempting DOE from Other Agency Information Technology Requirements</td>
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<tr>
<td>5/20/2011</td>
<td>CAB-04</td>
<td>(unpublished)</td>
<td>Memorandum and Order Granting DOE’s Motion to Quash Depositions and Warning that Board Expects the State of Nevada to Withdraw Additional Deposition Notices In Light of Events Beyond Board’s and Parties’ Control</td>
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<tr>
<td>6/9/2011</td>
<td>CAB-04</td>
<td>(unpublished)</td>
<td>Order Granting in Part and Denying in Part NRC Staff’s Reconsideration Motion of Board’s April 11, 2011 Order and Providing that NRC Staff Need Not Duplicate its Collection in the Agencywide Documents Access and Management System (ADAMS) and that the Secretary of the Commission Need Only Place Documents in ADAMS as Funding Permits</td>
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<td>7/13/2011</td>
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<td>(unpublished)</td>
<td>Memorandum and Order Granting in Part DOE’s Motion to Dismiss by Dismissing One Nevada Safety Contention and Parts of Three Others</td>
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<td>7/26/2011</td>
<td>LSNA</td>
<td>(unpublished)</td>
<td>Memorandum of LSNA that LSN will Cease Operations on or about August 5, 2011</td>
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<td>9/9/2011</td>
<td>Commission</td>
<td>CLI-11-07, 74 NRC ___ (slip op.) (Sept. 9, 2011)</td>
<td>Memorandum and Order Announcing Commission Divided 2-2 on Whether to Take Affirmative Action on LBP-10-11 Denying DOE’s Motion to Withdraw License Application and Directing Board to Complete All Necessary and Appropriate Case Management Activities, Including Documenting the History of the Proceeding by Close of Fiscal Year 2011</td>
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<tr>
<td>9/16/2011</td>
<td>CAB-04</td>
<td>(unpublished)</td>
<td>Order Directing LSNA to Submit DOE Employee Concern Program Documents to Secretary of the Commission and Each Party to Retain All Documentary Material Represented in LSN only by Bibliographic Header Information</td>
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<tr>
<td>9/28/2011</td>
<td>CAB-04</td>
<td>(unpublished)</td>
<td>Memorandum and Order Dismissing without Prejudice Timbisha Shoshone Tribal Council’s Motion for Recognition as Representative of Timbisha Shoshone Indian Tribe</td>
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</tbody>
</table>
CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing MEMORANDUM AND ORDER (Suspending Adjudicatory Proceeding) (LBP 11-24) dated September 30, 2011, have been served upon the following persons by Electronic Information Exchange.

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Hearing Docket
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MEMORANDUM AND ORDER (Suspending Adjudicatory Proceeding) (LBP 11-24)

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MEMORANDUM AND ORDER (Suspending Adjudicatory Proceeding) (LBP 11-24)

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Dated at Rockville, Maryland
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[Original Signed by Christine M. Pierpoint]
Office of the Secretary of the Commission