

March 2009

High-level Waste Hearings Summary Table

The following table summarizes

- Electronic Hearing Docket Notices for March, 2009.

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High-Level Waste hearing

ORDERS Electronic Hearing Docket Board Orders for March (CAB01, CAB02, CAB03)

Date	March 6th	March 3	March 13th
	<p>NOTICE OF RECONSTITUTION Pursuant to 10 C.F.R. ' 2.313(c), the Atomic Safety and Licensing Board in the above captioned U.S. Department of Energy, ASLBP No. 09-877-HLW-CAB02 proceeding is hereby reconstituted, and the following Administrative Judge is designated to serve in place of Administrative Judge Lawrence G. McDade: Administrative Judge Alan S. Rosenthal Atomic Safety and Licensing Board Panel U.S. Nuclear Regulatory Commission</p>	<p>Timbisha Shoshone Tribe For good cause shown, the Tribe's amended motion for an extension of time until March 11, 2009 to file its reply is GRANTED.</p>	<p>ORDER (Clarifying CAB Case Management Order #1) On January 16, 2009, the Chief Administrative Judge established three licensing boards, denoted construction authorization boards (CABs), to pre- side, inter alia, 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. On January 29, 2009, the three Licensing Boards issued a CAB case management order setting forth requirements and procedures applicable to the proceeding.</p>
Date	March 18	March 18	March 13th
	<p>ORDER (Terms, Logistics, and Questions for Oral Argument) In a February 12, 2009 notice, the three construction authorization boards (CABs) scheduled oral argument in Las Vegas for March 31, April 1, and April 2, 2009, on the twelve petitions to intervene filed in response to the Commission's October 22, 2008 notice of hearing on the June 3, 2008, license application (LA). A. Terms of Oral Argument 1. Times and Location Unless otherwise announced, oral argument will begin each morning at 9:00 a.m. PDT at the Las Vegas Hearing Facility (LVHF), Pacific Enterprise Plaza, Building 1, 3250 Pepper Lane, Las Vegas, Nevada. Counsel should expect a 90-minute lunch break each day and the Boards will strive to conclude each session by 5:00 p.m., but the arguments might go later. The oral argument will be open to the public and will be webstreamed.</p>	<p>Order (Continued) On Thursday, April 2, CAB-01 will sit and, inter alia, focus upon the various overarching issues involved in the provisions of 10 C.F.R. § 2.1012(b) regarding compliance with the requirements of the Licensing Support Network (LSN) and orders of the Pre-License Application Presiding Officer Board. Additionally, the Board will examine the issues regarding the so-called heightened standard for contention admissibility argument posited by DOE in its answers to most of the intervention petitions. Participants Oral argument shall be limited to counsel who have filed an appropriate notice of appearance on behalf of a petitioner or party. The oral argument will be open to the public and will be webstreamed. In any event, the Digital Data Management System (DDMS) will be utilized for the argument.</p>	<p>On January 16, 2009, the Chief Administrative Judge established three licensing boards, denoted construction authorization boards (CABs), to pre- side, inter alia, 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. On January 29, 2009, the three Licensing Boards issued a CAB case management order setting forth requirements and procedures applicable to the proceeding On January 15, 2009, prior to the designation of the CAB Boards, the Chief Administrative Judge issued an order stating "[a]fter the duly established licensing boards issue any initial pre-hearing conference orders identifying the parties and admitted contentions, all parties may, notwithstanding the ten-day rule in 10 C.F.R. § 2.323(a), file any appropriate pleadings addressing relevant matters introduced by any updates and supplements to DOE's June 3, 2008 application." On January 29, 2009, in the CAB Case Management Order #1, at page 2, we stated that, "[n]otwithstanding the time period specified in 10 C.F.R. § 2.323(a), such motion [dealing with new or amended contentions] shall be deemed timely under 10 C.F.R. § 2.309(f)(2) if filed within 30 days of the date when the new and material information on which it is based first became available." It was not the intent of the CABs to create a conflict</p>

			with the Chief Administrative Judge's order with regard to matters dealing with any updates and supplements to DOE's June 3, 2008 application. Accordingly, Case Management Order #1 is clarified to state that new or amended contentions arising from DOE's February 19, 2009 updates and supplements to DOE's initial application for construction authorization shall be deemed timely if filed within 30 days from the date of the CABs' initial order identifying the parties and admitted contentions.
Date	March 16th	March 18	March 18th
	<p>NOTICE OF RECONSTITUTION</p> <p>Pursuant to 10 C.F.R. ' 2.313(c), the Atomic Safety and Licensing Board in the above captioned U.S. Department of Energy, ASLBP No. 09-877-HLW-CAB02 proceeding is hereby reconstituted, and the following Administrative Judge is designated to serve in place of Administrative Judge Lawrence G. McDade: Administrative Judge Alan S. Rosenthal Atomic Safety and Licensing Board Panel U.S. Nuclear Regulatory Commission Washington, D.C. 20555-0001</p>	<p>The CABs requested "a list of specialized terms and their pronounced acronyms" and "technical words" that are "used in [the participants and parties'] contentions, answers, and replies that likely will be used by counsel at oral argument." Order at 6.</p>	<p>ORDER</p> <p>(Terms, Logistics, and Questions for Oral Argument)</p> <p>In a February 12, 2009 notice, the three construction authorization boards (CABs) scheduled oral argument in Las Vegas for March 31, April 1, and April 2, 2009, on the twelve petitions to intervene filed in response to the Commission's October 22, 2008 notice of hearing on the June 3, 2008, license application (LA) by the Department of Energy (DOE) to construct a geologic repository at Yucca Mountain in Nye County, Nevada.¹ Intervention petitions were filed by (1) Caliente Hot Springs Resort, LLC; (2) State of California; (3) Clark County, Nevada; (4) Churchill, Esmeralda, Lander, and Mineral Counties, Nevada (Four Counties); (5) Inyo County, California; (6) Native Community Action Council; (7) State of Nevada; (8) Nuclear Energy Institute; (9) Nye County, Nevada; (10) Timbisha Shoshone Tribe; (11) Timbisha Shoshone Yucca Mountain Oversight Program Non-Profit Corporation; and (12) White Pine County, Nevada. In addition, Eureka County, Nevada and Lincoln County, Nevada filed requests to participate as interested governmental bodies under 10 C.F.R. § 2.315(c) and, pursuant to 10 C.F.R. § 2.1001, DOE and the NRC Staff are designated parties to the proceeding.</p> <p>At least one counsel for each petitioner and party who has filed an appropriate notice of appearance shall attend the oral argument in Las Vegas. Because the participation of Eureka and Lincoln Counties is unopposed, counsel for those counties are welcome to attend but will not be permitted to participate in oral argument.</p> <p>Full order found here.</p>

Date	March 20th	March 24	Continued
	<p>MEMORANDUM AND ORDER (Regarding Telephonic First Prehearing Conference)</p> <p>On March 12, 2009 at 1:00 p.m. EDT, CAB-01 held the first prehearing conference pursuant to 10 C.F.R. § 2.1021 and the Commission's schedule for the proceeding in CLI-08-25, 68 NRC ___, ___ (Oct. 17, 2008), 73 Fed. Reg. 63,029, 63,032 (Oct. 22, 2008). During this telephone conference, the Board discussed with counsel for the petitioners and parties the agenda set forth in the Board's order of March 4, 2009.¹ In addition, Nevada raised an issue with the apparent conflict between the due dates for new or amended contentions based upon any revisions or supplements to the DOE license application.² The Board issued a clarifying order on March 13, 2009.</p> <p>The Board also inquired of the NRC Staff whether they will be following the schedule set forth in Appendix D to 10 C.F.R. Part 2 and when it expects to issue the Safety Evaluation Report (SER). The NRC Staff indicated that it is "holding to the current schedule under Appendix D and awaiting guidance from the Commission regarding the budget environment for any changes to that schedule.".....</p>	<p>ORDER (Modifying March 18, 2009 Order)</p> <p>On March 18, 2009, the three construction authorization boards (CABs) issued an Order setting forth the terms and logistics for oral argument on March 31, April 1, and April 2, 2009, at the NRC's Las Vegas Hearing Facility (LVHF).¹ On March 20, 2009, the NRC Staff (Staff) filed a motion to modify and clarify certain provisions in the Order.</p> <p>On March 20, 2009, DOE and NEI filed answers in support of the Staff motion. On March 23, 2009, Nye County and Clark County filed answers to the Staff motion and Eureka County filed a motion for clarification or modification of the Order. NEI, Clark County, and Nye County requested additional modification on their own behalf.</p> <p>Because the time before oral argument is so short, the CABs will not individually address the numerous specific relief requests now pending or confront any issues of the parties and petitioners' compliance with 10 C.F.R. § 2.323(b). Rather the Boards will, on their own motion, modify the March 18, 2009 Order. In modifying our earlier Order, the CABs are constrained by the features of the hearing room design that involve the size and physical configuration of counsel tables so as to provide a modicum of privacy to counsels' papers, the sight-lines for the judges and counsel, the physical placement of the cameras and voice-activated microphones for (DDMS) which are configured and adjusted to deal with visual and acoustical dead spots in the room, the regulations governing safe egress from the hearing room in the event of an emergency, and the very practical demands of the real-time court reporter for an oral argument involving counsel for 14 petitioners and parties, as well as the judges. Additionally, security features and the size of the LVHF guard force place additional constraints on the CABs' flexibility in altering procedures for the convenience of some parties. may seat up to two (2) counsel at their respective Board assigned counsel tables. (Continued next column)</p>	<p>The March 18, 2009 Order is modified as follows:</p> <ol style="list-style-type: none"> 1. DOE, Nevada, and Staff may have up to three (3) counsel at their Board assigned counsel table on any given day. There will be no intra-day "rotating in" of additional counsel. 2. Counsel for Eureka and Lincoln Counties may share a designated counsel table in the well. 3. As stated in the March 18, 2009 Order, all petitioners, except Nevada as noted above, one attorney may make arguments, unless directed otherwise by the Chairman of the Board sitting that day. 4. Only one attorney from DOE and only one attorney from Staff may make arguments concerning the Timbisha Shoshone Yucca Mountain Oversight Program Non-Profit Corporation, the Timbisha Shoshone Tribe, and the Native Community Action Council, when those arguments are heard. <p>All other provisions of the March 18, 2009 Order remain in full force and effect, including the limitation that no more than eight individuals may register for access to each of the assigned conference rooms. The CABs are disinclined to make additional modifications to the Order. It is so ORDERED.</p> <p>FOR THE ATOMIC SAFETY</p>

MOTIONS AND PLEADINGS

Date	March 2	March 2nd	March 3rd
	<p>ANSWER OF THE U.S. DEPARTMENT OF ENERGY TO TIMBISHA SHOSHONE TRIBE'S AMENDED MOTION FOR EXTENSION OF TIME</p> <p>In accordance with 10 C.F.R. § 2.323(c), the U.S. Department of Energy (DOE or the Department) hereby opposes the "Timbisha Shoshone Tribe's Amended Motion for Extension of Time and Finding of Good Cause for Late Filed Motion," (Amended Motion), filed on February 27, 2009.¹ As the Atomic Safety and Licensing Board (Board) is aware, approximately two and a half hours after the deadline for filing the Timbisha Shoshone Tribe's (Tribe) Reply to DOE and the NRC Staff's Answers, the Tribe filed its original motion for extension of time. On February 27, 2009, the Board denied the Tribe's original motion. On that same day, three days after the deadline for filing the Tribe's Reply, the Tribe filed its Amended Motion.</p> <p>....The Tribe is using the "ongoing dispute" between two different entities on the Tribal representation issue as an excuse for not having filed its Reply in a timely manner, but that dispute had no bearing on the Tribe's ability (and obligation) to file a timely Reply.</p> <p>The dispute regarding Tribal representation in no way impaired the Tribe's ability to respond to(arguments against challenges) these arguments.</p> <p>...the dispute over Tribal leadership should not have had any impact on the Tribe's ability to respond to DOE's arguments as to whether it was in "substantial and timely compliance" with the applicable LSN requirements at the time it filed its Petition to Intervene.</p>	<p><i>(Continued)</i></p> <p>....Whether the Tribe is the legitimate representative for this proceeding should not hinder its ability to address its silence about LSN compliance, its failure to make the required certification to the PAPO Board within 90 days after DOE's initial LSN certification, or its failure to make monthly supplemental productions and certifications as required by the PAPO Board's Second Case Management Order.</p> <p>Conclusion</p> <p>The Tribe has not established "good cause" warranting an extension of time, as required by 10 C.F.R. § 2.307. The dispute over Tribal leadership should not have had any impact on the Tribe's obligation to adhere to established schedules and deadlines, and to make sincere efforts to comply with the Rules of Practice. Accordingly, its Amended Motion should be denied.</p>	<p>NOTICE OF ADOPTION OF CERTAIN NYE COUNTY CONTENTIONS</p> <p>Pursuant to 10 C.F.R. 5 2.309(f)(3), the Nuclear Energy Institute ("NEI") hereby gives notice that it is adopting the following Safety contentions that were timely filed by Nye County, -. Nevada (Nye County):</p> <p>NYE-SAFETY- 1 NYE-SAFETY-2</p> <p>NEI has discussed its adoption of these two contentions with Nye County, and Nye County retains "the authority to act" regarding both contentions.</p>

Date	March 4h	March 5	March 5
	<p>Notice is hereby given that the undersigned attorney herewith enters an appearance in the above-captioned matter. In accordance with 10 C.F.R. ' 2.314(b), the following information is provided: Name: Daniel Hugo Fruchter Address: U.S. Nuclear Regulatory Commission Office of the General Counsel Mail Stop: O-15-D21 Washington, DC 20555-0001 Telephone Number: (301) 415-1575 Fax Number: (301) 415-2960 E-Mail address: Daniel.Fruchter@nrc.gov Admissions: State of New York Name of Party: NRC Staff</p>	<p>NOTICE OF APPEARANCE ON BEHALF OF LINCOLN COUNTY Notice is hereby given that the undersigned attorney herewith enters an appearance in the above-captioned matter. In accordance with 10 C.F. R § 2.314(b), the following information is provided: Bret Whipple, Connie Simkins Mike Baughman Gregory Barlow</p>	<p>NOTICE OF APPEARANCE ON BEHALF OF THE NATIVE COMMUNITY ACTION COUNCIL Notice is hereby given that the attorneys listed below enter their appearances in the above-captioned matter. In accordance with 10 C.F.R. § 2.314(b), the following information is provided: Name: Curtis G. Berkey Address: ALEXANDER, BERKEY, WILLIAMS & WEATHERS LLP 2030 Addison Street, Suite 410 Berkeley, CA 94704 E-Mail: cberkey@abwwlaw.com Telephone: 510/548-7070 Facsimile: 510/548-7080 Admissions: California District of Columbia Name: Scott W. Williams Address: ALEXANDER, BERKEY, WILLIAMS & WEATHERS LLP 2030 Addison Street, Suite 410 Berkeley, CA 94704 E-Mail: swilliams@abwwlaw.com Telephone: 510/548-7070 Facsimile: 510/548-7080 Admissions: California Virginia Name: Rovianne A. Leigh Address: ALEXANDER, BERKEY, WILLIAMS & WEATHERS LLP 2030 Addison Street, Suite 410 Berkeley, CA 94704 E-mail: rleigh@abwwlaw.com Telephone: 510/548-7070 Facsimile: 510/548-7080 Admissions: California</p>

Date	March 5	March 5	March 5
	<p>CHURCHILL, ESERALDA, LANDER AND MINERAL Notice is hereby given that the attorneys listed below enter their appearances in the captioned matter on behalf of the Nevada Counties of Churchill, Esmeralda, Lander and Mineral. In accordance with 10 C.F.R. §2.314(b), the following information is provided: Name: Robert F. List Armstrong Teasdale, LLP Address: 1975 Village Center Circle, Suite 140 Las Vegas, NV 89134 E-Mail: rlist@armstrongteasdale.com Telephone: (702)733-6700 Admissions: Nevada Name: Jennifer A. Gores Armstrong Teasdale, LLP Address: 1975 Village Center Circle, Suite 140 Las Vegas, NV 89134 E-Mail: jgores@armstrongteasdale.com Telephone: (702)733-6700 Admissions: Missouri</p>	<p>NEI RESPONSE TO MARCH 4,2009 MEMORANDUM AND ORDER Pursuant to the March 4,2009 Memorandum and Order (Agenda for Telephonic First ASLBP BOARD Prehearing Conference) issued by the Construction Authorization Board ("CABOI"), the Nuclear Energy Institute ("NEI") submits the following issues to be considered by CAB01 at the March 12, 2009 first prehearing telephonic conference: 1. What procedures do the CABS anticipate using at the March 3 1 -April 2 oral arguments, such as and including use of the Nuclear Regulatory Commission ("NRC") Digital Data Management System ("DDMS")? With respect to the DDMS, will access to and use of the DDMS be required of counsel to conduct oral arguments? 2. What is the anticipated schedule for ruling on NEI's February 13,2009 Motion to Strike Nevada's Answer to NEI's Petition to Intervene?</p>	<p>NOTICE OF APPEARANCE Notice is hereby given that the undersigned here-with enters an appearance in the above captioned matter. In accordance with 10 C.F. R § 2.314(b) the following information is provided: Name: Richard Sears Address: 801 Clark Street, Suite 3 Ely, Nevada 89301 Telephone Number: (775) 289-8828 Fax: (775) 289-1541 Email address: rwsears@wpca.org Name of Party: White Pine County, Nevada Name: Mike Simon Address: 959 Compton Street Ely, Nevada 89301 Telephone Number: (775) 289-2033 Fax: (775) 289-2066 Email address: wpnucwst1@mwpower.net Name of Party: White Pine County, Nevada Name: Mike Baughman Address: P.O. Box 2008 Carson City, Nevada 89702 Telephone Number: (775) 883-2051 Fax: (775) 883-2638 Email address: bigboff@aol.com Name of Party: White Pine County, Nevada</p>
	March 16		March 17th
	<p>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 (continued next column)</p>	<p>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.</p>	<p>TIMBISHA SHOSHONE YUCCA MOUNTAIN OVERSIGHT PROGRAM NON-PROFIT CORPORATION'S ANSWER TO THE TIMBISHA SHOSHONE TRIBE'S REPLY TO NRC STAFF AND DOE ANSWERS TO ITS MOTION TO INTERVENE AS A FULL PARTY TOP argues for standing with the boards.</p> <p>CONCLUSION For these reasons, the Timbisha Shoshone Yucca Mountain Oversight Program Non-Profit Corporation respectfully requests that the Board decide that TOP has standing to participate in this proceeding as a full party, whether as an AIT or otherwise. In the alternative, the Board should withhold a decision on that issue until the appeals in connection with the internal dispute are fully resolved.</p>

Date	March 10	March 13 th	March 13th
	<p>U.S. DEPARTMENT OF ENERGY STATEMENT OF ADDITIONAL ISSUES FOR MARCH 12, 2009 PREHEARING TELECONFERENCE</p> <p>Pursuant to the Atomic Safety and Licensing board's March 4, 2009 "Memorandum and Order (Agenda for Telephone First Prehearing Conference)," the U.S. Department of Energy (DOE) hereby requests that the telephone conference participants be afforded the opportunity to provide recommendations for the Board's consideration on how to structure the March 31 and April 1 and 2, 2009 Prehearing Conference in the most effective and expeditious manner to assist the Board in determining the admissibility of the large number of contentions submitted in this proceeding.</p>	<p>NOTICE OF PUBLICATION OF FINAL RULE This filing is to notify the Boards, the U.S. Department of Energy and the petitioners that the U.S. Nuclear Regulatory Commission's final rule implementing revised standards of the U.S. Environmental Protection Agency has been published in the <i>Federal Register</i>. See Implementation of a Dose Standard After 10,000 Years, 74 Fed. Reg. 10,811 (Mar. 13, 2009). Respectfully submitted, /Signed electronically by/ Mitzi A. Young</p>	<p>NRC STAFF ANSWER TO THE TIMBISHA SHOSHONE YUCCA MOUNTAIN OVERSIGHT PROGRAM NON-PROFIT CORPORATION'S MOTION FOR LEAVE TO FILE AMENDED INTERVENTION PETITION AND AMENDED INTERVENTION PETITION</p> <p>..... As discussed below, the Board should grant TOP's Motion because it satisfies the standards set forth in 10 C.F.R. § 2.309(c) for late-filed petitions and contentions. With respect to the Amended Petition, the Staff does not oppose TOP's standing as a non-governmental organization and does not oppose the admission of one of its contentions, TOP-NEPA-01, but opposes the admission of the other, TOP-MISC-01. See more here</p>
	March 20th	Continued	March 10
	<p>NEI ANSWER TO NRC STAFF MOTION FOR MODIFICATION AND CLARIFICATION OF ORDER</p> <p>NEI supports the NRC Staffs requests for modification and clarification of the Order and requests that it be allowed to have two counsel address the presiding CAB each day. Motion at 3.' NEI files this Answer to expand upon its request that it be allowed to have two counsel address the presiding CAB each day NEI respectfully requests that the Order be modified to permit two counsel for NEI to present argument on any day. Different portions of NEI's intervention petition were prepared by different counsel, and more than one counsel on any day may be needed to address the subject matters identified in the Order as allocated over the three-day oral arguments, as well as "specific questions about the contentions in [NEI's] filings." Order at 3. The NEI counsel who will be attending the oral argument - David Replta and Jay Silberg - each have decades of experience in NRC proceedings and have worked with the Licensing Boards in those proceedings to assure the efficient and meaningful conduct of oral argument. (continued next column)</p>	<p>NEI assures the CABS that permitting these two counsel to present argument each day will not interfere with the efficient and meaningful conduct of oral arguments.</p>	<p>NEVADA'S RESPONSE TO MARCH 4, 2009 MEMORANDUM AND ORDER</p> <p>Pursuant to the March 4, 2009 Memorandum and Order (Agenda for Telephonic First Prehearing Conference) issued by the Construction Authorization Board (CAB01), the State of Nevada submitted the following issues to be considered by CAB01 at the March 12, 2009 Telephonic First Prehearing Conference:</p> <ol style="list-style-type: none"> 1. Apparent conflict regarding due date for contentions from Petitioners which address DOE LA Updates, between January 15, 2009 Order Addressing Procedural Matters and January 29, 2009 CAB Case Management Order #1. 2. Advise Petitioners what documents will already be available on DDMS at NRC's hearing facility (for the oral arguments scheduled March 31 - April 2) without the necessity for specific prior filing by a party before the hearing date. 3. Whether the use of the discovery methods of interrogatories and depositions upon written questions in this proceeding are limited to the circumstances specified in 10 C.F.R. § 2.1018(a)(2), i.e., only with prior authorization by order of the presiding officer, and only in the event that the parties are unable to resolve a dispute concerning the production of information after good-faith efforts to do so.

Date	March 20	March 20	NRC Staff Motion Continued
	<p>U.S. DEPARTMENT OF ENERGY ANSWER SUPPORTING NRC STAFF MOTION FOR MODIFICATION AND CLARIFICATION OF THE BOARDS' MARCH 18, 2009 ORDER....</p> <p>DOE supports the NRC Staff's Motion, which should be granted for the reasons set forth therein, and for the additional reasons set forth below. DOE and the NRC Staff are the only participants faced with the burden of being prepared to respond to all of the pleadings and all of the numerous contentions filed in this proceeding.</p> <p>Indeed, for many issues, counsel for DOE and the NRC Staff must be prepared to respond directly to all of the other counsel participating in oral argument. In contrast, the other participants altogether are allowed up to 13 counsel on any day (two counsel for Nevada and one for each of the 11 remaining participants), whereas DOE and the NRC Staff are each allowed only 2. Further, counsel for the other participants need only be prepared to address the much more limited set of arguments and responses associated with a single pleading and its contentions. Counsel for DOE and the NRC Staff, therefore, are faced with unique burdens not shared by other participants. Authorizing up to three attorneys for DOE and the NRC Staff to present oral argument on any given day is important to DOE's and the NRC Staff's ability to have the most knowledgeable counsel on the issues identified in the Boards' Order present arguments to the Boards on those issues. DOE believes that the benefit of having the most knowledgeable counsel on the identified issues present oral argument on those issues outweighs any modest inconvenience that might be associated with having at most, three, rather than two attorneys presenting oral argument for DOE and the NRC Staff on any given day.</p> <p>DOE does not believe it is necessary to have any more than three individual attorneys designated to present oral argument on any given day. Indeed, DOE intends, at the present time, to limit the total number of counsel participating in the oral argument to five individuals over the course of the three-day oral argument period. Finally, DOE respectfully requests that the Boards rule on the NRC Staff's Motion as expeditiously as practicable, so that all parties can make best use of their time and resources to prepare for oral argument.</p>	<p>NRC STAFF MOTION FOR MODIFICATION AND CLARIFICATION OF ORDER INTRODUCTION</p> <p>Pursuant to 10 C.F.R. § 2.323, the Staff requests that the three construction authorization boards (CABs) modify and clarify certain logistical provisions of the "Order (Terms, Logistics, and Questions for Oral Argument)," dated March 18, 2009 (Order). Specifically, the Staff requests that the Order be modified and clarified to (1) allow the Staff, the Department of Energy (DOE) and the State of Nevada (Nevada) to have three attorneys address the Board each day on the matters identified in the Order (or have the option of rotating a third counsel in at the table) and (2) allow the Staff, DOE and Nevada to list more than eight individuals who can access assigned conference rooms, provided that each limits the access of its litigation and support team to no more than eight people at any one time.</p> <p>DISCUSSION</p> <p>As grounds for its motion, the Staff states as follows: On March 31, April 1, and April 2, 2009, three construction authorization boards (CABs) in the above-captioned proceeding plan to conduct an oral argument on the twelve intervention petitions filed in response to the notice of hearing on the June 3, 2008 license application submitted by the U.S. Department of Energy. See Order at 1; Notice (Setting Date for Argument on Admissibility of Contentions), dated February 12, 2009 (unpublished).</p> <p>Over 300 contentions have been filed in this proceeding and Nevada alone has filed over 220 of those contentions. See, e.g., NRC Staff Answer to Interventions Petitions, dated February 9, 2009, at ii-xx. In order to respond to matters raised by the intervention petitions, the Staff prepared its answer to the petitions by dividing the numerous contentions and issues among several attorneys. The attorneys who are most knowledgeable about matters identified for each day of the argument, and who can be of the greatest assistance to the CABs on questions associated with specific contentions, are more than the maximum of two permitted to address the CABs each day.</p> <p>(Continued next column)</p>	<p>Therefore, the Staff respectfully requests that the Order be modified to permit the Staff, DOE and Nevada, three counsel (seated at counsel table or rotating into position) to respond daily to questions posed by the CABs. Good cause exists to modify the terms of the Order to allow a third attorney to be present at counsel table because modifying the order would ensure that CABs would have the information needed to rule on the pending intervention petitions given the limited preparation time remaining for counsel and the over three hundred contentions involved. The Staff submits that inclusion third attorney at counsel table could be accomplished in a manner that will not delay or disrupt the proceeding.</p> <p>Accordingly, the Staff maintains that good cause exist to modify and clarify certain logistical provisions of the Order in the manner requested. Pursuant to 10 C.F.R. § 2.323(b), the undersigned counsel has contacted counsel for DOE and the petitioners in this proceeding to resolve the issues raised by this motion. Counsel for DOE concurs with the motion....</p> <p>CONCLUSION</p> <p>For the reasons discussed above, the Staff's request for modification and clarification of the Order should be granted.</p>
Date	March 20th	March 20th	

	<p>NOTICE OF DOCUMENT IN ADAMS This filing is to notify the Boards, the U.S. Department of Energy (DOE) and the petitioners in the above-captioned proceeding that the DOE Yucca Mountain License Application, Revision 1, submitted by letter, dated February 19, 2009, is available in the U.S. Nuclear Regulatory Commission's Agencywide Document Access and Management System (ADAMS) at ML090700817.</p>	<p>NOTICE OF DOCUMENT IN ADAMS The DOE Yucca Mountain License Application, Revision 1, submitted by letter, dated February 19, 2009, is available in the U.S. Nuclear Regulatory Commission's Agencywide Document Access and Management System (ADAMS) at ML090700817.</p>	
<p>Date</p>	<p>March 23</p>	<p>March 23</p>	<p>March 23</p>
	<p>ANSWER OF CLARK COUNTY, NEVADA TO NRC STAFF MOTION FOR MODIFICATION AND CLARIFICATION OF ORDER Pursuant to 10 C.F.R. §2.323 (c), Clark County, files this Answer to the Motion filed by the Nuclear Regulatory Commission Staff on March 20, 2009 seeking modification and clarification of the March 18, 2009 Order issued by the Construction Authorization Boards ("CABs"). Staff requests that the Order be modified to permit the Staff, DOE and Nevada, three counsel to respond daily to questions posed by the CABs. Staff submits that inclusion third attorney at counsel table could be accomplished in a manner that will not delay or disrupt the proceeding. Staff also requests that the Order be clarified to indicate that the Staff, DOE and Nevada may identify more than eight people who are authorized to enter the conference room area provided that conference room access is limited to eight people at any one time. Clark County advised Staff that it would support its requests for modification of the March 18 Order with respect the number of counsel who may respond daily to the questions posed by the CABs; provided, however, that Clark County likewise be permitted to increase its counsel by one (from one to two) who may address the presiding CAB on any given day. In the interest of administrative efficiency, Clark County submits this request in response to Staff's motion rather than filing a separate motion. Good cause exists to permit a second attorney on behalf of Clark County to address the CABs on any given day in that it more accurately reflects the division of work to date in preparing Clark County's Petition to Intervene and its Reply to the Answers of DOE and NRC Staff in opposition to that Petition, and in preparing for oral argument. Permitting a second attorney to address the CABs on behalf of Clark County would also reflect a more even playing field should the NRC Staff and DOE, both of whom challenge all of Clark County's contentions, be permitted to have three attorneys ad-</p>	<p>EUREKA COUNTY'S MOTION FOR CLARIFICATION OR MODIFICATION OF MARCH 18, 2009 ORDER Pursuant to 10 C.F.R. §§ 2.323(c), Eureka County hereby moves for clarification or modification of the ASLB March 18, 2009, Order (Terms, Logistics and Questions for Oral Argument) with respect to whether counsel for Eureka County will be permitted to sit at a counsel table during the March 31-April 2 oral argument for purposes of using the Digital Data Management System ("DDMS"). As permitted by the March 18 Order, Eureka County plans to attend the March 31-April 2 for purposes of observing the oral argument. The County wishes to have its counsel follow the oral arguments as closely as possible by using the DDMS to read relevant documents during the arguments. It is our understanding that the only reliable way to access DDMS in the Las Vegas hearing room is to plug into the system from a counsel table. The Board's March 18 Order makes specific provision to seat, at counsel tables, a limited number of counsel and representatives who will be making oral arguments. It does not state, however, whether Eureka County -- which is not permitted to participate in oral arguments -- will be allowed to sit at a counsel table. Therefore, Eureka County requests clarification or modification of the Order to permit its counsel to sit at a counsel table for purposes of using the DDMS. This motion is supported by the attached Certificate of Counsel Pursuant to 10 C.F.R. § 3.323(b). Respectfully submitted, Diane Curran</p>	<p>NYE COUNTY'S ANSWER TO NRC STAFF'S MOTION FOR MODIFICATION AND CLARIFICATION. Nye County supports the NRC Staff's requests for modification and clarification of the Order and also requests that it be permitted to have two counsel address the presiding CAB each day. Motion at 3. Nye County submits this Answer to expand upon its request that it be allowed to have two counsel address the presiding CAB each day. Nye County respectfully requests that the Order be modified to permit two of Nye County's counsel to present argument on any day of the hearing. Nye County's individual counsel have prepared different portions of the County's intervention petition, as well as different portions of the County's Reply to the Answers filed on behalf of the Department of Energy and the NRC Staff to the County's Petition to intervene and contentions. Consequently, more than one counsel on any day may be needed to properly address the subject matters identified in the Order as allocated over the three-day oral arguments, as well as "specific questions about [Nye County's] contentions...." Order at 3. In no event does the County intend to have more than one attorney respond to a single topic. Nye County appreciates the CABS' efforts to structure oral arguments, so that all parties and potential parties can participate meaningfully in the discussion. Nye County assures the CABS that permitting two counsel to present argument each day will assist in the efficient and meaningful conduct of oral arguments. For the reasons discussed above, Nye County respectfully requests that the Order be modified to permit two of Nye County's counsel to present argument on any day of the hearing.</p>

	<p>dress the CAB on any given day. Such a modification to the March 18 Order would have minimal effect on the proceeding, and would maximize Clark County's ability to effectively address the questions identified in the March 18 Order, as well as any specific questions which may arise during oral argument. Clark County does not oppose the requests made by other participants in this proceeding to be allowed one additional counsel to address the CAB each day of oral argument. Clark County takes no position on Staff's request that the Staff, DOE and Nevada be permitted to identify more than eight people who are authorized to enter the conference room area provided that conference room access is limited to eight people at any one time.</p>		
Date	March 24 (PAPO Board)	March 24 (CAB 1, 2, 3)	March 26
	<p>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</p> <p>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.</p> <p>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.</p>	<p>THE DEPARTMENT OF ENERGY'S OPPOSITION TO MARCH 11, 2009 MOTION OF TIMBISHA SHOSHONE TRIBE FOR CERTIFICATION OF LICENSING SUPPORT NETWORK OUT OF TIME FOR GOOD CAUSE'</p> <p>The Department of Energy (DOE) opposes the March 11, 2009 Motion of the Timbisha Shoshone Tribe (Tribe) for Certification of Licensing Support Network (LSN) Out of Time "Motion", because:</p> <ol style="list-style-type: none"> 1. The Tribe did not make a sincere attempt to consult with DOE prior to submitting the Motion, and it, therefore, should be rejected under 10 C.F.R. § 2.232(b); 2. The Tribe's proffered certification is addressed to the wrong time period; and 3. The Tribe's Motion fails to demonstrate LSN compliance as required under 10 C.F.R 2.1012 even as of March 11, 2009. <p>The Tribe failed to file its LSN certification when it was due more than one year ago, on January 17, 2008. Under Subpart J, the primary question now is not whether the Tribe had "good cause"</p>	<p>NOTICE OF WITHDRAWAL</p> <p>Notice is hereby given that Ethan I. Strell , Barry Neuman and withdraws his appearance in the above captioned proceeding as counsel for Lincoln County, Nevada. Accordingly, all service lists in this proceeding should be amended appropriately.</p>
Date	March 26th	March 26th	March 26th
	<p>U.S. DEPARTMENT OF ENERGY'S RESPONSE TO CONSTRUCTION AUTHORIZATION BOARDS' MARCH 18, 2009 ORDER (REQUESTING LIST OF SPECIALIZED TERMS AND THEIR <u>PRONOUNCED ACRONYMS</u></p>	<p>CLARK COUNTY'S RESPONSE TO CONSTRUCTION AUTHORIZATION BOARDS' MARCH 18, 2009 ORDER (REQUESTING LIST OF SPECIALIZED TERMS AND THEIR PRONOUNCED ACRONYMS</p>	<p>NEI's RESPONSE TO CONSTRUCTION AUTHORIZATION BOARDS' MARCH 18, 2009 ORDER (REQUESTING LIST OF SPECIALIZED TERMS AND THEIR PRONOUNCED ACRONYMS</p>
Date	March 26	March 27	March 27

White Pine County'S RESPONSE TO CONSTRUCTION AUTHORIZATION BOARDS' MARCH 18, 2009 ORDER (REQUESTING LIST OF SPECIALIZED TERMS AND THEIR PRONOUNCED ACRONYMS

CALIENTE HOT SPRING RESORT LLC'S MOTION TO DISMISS U.S. DEPARTMENT OF ENERGY'S LICENSE APPLICATION

Caliente Hot Springs Resort LLC (CHS) respectfully moves the Commission to dismiss the License Application (LA) filed by the U.S. Department of Energy (DOE) herein.

As basis for this Motion, CHS shows the Commission, and asks the Commission to take notice of, the recent statements of the President of the United States to the effect that "Yucca Mountain is dead" and the March 17, 2009 testimony of the Secretary of DOE (Secretary) before the Energy & Natural Resources Committee, U.S. Senate (Committee), wherein the Secretary admitted that the Obama Administration, which includes DOE, has decided not to proceed with Yucca Mountain for the purposes and as stated in the LA.

As further basis for this motion, CHS shows the Commission that, in his testimony, the Secretary intimated that Yucca Mountain, its design, potential safety, environmental studies, or all of them, are defective. In support of such statement, CHS requests that the Commission take special notice of the Secretary's claim under oath, in response to the question, "What is wrong with Yucca Mountain?" he answered, "I think we can do a better job."

The LA is therefore without foundation and is speculative. The LA is wasteful of the staff time and funds of the Commission and the CAB's, wasteful of public funds and treasury of the United States of America, and now comprises an unlawful taking of the time and funds of private persons and other public agencies that are constrained to appear before the Commission to be heard to oppose or support the speculative LA, in whole or in part. If the Commission should have any doubt, the Commission should set a hearing, at its earliest opportunity, and call the Secretary to testify and confirm his earlier testimony to the Committee to the effect that the Administration, including DOE, has, in fact, abandoned plans to construct and operate Yucca Mountain as stated and claimed in the LA.

BEFORE THE SURFACE TRANSPORTATION BOARD

Finance Docket No. 35106

UNITED STATES DEPARTMENT OF ENERGY - RAIL CONSTRUCTION AND OPERATION - CALIENTE RAIL LINE IN LINCOLN, NYE, AND ESMERALDA COUNTIES, NEVADA

CALIENTE HOT SPRINGS RESORT LLC'S RESPONSE TO REPLY OF THE UNITED STATES DEPARTMENT OF ENERGY

Caliente Hot Springs Resort LLC ("CHS") joins Norfolk Southern Corp. (Norfolk Southern) and respectfully requests clarification of the important position by the United States Department of Energy ("DOE") on October 8, 2008.1 In addition, CHS respectfully requests that STB: (i) require DOE to provide the "detailed compensatory mitigation plan" as conditioned and required by the United States Environmental Protection Agency ("EPA") in its letter appearing as Appendix D (at 4) of the Reply; and (ii) extend the period for responses to the Application with regard to any such mitigation plan to provide adequate opportunity for parties to respond and to make the process of consideration of the Application fair.

The reopening of the time for response to any such "detailed compensatory mitigation plan" will take time and generate expense for DOE, the parties and STB. The fault lies with DOE.

CHS assumes that the New EPA Deal came as a surprise to STB also, especially as its disclosure by DOE came after expiration of the period for filing responses to the Application.

Concerning the issue of dedicated trains in serving the proposed Yucca Mountain repository, CHS agrees entirely with Norfolk Southern as stated in Norfolk Southern's *Response to Reply of the United States Department of Energy*, both dated October 10, 2008.

Concerning the issue of wetlands and the New EPA Deal, in its Application:.....

There are material differences between the FSEIS/FEIS and the ROD and the Reply. DOE discloses material, new information, and takes new positions in the Reply, inconsistent with the Application.....

	March 27th	Continued	Continued
	<p>U.S. DEPARTMENT OF ENERGY'S ANSWER TO TIMBISHA SHOSHONE YUCCA MOUNTAIN OVERSIGHT PROGRAM CORRECTED MOTION FOR LEAVE TO FILE AMENDED PETITION TO INTERVENE AND AMENDED PETITION TO INTERVENE</p> <p>On December 22, 2008, the Timbisha Shoshone Yucca Mountain Oversight Program ("Timbisha YMOP") filed a Petition to Intervene in this proceeding. In its Petition, Timbisha YMOP proposed three contentions regarding: (1) land ownership and control, (2) water rights, and (3) whether the United States Department of Energy ("DOE") met the requirements of the National Environmental Policy Act ("NEPA").</p> <p>On January 15, 2009, DOE filed its Answer to Timbisha YMOP's Petition. DOE argued that the Petition should be denied because Timbisha YMOP was not in substantial and timely compliance with Licensing Support Network ("LSN") requirements and because Timbisha YMOP lacked standing, if it was not the representative of the Affected Indian Tribe. DOE also argued that none of Timbisha YMOP's contentions were admissible.</p> <p>On February 24, 2009, Timbisha YMOP filed its Reply, and on March 5, 2009, filed a Motion for Leave to File Its Amended Petition to Intervene as a Full Party ("Motion"). In the Motion, as well as in its Reply, Timbisha YMOP withdrew two of the contentions raised in its Petition filed on December 22, 2009, dealing with land ownership and control, and water rights.</p> <p>In the original Petition, this contention stated that DOE's Final Environmental Impact Statement ("2002 FEIS") and DOE's Final Supplemental Environmental Impact Statement ("Repository SEIS") are inadequate because their consideration of postclosure radiological dose impacts did not use a Reasonably Maximally Exposed Individual ("RMEI") with a diet reflective of a Native American diet..... As demonstrated in Section II below, Timbisha YMOP's corrected Motion should be denied because Timbisha YMOP failed to show that: (1) the Amended Petition is timely under 10 C.F.R. § 2.309(f)(2); or that (2) the balancing of the factors in Section 2.309(c)(1) weigh in favor of admitting the Amended Petition. As demonstrated in Section III, the Amended Petition should be denied for the additional reasons that Timbisha YMOP has failed to demonstrate: (1) substantial and timely compliance (continued next column)</p>	<p>with its LSN obligations, (2) that it has standing (if it is not the representative of the AIT), and (3) that either of its contentions meets the contention admissibility requirements of Section 2.309(f)(1), as well as the additional requirements for NEPA-based contentions in Sections 51.109 and 2.326.</p> <p>II. THE CORRECTED MOTION SHOULD BE DENIED</p> <ol style="list-style-type: none"> 1. The Amended Petition Fails to Meet the Requirements of 10 C.F.R. § 2.309(f)(2). 2. The information, upon which the Amended Petition is based, is not <i>materially different</i> than information previously available to Timbisha YMOP. 3. Timbisha YMOP failed to submit the Amended Petition in a timely fashion..... <p>The Eight Factor Balancing Test for Untimely Contentions, Set Forth in Section 2.309(c)(1)(i)-(viii), Weighs Against Admitting the Amended Petition. When a contention is untimely (because it does not meet the requirements of Section 2.309(f)(2)), the petitioner must show that the eight factors set forth in Section 2.309(c)(1)(i)-(viii) weigh in favor of admitting it. These factors are:</p> <ol style="list-style-type: none"> (i) Good cause, if any, for the failure to file on time; (ii) The nature of the requestor's/petitioner's right under the Act to be made a party to the proceeding; (iii) The nature and extent of the requestor's/petitioner's property, financial or other interest in the proceeding; (iv) The possible effect of any order that may be entered in the proceeding on the requestor's/petitioner's interest; (v) The availability of other means whereby the requestor's/petitioner's interest will be protected; (vi) The extent to which the requestor's/petitioner's interest will be represented by other parties; (vii) The extent to which the requestor's/petitioner's participation will broaden the issues or delay the proceeding; and (viii) The extent to which the requestor's/petitioner's participation may reasonably be expected to assist in developing a sound record.... <p>(Timbisha YMOP failed to show that it is entitled to representational standing in this proceeding. Any member whose declaration is submitted to support representational standing needs to show that the declarant personally will suffer an injury.</p> <p>(continued next column)</p>	<p>III. TIMBISHA YMOP'S AMENDED PETITION TO INTERVENE SHOULD BE DENIED</p> <ol style="list-style-type: none"> A. Timbisha YMOP Has Not Shown Compliance With LSN Requirements. B. Unless It Is Found to Be the Representative of the AIT, Timbisha YMOP is not entitled to standing in this proceeding. C. Timbisha YMOP Has Failed to Show That It Should Be Granted Discretionary Intervention. D. Timbisha YMOP Has Not Proffered an Admissible Contention..... <p>DOE's response to YMOP's contentions</p> <ol style="list-style-type: none"> 1. TOP-NEPA-01 – Failure to Consider and Analyze Cultural, Historic, Religious, and Other Impacts. <p>Timbisha YMOP fails to address any of the requirements of Sections 51.109 and 2.326 in its contention.....</p> <ol style="list-style-type: none"> 2. TOP-MISC-01-Failure to Satisfy Trust Obligations <p>DOE failed to consult with the Timbisha regarding the potential cultural and historic impacts that contamination of springs in Death Valley, California, by effluent from the Yucca Mountain Geologic Repository could have on the Timbisha.</p> <p>RESPONSE....</p> <p>IV. CONCLUSION</p> <p>Timbisha YMOP has not shown that its Amended Petition is timely under Section 2.309(f)(2), or that the balancing of the factors in Section 2.309(c)(1) weighs in favor of admitting the Amended Petition. Thus, its Motion should be denied.</p> <p>Furthermore, the Amended Petition must be denied for the additional reasons that Timbisha YMOP has failed to demonstrate that (1) it is in substantial and timely compliance with its LSN obligations, (2) it has standing (if it is not the representative of the AIT), and (3) either of the contentions in its Amended Petition meets the requirements of Sections 2.309(f)(2), 51.109 and 2.326.</p> <p>Full filing can be viewed here - EHD</p>

Date	March 29	March 29	
	<p>THE TIMBISHA SHOSHONE TRIBE'S REPLY TO THE DOE'S OPPOSITION TO THE TRIBE' MOTION FOR CERTIFICATION OF LICENSING SUPPORT NETWORK OUT OF TIME FOR GOOD CAUSE</p> <p>Contrary to the DOE's contentions, the Tribe has (1) made a "sincere effort" to confer with the DOE and other parties to this proceeding prior to submitting the instant motion, therefore rejection under 10 C.F.R. § 2.232(b) is unwarranted; (2) the Tribe's certification complies with 10 C.F.R. § 2.1 02(b); and (3) whether the Tribe has demonstrated LSN compliance is irrelevant to the issue of whether this Board should grant the Tribe's motion for "good cause.".....</p> <p>The Tribe has made a good faith showing of LSN compliance. The NRC has not questioned such compliance, and DOE has not pointed to any actual example of non-compliance with the regulations. The petition to intervene specifically cites to material that is either located on the LSN or excluded from listing pursuant to section 2.1 005. Any and all documents relied upon by the Tribe are or will be made available on a timely and good faith basis throughout the course of the proceedings on the LSN, or will be specifically excluded from such requirement pursuant to 10 C.F.R. §2.1005.</p>	<p>List of Terms and Acronyms for the Timbisha Shoshone Tribe.</p>	