



Department of Energy

Washington, DC 20585

October 8, 2008

Via E-filing

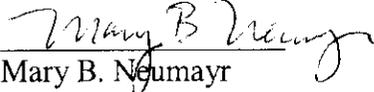
The Honorable Anne K. Quinlan
Acting Secretary
Surface Transportation Board
395 E. Street, S.W.
Washington, DC 20423-0001

Re: STB Finance Docket No. 35106
United States Department of Energy --
Rail Construction and Operation --
Caliente Rail Line in Lincoln, Nye, and
Esmeralda Counties, Nevada

Dear Acting Secretary Quinlan:

Enclosed for filing in the above referenced matter is the United States Department of Energy's Opposition to the Timbisha Shoshone Tribe's Request for Extension.

Sincerely,


Mary B. Neumayr
Deputy General Counsel
for Environment & Nuclear Programs



UNITED STATES OF AMERICA

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

UNITED STATES DEPARTMENT OF ENERGY'S
OPPOSITION TO THE
TIMBISHA SHOSHONE TRIBE'S REQUEST FOR EXTENSION

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By letter dated September 19, 2008, and filed September 26, 2008, the Chairman of the Timbisha Shoshone Tribe (“Tribe”) requested additional time for comment and response to the Department of Energy’s (“DOE”) Application for a Certificate of Public Convenience and Necessity (“Application”) to construct and operate an approximately 300-mile rail line, to be known as the Caliente Rail Line, in Nevada. The letter asserts that DOE has not provided funding to allow the Tribe to independently conduct oversight and monitoring of the Yucca Mountain project and that the Tribe is not able to fully comment on impacts that affect it. DOE respectfully asks the Surface Transportation Board (“STB” or “Board”) to deny the request.

DOE filed its Application on March 17, 2008. On April 16, 2008, the Board published a *Federal Register* notice (73 Fed. Reg. 20748) announcing DOE’s Application. In the notice, the Board also adopted a procedural schedule for comments on the Application. A 120-day comment period was provided instead of the usual 35-day period set forth in the Board’s regulations. In providing this extended comment period, the Board determined that the 120-day response period “will accord all parties due process because it provides ample time and opportunity for the submission of comments and replies.” STB Order, served April 11, 2008, at 2.

The Tribe submitted comments on the Application on July 8, 2008. The Tribe’s comments, signed by its Chairman, address various alleged impacts to the Tribe. The Tribe’s comments do not request an extension of the filing deadline. They also do not state that the Tribe had inadequate time or funding to prepare comments.

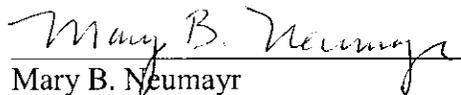
By letter dated July 18, 2008, Clark County requested additional time to comment on the Application. The Board denied that request. Noting the extended comment period that it had already provided, the Board stated that Clark County “has not shown that an extension of time to

file comments is warranted, nor has it explained why its extension request was late-filed.” STB Order, *slip op.* at 1, served July 30, 2008.

The Board should deny the Tribe’s request for the same reasons. The Tribe’s request comes two and a half months after the close of the extended comment period. The Tribe does not explain why its request is late, and it does not show good cause for re-opening the record. The Tribe had an extended time period to submit comments and was able in fact to submit its comments by the prescribed deadline. Re-opening the comment period would unduly delay the proceedings and prejudice DOE.

Also, the Tribe’s letter renews the request for public hearings that the Tribe made in its comments. DOE opposes that request. As DOE stated in its reply to comments on the Application, the Tribe has not identified any need for a hearing. The Tribe has not identified any relevant information and argument that it did not, or could not have, provided in its comments.

Respectfully submitted,



Mary B. Neumayr

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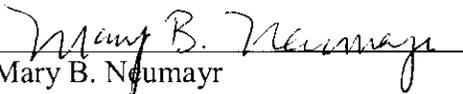
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Attorneys for the United States Department of Energy

October 8, 2008

CERTIFICATE OF SERVICE

I, Mary B. Neumayr, hereby certify that I caused to be served true and correct copies of the United States Department of Energy's Opposition to the Timbisha Shoshone Tribe's Request for Extension on each party of record on the attached list by first-class mail or more expedient service on this 8th day of October 2008.


Mary B. Neumayr
Deputy General Counsel
for Environment & Nuclear Programs

October 8, 2008

UNITED STATES OF AMERICA
BEFORE THE
SURFACE TRANSPORTATION BOARD

Finance Docket No. 35106

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