LBP-20-10

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

ATOMIC SAFETY AND LICENSING BOARD

Before Administrative Judges:
Paul S. Ryerson, Chairman
Nicholas G. Trikouros
Dr. Gary S. Arnold

In the Matter of HOLTEC INTERNATIONAL (HI-STORE Consolidated Interim Storage Facility)	Docket No. 72-1051-ISFSI ASLBP No. 18-958-01-ISFSI-BD01 September 3, 2020

MEMORANDUM AND ORDER
(Denying Motions to Reopen and for Leave to File)

Before the Board in this closed proceeding are two motions by Fasken Land and Minerals, Ltd. and Permian Basin Land and Royalty Owners (collectively, "Fasken"): (1) to reopen the record;[1] and (2) for leave to file an amended contention out of time.[2] Holtec International (Holtec) and the NRC Staff oppose.[3]

We deny the motions.

[1] Fasken Motion to Reopen the Record (May 11, 2020) [hereinafter Motion to Reopen].

[2] Fasken Motion for Leave to File Amended Contention No. 2 (May 11, 2020) [hereinafter Amended Motion for Leave].

[3] Holtec's Answer Opposing Fasken Motion to Reopen the Record and Motion for Leave to File Amended Contention No. 2 (June 5, 2020) [hereinafter Holtec Answer]; NRC Staff Answer in Opposition to Fasken's Motions to Amend Contention 2 and Reopen the Record (June 4, 2020) [hereinafter NRC Staff Answer]. Fasken submitted a combined reply. Fasken Combined Reply to NRC Staff's and Holtec's Oppositions to Motion for Leave to File Amended Contention and Motion to Reopen the Record (June 11, 2020).

I. BACKGROUND

This proceeding concerns Holtec's application for a license to construct and operate a consolidated interim storage facility for spent nuclear fuel in Lea County, New Mexico. The factual background and prior proceedings before this Licensing Board are set forth in our Memorandum and Order of May 7, 2019 (LBP-19-04), in which the Board denied all petitioners' hearing requests.[4]

On April 23, 2020, in response to petitioners' appeals, the Commission in CLI-20-04 substantially affirmed the Board's rulings in LBP-19-04, but reversed in part and remanded for further consideration four contentions that had been proffered by Sierra Club.[5] Additionally, the Commission remanded, for the Board's ruling on admissibility, two contentions that were proffered several months after we had terminated this proceeding at the Licensing Board level: (1) Sierra Club Contention 30; and (2) Fasken Contention 2.[6]

On June 18, 2020, for reasons explained in our Memorandum and Order (LBP-20-06),[7] we ruled that Sierra Club's remanded contentions were not admissible and denied its motion to late-file Sierra Club Contention 30. We also denied Fasken's motion for leave to file Fasken Contention 2 as originally proffered.

To place Fasken's pending motions in context, we first summarize the history of Fasken Contention 2.

II. FASKEN CONTENTION 2

At the outset of this adjudicatory proceeding, Fasken did not submit any contentions. Instead, it moved to dismiss Holtec's application, claiming the NRC lacked jurisdiction to

---

[4] LBP-19-04, 89 NRC 353, 358 (2019).

[5] CLI-20-04, 91 NRC __, __–__ (slip op. at 1, 23–29) (Apr. 23, 2020).

[6] Id. at __, __ (slip op. at 3, 55).

[7] LBP-20-06, 91 NRC __, __–__, __ (slip op. at 2, 3–9, 15) (June 18, 2020).

consider it.[8] The Secretary of the Commission denied Fasken's motion without prejudice, and referred it for consideration as a contention under 10 C.F.R. § 2.309.[9]

This Board did so. Although we determined that Fasken had demonstrated standing, we concluded that its jurisdictional challenge (later designated Fasken Contention 1) did not satisfy the requirements for an admissible contention under 10 C.F.R. § 2.309(f)(1). As explained in LBP-19-04, we therefore denied Fasken's petition, at the same time we denied all other hearing petitions, and terminated this proceeding on May 7, 2019.[10]

More than twelve weeks later, Fasken proffered Fasken Contention 2, accompanied by a motion for leave to file out of time.[11] Fasken Contention 2 stated:

> Statements in Holtec's Safety Analysis Report (SAR) and Facility Environmental Report (FER) regarding "control" over mineral rights below the site are materially misleading and inaccurate. Reliance on these statements nullifies Holtec's ability to satisfy the NRC's siting evaluation factors.[12]

Fasken claimed to submit Contention 2 in response to new information contained in a June 19, 2019 letter from Stephanie Garcia Richard, State of New Mexico, Commissioner of Public Lands, to Krishna P. Singh, President and CEO of Holtec.[13] In that letter, Ms. Richard expressed concern that Holtec has characterized the site of its proposed facility as under Holtec's control. In fact, Ms. Richard stated, although Holtec may control the surface estate, "the State of New Mexico, through the New Mexico State Land Office, owns the mineral

---

[8] Motion of Fasken to Dismiss Licensing Proceedings for HI-STORE Consolidated Interim Storage Facility and WCS Consolidated Interim Storage Facility at 1–2 (Sept. 14, 2018).

[9] Order of the Secretary at 2–3 (Oct. 29, 2018).

[10] LBP-19-04, 89 NRC at 354.

[11] Fasken Motion for Leave to File a New Contention (Aug. 1, 2019) [hereinafter Initial Motion for Leave].

[12] Id. at 3.

[13] See Initial Motion for Leave, Ex. 5 (Letter from Stephanie Garcia Richard, Commissioner of Public Lands, State of New Mexico, to Krishna P. Singh, Holtec President and CEO (June 19, 2019) (ADAMS Accession No. ML19183A429).

estate."[14] She asserted that "in its filings with the NRC, Holtec appears to have entirely disregarded the State Land Office's authority over the Site's mineral estate."[15]

As both the NRC Staff and Holtec pointed out in their oppositions,[16] Fasken failed to move to reopen the record of this now-closed proceeding. Apparently in response to their arguments, Fasken filed such a motion belatedly.[17] Nine days later, however, without explanation Fasken withdrew its motion to reopen the closed record.[18]

As directed by the Commission,[19] we addressed Fasken Contention 2 in LBP-20-06.[20] As more fully explained in that decision, we denied Fasken's motion for leave to file because (1) having withdrawn its motion to reopen, Fasken failed to address the requirements for reopening a closed record; and (2) Fasken failed to show that Contention 2 satisfied even the less stringent requirements for filing out of time if the record had remained open.[21] Because Holtec's Environmental Report and correspondence with the NRC had previously acknowledged the State of New Mexico's authority over mineral rights at the proposed site, we concluded that Fasken Contention 2 was based not on new information, but rather "on information that was available in Holtec's application materials long before Fasken moved for leave to file it."[22]

---

[14] Id. at 2.

[15] Id.

[16] Holtec's Answer Opposing Fasken's Late-Filed Motion for Leave to File a New Contention at 11–13 (Aug. 26, 2019); NRC Staff Answer in Opposition to Fasken's Motion to File a New Contention at 9–10 (Aug. 26, 2019).

[17] Fasken Motion for Leave to Reopen and Incorporate Contention Filed August 1, 2019 (Sept. 3, 2019).

[18] Fasken's Withdrawal of Their "Motion for Leave to Reopen and Incorporate Contention Filed August 1, 2019" (Sept. 12, 2019).

[19] CLI-20-04, 91 NRC at __, __ (slip op. at 3, 55).

[20] LBP-20-06, 91 NRC at __ (slip op. at 19).

[21] Id. at __–__ (slip op. at 20–21).

[22] Id. at __ (slip op. at 21).

III. FASKEN AMENDED CONTENTION 2

Fasken initiated its efforts to proffer Fasken Amended Contention 2 while petitioners' (including Fasken's) appeals of LBP-19-04 were still pending before the Commission. On March 20, 2020, the NRC announced publication of the NRC staff's draft Environmental Impact Statement (DEIS) concerning Holtec's proposed interim storage facility.[23] On April 7, 2020, at Fasken's request, the Secretary extended the deadline for filing new or amended contentions based on the DEIS until May 11, 2020.[24]

Hence on May 11, 2020—some twenty months after the September 2018 deadline for submitting hearing requests and contentions challenging Holtec's license application[25]—Fasken filed a second motion to reopen the record, together with a motion for leave to file Fasken Amended Contention 2.[26] Although purporting to challenge statements "made for the very first time in the recent Holtec DEIS,"[27] Fasken Amended Contention 2 also repeatedly challenges statements in "Holtec's application." Indeed, Fasken Amended Contention 2 states:

> Holtec's application fails to adequately, accurately, completely and consistently describe the control of subsurface mineral rights and oil and gas and mineral extraction operations beneath and in the vicinity of the proposed Holtec [Consolidated Interim Storage] Facility site, which precludes a proper analysis under NEPA and further nullifies Holtec's ability to satisfy NRC's siting evaluation factors now and anticipated in the future and is in further violation of NRC regulations.[28]

---

[23] See Holtec International HI-STORE Consolidated Interim Storage Facility Project, 85 Fed. Reg. 16,150 (Mar. 20, 2020); see also Office of Nuclear Material Safety and Safeguards (NMSS), NUREG-2237, Environmental Impact Statement for the Holtec International's License Application for Consolidated Interim Storage Facility for Spent Nuclear Fuel and High Level Waste, Draft Report for Comment (Mar. 2020) (ADAMS Accession No. ML20069G420) [hereinafter DEIS].

[24] Order (Granting Extension of Time) (Apr. 7, 2020) [hereinafter Commission Extension].

[25] See Holtec's HI-STORE Consolidated Interim Storage Facility for Interim Storage of Spent Nuclear Fuel, 83 Fed. Reg. 32,919, 32,919 (July 16, 2018).

[26] Motion to Reopen; Amended Motion for Leave.

[27] Amended Motion for Leave at 11.

[28] Id. at 10–11 (emphasis added).

The Board heard oral argument on Fasken's motions from each participant's counsel, by telephone, on August 5, 2020.[29]

IV. MOTION TO REOPEN THE RECORD

To reopen a closed record, a petitioner must file a motion that demonstrates (1) its new contention is timely; (2) the contention addresses a significant safety or environmental issue; and (3) a materially different result would be or would have been likely had the newly proffered evidence been considered initially.[30] The petitioner must attach an affidavit from "experts in the disciplines appropriate to the issues raised" or from "competent individuals with knowledge of the facts alleged" that separately addresses each of these criteria, explaining how each criterion has been satisfied.[31] Moreover, the evidence in any such affidavit must meet the admissibility standards in 10 C.F.R. § 2.337.[32] In other words, the affidavit must be of such quality as to be admissible into evidence at an evidentiary hearing.

The Commission considers "reopening the record for any reason to be 'an extraordinary' action,'"[33] and places "an intentionally heavy burden on parties seeking to reopen the record."[34] The Commission's rules mandate that "the standard for admitting a new contention after the

---

[29] Licensing Board Order (Scheduling Oral Argument) (June 25, 2020). During the argument, Fasken's counsel asked whether its expert geologist, Mr. Pollock, might respond to some of the Board's questions directly. Tr. at 456. The Board has considered Mr. Pollock's Amended Declaration, which was submitted as Exhibit 4 to Fasken's Amended Motion for Leave. However, the Board declined (without timely objection from Fasken) to permit Mr. Pollock to present information orally. Tr. at 456–57, 470. Licensing boards may exercise broad discretion to limit oral argument or to allow it at all. See 10 C.F.R. § 2.331. Generally, we do not hear from a petitioner's experts at oral argument on whether the petitioner's written pleadings are sufficient to merit an evidentiary hearing at which the experts would then testify.

[30] 10 C.F.R. § 2.326(a)(1)–(3). An "exceptionally grave" issue may be considered in the discretion of the presiding officer even if untimely presented. Id. § 2.326(a)(1).

[31] Id. § 2.326(b).

[32] Id.

[33] Tenn. Valley Authority (Watts Bar Nuclear Plant, Unit 2), CLI-15-19, 82 NRC 151, 156 (2015).

[34] Id. at 155.

record is closed is higher than for an ordinary late-filed contention."[35] Fasken fails to carry this intentionally heavy burden.

Both Holtec and the NRC Staff assert that Fasken has not even satisfied a threshold requirement. They claim that Fasken's motion to reopen the record is not accompanied by an appropriate affidavit.[36]

To support its motion, Fasken attaches an affidavit by its lawyer, Mr. Kanner.[37] But 10 C.F.R. § 2.326(b) does not generally call for the affidavit of a petitioner's lawyer. On the contrary, when the rules for reopening a closed record were proposed, commentators expressed concern that "affidavits of lawyers repeating allegations of undisclosed principals should not be sufficient."[38] In response, the Commission codified the requirement that the supporting affidavit must be from either "competent individuals with knowledge of the facts alleged" or from "experts in the disciplines appropriate to the issues raised."[39]

Although Mr. Kanner's affidavit states that he reviewed the sworn declarations of other individuals,[40] he claims no technical expertise. For the most part, Mr. Kanner also claims no personal knowledge, relying on the knowledge of others for criticisms of the DEIS and for factual support for his conclusion that information in the DEIS "implicates significant environmental and

---

[35] Private Fuel Storage, LLC (Independent Spent Fuel Storage Installation), CLI-05-12, 61 NRC 345, 350 (2005).

[36] See Holtec Answer at 13–15; NRC Staff Answer at 26–27.

[37] Affidavit of Allan Kanner (May 11, 2020) [hereinafter Kanner Affidavit]. Although the Kanner Affidavit does not reflect that it was executed under oath before a notary public, Mr. Kanner represented at oral argument (Tr. at 432–33) that such formality is not required for a lawyer's affidavit under Louisiana law. No party has challenged the sufficiency of Mr. Kanner's affidavit on this ground.

[38] Final Rule, Criteria for Reopening Records in Formal Licensing Proceedings, 51 Fed. Reg. 19,535, 19,537 (May 30, 1986).

[39] Id.

[40] Kanner Affidavit at 6 (citing Amended Motion for Leave, Ex. 1 (Declaration of Tommy Taylor) & Ex. 4 (Amended Declaration of Stonnie Pollock) (May 11, 2020) [hereinafter Pollock Declaration]).

safety issues."[41] We do not question whether Mr. Kanner is a qualified lawyer. But, because Mr. Kanner claims neither technical expertise nor personal knowledge of critical facts, we likely would not admit most or all of Mr. Kanner's affidavit as evidence at an evidentiary hearing under 10 C.F.R. § 2.337. It is questionable, therefore, whether Mr. Kanner's affidavit can properly support a motion to reopen the record in accordance with 10 C.F.R. § 2.326(b).

We need not rely on this possible pleading defect to deny Fasken's motion, however, because Fasken fails to carry the heavy burden to reopen a closed record for more substantial reasons.

Most importantly, Fasken's motion is not timely. Fasken submitted its amended contention challenging the DEIS within the extended deadline permitted by the Commission.[42] But Fasken Amended Contention 2 and Fasken's associated motion to reopen the record are based on statements in the DEIS that do not differ materially from information that was publicly available in Holtec's application materials much earlier.[43] This is fatal to Fasken's motion.

Under 10 C.F.R. § 2.309(f)(2), "[o]n issues arising under the National Environmental Policy Act, participants shall file contentions based on the applicant's environmental report."[44] Petitioners such as Fasken therefore have "an ironclad obligation"[45] to examine the relevant application documents to uncover information that might prompt a contention.

---

[41] Kanner Affidavit at 7.

[42] See Commission Extension at 1.

[43] In Exhibit 2 to its Amended Motion for Leave, Fasken lists allegedly new statements in the DEIS, but fails to show that they differ significantly from previously available information or that any difference is material to Fasken Amended Contention 2. See Amended Motion for Leave, Ex. 2, (Facts Petitioners Intend to Reply on to Support New and Amended Contentions) at 1–3 (May 11, 2020).

[44] 10 C.F.R. § 2.309(f)(2).

[45] Duke Energy Corp. (Oconee Nuclear Station, Units 1, 2, & 3), CLI-99-11, 49 NRC 328, 338 (1999).

Under 10 C.F.R. § 2.309(f)(2), the NRC expects a petitioner "to evaluate all available information at the earliest possible time to identify the potential basis for contentions and preserve their admissibility."[46] Fasken may not seize upon publication of the NRC staff's DEIS in March 2020 as an excuse to raise challenges to Holtec's license application that Fasken could have timely raised in September 2018, but did not.

Fasken's fundamental argument is that statements in the DEIS "continue to misrepresent" information that Fasken claims was misrepresented or wrongfully omitted from Holtec's Environmental Report and other application documents.[47] This includes, Fasken claims, information concerning "the control and ownership of subsurface mineral rights, the status of [petroleum] industry operations, and geologic characteristics in the region."[48]

Thus, Fasken describes Fasken Amended Contention 2 as challenging "material omissions, inadequacies and inconsistencies contained in Holtec's licensing application documents."[49] By its terms, Fasken Amended Contention 2 alleges deficiencies in "Holtec's application" and does not even mention the DEIS.[50] Likewise, the supporting declaration of Fasken's geologist, Mr. Pollock,[51] repeatedly references "Holtec's application," but does not mention or directly address the DEIS.

---

[46] Private Fuel Storage (Independent Spent Fuel Storage Installation), LBP-99-43, 50 NRC 306, 313 (1999) (citing Duke Power Co. (Catawba Nuclear Station, Units 1 & 2), CLI-83-19, 17 NRC 1041, 1050 (1983)).

[47] Amended Motion for Leave at 11.

[48] Id.

[49] Id. at 1 (emphasis added).

[50] Id. at 10.

[51] Id., Ex. 4 (Pollock Declaration). Although Mr. Pollock's declaration was neither executed under oath nor drafted strictly in compliance with 28 U.S.C. § 1746, absent objection the Board waived any technical deficiency and ruled Mr. Kanner's offer to resubmit the declaration unnecessary. Tr. at 437.

Elsewhere, Fasken challenges the accuracy of statements "in Holtec's application documents and the most recent Holtec DEIS."[52] Throughout its supporting discussion, Fasken confirms that Amended Contention 2 is intended to challenge "inconsistent statements in Holtec's application,"[53] incorrect statements in "Holtec's application documents,"[54] inadequacies in "[t]he Holtec application,"[55] failures common to "[b]oth" Holtec's Environmental Report and the DEIS,[56] and deficiencies in "Holtec's application."[57]

But it is too late for Fasken to challenge anything in Holtec's application that could have been challenged in September 2018, unless the challenge is premised on materially new information. Repetition in the DEIS of information similar to that in Holtec's Environmental Report does not qualify. And, although Fasken makes general references to other "newly disclosed and highly pertinent information,"[58] neither Fasken's motions nor its supporting affidavit and declarations tell us when Fasken first learned of any new information on which it relies.

The closest Fasken comes to dating any "new" information is to reference Ms. Richard's June 19, 2019 letter, which Fasken claimed to supply new information sufficient to justify filing its original Contention 2 several weeks after this proceeding was closed. According to Fasken, "Petitioners' original Contention No. 2 was timely," and "[a]s such, it is permissible to incorporate the arguments and facts relied on in Contention No. 2" to justify the timeliness of Amended Contention 2.[59]

---

[52] Amended Motion for Leave at 13 (emphasis added).

[53] Id. at 18.

[54] Id. at 19.

[55] Id. at 25.

[56] Id. at 26.

[57] Id. at 28.

[58] Id. at 1.

[59] Amended Motion for Leave at 11 n.39.

Unfortunately for Fasken, it failed to anticipate our ruling in LBP-20-06. In LBP-20-06, we ruled that Fasken's original Contention 2 was not timely because the information in Ms. Richard's letter was available in Holtec's application materials long before Fasken moved for leave to file it.[60] Moreover, in addition to the facts on which we relied in LBP-20-06, Holtec points out that Fasken's vice president, Mr. Taylor (who also submitted a declaration supporting Fasken's motion for leave to file Amended Contention 2[61]), wrote to the NRC nearly a year before Contention 2 was filed with the same information in Ms. Richard's letter.[62]

Fasken's claims concerning the cumulative impact analysis in the DEIS exhibit a similar defect. Fasken states that the DEIS "recently concluded that the project would have a 'small cumulative impact' for geology and soils, which when combined with regional activities would result in an 'overall MODERATE cumulative impact.'"[63] This conclusion, according to Fasken, represents "new and material information that is significantly different" from the conclusion in Holtec's Environmental Report that the cumulative impacts of its proposed facility on geology and soils would be "minimal."[64]

Fasken does not show that the difference in language is material. On the contrary, Holtec and the NRC staff use "minimal" and "small" interchangeably. Nothing requires Holtec to use the same terminology as the NRC staff to describe potential environmental impacts.[65] In the DEIS, the NRC staff concluded that the "small" (i.e., "minimal") incremental impact of

---

[60] LBP-20-06, 91 NRC at __ (slip op. at 21).

[61] Amended Motion for Leave, Ex. 1 (Declaration of Tommy Taylor) (May 11, 2020).

[62] See Letter from Tommy E. Taylor, Fasken Oil and Gas Development Director, to Michael Layton, Division of Spent Fuel Management, NRC Office of Nuclear Material Safety and Safeguards (NMSS) at 2–3 (July 30, 2018) (ADAMS Accession No. ML18219A710).

[63] Amended Motion for Leave at 12 & n.43 (citing DEIS at 5-10 to 5-11).

[64] Id. (citing Holtec International's Environmental Report on the HI-STORE CIS Facility at 5-3 (rev. 6 May 2019) (ADAMS Accession No. ML19163A146) [hereinafter Environmental Report]).

[65] See NMSS, NUREG-1748, Environmental Review Guidance for Licensing Actions Associated with NMSS Programs, Final Report at 4-14 (Aug. 2003) (ADAMS Accession No. ML032450279).

Holtec's proposed facility on geology and soils, when added to the overall "moderate" impacts from all other past, present, and reasonably foreseeable actions within the region, does not change the overall "moderate" cumulative impacts determination for geology and soils.[66] In other words, the expected incremental impact of the proposed facility does not alter, in any way, the NRC staff's overall cumulative impacts determination for geology and soils within the region analyzed.

Moreover, it surely does not appear that any difference could be material to Fasken, which had the opportunity to challenge Holtec's characterization of "minimal" impacts in September 2018, but did not. Moreover, Fasken does not identify any new facts that are presented in, or support the conclusions in, the NRC staff's DEIS. The dispositive issue is not whether there are differences between Holtec's Environmental Report and the DEIS, but whether Fasken Amended Contention 2 is "based on new facts not previously available."[67]

Another example is Fasken's claim that a six-mile radius for assessing the cumulative impacts on land use was "applied for the first time in the Holtec DEIS."[68] However, Holtec's Environmental Report uses a six-mile radius to describe land uses surrounding its proposed facility[69] and a larger, 50-mile radius for its cumulative impact analysis.[70] The information on which the DEIS relies is merely a subset of the information in Holtec's Environmental Report. Fasken identifies no regulation that prevents the NRC staff from using only some of the information in Holtec's Environmental Report. Nor has Fasken identified any new information, much less new information that is materially different.

---

[66] DEIS at 5-11.

[67] Entergy Nuclear Generation Co. (Pilgrim Nuclear Power Station), CLI-12-10, 75 NRC 479, 493 n.70 (2012) (emphasis in original).

[68] Amended Motion for Leave at 13 & n.44 (citing DEIS at 5-17).

[69] Environmental Report at 3-16.

[70] Id. at 5-1.

Likewise, Fasken fails to show that its claims concerning the DEIS's description of oil and gas operations in the vicinity of the proposed facility are based on new or materially different information. The description in the DEIS of currently known operations is based on information cited in Holtec's Environmental Report, including information from a 2007 report by the Eddy-Lea Energy Alliance, LLC (ELEA).[71] Fasken does not demonstrate how any other source cited in the DEIS is inconsistent.

Fasken compares statements in the DEIS, indicating that oil and gas extraction will occur under the proposed facility at depths greater than 3,050 feet, to Holtec's statements indicating that these activities will occur at depths greater than 5,000 feet.[72] But Fasken does not demonstrate how this difference is material to the impacts analysis in the DEIS. And again, Fasken does not explain how the difference is material to Fasken. If Fasken—which has "been drilling and extracting oil in the region for over 80 years"[73]—now asserts that petroleum activities might occur even closer to the surface than 3,050 feet,[74] why did it not timely challenge Holtec's initial representation they would occur no closer to the surface than 5,000 feet?

Mr. Pollock's supporting declaration is nearly identical to a declaration he submitted in August 2019[75]—setting forth information that obviously did not first come to light in the NRC staff's March 2020 DEIS. Two points have been added. First, Mr. Pollock now speculates that drilling at depths shallower than 3050 feet, beneath and surrounding Holtec's proposed site, is

---

[71] Id. at 3-2 to 3-3.

[72] Amended Motion for Leave at 17–18.

[73] Id. at 2.

[74] Id. at 18.

[75] Compare Pollock Declaration with Initial Motion for Leave, Ex. 1 (Declaration of Stonnie Pollock) (July 30, 2019).

"a real possibility."[76] Second, Mr. Pollock now speculates that revisiting old wells, beneath and around Holtec's proposed site, is likewise "a real possibility."[77]

Mr. Pollock does not assert, however, that he was unaware of these possibilities before March 2020. Nor would it appear he could credibly do so. Mr. Pollock is Fasken's senior geologist, and has worked for Fasken since 2003.[78] He recently served as president of the West Texas Geological Society.[79] He was described at oral argument by Fasken's counsel—with perhaps little or no hyperbole—as being "more knowledgeable about this area than any other human being."[80] Not surprisingly, Mr. Pollock does not claim newly acquired knowledge about drilling in the Permian Basin.

Nor, apart from a brief reference to the region's being "historically known for surface subsidence"[81] due to potash extraction, does Mr. Pollock explain the significance of oil or gas drilling at any particular depth. He certainly does not claim that drilling at any specific depth is potentially unsafe, or challenge Holtec's ultimate conclusion that drilling will not take place at depths that raise a subsidence issue.

Fasken does claim that the DEIS discusses "for the very first time" an active oil and gas well near the site that operates at a minimum level of production to maintain mineral rights.[82] But Holtec disclosed exactly that information in its Safety Analysis Report (SAR). SAR section

---

[76] Pollock Declaration at 2.

[77] Id. at 3.

[78] Id. at 6.

[79] Id.

[80] Tr. at 437.

[81] Pollock Declaration at 2.

[82] Amended Motion for Leave at 18–19 (citing DEIS at 3-7).

2.2.2 states: "One active oil/gas well on the southwest portion of Section 13 operates at a minimum production to maintain mineral rights."[83]

Simply put, Fasken never demonstrates that any information supporting Amended Contention 2 is materially new or, if new, when Fasken first became aware of it. Perhaps sensing the difficulty of arguing that its claims are not too late, at oral argument Fasken sought to invoke—admittedly for the first time[84]—the Board's discretion under 10 C.F.R. § 2.326(a)(1) to consider an "exceptionally grave" issue even if untimely presented.[85]

We decline to do so on multiple grounds. First, because we do not entertain arguments that are advanced for the first time in a reply brief,[86] we surely should not consider positions that are advanced for the first time at oral argument. Second, the "exceptionally grave issue" exception is a narrow one, to be granted rarely and only in truly exceptional circumstances.[87] As explained infra, Fasken fails to proffer an admissible contention, much less one that raises an exceptionally grave issue. Third, insofar as 10 C.F.R. § 2.326(a)(1) permits the Board to exercise discretion, we exercise it to deny Fasken's request in the circumstances presented.

Despite Fasken's demonstrated familiarity with drilling in the relevant region, it did not proffer a timely contention when petitions were due. Unlike several other petitioners,[88] Fasken

---

[83] See Holtec's HI-STORE CIS Facility Safety Analysis Report at 2-44 (rev. 0F Jan. 2019) (ADAMS Accession No. ML19052A379).

[84] Tr. at 423.

[85] Id. at 421–23.

[86] See Nuclear Mgmt. Co. (Palisades Nuclear Plant), CLI-06-17, 63 NRC 727, 732 (2006). Allowing new claims in a reply would defeat the contention-filing deadline and unfairly deprive other participants an opportunity to rebut the new claims. Exelon Generation Co. (Dresden Nuclear Power Station, Units 2 & 3), LBP-14-04, 79 NRC 319, 330 (2014) ("It is well established in NRC proceedings that a reply cannot expand the scope of the arguments set forth in the original hearing request") (quoting Palisades, CLI-06-17, 63 NRC at 732).

[87] See, e.g., Entergy Nuclear Generation Co. and Entergy Nuclear Operations, Inc. (Pilgrim Nuclear Power Station), CLI-12-21, 76 NRC 491, 500–01 (2012).

[88] See, e.g., Motion by [Joint Petitioners] to File a New Contention (Jan. 17, 2019); Sierra Club's Motion to File New Late-Filed Contentions 27, 28, and 29 (Feb. 25, 2019); Sierra Club's Motion to File a New Late-Filed Contention (Oct. 23, 2019).

never sought to proffer new or amended contentions while this adjudication was pending. When, after the proceeding had been terminated, Fasken for the first time proffered a contention concerning drilling, it declined to move to reopen the closed record. Now, having admittedly failed to make the argument in its pleadings, Fasken tries to invoke the "exceptionally grave issue" exception to excuse its lateness.

The Board's rejecting Fasken's argument does not mean that the NRC staff will not independently consider safety issues as it completes its evaluation of Holtec's license application. The NRC staff's requests for additional information (RAI's) from Holtec, discussed infra, demonstrate that the staff is doing exactly that. But Fasken has not demonstrated that it is entitled to a separate evidentiary hearing on any of the issues it has raised.

For the foregoing reasons alone, we must deny Fasken's motion to reopen the record. Moreover, we conclude that Fasken's motion also does not address a significant safety or environmental issue. As explained infra, in our discussion of contention admissibility, Fasken Amended Contention 2 does not raise a genuine dispute on any material issue of fact or law. Thus, these same claims cannot possibly meet the higher standard of presenting a significant issue that must be adjudicated by reopening this closed proceeding.

Finally, Fasken's motion to reopen the record also does not demonstrate that, if it were granted, a materially different result would be likely. Because Fasken Amended Contention 2 is not admissible, as explained infra, no materially different result would have occurred had it been considered initially.

V. MOTION FOR LEAVE TO FILE CONTENTION OUT OF TIME

Even if we were to allow Fasken to reopen the record at this late date, we would necessarily deny its motion for leave to file Amended Contention 2 out of time in any event. Fasken's more recent motion fails for the same reasons that Fasken's original motion to file Contention 2 failed to demonstrate good cause for filing out of time. Additionally, we conclude that Fasken Amended Contention 2 is not admissible.

Again, we agree that Fasken Amended Contention 2 was timely submitted in the sense that it was filed within the timeframe prescribed by the Secretary for contentions challenging the DEIS. But the Secretary's extension did not alter Fasken's obligation to show that Amended Contention 2 is based on new, previously unavailable information that differs materially from information that was previously available. For all the reasons addressed supra, Fasken makes no such showing.

VI. ADMISSIBILITY OF FASKEN AMENDED CONTENTION 2

Fasken's failure to satisfy either the requirements for reopening a closed record or for proffering a contention out of time, without more, necessarily requires us to reject Fasken Amended Contention 2.[89] In addition, the contention does not satisfy the admissibility requirements in 10 C.F.R. § 2.309(f)(1).[90]

Although the NRC's contention admissibility requirements are not intended to be a "fortress to deny intervention,"[91] nonetheless they are "strict by design."[92] They result from the Commission's "conscious effort to raise the threshold bar for an admissible contention."[93] Failure to satisfy any one of the NRC's pleading requirements requires a licensing board to reject a contention.[94] Rather than expend agency time and resources on litigating vague and unsupported claims, the Commission strengthened the contention admissibility requirements to

---

[89] See Dominion Nuclear Conn., Inc. (Millstone Nuclear Power Station, Unit 3), CLI-09-05, 69 NRC 115, 124 (2009).

[90] 10 C.F.R. § 2.309(f)(1)(i)–(vi).

[91] Oconee, CLI-99-11, 49 NRC at 335.

[92] Dominion Nuclear Conn., Inc. (Millstone Nuclear Power Station, Units 2 & 3), CLI-01-24, 54 NRC 349, 358 (2001).

[93] Oconee, CLI-99-11, 49 NRC at 334.

[94] See Entergy Nuclear Operations, Inc. (Indian Point, Unit 2), CLI-16-05, 83 NRC 131, 136 (2016).

provide evidentiary hearings only to those who "proffer at least some minimal factual and legal foundation in support of their contentions."[95]

Therefore, although a petitioner need not prove its contention at this stage, mere notice pleading of proffered contentions is insufficient.[96] The NRC requires a petitioner to read the pertinent portions of the license application or amendment request, state the applicant's or licensee's position and the petitioner's opposing view, and explain why it disagrees with the applicant or licensee.[97]

Among other things, an admissible contention must (1) demonstrate that the issue raised in the contention is material to the findings the NRC must make to support the action involved in the proceeding;[98] and (2) provide sufficient information to show that a genuine dispute exists with the applicant or licensee on a material issue of law or fact.[99] This must include references to specific portions of the disputed document, as well as to the supporting reasons for each dispute.[100] Likewise, if a petitioner claims that a document fails to contain relevant information that is legally required, it must identify each such failure and the reason why the missing information is required.[101]

The claims in Fasken Amended Contention 2 do not satisfy these requirements, often for reasons similar to those previously discussed in connection with their untimeliness.

---

[95] Oconee, CLI-99-11, 49 NRC at 334.

[96] Fansteel, Inc. (Muskogee, Okla. Site), CLI-03-13, 58 NRC 195, 203 (2003).

[97] Rules of Practice for Domestic Licensing Proceedings—Procedural Changes in the Hearing Process, 54 Fed. Reg. 33,168, 33,170–71 (Aug. 11, 1989).

[98] 10 C.F.R. § 2.309(f)(1)(iv).

[99] Id. § 2.309(f)(1)(vi).

[100] Id.

[101] Id.

First, Fasken claims that the difference in phrasing between Holtec's application and the DEIS creates a "seriously distorted and materially different picture."[102] Fasken states that, while Holtec's Environmental Report asserted there would be "minimal potential" for any cumulative impact on geology and soils at the site, the DEIS concludes that Holtec's facility would have a "small" incremental impact that, "when added to the MODERATE impacts from other past, present, and reasonably foreseeable future actions [would] result in an overall MODERATE cumulative impact."[103]

Fasken claims this difference "constitutes new and material information that is significantly different."[104] As explained supra, however, Fasken fails to show that any difference in terminology represents a material difference between Holtec's and the NRC staff's assessment of the expected incremental impact of the proposed facility on geology and soils.

Moreover, Fasken does not specify what aspect of the DEIS's conclusions it disputes. Simply pointing to a difference between Holtec's Environmental Report and the DEIS, without more, does not raise a genuine dispute on a material issue as required by 10 C.F.R. §§ 2.309(f)(1)(iv) and (vi). A significant difference may give rise to an opportunity to proffer a new contention, but it does not relieve a petitioner of the burden to demonstrate that the contention satisfies the requirements of 10 C.F.R. § 2.309(f)(1).

Second, Fasken claims there are "glaring omissions, inaccuracies, and inconsistencies" in the DEIS regarding ownership of mineral rights under the site.[105] It asserts that these alleged misrepresentations implicate "serious and important safety and environmental issues."[106] Specifically, Fasken claims that, "contrary to statements in . . . the most recent Holtec DEIS,"

---

[102] Amended Motion for Leave at 12.

[103] Id. (quoting DEIS at 5-11).

[104] Id.

[105] Id. at 7.

[106] Id.

Holtec "does not own the mineral rights below the site and does not have the ability to control extraction activities adjacent to the site."[107]

Fasken misreads the DEIS. In actuality, the DEIS acknowledges (as did Holtec's Environmental Report) that the State of New Mexico and the Bureau of Land Management (BLM) own the subsurface property rights within and surrounding the site of Holtec's proposed project. For example, section 3.2.1 of the DEIS states: "The State of New Mexico owns subsurface property rights within the proposed [storage facility] project area, and BLM or the State of New Mexico owns subsurface property rights on privately-owned land surrounding the proposed [storage facility] project area (DEIS Figure 3.2-2)."[108] Fasken therefore fails to raise a genuine dispute, as required by 10 C.F.R. § 2.309(f)(1)(vi).

Moreover, Fasken does not explain how ownership of subsurface mineral rights and control of subsurface activities would affect, much less contradict, the NRC staff's environmental analysis presented in the DEIS. Because Fasken does not show how these matters are material to the NRC staff's environmental review, its claims also fail to raise an issue that is material to the findings the NRC must make, as required by 10 C.F.R. § 2.309(f)(1)(iv).

Third, Fasken claims that using a radius greater than six miles to evaluate land use is necessary to "truly evaluate cumulative impacts" associated with Holtec's proposed facility.[109] The Commission instructs us, however, that contentions must identify a deficiency in the NRC staff's environmental analysis and may not merely offer "suggestions" of other ways the analysis

---

[107] Id. at 13.

[108] DEIS at 3-2; see also DEIS at 4-3, 4-4.

[109] Amended Motion for Leave at 15–16.

could have been done.[110] The National Environmental Policy Act (NEPA) "gives agencies broad discretion to keep their inquiries within appropriate and manageable boundaries."[111]

In this instance, the NRC staff applied the guidance in NUREG-1748 and determined that a six-mile radius is reasonable "because of the small footprint, low profile, and passive nature of the project."[112] Although Fasken may favor an expanded analysis, it does not explain how the NRC staff's approach violates the requirements of NEPA. Fasken therefore fails to raise a genuine dispute, as required by 10 C.F.R. § 2.309(f)(1)(vi).

Fourth, Fasken claims that the DEIS contains misleading or inaccurate information on the scope of oil and gas operations in the region.[113] In support, Fasken describes the number and types of wells in the region.[114] Fasken does not, however, identify any statement in the DEIS that is inaccurate or misleading, or explain how any alleged inaccuracies might affect a material issue.

In further support of its claim that the description of drilling operations is inaccurate, Fasken states that the DEIS "defies all logic" when it "bizarrely and unjustifiably" relies on a 1978 study to reach conclusions about the depth of oil and gas production zones, given available "advancements in drilling technologies."[115] However, Fasken does not explain why advancements in drilling technologies impact the 1978 study's conclusions about the depths of oil and gas deposits in the vicinity of the site. And Fasken simply ignores the fact that the DEIS did not base its conclusions solely on the 1978 study, but also relied on the 2007 ELEA study.[116]

---

[110] NextEra Energy Seabrook, LLC (Seabrook Station, Unit1), CLI-12-05, 75 NRC 301, 323 (2012).

[111] La. Energy Servs, L.P. (Nat'l Enrichment Facility), CLI-98-03, 47 NRC 77, 103 (1998).

[112] DEIS at 3-1.

[113] Amended Motion for Leave at 15.

[114] Id.

[115] Id. at 16, 19.

[116] DEIS at 4-4, 4-5 ("[A]ll oil and gas production zones in the area of the proposed [consolidated interim storage facility] occur beneath the Salado Formation at depths greater than 914 m

Fasken must show some reason why "resolution of the dispute would make a difference in the outcome of the licensing proceeding."[117] For example, as discussed supra, Fasken's petroleum geologist, Mr. Pollock, asserts that recent technological advances make drilling at shallower depths and revisiting existing wells a "real possibility."[118] But Fasken does not explain how the existence of wells at any depth is material to the NRC staff's assessment of environmental and cumulative impacts. Therefore, Fasken does not satisfy the requirements of 10 C.F.R. § 2.309(f)(1)(iv) and (vi).

Fifth, citing a March 26, 2020 5.0 magnitude earthquake that took place approximately 50 miles from Holtec's proposed facility, Fasken claims it is "unclear" if adequate consideration has been given to the risks of seismicity.[119] But Fasken does not specify whether it is challenging the NRC staff's NEPA assessment or Holtec's safety analysis. In any event, the DEIS discusses seismicity, and provides a history of earthquakes in the area of the proposed site.[120] And Holtec's SAR Section 2.6.2 contains an analysis for the 10,000-year return earthquake, including ground acceleration. Fasken does not acknowledge or address either of these discussions. Accordingly, Fasken fails to demonstrate a genuine dispute, as required by 10 C.F.R § 2.309(f(1)(vi).

Finally, as another basis for Amended Contention 2, Fasken points out that Holtec has not yet responded to various RAI's from the NRC staff concerning regional drilling activities,

---

[3,000 ft]. . . oil and gas exploration targets within and surrounding the proposed project area range from relatively shallow oil and gas at approximately 930 to 1,524 m [3,050 to 5,000 ft] in upper to middle Permian formations to deep gas targets in middle Paleozoic formations in excess of 4,877 m [16,000 ft] deep (ELEA, 2007)").

[117] Final Rule, Rules of Practice of Domestic Licensing Proceedings—Procedural Changes in the Hearing Process, 54 Fed. Reg. 33,168, 33,172 (Aug. 11, 1989). See also 10 C.F.R. § 2.309(f)(1)

[118] Amended Motion for Leave at 18; see Pollock Declaration at 2–3.

[119] Amended Motion for Leave at 27.

[120] DEIS at 3.4.4.

orphaned and abandoned wells, potash mining, and seismicity.[121] As the Commission instructs, however, "'[p]etitioners must do more than rest on the mere existence of RAI's as a basis for their contention.'"[122] This is because the issuance of RAI's alone does not establish deficiencies in the application or that the staff will find any applicant responses unsatisfactory.[123]

Fasken claims that the DEIS "allegedly relied" on information that Holtec has yet to provide in response to outstanding RAI's and that the NRC staff "cannot feasibly conduct an independent review and analysis without considering Holtec's RAI responses."[124] But Fasken does not identify any section of the DEIS that relies on information that may be provided by Holtec's responses to outstanding RAI's. Moreover, the NRC Staff represents that all pending RAI's cited by Fasken pertain to the staff's safety review.[125] With no showing of how the DEIS is deficient, Fasken fails to raise a genuine dispute, as required by 10 C.F.R. § 2.309(f)(1)(vi).

Fasken Amended Contention 2 is not admitted.

---

[121] Amended Motion for Leave at 20.

[122] PPL Susquehanna, LLC (Susquehanna Steam Electric Station, Units 1 & 2), CLI-15-08, 81 NRC 500, 506 n.47 (2015) (quoting Oconee, CLI-99-11, 49 NRC at 336).

[123] Id.

[124] Amended Motion for Leave at 21.

[125] NRC Staff Answer at 22.

VII. ORDER

For the reasons stated:

A. Fasken's motion to reopen the record is denied.

B. Fasken's motion for leave to file its Amended Contention 2 is denied.

C. Fasken Amended Contention 2 is not admitted.

D. No contention having been admitted, and no proffered contention pending, this adjudicatory proceeding remains terminated.

It is so ORDERED.

THE ATOMIC SAFETY
AND LICENSING BOARD

/RA/

Paul S. Ryerson, Chairman
ADMINISTRATIVE JUDGE

/RA/

Nicholas G. Trikouros
ADMINISTRATIVE JUDGE

/RA/

Dr. Gary S. Arnold
ADMINISTRATIVE JUDGE

Rockville, Maryland
September 3, 2020

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

In the Matter of	)	
	)	
	)	
HOLTEC INTERNATIONAL	)	Docket No. 72-1051-ISFSI
	)	
	)	
(HI-STORE Consolidated Interim Storage Facility)	)	
	)	

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing **MEMORANDUM AND ORDER (Denying Motions to Reopen and for Leave to File)** have been served upon the following persons by Electronic Information Exchange (EIE).

U.S. Nuclear Regulatory Commission
Office of Commission Appellate Adjudication
Mail Stop: O-16B33
Washington, DC 20555-0001
E-mail: ocaamail.resource@nrc.gov

U.S. Nuclear Regulatory Commission
Office of the Secretary of the Commission
Mail Stop: O-16B33
Washington, DC 20555-0001
E-mail: hearingdocket@nrc.gov

U.S. Nuclear Regulatory Commission
Atomic Safety and Licensing Board Panel
Mail Stop: T-3F23
Washington, DC 20555-0001

Paul S. Ryerson, Chair
Administrative Judge

Nicholas G. Trikouros
Administrative Judge

Dr. Gary S. Arnold
Administrative Judge

E-mail: paul.ryerson@nrc.gov
nicholas.trikouros@nrc.gov
gary.arnold@nrc.gov

U.S. Nuclear Regulatory Commission
Office of the General Counsel
Mail Stop - O-14A44
Washington, DC 20555-0001

Sheldon Clark, Esq.
Joseph I. Gillespie, Esq.
Esther Houseman, Esq.
Sara B. Kirkwood, Esq.
Mauri Lemoncelli, Esq.
Patrick Moulding, Esq.
Carrie Safford, Esq.
Thomas Steinfeldt, Esq.
Rebecca Susko, Esq.
Alana M. Wase, Esq.
Brian Newell, Senior Paralegal
Stacy Schumann, Paralegal
E-mail: sheldon.clark@nrc.gov
joe.gillespie@nrc.gov
esther.houseman@nrc.gov
sara.kirkwood@nrc.gov
mauri.lemoncelli@nrc.gov
patrick.moulding@nrc.gov
carrie.safford@nrc.gov
thomas.steinfeldt@nrc.gov
rebecca.susko@nrc.gov
alana.wase@nrc.gov
brian.newell@nrc.gov
stacy.schumann@nrc.gov

Ian Curry, Law Clerk
Stephanie Fishman, Law Clerk
Molly Mattison, Law Clerk
Taylor Mayhall, Law Clerk
E-mail: ian.curry@nrc.gov
stephanie.fishman@nrc.gov
molly.mattison@nrc.gov
taylor.mayhall@nrc.gov

Counsel for Holtec International
Pillsbury Winthrop Shaw Pittman LLP
1200 Seventeenth Street, NW
Washington, DC 20036
Meghan Hammond, Esq.
Anne Leidich, Esq.
Michael Lepre, Esq.
Jay Silberg, Esq.
Timothy Walsh, Esq.
Sidney Fowler, Esq.
E-mail: meghan.hammond@pillsburylaw.com
anne.leidich@pillsburylaw.com
michael.lepre@pillsburylaw.com
jay.silberg@pillsburylaw.com
timothy.walsh@pillsburylaw.com
sidney.fowler@pillsburylaw.com

Counsel for Beyond Nuclear
Harmon, Curran, Spielberg & Eisenberg LLP
1725 DeSales Street NW
Suite 500
Washington, DC 20036
Diane Curran, Esq.
E-mail: dcurran@harmoncurran.com

Turner Environmental Law Clinic
1301 Clifton Road
Atlanta, GA 30322
Mindy Goldstein, Esq.
E-mail: magolds@emory.edu

Counsel for Alliance Environmental Strategies
Law Office of Nancy L. Simmons
120 Girard Boulevard SE
Albuquerque, NM 87106

Nancy L. Simmons, Esq.
E-mail: nlsstaff@swcp.com

Eddy-Lea Energy Alliance
102 S. Canyon
Carlsbad, NM 88220

John A. Heaton
E-mail: jaheaton1@gmail.com

Counsel for Don't Waste Michigan
316 N. Michigan Street, Suite 520
Toledo, OH 43604-5627
Terry J. Lodge, Esq.
E-mail: tjlodge50@yahoo.com

Counsel for Sierra Club
4403 1st Avenue SE, Suite 402
Cedar Rapids, IA 52402
Wallace L. Taylor, Esq.
E-mail: wtaylor784@aol.com

Counsel for NAC International Inc.
Robert Helfrich, Esq.
NAC International Inc.
3930 E Jones Bridge Rd., Ste. 200
Norcross, GA 30092
E-mail: rhelfrich@nacintl.com

Hogan Lovells LLP
555 13th Street NW
Washington, DC 20004
Sachin S. Desai, Esq.
Allison E. Hellreich, Esq.
E-mail: sachin.desai@hoganlovells.com
allison.hellreich@hoganlovells.com

Counsel for Fasken Land and Oil and Permian Basin Land and Royalty Owners
Monica R. Perales, Esq.
6101 Holiday Hill Road
Midland, TX 79707
E-mail: monicap@forl.com

Kanner & Whiteley, LLC
701 Camp Street
New Orleans, LA 70130
Allan Kanner, Esq.
Elizabeth Petersen, Esq.
Cynthia St. Amant, Esq
Conlee Whiteley, Esq .
E-mail: a.kanner@kanner-law.com
e.petersen@kanner-law.com
c.stamant@kanner-law.com
c.whiteley@kanner-law.com

Eddy County, NM*
101 W. Greene Street
Carlsbad, NM

~~Rick Rudometkin~~
E-mail: ~~rrudometkin@co.eddy.nm.us~~
* Eddy County not served due to no representative for the County assigned at the time of Mr. Rudometkin's departure.

Lea County, NM
100 N. Main
Lovington, NM 88260

Jonathan B. Sena
E-mail: jsena@leacounty.net

City of Hobbs, NM
2605 Lovington Highway
Hobbs, NM 88242

Garry A. Buie
E-mail: gabuie52@hotmail.com

City of Carlsbad, NM
1024 N. Edward
Carlsbad, NM 88220

Jason G. Shirley
E-mail: jgshirley@cityofcarlsbadnm.com

Krupskaya T. Castellon

Digitally signed by Krupskaya T. Castellon
Date: 2020.09.03 12:35:40 -04'00'

Office of the Secretary of the Commission

Dated at Rockville, Maryland,
This 3rd day of September 2020