

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE COMMISSION

In the Matter of)
)
THOMAS SAUNDERS) Docket No. IA-19-027
)

NRC STAFF’S ANSWER TO REQUEST FOR HEARING BY LEONARD SPARKS

INTRODUCTION

Pursuant to 10 C.F.R. § 2.309(i)(1), the staff of the Nuclear Regulatory Commission (Staff) hereby responds to the “Motion to Intervene and Motion to Combine Opposition with Related Proceeding” filed on November 29, 2019 by Leonard Sparks (“Petitioner” or “Mr. Sparks”).¹ The Petitioner’s request for a hearing should be denied because the request is outside the scope of this proceeding, and he has not demonstrated how measures to be taken under the order would harm him. Accordingly, the Petitioner lacks standing to request a hearing in this matter pursuant to 10 C.F.R. § 2.309(d) and has not proffered an admissible contention pursuant to 10 C.F.R. § 2.309(f).²

BACKGROUND

On October 21, 2019, the NRC Staff issued a Confirmatory Order (IA-19-027) to Mr. Thomas B. Saunders, the former Contracts and Procurement Director for Construction at Southern Nuclear Operating Company’s (SNC’s) Vogtle Electric Generation Plant (Vogtle),

¹ Leonard Sparks’s Motion to Intervene Regarding IA-19-027 and Motion to Combine Opposition with Related Proceeding at 1 (Nov. 29, 2019) (ADAMS Accession No. ML19338E836) (hereinafter “Sparks Petition”).

² The same reasoning applies to the requests on the related proceedings named in Mr. Sparks’s Petition.

Units 3 and 4. The Order was the result of an agreement reached during an Alternative Dispute Resolution (ADR) mediation session, which Mr. Saunders requested after the Staff identified his apparent willful violation of 10 C.F.R. § 52.5, “Employee Protection.”³ The Order documents Mr. Saunders’s commitments and requires him to take certain actions to reasonably assure protection of the public health and safety, including presenting at SNC trainings and meetings, presenting at five nuclear industry forums, submitting an article for publication to an industry forum, and presenting at the NRC’s annual Regulatory Information Conference.⁴

The Staff also issued a Confirmatory Order Modifying License (EA-18-130 and EA-18-171) to SNC on November 20, 2019. This Order was the result of an agreement reached between the Staff and SNC during an ADR mediation session related to two apparent licensee violations of 10 C.F.R. § 52.5 at the Vogtle Units 3 and 4 site, one of which was due to Mr. Saunders’s apparent violation described above.⁵ The Order sets forth numerous actions that SNC is required to take to improve and ensure a safety conscious work environment (SCWE) not only at Vogtle but also across the SNC fleet, such as maintaining a fleetwide Employee Concerns Program; maintaining both a fleetwide and Vogtle-specific adverse action review process; implementing SCWE training requirements for new and current employees, as well as

³ Confirmatory Order to Thomas Saunders (IA-19-027) at 1 (Oct. 21, 2019) (ADAMS Accession No. ML19269C005) (hereinafter “Saunders Order”).

⁴ *Id.* at 5–6.

⁵ Confirmatory Order Modifying License (EA-18-130 & EA-18-171) to Southern Nuclear Company at 1–2 (Nov. 20, 2019) (ADAMS Accession No. ML19249B612) (hereinafter “SNC Order”). Due to the substantially similar broad corrective actions expected from the two cases, the Staff and SNC agreed to have the mediation session encompass both cases.

Additionally, on November 20, 2019, the Staff issued a Notice of Violation (NOV) to Mr. Mark Rauckhorst, the former Vice President of SNC, for a violation of 10 C.F.R. § 52.4. See Notice of Violation to Mark Rauckhorst (Nov. 20, 2019) (ADAMS Accession No. ML19301C710). The NOV states that Mr. Rauckhorst engaged in deliberate misconduct that caused SNC to be in violation of 10 C.F.R. § 52.5(a) when he sent a letter to Westinghouse directing the removal of 14 listed individuals. *Id.* at 1. Mr. Sparks did not have a role in the events leading to Mr. Rauckhorst’s violation; NRC’s Office of Investigations (OI) conducted two separate investigations for the allegations against Mr. Rauckhorst and Mr. Saunders. The NOV issued to Mr. Rauckhorst does not include a provision providing hearing rights for third parties.

management; revising SNC SCWE policy to reflect lessons learned from these issues; presenting at industry forums; and obtaining two third-party, independent SCWE surveys.⁶

Both Confirmatory Orders clarify that the scope of any hearing request shall be limited to the issue of “whether this Confirmatory Order should be sustained.”⁷ By the terms of both Orders and in accordance with 10 C.F.R. §§ 2.202 and 2.309, any person other than the Order recipients (*i.e.*, Mr. Saunders or SNC) may request a hearing within 30 calendar days of the issuance.⁸ The Orders further specify that for such a hearing request, “that person shall set forth with particularity the manner in which his interest is adversely affected by this CO and shall address the criteria set forth in 10 CFR 2.309(d) and (f).”⁹ The Orders also clarify that where good cause is shown, consideration will be given to extending the time to request a hearing.¹⁰ On November 18, 2019, Mr. Sparks requested a ten-day extension to request a hearing on the Saunders Order, which was granted by Mr. George Wilson, Director of the Office of Enforcement.¹¹

DISCUSSION

To obtain a hearing on an order, a petitioner must demonstrate standing and offer at least one admissible contention. However, the threshold issue on which the determinations of standing and admissibility depend is whether the hearing request is within the scope of the proceeding as defined in the order. Here, the Petitioner seeks remedies beyond the stated scope of the proceeding, which is defined in Mr. Saunders’s Confirmatory Order as “whether

⁶ SNC Order at 10–14.

⁷ Saunders Order at 10; SNC Order at 18.

⁸ Saunders Order at 7; SNC Order at 14.

⁹ Saunders Order at 10; SNC Order at 18.

¹⁰ Saunders Order at 7; SNC Order at 14.

¹¹ See Email from George Wilson to Billie Garde, Counsel for Petitioner (Nov. 18, 2019) (ADAMS Accession No. ML19337A679).

this CO should be sustained.”¹² Under both longstanding federal and Commission case law, Licensing Boards are not to consider whether enforcement orders need strengthening because it intrudes upon the “the Staff’s discretion to select the enforcement action, which in its judgment, best fits the violation,”¹³ and deters licensees (including individuals subject to NRC enforcement) from entering into agreements with the NRC to efficiently resolve matters without the need for costly litigation.¹⁴ Because Mr. Sparks raises issues that are outside the scope of this proceeding, he has satisfied neither the standing nor contention admissibility requirements of 10 C.F.R. § 2.309(d) and 10 C.F.R. § 2.309(f). Therefore, his request for a hearing should be denied.

A. The Petitioner’s Request Is Outside the Scope of the Proceeding and Is Contrary to Longstanding Federal and Commission Case Law and Commission Policy

Petitioner asserts that the actions outlined in both the Saunders and SNC Confirmatory Orders worsen the SCWE at Vogtle Units 3 and 4, and that the Orders are based “on a set of alternative facts” and “are not based on a factual determination by the NRC.”¹⁵ He further asserts that because the Orders omit his “blacklisting” and “failure to hire,” the SCWE at the site is worse than it was before the issuance of the Orders.¹⁶ But these claims are fundamentally requests to challenge an enforcement order as “too weak or otherwise insufficient,” which the Commission has definitively held do not warrant a licensing board hearing.¹⁷

¹² Saunders Order at 10.

¹³ *Alaska Dep’t of Transp. & Pub. Facilities*, CLI-04-26, 60 NRC 399, 409 (citing “NRC Staff’s Notice of Appeal of Licensing Board Order of July 29, 2004 and Accompanying Brief” at 8) (hereinafter “ADOT”), *reconsid. denied*, CLI-04-38, 60 NRC 652 (2004).

¹⁴ *See id.* at 408–409 (“[T]o allow third parties to contest enforcement settlements at hearings would undercut our salutary policy favoring enforcement settlements.”); *see also Bellotti v. Nuclear Regulatory Comm’n*, 725 F.2d 1380, 1382 (D.C. Cir. 1983) (upholding the Commission’s direction of agency resources toward the inspection rather than the adjudication process).

¹⁵ Sparks Petition at 1.

¹⁶ *Id.* at 2.

¹⁷ *ADOT*, CLI-04-26, 60 NRC at 404 (“For the third time this year we address the question whether petitioners may obtain licensing board hearings to challenge NRC Staff enforcement orders as too

Under both Commission and controlling federal case law, the Commission has the authority under Section 189a. of the Atomic Energy Act of 1954, as amended, 42 U.S.C. §§ 2011 *et seq.*, to define the scope of an enforcement proceeding.¹⁸ The scope of this proceeding is limited to the question of whether the Order should be sustained.¹⁹ Under the controlling holding of *Bellotti* and related Commission case law, to prevent “unstructured and almost interminable hearings on any issue some member of the public may wish to litigate,” Boards are not to consider speculation about substitute or possible future potential remedies in enforcement proceedings.²⁰

Further, post-*Bellotti* Commission case law dictates that “a petitioner may obtain a hearing only if the measures to be taken under the order would *in themselves* harm the petitioner.”²¹ If an Order improves health and safety, however, then no hearing is appropriate.²² Moreover, allowing a third party to contest enforcement settlements would discourage parties from entering into such agreements, undercutting both the Commission’s policy favoring

weak or otherwise insufficient. The answer, under a longstanding Commission policy upheld in *Bellotti v. NRC*, is no.”).

¹⁸ *Bellotti*, 725 F.2d at 1381; *All Operating Boiling Water Reactor Licensees with Mark I & Mark II Containments: Order Modifying Licenses with Regard to Reliable Hardened Containment Vents*, CLI-13-2, 77 NRC 39, 44 (2013); *ADOT*, CLI-04-26, 60 NRC at 405; *Public Serv. Co. of Ind.* (Marble Hill Nuclear Generating Station, Units 1 & 2), CLI-80-10, 11 NRC 438, 442 (1980).

¹⁹ Saunders Order at 10; see also SNC Order at 18.

²⁰ *Bellotti*, 725 F.2d at 1383; see also *ADOT*, CLI-04-26, 60 NRC at 404 n.19. Instead, a petitioner who seeks the imposition of stricter, different, or additional requirements should file a petition pursuant to 10 C.F.R. § 2.206. *All Operating Boiling Water Reactor Licensees with Mark I & Mark II Containments*, CLI-13-2, 77 NRC at 50 n.57; *ADOT*, CLI-04-26, 60 NRC at 407 n.35; *Sequoyah Fuels Corp.* (UF6 Production Facility), CLI-86-19, 24 NRC 508, 513–514 (1986) (citing *Bellotti*, 725 F.2d at 1380); *Marble Hill*, CLI-80-10, 11 NRC at 442.

²¹ *All Operating Boiling Water Reactor Licensees with Mark I & Mark II Containments*, CLI-13-2, 77 NRC at 45 (emphasis in original).

²² *ADOT*, CLI-04-26, 60 NRC at 408.

settlement over costly litigation²³ and the Staff's discretion to impose enforcement sanctions appropriate to remedy the underlying violation.²⁴

The Petitioner's assertion that his "position as an intervenor is consistent with existing case law," disregards legal precedent.²⁵ The instant case is ultimately controlled by *Alaska Department of Transportation (ADOT)*, where the Commission held that, under the holding in *Bellotti*, the Petitioner was not entitled to a hearing.²⁶ In both cases, the individual who was subject to discrimination petitioned to intervene in an enforcement proceeding against the party responsible for the discrimination, specifically challenging a Confirmatory Order that was the result of an ADR settlement.²⁷ As discussed more fully below, Mr. Sparks's proposed contentions are likewise analogous to those of the individual petitioner in *ADOT* (Mr. Farmer): one proposed contention challenges the sufficiency of the facts as stated in the Order and the other challenges the sufficiency of the agreed-upon actions in the Order.²⁸

Mr. Sparks's first proposed contention is "[w]hether the facts, as stated in the Order(s), are true; and whether the proposed sanction is supported by these facts." He claims that the "facts apparently became secondary to the parties reaching agreement at ADR" and argues that he can supply more direct, personal support "for what actually happened" at a hearing.²⁹ This contention is analogous to Mr. Farmer's factual contention in *ADOT* that his case was not based upon "an accurate assessment and analysis of all the facts available to the Commission."³⁰

²³ *Id.* at 408–409; *Marble Hill*, CLI-80-10, 11 NRC at 441.

²⁴ *ADOT*, CLI-04-26, 60 NRC at 410–411 (citing *Advanced Medical Systems, Inc.* (One Factory Row, Geneva, Ohio 44041), CLI-94-6, 39 NRC 285, 312 (1994)).

²⁵ Sparks Petition at 6.

²⁶ *ADOT*, CLI-04-26, 60 NRC at 411.

²⁷ *See id.* at 402–403.

²⁸ *See* Sparks Petition at 7–8; *ADOT*, CLI-04-26, 60 NRC at 403.

²⁹ Sparks Petition at 8.

³⁰ *ADOT*, CLI-04-26, 60 NRC at 403.

There, the Commission unequivocally held that “a challenge to the facts themselves by a nonlicensee is not cognizable,” because challenging a confirmatory order “under the guise of a factual dispute would effectively permit an end run around *Bellotti*.”³¹ Further, the factual circumstances that precipitated the 10 C.F.R. § 52.5 apparent violations are described in Section II of both the Saunders and SNC Confirmatory Orders. Mr. Sparks vaguely criticizes those summaries as “alternative facts”; but without providing any explanation of what facts he specifically disputes, let alone how they reveal that he would be harmed by sustaining the Order, Mr. Sparks’s claim amounts to the attempted “end run” around *Bellotti* that the Commission specifically and unequivocally rejected in *ADOT*.³²

In his second contention, Mr. Sparks claims that the corrective measures outlined in the Orders are detrimental to the public health and safety by creating a false impression that Mr. Saunders and SNC are undertaking actions that will improve the SCWE at Vogtle, thus leaving employees similarly situated to Mr. Sparks “worse off than before the Order.”³³ As articulated in *ADOT* and *Bellotti*, Mr. Sparks’s petition fails to frame his contentions in terms of the singular inquiry for this proceeding: whether the order should be sustained.³⁴ Instead, Mr. Sparks “proposes that the proper contention[] should be” whether the actions agreed upon are

³¹ *Id.* 408.

³² Sparks Petition at 1, 8; *ADOT*, CLI-04-26, 60 NRC at 408. Mr. Sparks cites one footnote in *Andrew Siemaszko*, which in turn cites *North Anna*, for the principle that firsthand witnesses are in the best position to support factual determinations in enforcement actions. Sparks Petition at 8; *Andrew Siemaszko*, CLI-06-16, 63 NRC 708, 720 n.35 (2006) (citing *Virginia Electric & Power Co.* (North Anna Power Station, Units 1 & 2), ALAB-363, 4 NRC 631, 633 (1976)). Although *North Anna* acknowledges the value of firsthand witness testimony, such testimony is only pertinent for issues that are properly within the scope of proceedings. Thus, even if Mr. Sparks’s “direct, personal information about what happened” could contribute to the proceedings, it does not overcome the *ADOT* and *Bellotti* precedent dictating why this petition is out of scope. Sparks Petition at 8.

³³ Sparks Petition at 1–2.

³⁴ *Compare* Sparks Petition at 7–8 (proposing “Whether the actions agreed upon in the Confirmatory Order(s) *are sufficient to ensure* that...the workforce (employees and contractors), are free to raise safety concerns without fear of reprisal” as a contention) (emphasis added) *with ADOT*, CLI-04-26, 60 NRC at 403 (contention stating, “The agreed upon Confirmatory Order *should not be sustained* since, even if fully implemented, it does not provide reasonable assurance to the Commission that the health and safety of the public will be protected...” (emphasis added)).

sufficient.³⁵ That is precisely the claim that the Commission in *ADOT* determined would infringe on the Staff's discretion and discount the Commission's policy of encouraging settlement, and thus clearly falls outside the scope of an enforcement proceeding.³⁶

In sum, both submitted contentions are an attempt to recharacterize what is in fact a request to strengthen the sanctions in enforcement orders. This is an impermissible basis for a hearing according to both applicable federal and Commission case law, regardless of whether the challenge is directed at Mr. Saunders or SNC. Accordingly, the Commission should deny the Petitioner's hearing request.

B. The Petitioner Has Not Met the Requirements of 10 C.F.R. § 2.309

The Commission has spoken definitively on the scope of enforcement proceedings, and both of Mr. Sparks's contentions fall squarely outside of the scope of this proceeding. Mr. Sparks has also failed to demonstrate how sustaining the order harms him. For this reason, Mr. Sparks has neither demonstrated standing nor proffered admissible contentions.

1. Mr. Sparks Has Not Demonstrated Standing

Any person who seeks to intervene in a Commission proceeding must demonstrate standing to do so.³⁷ To establish standing, the petitioner must meet the requirements set forth in 10 C.F.R. § 2.309(d), which include "the nature of the requestor's/petitioner's right under the Act to be made a party to the proceeding...the nature and extent of [petitioner's] property, financial or other interest in the proceeding; and [t]he possible effect of any decision or order that may be issued in the proceeding on the [petitioner's] interest."³⁸ The Commission applies contemporaneous judicial concepts of standing to evaluate whether the petitioner has

³⁵ Sparks Petition at 7.

³⁶ *ADOT*, CLI-04-26, 60 NRC at 409–410, 411.

³⁷ See Atomic Energy Act § 189a, 42 U.S.C. § 2239(a).

³⁸ 10 C.F.R. § 2.309(d)(1).

demonstrated the requisite interest.³⁹ To this end, “a petitioner must (1) allege an injury in fact that is (2) fairly traceable to the challenged action and (3) is likely to be redressed by a favorable decision.”⁴⁰ The injury must be “concrete and particularized” and “actual or imminent, not conjectural or hypothetical.”⁴¹ It must be likely, rather than speculative, that a favorable decision will redress the injury.⁴²

In the context of enforcement matters, a petitioner may only obtain a hearing “if the measures to be taken under the order would *in themselves* harm the petitioner.”⁴³ Without an injury attributable to the Confirmatory Order itself, a petitioner does not have standing.⁴⁴ Further, the individual requesting the hearing “must show that the petitioner would be adversely affected by the enforcement order as it exists, rather than being adversely affected by the existing order as it might be compared to a hypothetical order that the petitioner asserts would be an improvement.”⁴⁵

Here, Mr. Sparks has not met the legal requirements for standing because he has not demonstrated a concrete, particularized injury that is traceable to the challenged action and

³⁹ See *Fla. Power & Light Co.* (Turkey Point Nuclear Generating Plant, Units 3 & 4), CLI-15-25, 82 NRC 389, 394 (2015); see also *Calvert Cliffs 3 Nuclear Project, LLC, & UniStar Nuclear Operating Services, LLC* (Calvert Cliffs Nuclear Power Plant, Unit 3), CLI-09-20, 70 NRC 911, 915 (2009).

⁴⁰ *Turkey Point*, CLI-15-25, 82 NRC at 394; see also *Sequoyah Fuels Corp. & General Atomics* (Gore, Oklahoma Site), CLI-94-12, 40 NRC 64, 71–72 (1994); *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560–61 (1992).

⁴¹ *Lujan*, 504 U.S. at 560.

⁴² *Id.* at 561.

⁴³ *All Operating Boiling Water Reactor Licensees with Mark I & Mark II Containments*, CLI-13-2, 77 NRC at 45 (emphasis in original); see also *Detroit Edison Co.* (Fermi Power Plant Independent Spent Fuel Storage Installation), CLI-10-3, 71 NRC 49, 53 (2010) (“Under *Bellotti*, Petitioners must provide factual support for their claim that injury could be redressed by a favorable Board ruling, that is, that they would be better off if the order were vacated.”).

⁴⁴ *ADOT*, CLI-04-26, 60 NRC at 406.

⁴⁵ *Florida Power & Light Co.* (St. Lucie Nuclear Power Plant, Units 1 & 2), LBP-08-14, 68 NRC 279, 286–287 (2008); see also *ADOT*, CLI-04-26, 60 NRC at 406 (stating that a “petitioner like Farmer simply is not adversely affected by a Confirmatory Order that improves the safety situation over what it was in the absence of the order.”).

likely to be redressed by a favorable decision. Mr. Sparks alleges that the Confirmatory Order has caused a personal injury (because the Order fails to set out the facts that led to his retaliatory termination, his “professional reputation and credibility remains in question”⁴⁶), as well as a broader injury to the public health and safety (the “false impression” that Mr. Saunders is undertaking actions that will improve the safety culture at Vogtle, which actually makes the safety culture at the site worse).⁴⁷ He additionally alleges that the safety culture at Vogtle is worsened by leaving out “blacklisting” and “failure to hire” from the enumerated adverse actions that SNC must review.⁴⁸ However, Mr. Sparks’s alleged individual injuries are in no way attributable to the measures agreed upon in the Confirmatory Orders, but by the circumstances leading to the NRC’s issuance of the Orders.⁴⁹ Additionally, because he has not provided any reasoning to support his assertion that the Order has undermined the safety culture at the Vogtle site, the alleged injury is merely speculative and hypothetical.⁵⁰

Mr. Sparks has also failed to demonstrate how the alleged injuries would be redressed by a favorable decision because his request is ultimately an attempt to obtain additional, stricter remedies. As discussed in Section A above, Boards are not to consider speculation about substitute or possible future potential remedies in enforcement proceedings.⁵¹ Removing the additional safety requirements that were crafted specifically to address a concern about employee protection would not improve the public health and safety, but would instead revert the situation to what it was before the Orders were issued.⁵² As was the case with the Order

⁴⁶ Sparks Petition at 5–6.

⁴⁷ *Id.* at 1.

⁴⁸ *Id.* at 2.

⁴⁹ See *All Operating Boiling Water Reactor Licensees with Mark I & Mark II Containments*, CLI-13-2, 77 NRC at 45; *ADOT*, CLI-04-26, 60 NRC at 406.

⁵⁰ See *Lujan*, 504 U.S. at 560; see also *ADOT*, CLI-04-26, 60 NRC at 406.

⁵¹ See *Bellotti*, 725 F.2d at 1383; *ADOT*, CLI-04-26, 60 NRC at 406.

⁵² See *ADOT*, CLI-04-26, 60 NRC at 406 (holding that the Petitioner’s position after the requested Order rescission “would *not* be improved, for the situation would revert to what it was before the order.”)

issued to ADOT, the Confirmatory Orders issued to Mr. Saunders and SNC “plainly enhance[] public safety and increase[] protection of the licensee's employees.”⁵³ Both Mr. Saunders’ and SNC’s Orders include measures to improve the SCWE not only at the Vogtle 3 and 4 site but also throughout the industry.⁵⁴ For instance, Mr. Saunders’s required presentations and publication in industry forums will send a message to other licensees that the NRC, through its enforcement program, will not tolerate discrimination against employees or contractors for raising nuclear safety concerns.⁵⁵ Similarly, the SNC Order not only includes improvements specific to the Vogtle 3 and 4 site, such as the adverse action review process and obtaining two third-party, independent SCWE surveys, but also requires SNC to take fleetwide corrective actions, such as improvements to the Employee Concerns Program and fleetwide policy revisions.⁵⁶

Mr. Sparks’s individual situation would likewise not be improved by the Order’s rescission because the Staff is not compelled to necessarily take stricter enforcement action in the absence of the Order.⁵⁷ As stated by the Commission, a petitioner like Mr. Sparks “simply is not adversely affected by a Confirmatory Order that improves the safety situation over what it was in the absence of the order,”⁵⁸ and hearing petitions that cloak themselves as factual disputes would permit an impermissible end-run around *Bellotti*.⁵⁹ Finally, to the extent that Mr.

⁵³ *Alaska Dep’t of Transp. & Pub. Facilities*, CLI-04-38, 60 NRC 652, 655 (2004) (denying reconsideration of CLI-04-26).

⁵⁴ See Saunders Order at 5–6; SNC Order at 10–14; see also ADOT, CLI-04-26, 60 NRC at 406 (“To decide whether the order should be upheld, the pertinent time contrast is between the petitioner’s position with and without the order in question – not between the disputed order and a hypothetical substitute order, whether or not that substitute order be, in [the Petitioner’s] estimation, an improvement.”).

⁵⁵ Saunders Order at 5–6.

⁵⁶ SNC Order at 10–14.

⁵⁷ ADOT, CLI-04-26, 60 NRC at 406.

⁵⁸ *Id.*

⁵⁹ *Id.* at 408.

Sparks actually seeks reinstatement, back pay, or other civil remedies, the appropriate forum for such a request is an administrative proceeding with the Department of Labor.⁶⁰

To the extent that Mr. Sparks is requesting a hearing on the Confirmatory Order issued to SNC, the same logic applies: because his speculative injuries are not traceable to the Order, rescinding it would neither improve his individual situation nor the public health and safety. Because a hypothetical substitute order is not to be considered, rescinding the order would revert the situation “to what it was before the order.”⁶¹ Therefore, for the reasons described above, Mr. Sparks has not demonstrated standing to intervene for either Order.⁶²

2. Mr. Sparks Has Not Proffered an Admissible Contention

10 C.F.R. § 2.309(f)(1) establishes the “basic criteria that all contentions must meet in order to be admissible.”⁶³ Pursuant to that section, a contention must:

- (i) provide a specific statement of the issue of law or fact to be raised or controverted;
- (ii) provide a brief explanation of the basis for the contention;
- (iii) demonstrate that the issue raised in the contention *is within the scope of the proceeding*;
- (iv) demonstrate that the issue raised in the contention is material to the findings the NRC must make to support the action that is involved in the proceeding;
- (v) provide a concise statement of the alleged facts or expert opinions, including references to specific sources and documents, that support the petitioner's position and upon which the petitioner intends to rely at hearing; and
- (vi) provide information sufficient to show that a genuine dispute with the applicant/licensee exists in regard to a material issue of law or fact, including

⁶⁰ 10 C.F.R. § 52.5(b); *see also* ADOT, CLI-04-26, 60 NRC at 407 n.35 (explaining that the NRC’s employee protections regulations steer petitioners to “possible individual remedy for the discrimination through an administrative proceeding in the Department of Labor.”).

⁶¹ ADOT, CLI-04-26, 60 NRC at 406.

⁶² Additionally, Mr. Sparks’s injury is certainly not traceable to the NOV against Mr. Rauckhorst, as Mr. Sparks was not involved in the events leading to the NRC’s issuance of the NOV. Further, as noted in n.5 *supra*, the NOV issued to Mr. Rauckhorst does not include a provision providing hearing rights for third parties.

⁶³ *Entergy Nuclear Vermont Yankee, LLC* (Vermont Yankee Nuclear Power Station), LBP-06-14, 63 NRC 568, 571–72 (2006); *see also* *USEC, Inc. (American Centrifuge Plant)*, CLI-06-9, 63 NRC 433, 436–437 (2006) (stating that the Commission “will reject any contention that does not satisfy the requirements”).

references to specific portions of the application that the petitioner disputes, or in the case of an application that is asserted to be deficient, the identification of such deficiencies and supporting reasons for this belief.⁶⁴

The failure to comply with any one of the 10 C.F.R. § 2.309(f) requirements is grounds for dismissal of a contention.⁶⁵

The Petitioner has proffered two contentions, but neither satisfies the criteria set forth in 10 C.F.R. § 2.309(f) because both are outside the scope of this proceeding. As discussed above in Section A, the scope of an enforcement proceeding is limited to whether the order should be sustained.⁶⁶ Mr. Sparks's contentions are an effort to force the NRC to impose more stringent measures on the licensee, which, according to federal and Commission case law, will not be considered by licensing boards. Additionally, Mr. Sparks's contentions do not assert that the order should be relaxed or that it will affirmatively harm public health and safety; rather, he claims that he is injured by the Order's alleged failure "to set out the facts and circumstances that led to his retaliatory termination."⁶⁷ Like Mr. Farmer's claims in *ADOT*, Mr. Sparks's contentions are merely a repackaging of his principal argument that additional measures would make the public safer, which falls short of overcoming the *Bellotti* hurdle.⁶⁸ These same principles apply to the Petitioner's request to intervene in the Order against SNC.

Consequently, Mr. Sparks's proffered contentions are outside the scope of the proceeding.⁶⁹

⁶⁴ 10 C.F.R. § 2.309(f)(1) (emphasis added).

⁶⁵ *Private Fuel Storage, L.L.C.* (Independent Spent Fuel Storage Installation), CLI-99-10, 49 NRC 318, 325 (1999).

⁶⁶ See *Bellotti*, 725 F.2d at 1382; *ADOT*, CLI-04-26, 60 NRC at 404.

⁶⁷ Sparks Petition at 5–6.

⁶⁸ See *Bellotti*, 725 F.2d at 1382; *ADOT*, CLI-04-26, 60 NRC at 408; see also *All Operating Boiling Water Reactor Licensees with Mark I & Mark II Containments*, CLI-13-2, 77 NRC at 50.

⁶⁹ Mr. Sparks also contends that the SNC Confirmatory Order is unclear as to whether it is a final agreement between SNC and the NRC, "since...the settlement agreement is described as 'preliminary.'" Sparks Petition at 4 n.2. The SNC Order indeed describes the Agreement in Principle that was reached during the ADR session as a "preliminary settlement agreement." See SNC Order at 3. Section V of the Confirmatory Order, however, is a legally binding license modification. See *id.* at 10. Mr. Sparks's apparent confusion does not create any genuine material dispute with the Order under 10 C.F.R. § 2.309(f)(1)(vi).

CONCLUSION

For the reasons set forth above, the Petitioner's hearing requests should be denied, and the proceeding terminated.

Respectfully submitted,

/RA/

Lorraine Baer
Counsel for NRC Staff

/RA/

Dated at Rockville, Maryland
this 19th day of December, 2019

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE COMMISSION

In the Matter of

THOMAS SAUNDERS

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Docket No. IA-19-027

Date: December 19, 2019

CERTIFICATE OF SERVICE

Pursuant to 10 C.F.R. § 2.305, I hereby certify that a copy of the foregoing "NRC STAFF'S ANSWER TO REQUEST FOR HEARING BY LEONARD SPARKS" in this proceeding has been served via the Electronic Information Exchange (EIE), the NRC's E-Filing System, this 19th day of December, 2019.

Signed (electronically) by

Lorraine Baer

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