December 26, 2019

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of	)	
	)	Docket No. IA-19-027 EA
THOMAS B. SAUNDERS	)	
	)	ASLBP No. 20-963-01-EA-BD01

ANSWER OF THOMAS B. SAUNDERS IN OPPOSITION TO LEONARD SPARKS' MOTION TO INTERVENE AND REQUEST FOR HEARING

INTRODUCTION

Thomas B. Saunders files this Answer in Opposition to Leonard Sparks' *Motion to Intervene and Combine Opposition with Related Proceeding* (*Motion to Intervene* or *Motion*). In his *Motion*, Mr. Sparks seeks intervention and a hearing regarding Mr. Saunders' Confirmatory Order (CO). Mr. Sparks also seeks to combine his challenge to Mr. Saunders' CO with challenges to a CO issued to Southern Nuclear Operating Company (SNC) and Notice of Violation (NOV) issued to Mark Rauckhorst, a retired SNC employee. Both of the referenced COs resulted from settlement agreements reached through the U.S. Nuclear Regulatory Commission's (NRC) alternative dispute resolution (ADR) program.

On November 18, 2019, George A. Wilson, Director of Enforcement, granted Mr. Sparks an extension of time to file a *Motion to Intervene* regarding Mr. Saunders' CO

until 10 days after SNC's CO was issued.[1] Mr. Sparks, however, did not timely file his *Motion* through the NRC's Electronic Information Exchange (EIE), or show good cause for filing after the extension deadline. Mr. Sparks' failure to timely E-File is itself sufficient grounds to deny his *Motion*.

Additionally, Mr. Sparks' failure to certify that he conferred with SNC and Mr. Rauckhorst regarding his desire to combine his challenges to SNC's CO and Mr. Rauckhorst's NOV, with his challenge to Mr. Saunders' CO, is grounds to deny his *Motion*. Equally fatal to Mr. Sparks' *Motion* is the fact that Mr. Sparks lacks any injury supporting his claim to standing as an aggrieved party under 10 C.F.R. § 2.309(c)(i), and his two proposed contentions are unsupported and inadmissible under 10 C.F.R. § 2.309(f)(1).

Accordingly, Mr. Sparks' *Motion to Intervene* should be denied in its entirety.

I. BACKGROUND and PROCEDURAL HISTORY

On August 15, 2019, Mr. Saunders participated in a voluntary ADR mediation session with the NRC's Office of Enforcement (OE). With the mediator's assistance, Mr. Saunders proposed settlement terms and reached a preliminary settlement agreement with OE.[2] On October 21, 2019, Mr. Saunders' CO became effective on issuance.[3] Among other commitments, Mr. Saunders' CO ordered him, within 120 days from the CO's

---

1 ADAMS Accession No. ML19337A679.

2 Accession No. ML19269C005 (Saunders' CO) at 1 – 2.

3 *Id.* at 3, 5.

effective date, to make presentations at SNC's new employee orientation on Employee Protection, and at one corporate and one site-level leadership meeting. [4]

The CO also required Mr. Sparks to make presentations, within one year of the CO, at five industry forums.[5] Mr. Saunders was directed to submit all presentation materials to OE Director, George A. Wilson, "for comment and approval 14 days prior to making these presentations."[6] Director Wilson concluded that with Mr. Saunders' commitments "the public health and safety" were reasonably assured.[7]

On October 22, 2019, the NRC made Mr. Saunders' CO publicly available.[8] At Section VI, page 7, the CO notified persons adversely affected that they could "request a hearing within thirty (30) calendar days" of the Order's effective date.[9] On October 28, 2019, the CO was published in the *Federal Register* at 84 Fed. Reg. 57778.

Mr. Saunders' CO required that all documents "including a request for hearing, a petition for leave to intervene, any motion or other document filed in the proceeding prior to the submission of a request for hearing or petition to intervene . . . *must be filed in*

---

4 *Id.* at 5.

5 *Id.* at 6.

6 *Id.* at 5 – 6.

7 *Id.* at 4.

8 Accession No. ML19269C005; *NRC News*, No: 19-051.

9 *Id.* at 7.

accordance with the NRC's E-Filing rule . . . ." (emphasis added).[10] At least 10 days prior to the filing deadline a petitioner, such as Mr. Sparks or his representative, was to contact the Office of the Secretary to request a digital identification (ID) certificate to advise the Secretary that the petitioner will be submitting an adjudicatory document so that "the Secretary will establish an electronic docket for the hearing."[11]

On November 18, 2019, Mr. Sparks' Attorney e-mailed OE Director Wilson to request an extension of time to file Mr. Sparks' request for intervention and contention(s) until 10 days after the Agency issued its final decision against SNC. [12] The Director granted the Attorney's request for an extension of time "until ten days after the Agency issue[d] its final decision regarding the facts that gave rise to this matter, including any potential action against the Licensee."[13]

---

10 *Id.*; 10 C.F.R. § 2.302(a) (Documents filed in Commission adjudicatory proceedings subject to [Part 2] shall be electronically transmitted through the E-Filing system, unless the Commission or presiding officer grants an exemption permitting an alternative filing method or unless the filing falls within the scope of paragraph (g)(1) of this section).

11 Accession No. ML19269C005 (Saunders' CO) at 1-2.

12 The original due date for Mr. Sparks to request a hearing under Mr. Saunders' CO was November 20, 2019.

13 Accession No. ML19337A679 (correspondence) at 1.

Licensee SNC's CO was issued on November 20, 2019, and made public the same day.[14] On November 27, 2019, SNC's CO was published in the *Federal Register* at 84 Fed. Reg. 65426.[15]

On November 29, 2019, Mr. Sparks' Attorney e-mailed the Office of the Secretary a *Motion to Intervene* in connection with Mr. Saunders' CO. The Attorney's e-mailed letter stated that Mr. Sparks' *Motion* was being filed both "electronically and by deposit in the United States Mail."[16] The Attorney requested an exemption from the NRC's electronic filing requirements, stating "[e]fforts to obtain the NRC acceptance of the application for a Digital Certificate *today* were unsuccessful; however, upon receipt of the Digital Certificate we will E-File in the future in this case (emphasis added)."[17] The Certificate of Service attached to Mr. Sparks' *Motion* (Accession No. ML19338E836 at 11 of 53) listed an incorrect e-mail address for the undersigned counsel for Mr. Saunders.

On Saturday, November 30, 2019, via a corrected e-mail address, the undersigned received a copy of Mr. Sparks' *Motion*. On December 2, 2019, the undersigned received a copy of Mr. Sparks' *Motion* by U.S. mail.[18] Although Mr. Sparks' *Motion* referenced "the companion Notice of Violation of Mr. Mark Rauckhorst," and SNC's CO, neither

---

14 Accession No ML19249B612 (SNC CO).

15 *Id.* at 14; 84 Fed. Reg. at 65430.

16 Accession No. ML19338E836 (*Motion to Intervene*) at 1.

17 *Id.* (emphasis added).

18 *Id.* at 11.

Mr. Rauckhorst nor SNC was served with a copy of Mr. Sparks' *Motion* (about Mr. Saunders) and, to date, Mr. Saunders has not been served with Mr. Sparks' separate hearing requests regarding SNC or Mr. Rauckhorst.[19]

II. DISCUSSION

A. Mr. Sparks' *Motion to Intervene* Was Not Timely E-Filed.

Based upon the Director's extension of time for Mr. Sparks to file his *Motion to Intervene* in Mr. Saunders' CO, the deadline to request intervention was December 2, 2019, 10 days after the date SNC's CO was issued on November 20, 2019. By that time, Mr. Sparks' Attorney had ample opportunity to request a digital certificate from the NRC.[20]

On November 29, 2019, when Mr. Sparks' Attorney deposited the request to intervene in the U.S. mail, she also e-mailed the Office of the Secretary that she had not obtained a digital certificate, because "efforts to obtain the NRC acceptance of the application for a Digital Certificate today were unsuccessful; however, upon receipt of the Digital Certificate, we will E-File in the future in this case."[21] Although the Attorney's correspondence stated, "[w]e request an exemption for this initial filing not

---

19 *Id., see also* Sparks' *Motion to Intervene and Combine* re SNC (ML19354A884).

20 10 C.F.R. § 2.302(f)(2) (Any participant or participant representative that does not have a digital ID certificate shall request one from the NRC before that participant or representative intends to make its first electronic filing to the E-Filing system).

21 Accession No. ML19338E836, November 29, 2019 letter at 1.

being filed electronically,"[22] she did not include any demonstration of good cause as to why she could not obtain a digital certificate.[23]

In *AmerGen Energy Company*, LLC, the Commission declared that its "expanding adjudicatory docket makes it critically important" that petitioning parties "comply with our pleading requirements and that the Board enforce those requirements."[24]

In summary, Mr. Sparks' Attorney's correspondence shows she was aware of the Commission's E-Filing requirements. Nevertheless, her e-mailed letter to the Office of the Secretary did not show good cause as to why her efforts to obtain a digital certificate did not succeed, or how she intended to comply with the E-Filing rule before Mr. Sparks' filing deadline expired on December 2, 2019. And the Commission apparently did not grant Mr. Sparks an exemption from E-Filing (or make it publicly available). Accordingly Mr. Sparks' untimely e-filed *Motion to Intervene* should be rejected.

B. Mr. Sparks' Motion to Consolidate Should be Rejected and References to Separate Matters and Scurrilous Inaccuracies Disregarded.

Mr. Sparks' *Motion to Intervene* contained a separate request to consolidate his *Motion* for a hearing in Mr. Saunders' CO with SNC's CO, and with Mr. Rauckhorst's

---

22 *Id.*; 10 C.F.R. § 2.302(g)(4) (A filer seeking an exemption under paragraphs (g)(2) [Electronic transmission] or (g)(3) [Electronic document exemption] of this section must submit the exemption request with its first filing in the proceeding. In the request, *a filer must show good cause* as to why it cannot file electronically. The filer may not change its formats or delivery methods for filing until a ruling on the exemption is issued (emphasis added).

23 ML19338E836 (*Motion*) at 1.

24 *AmerGen Energy Company, LLC* (License Renewal for Oyster Creek Nuclear Generating Station), CLI-09-7, 69 NRC 235, 260-61 (2009).

NOV.[25] Such requests are subject to 10 C.F.R. § 2.323(b),[26] which requires Mr. Sparks' Attorney to have certified that she made a sincere effort to contact counsel for Mr. Saunders, SNC, and Mr. Rauckhorst.[27] No such effort was made, however, rendering the requisite certification impossible. As a result, Mr. Sparks' consolidation request must be rejected.[28]

With respect to Mr. Rauckhorst's NOV, it warrants highlighting that the NOV does not provide for an opportunity for a hearing; and, as Staff has already pointed out, Mr. Sparks had no involvement with the events that lead to the NOV.[29] For these additional reasons, Mr. Sparks' Motion to Consolidate Mr. Rauckhorst's NOV must be denied. It goes without saying that Mr. Sparks should have no more rights than Mr. Rauckhorst, in a matter that involves only Mr. Rauckhorst, not Mr. Sparks.

More concerning, however, are the scurrilous inaccuracies contained in Mr. Sparks' depiction of Mr. Rauckhorst's NOV which, again, has nothing to do with Mr. Sparks. Specifically, Mr. Sparks asserts that the NOV was issued against Mr. Rauckhorst

---

25 Accession No. ML19338E836 (*Motion to Intervene*) at 7.

26 Accession No. ML19301C710 (NOV) at 2, 4.

27 10 C.F.R. § 2.323(b) (A motion must be rejected if it does not include a certification by the attorney . . . of the moving party that the movant has made a sincere effort to contact other parties in the proceeding and resolve the issue(s) raised . . . .)

28 *See* Accession No. ML19338E836 (*Motion*) at 1 – 11.

29 Staff Answer at 5, n. 62.

"for 'blacklisting' employees engaged in protected activities."[30] The NOV says no such thing. It states that Mr. Rauckhorst directed the removal of 14 individuals from site and that *one* individual, "a contract employee was included . . .. in part, because he engaged in protected activity."[31]

The NOV never mentions "blacklisting" the referenced contract employee, or anyone else. Nor does it even remotely suggest that any blacklisting occurred. In the end, Mr. Sparks completely ignores what the NOV actually says, as well as the fact that Mr. Rauckhorst has the opportunity to dispute the findings contained in the NOV. In sum, Mr. Sparks' mischaracterization of the NOV is flagrant and gratuitous.

Indeed, Mr. Sparks' mischaracterization of Mr. Rauckhorst's NOV, while supporting his false narrative that "blacklisting" is somehow an issue that somehow relates to Mr. Saunders' CO, could very well cause Mr. Rauckhorst the kind of reputational harm that Mr. Sparks believes entitles him to a hearing—but ultimately does not, as shown below.

C. Mr. Sparks Has Failed to Establish Standing.

As an individual who claims he was adversely affected by Mr. Saunders' CO, and requesting intervention, Mr. Sparks does not have standing in his own right to intervene and request a hearing. In a proceeding under the Atomic Energy Act of 1954, *as amended*, and NRC regulations, only the licensee or other person against whom the

---

30 Accession No. ML19338E836 (*Motion)* at 8.

31 Accession No. ML19301C710 (Rauckhorst NOV) at 4.

action is taken has the right to standing.[32] To show he has standing, Mr. Sparks 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."[33]

Mr. Sparks fails to allege an injury-in-fact, let alone an injury in fact that is traceable to Mr. Saunders' CO. To satisfy this requirement, the injury claimed must be "concrete and particularized" and "actual or imminent, not conjectural or hypothetical.[34] The injuries Mr. Sparks alleges are nothing but conjectural and hypothetical. For example, Mr. Sparks alleges that Mr. Saunders' CO has harmed him (Mr. Sparks) by failing to set out the facts that led to his retaliatory termination; and, as a result, his "professional reputation and credibility remains in question."[35]

Notwithstanding this claim, Mr. Sparks fails to identify a single fact that is missing from Mr. Saunders' CO, relates to his (Mr. Sparks') termination, or somehow harms his reputation or credibility. In short, his naked assertions identify no injury "in-fact" that relates in any way to the CO. What they do reveal is his apparent desire to

---

32 10 C.F.R. § 2.309(d)(3) (In enforcement proceedings, the licensee or other person against whom the action is taken shall have standing).

33 *See Florida Power & Light Co.* (Turkey Point Nuclear Generating Units 3 and 4), CLI-15-25, 82 NRC at 394; *see also Sequoyah Fuels Corp.& General Atomics* (Gore, Oklahoma Site), CLI-94-12, 40 NRC 64, 71 (1994).

34 *Lujan v. Defenders of Wildlife,* 504 U.S. at 555, 560-1 (1992) (internal quotations and citations omitted); *see Sequoyah Fuels Corp.& General Atomics*, 40 NRC at 72 (Standing has been denied when the injury is too speculative.).

35 Accession No. ML19338E836 (*Motion*) at 5 – 6 (citing numbers at bottom of page).

include additional or different information in the CO, such as how "[t]he SCWE issues for the site, i.e., the existence of a 'chilling effect' at the site is ill served by this Confirmatory Order."[36] In the end, his Motion is silent on what information should be included other than something less "vague," with more facts about "what actually happened."[37]

Mr. Sparks also fails to allege an injury caused by the CO that can be redressed. To satisfy this requirement, he must show that he, as petitioner, is adversely affected by the enforcement order as it currently exists, not by how he could improve it with harsher punishment, statements extolling him, or the health and safety topics he would prefer it address."[38] In this regard, Mr. Sparks theorizes in his *Motion* that a different CO, or no CO at all, would somehow be better than what the NRC has already agreed to and Mr. Saunders has begun performing, in accordance with the commitments he made. Setting aside the fact that Mr. Sparks' theory is unsupported, it also is made moot by the fact that in order to establish standing, he must show that the existing CO has caused or will cause him harm, not that something in lieu of the existing CO would somehow, in some way, be better.

---

36 *Id.* at 6 (citing no. at bottom of page).

37 *Id.*

38 *See Public Service Co. of Indiana* (Marble Hill Nuclear Generating Station, Units 1 and 2), CLI-80-10, 11 NRC 438, 440 (1982) (The scope of a hearing directed at whether an Order should be sustained does not include consideration of enforcement remedies beyond those already granted by the Order).

Mr. Sparks claims that Commission case law is consistent with his position that he has the right to intervene by generally citing to *Bellotti v. NRC*, 725 F.2d 1380 (D.C. Cir. 1983), *aff'g Boston Edison Co.* (Pilgrim Nuclear Power Station), CLI-82-16, 16 NRC 44 (1982), and *State of Alaska Department of Transportation (DOT)*.[39] Ironically, these cases completely undercut his *Motion to Intervene* and his argument that he has standing in this matter.

Bellotti v. NRC, for example, upheld the Commission's right to "define the scope of the proceeding," and restrict the scope to the narrow issue of whether the remedy selected was supported by the facts.[40] The measures Mr. Sparks would like to see are, in reality, his preferred substitutions for the positive corrective measures already agreed to by Mr. Saunders through his ADR settlement.[41]

Mr. Saunders' commitments to taking these measures – personal and public steps to improve his approach to safety consciousness in the nuclear industry through a series of OE-approved presentations that he has already begun – do no harm to Mr. Sparks. Nor are they so "affirmatively detrimental to the public health and safety" that the CO

---

39 ML19338E836 (*Motion*) at 6.

40 *Bellotti*, 725 F.2d at 1382.

41 ML19269C005 (CO) at 2.

requires rescission."[42] Quite the opposite, they are acceptable and necessary and with them "the public health and safety are reasonably assured.[43]

Along these same lines, *Alaska DOT*, a case in which Mr. Sparks' Attorney represented an individual petitioner, also undercuts Mr. Sparks' position that he has standing to participate here. *Alaska DOT* announced that the corrective measures required in a CO "cannot conceivably" cause a petitioner such as Mr. Sparks to suffer any injury.[44] A petitioner "simply is not adversely affected by a Confirmatory Order that improves the safety situation over what it was," before Mr. Saunders' (or SNC's) COs were issued.[45] Without an injury attributable to Mr. Saunders' CO, Mr. Sparks does not have standing.[46]

Mr. Sparks also claims that Mr. Saunders' CO (and SNC's) will cause a broader injury to the public health and safety, because the COs create a "false impression that undermines safety."[47] His *Motion* states that Mr. Saunders may be creating the impression that his actions will improve the safety culture at the site; however, "the

---

42 *FirstEnergy Nuclear Operating Co.* (Davis-Besse Nuclear Power Station, Unit 1), CLI-04-23, 60 NRC 154, 157-58 (2004).

43 ML19269C005 (CO) at 4.

44 *State of Alaska DOT*, CLI-04-26, 60 NRC 399, 406.

45 *Id.* at 405-6.

46 *Id.* at 406.

47 Accession No. ML19338E836 (*Motion*) at 1 (citing no. at bottom of page).

workforce recognizes this fallacy."[48] According to Mr. Sparks, this makes the safety culture at the site worse: "Mr. Sparks and the workforce will become further impacted by the realization that misconduct can be negotiated away."[49]

Here, Mr. Sparks alleges injury based on conjecture. He fails to offer a single piece of evidence – credible or not – that even hypothesizes how Mr. Saunders' actions, already approved and tracked by the OE Director, will make the safety culture worse or, more specifically, how that would affect him personally rather than in the abstract.

The final injury alleged by Mr. Sparks is that the safety culture at the site will be worsened by leaving out "failure to hire/blacklisting" from the actions SNC must review under its CO. In his *Motion*, however, Mr. Sparks' admitted that these allegations are not yet "ripe for consideration".[50] For that reason, they should be given no further consideration. Indeed, given that these issues relate to SNC's CO, *not* Mr. Saunders' CO, they should be disregarded altogether. As previously discussed, Mr. Sparks has not properly requested that SNC's CO be made an issue in this proceeding.

---

48 *Id.*

49 *Id.*; Taking action in a direction opposite from Mr. Sparks' disapproval of mediated settlements, the Administrative Dispute Resolution Act of 1996, 5 U.S.C. §§ 571 – 584, encouraged Federal agencies to adopt policies addressing the use of voluntary dispute resolution to resolve issues in controversy related to administrative programs. In 2004, the NRC established an ADR program in the Office of Enforcement. 80 FR 11693 (March 4, 2015). Historically, ADR has resulted in broader, more comprehensive corrective actions. *Id.* at 11694.

50 Accession No. ML19338E836 (*Motion*) at 3.

Mr. Sparks' additional arguments supporting standing are that he, as a victim of Mr. Saunders' action, has a property and financial interest, and the property and financial interest in being free to seek employment without "the intentional retaliatory actions of any persons working for Licensees, in this case SNC."[51] He also suggests that he is entitled to and seeks damages for reputational harm.[52] But Mr. Sparks has the right to seek financial redress through the Department of Labor (DOL), not the NRC.[53] His *Motion to Intervene* indicates that he is doing so, and the matter is ongoing.[54]

To conclude, the NRC's adjudicatory process is not an appropriate forum for Mr. Sparks to second-guess enforcement decisions on resource allocation, policy priorities, or the likelihood of success at hearings.[55] The critical inquiry in a proceeding challenging a CO is whether the CO improves health and safety conditions.[56] To allow third parties to

---

51 Accession No. ML19338E836 (*Motion*) at 6-7 (citing nos. at bottom of page).

52 *Id.* at 5-7.

53 The Atomic Energy Act of 1954, cited in *State of Alaska DOT,* gave the Commission authority to take action against Licensees but did not include a personal remedy for employees who experienced discrimination (42 U.S.C. § 2011, *et seq.*). The Energy Reorganization Act of 1974, 42 U.S.C. § 5851, provided remedies for employees discharged or discriminated against with respect to compensation, terms, conditions, or privileges of employment.

54 Accession No. ML19338E836 at 3.

55 *State of Alaska*, 60 NRC at 407.

56 According to Mr. Saunders' CO, his commitments would reasonably assure the public health and safety. Accession No. ML19269C005 at 4.

contest settlements at hearings would undercut the Commission's "salutary policy favoring enforcement settlements."[57]

D. Mr. Sparks Has Failed to Proffer One Admissible Contention.

That Mr. Sparks does not have standing to contest Mr. Saunders' CO "is dispositive of this case."[58] Additionally, the two contentions he proposes fail to meet the NRC's contention admissibility requirements. To be admissible a contention must be timely,[59] and satisfy the requirements of 10 C.F.R. § 2.309(f)(1). To satisfy these requirements, Mr. Sparks must have:

> (i) Provide[d] a specific statement of the issue of law or fact to be raised or controverted . . . .;
>
> (ii) Provide[d] a brief explanation of the basis for the contention;
>
> (iii) Demonstrate[d] that the issue raised in the contention is within the scope of the proceeding;
>
> (iv) Demonstrate[d] 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;

---

57 *State of Alaska* at 408-9.

58 *Id.* at 408.

59 E-Filed within the time extended by OE Director Wilson (ML19337A679): ten days after the November 20, 2019 issuance of SNC's CO, or by December 2, 2019.

(v) Provide[d] a concise statement of the alleged facts . . . which support his position on the issue and on which he intends to rely at hearing, together with references to the specific sources and documents on which he intends to rely to support his position on the issue; [and]

(vi) . . .[P]rovide[d] sufficient information to show that a genuine dispute exists . . . on a material issue of law or fact.

As discussed previously, the Commission has already defined the scope of a potential hearing contesting Mr. Saunders' CO: it is whether the CO should be sustained.[60] Mr. Sparks, who lacks standing based upon *State of Alaska*, disagrees with the Commission's narrow scope, and proposes two contentions that he claims are valid as "the proper contentions".[61] Mr. Sparks' proposed contentions are:

> (1) Whether the facts, as stated in Mr. Saunders' CO and SNC's CO, are true; and whether the proposed sanction is supported by these facts; [and]
>
> (2) Whether the actions agreed upon in the COs are sufficient to ensure [that Mr. Saunders and SNC], and its supervisors, managers, executives and support infrastructure, i.e., HR, Compliance and Concerns Department, and ECP, as well as contractors, are sufficient to ensure that the workforce (employees and contractors, are sufficient to ensure that the workforce (employees and contractors), are free to raise safety concerns without fear of reprisal, in compliance with the NRC's requirements for Employee Protections 10 CFR 52.5 'Employee Protection'.[62]

---

60 Accession No. ML19269C005 (Saunders' CO) at 10.

61 Accession No. ML19338E836 (*Motion*) at 6, 8; 10 C.F.R. § 2.309(f)(1)(i) – (vi).

62 Accession No. ML19338E836 at 8-9.

Mr. Sparks provides no support for either contention and offers no explanation as to how either one satisfies the NRC's contention admissibility requirements – nor can he. Neither of his proposed contentions is within the scope of this proceeding,[63] and neither is material[64] to the findings the NRC must make in deciding whether to sustain Mr. Saunders' CO. Neither contains facts supporting its position;[65] instead, each omits any references to the sources or documents on which Mr. Sparks intends to rely. Mr. Sparks does not even cite to the parts of Mr. Saunders' or SNC's COs that he disputes, or offer some minimal factual and legal foundation in support of his two contentions.[66]

In addition, on October 1, 2019, Mr. Saunders agreed to comply with the CO's terms and conditions, and waived his right "to contest a hearing on all or any parts."[67] This was almost two months before Mr. Sparks' *Motion to Intervene,* dated November 29, 2019, was e-mailed to the Office of the Secretary. Mr. Sparks, therefore, has no right now to challenge the facts to which Mr. Saunders has waived his right to contest.[68]

---

63 10 C.F.R. § 2.309(f)(1)(iii).

64 10 C.F.R. § 2.309(f)(1)(iv).

65 10 C.F.R. § 2.309(f)(1)(i), (v).

66 *See USEC Inc.* (American Centrifuge Plant), CLI-06-10, 63 NRC 451, 457 (2006) (The contentions overwhelmingly lacked the necessary minimal factual or legal support).

67 Accession ML19276F540 (Mr. Saunders' waiver of right to hearing).

68 *State of Alaska*, 60 NRC at 408 (Allowing a petitioner to attack a CO under the guise of a factual dispute would permit an end run around *Bellotti*, 60 NRC at 120-23).

At its core, Mr. Sparks' *Motion* takes issue with Mr. Saunders' and SNC's CO commitments (without explaining how they negatively impact safety), would prefer to see Mr. Saunders receive harsher penalties (without explaining how such penalties likely would result even if a hearing were to take place), and wants to re-design Mr. Saunders' CO in a way that binds the entire workforce listed in his contention 2 (even though SNC is not a party to Mr. Saunders' CO).

Mr. Sparks also may be giving notice that he wishes to attack the ADR process through which each CO was reached.[69] In this regard, Mr. Sparks fails to distinguish his challenge to Mr. Saunders' CO (and SNC's CO) from *any* CO involving the resolution of a retaliation allegation. At the heart of his challenge to the CO is that the "facts" of his case, *in general*, have not been the subject of an NRC hearing and that the resolution of the issues through a mediation, *in general*, will not vindicate or restore the reputation of an individual.

Challenges such as these would allow third parties to contest enforcement settlements at hearings and under the NRC's policy favoring enforcement settlements. "Such a policy would be thwarted if licensees which consented to enforcement actions were . . . subjected to formal proceedings, possibly leading to . . . different enforcement actions."[70] Given that Mr. Saunders also appears to seek relief in the form of a personal

---

69 ML19338E836 at 2 (The first numbered page of the Sparks' *Motion* objects to "alternative, negotiated" facts, "agreed to through a mediated process . . . not based on a factual determination by the NRC").

70 *State of Alaska,* 60 NRC at 409 (*quoting Marble Hill*, CLI-80-10, 11 NRC at 441).

remedy, his challenge is tantamount to an impermissible collateral attacks on the NRC's employee protection provisions and enforcement authority under the Atomic Energy Act and Energy Reorganization Act, which do not authorize the NRC to issue orders granting personal remedies.[71]

Fortunately, it is not Mr. Saunders' obligation to create admissible contentions for Mr. Sparks. Mr. Saunders need go no further than stating Mr. Sparks lacks standing, because he does not meet *State of Alaska*'s redressability standard: Mr. Sparks cannot be injured by a CO addressing Mr. Saunders' personal commitment to improving safety consciousness.[72] Additionally, Mr. Sparks' two contentions are inadmissible, because he fails to demonstrate how they satisfy any of the requirements of 10 C.F.R. § 2.309(f)(1).

In light of the above, Mr. Sparks' *Motion to Intervene* should be denied in its entirety.

---

[71] *Cf.* 10 C.F.R.§ 2.335(b)-(c). An attempt to advocate stricter requirements than those imposed by the regulations must result in the rejection of a contention as an impermissible collateral attack on the Commission's rules.

[72] *State of Alaska*, 60 NRC at 408.

III. CONCLUSION

Pursuant to 10 C.F.R. § 2.309(d)(1), Mr. Sparks lacks standing to intervene in this proceeding. His claim to standing is further undermined by his failure to proffer one contention that satisfies 10 C.F.R. § 2.309(f)(1)'s contention admissibility requirements. His *Motion to Intervene and Combine* should be rejected in its entirety.

Respectfully submitted:

/Signed (electronically) by/
Jane G. Penny, PA ID 25673
Counsel for Thomas B. Saunders
Penny Legal, LLC
800 N. 3d St., Ste 201
Harrisburg, PA 17102
Direct: 717-232-1414
E-mail: jpenny@pennylegalgroup.com

Dated at Harrisburg, PA
This 26th day of December, 2019

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of	)	Docket No. IA-19-027 EA
	)	
THOMAS B. SAUNDERS	)	ASLBP No. 20-963-01-EA-BD01
	)	
	)	December 26, 2019

In compliance with 10 C.F.R. § 2.305, I certify that a copy of Mr. Saunders' *Answer in Opposition to Leonard Sparks' Motion to Intervene and Request a Hearing* has been served through the E-Filing System on the 26th day of December, 2019.

/Signed (electronically) by/
Jane G. Penny
PA ID 25673
Penny Legal, LLC
800 N. 3d St., Ste 201
Harrisburg, PA 17102
Direct: 717-232-1414
E-mail: jpenny@pennylegalgroup.com
Counsel for Thomas B. Saunders