

**UNITED STATES OF AMERICA  
 NUCLEAR REGULATORY COMMISSION  
 BEFORE THE ATOMIC SAFETY AND LICENSING BOARD**

In the Matter of:	)	Docket Nos. 5200025, 5200026
	)	License No. NPF-91, NPF-92
	)	
SOUTHERN NUCLEAR OPERATING CO.	)	EA-18-130
	)	and
Vogtle Electric Generating Plant	)	EA-18-171
Units 3 and 4	)	
	)	January 13, 2020

**SOUTHERN NUCLEAR OPERATING COMPANY’S  
 ANSWER IN OPPOSITION TO LEONARD SPARKS’ MOTION TO  
 INTERVENE AND MOTION TO COMBINE**

In accordance with 10 C.F.R. § 2.309(i)(1), Southern Nuclear Operating Company, Inc. (“SNC”) hereby files its Answer in Opposition to Mr. Leonard Sparks’ (“Petitioner”) “Motion to Intervene and Motion to Combine Opposition with Related Proceeding.”<sup>1</sup> Petitioner’s Motion to Intervene should be denied because Petitioner has neither demonstrated standing nor proffered an admissible contention as required by 10 C.F.R. § 2.309. Specifically, Petitioner has failed to raise a genuine issue of law or fact, failed to raise issues within the scope of the proceeding and failed to provide any factual basis to support his claims. Additionally, Petitioner’s Motion to Combine should be denied for the same reasons his similar “Motion to Combine” was denied in a separate enforcement proceeding, which held that Petitioner failed to comply with NRC procedural

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<sup>1</sup> Motion to Intervene and Motion to Combine Opposition with Related Proceeding (Dec. 20, 2019) (ADAMS Accession No. ML19354A884) (hereinafter “Motion to Intervene” and “Motion to Combine”).

requirements and lacked good cause to combine the proceedings.<sup>2</sup> As a result, Petitioner’s Motion to Intervene and Motion to Combine should be denied.

## I. BACKGROUND

On November 20, 2019, the Nuclear Regulatory Commission (“NRC”) Staff issued a Confirmatory Order to SNC related to two apparent willful violations of 10 C.F.R. § 52.5, “Employee Protection.”<sup>3</sup> The SNC CO was issued following an Alternative Dispute Resolution (“ADR”) mediation session between SNC and the NRC conducted by Cornell University’s Institute on Conflict Resolution. Although the NRC and SNC agreed to disagree as to whether violations occurred, the settlement embodied in the SNC CO documented previous corrective actions undertaken by SNC to improve its Employee Concerns Program (“ECP”) and memorialized additional commitments made by SNC to ensure a Safety Conscious Work Environment (“SCWE”) at Plant Vogtle Units 3 and 4 as well as at other SNC plants.<sup>4</sup> Among other things, the SNC CO requires SNC to maintain a fleetwide ECP, implement adverse action review processes, provide SCWE training for employees and make a presentation at an industry-sharing forum providing SCWE insights derived from events leading to the SNC CO.<sup>5</sup> On November 27, 2019, the SNC CO was published in the Federal Register.<sup>6</sup>

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<sup>2</sup> See Memorandum and Order Denying Motion to Consolidate, LBP-20-01 at 8-9 (Jan. 8, 2020) (ADAMS Accession No. ML20008D599).

<sup>3</sup> Confirmatory Order Modifying License Effective Upon Issuance (EA-18-130 and EA-18-171) (Nov. 20, 2019) (ADAMS Accession No. ML19249B612) (hereinafter “SNC CO”).

<sup>4</sup> *Id.* at 3-8; in addition to the measures SNC agreed to implement at Plant Vogtle Units 3 and 4, SNC agreed to implement the following measures fleet-wide: maintaining an adverse action review process, SCWE training, revising the SCWE policy to address lessons learned, and reinforcing SCWE commitments to employees.

<sup>5</sup> *Id.* at 10-14.

<sup>6</sup> 84 Fed. Reg. 65,426 (Nov. 20, 2019).

The SNC CO states that “[i]n accordance with 10 CFR 2.202 and 10 CFR 2.309, any person adversely affected by this Confirmatory Order, other than SNC, may request a hearing within thirty (30) calendar days of the date of issuance of this Confirmatory Order.”<sup>7</sup> The SNC CO requires any person who requests a hearing, other than SNC, to “set forth with particularity” the interest that has been adversely affected and address the criteria in 10 C.F.R. § 2.309(d) and (f). Most notably, the SNC CO limits the scope of any hearing to the issue of “whether this Confirmatory Order should be sustained.”<sup>8</sup> On December 20, 2019, Petitioner filed the Motion to Intervene requesting a hearing on the SNC CO, of which SNC received notice on December 23, 2019.<sup>9</sup>

## **II. PETITIONER HAS FAILED TO DEMONSTRATE STANDING**

Petitioner does not have standing to intervene because he has failed to demonstrate an injury traceable to the SNC CO that is capable of being redressed as required by 10 C.F.R. § 2.309(d). The standing requirements of 10 C.F.R. § 2.309(d) require petitioners to state: (1) the nature of the petitioner’s right to be made a party to the proceeding, (2) the nature and extent of the petitioner’s property, financial, or other interest in the proceeding and (3) the possible effect of any decision or order that may be issued in the proceeding on the petitioner’s interest.<sup>10</sup> Generally, the NRC applies judicial concepts of standing when interpreting this regulation.<sup>11</sup> Thus, a petitioner must show: (1) an injury in fact, (2) that is fairly traceable to the challenged action and

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<sup>7</sup> SNC CO at 14.

<sup>8</sup> SNC CO at 18.

<sup>9</sup> While SNC was served by email on December 23, 2019, as of that time no electronic docket had been established by the NRC, and SNC was not served electronically through the NRC’s e-filing system. As a result, SNC is appropriately treating December 23, 2019 as the date of service.

<sup>10</sup> 10 C.F.R. § 2.309(d)(1).

<sup>11</sup> See *Entergy Nuclear Vermont Yankee, LLC* (Vermont Yankee Nuclear Power Station), LBP-04-28, 60 N.R.C. 548, 552 (2004).

(3) is likely to be redressed by a favorable decision.<sup>12</sup> The injury must be “concrete and particularized” rather than “conjectural or hypothetical.”<sup>13</sup> It must also be “‘likely,’ as opposed to merely ‘speculative,’ that the injury will be ‘redressed by a favorable decision.’”<sup>14</sup>

With respect to an enforcement order, the D.C. Circuit Court of Appeals has made clear that the Commission has the authority to define the scope of an enforcement proceeding.<sup>15</sup> This includes the authority to limit a hearing to the question of whether an order should be sustained, as it has done in this case.<sup>16</sup> Therefore, the threshold question related to standing and contention admissibility in enforcement proceedings is “whether the hearing request is within the scope of the proceeding as outlined in the order.”<sup>17</sup> The purpose of this requirement is to avoid wide-ranging challenges and investigation when a licensee has agreed to make positive changes.<sup>18</sup> Thus, a petitioner may only challenge a confirmatory order if the order, as it exists, adversely affects the petitioner – that is, a confirmatory order may only be challenged if the petitioner is worse off with the order in question.<sup>19</sup> Accordingly, a petitioner *may not challenge* an enforcement order on the basis that some “hypothetical substitute order” would be an improvement,<sup>20</sup> as Petitioner has

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<sup>12</sup> See *Alaska Dep’t of Transp.*, CLI-04-26, 60 N.R.C. 399, 405 (2004), citing *Maine Yankee Atomic Power Co.* (Maine Yankee Atomic Power Station), CLI-04-5, 59 N.R.C. 52, 57 n.16 (2004) (hereinafter “*State of Alaska*”).

<sup>13</sup> *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560-61 (1992).

<sup>14</sup> *Id.* at 561, citing *Simon v. Eastern Ky. Welfare Rights Organization*, 426 U.S. 26, 41-42 (1976).

<sup>15</sup> *Bellotti v. NRC*, 725 F.2d 1380, 1383 (D.C. Cir. 1983) (hereinafter “*Bellotti*”).

<sup>16</sup> *State of Alaska*, 60 N.R.C. at 405; SNC CO at 18.

<sup>17</sup> *Id.*

<sup>18</sup> See *id.*; *Bellotti*, 725 F.2d at 1383 (recognizing the need to avoid “unstructured and almost interminable hearings on any issue some member of the public may wish to litigate”).

<sup>19</sup> See *State of Alaska*, 60 N.R.C. at 405.

<sup>20</sup> See *id.* at 406.

attempted to do in this case. Because of these strict requirements, petitioners will rarely be able to obtain hearings on confirmatory orders.<sup>21</sup>

**A. Petitioner has failed to show he has suffered any injury traceable to the SNC CO.**

Petitioner points to multiple alleged injuries, none of which establishes that he has standing in this case. First, Petitioner alleges that the SNC CO harms him by failing to set out facts leading to his termination and, as a result, his professional reputation and credibility have been adversely affected.<sup>22</sup> Petitioner does not provide any evidence that shows how his professional reputation and credibility have been harmed by the SNC CO. In fact, neither the choice letter providing notice of the apparent violation nor the SNC CO identifies Petitioner by name – a fact noted by Petitioner himself.<sup>23</sup> The only reason Petitioner’s name became publicly tied to the SNC CO is because he voluntarily decided to intervene. Petitioner claims there are additional facts that will “vindicate him”<sup>24</sup> but completely neglects to include any such facts in the Motion to Intervene. The burden of establishing those facts lies with Petitioner, not the Commission. Even if Petitioner established some basis that his professional reputation and credibility have been harmed, the Commission has recognized that enforcement proceedings are focused on injuries related to public health and safety.<sup>25</sup> The NRC’s role “is to procure corrective action for the Licensee’s program...not to provide redress for the whistleblower.”<sup>26</sup> Enforcement proceedings are not the

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<sup>21</sup> *Id.* at 406 n.28 (“In practicality it is unlikely that petitioners will often obtain hearings on confirmatory enforcement orders. That’s because such orders presumably enhance rather than diminish public safety.”).

<sup>22</sup> Motion to Intervene at 5.

<sup>23</sup> Motion to Intervene at 3 n.2.

<sup>24</sup> Motion to Intervene at 5.

<sup>25</sup> *See Nuclear Fuel Services, Inc.*, LBP-07-16, 66 N.R.C. at 305 (holding that “public health and safety...is the fundamental issue when determining standing and contention admissibility in a proceeding involving an enforcement order”).

<sup>26</sup> *State of Alaska*, 60 N.R.C. at 407.

place for petitioners to seek personal remedies.<sup>27</sup> As noted in the Motion to Intervene, Petitioner is seeking personal compensation for alleged damages through a pending Department of Labor (DOL) proceeding, which provides the appropriate forum for addressing the injuries alleged by Petitioner.

Petitioner also makes a speculative assertion that the SNC CO “undermines safety” because it could lead to a “chilling effect” at the site.<sup>28</sup> This claim is also without merit. Not only does Petitioner fail to provide any facts showing how the SNC CO adversely affects safety, the SNC CO plainly *improves* safety. As described above, the commitments outlined in the SNC CO bolster SNC’s SCWE and employee protection processes. Contrary to Petitioner’s assertion, NRC Staff determined that SNC’s commitments are “acceptable and necessary” and provide that “public health and safety are reasonably assured.”<sup>29</sup> Petitioner’s Motion to Intervene provides no evidence or information that conflicts with the NRC Staff’s determination. Petitioner is not adversely affected by a confirmatory order that improves public health and safety. In short, the injuries alleged by Petitioner are exactly the type of conjectural and hypothetical arguments the NRC’s standing requirements routinely reject and likewise are due to be rejected.

**B. Petitioner’s alleged injuries are incapable of being redressed by rescission of the Confirmatory Order.**

As noted above, the SNC CO properly narrows the scope of any hearing to the question of whether the order should be sustained. Instead of focusing on how the existing SNC CO adversely affects him, Petitioner incorrectly focuses on unspecified, hypothetical, corrective actions and

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<sup>27</sup> *Id.* at 407 n.33 (“The Atomic Energy Act gave the Commission authority to take action against licensees but did not include a personal remedy for employees who experience discrimination.”).

<sup>28</sup> Motion to Intervene at 6.

<sup>29</sup> SNC CO at 10.

improvements that could result should the NRC issue an entirely different Confirmatory Order.<sup>30</sup> The Motion to Intervene provides no facts showing Petitioner is made worse off by the SNC CO. Consequently, Petitioner has provided no support that his alleged injuries could be redressed by rescission of the SNC CO – which is the only remedy available to him in this proceeding.

Petitioner claims that “[h]is position is consistent with existing case law,” citing the *Bellotti* and *State of Alaska* cases.<sup>31</sup> However, these cases emphatically establish that Petitioner has no standing. Under the *Bellotti* and *State of Alaska* holdings, petitioners are not allowed to challenge an order on the basis that it can be strengthened by additional or substitute remedies.<sup>32</sup> In *State of Alaska* the petitioner challenged the sufficiency of a Confirmatory Order.<sup>33</sup> The Commission held that there was no injury to the petitioner traceable to the Confirmatory Order because rescission would just revert the petitioner’s position back to what it was before the order.<sup>34</sup> The Commission held that the “pertinent time contrast is between the petitioner’s position with and without the order – not between the disputed order and a hypothetical substitute order.”<sup>35</sup> The Commission noted that a contrary ruling would “undercut” the statutory policy favoring enforcement settlements.<sup>36</sup>

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<sup>30</sup> Nor is there any guarantee that SNC and the NRC would agree to a new Confirmatory Order if the current SNC CO were to be rescinded.

<sup>31</sup> Motion to Intervene at 6.

<sup>32</sup> See *Bellotti*, 725 F.2d at 1382 (holding that the Commission’s ability to limit the scope of enforcement proceedings will preclude petitioners “who do not object to the Order but might seek further corrective measures”); *State of Alaska*, 60 N.R.C. at 405 (stating that a “request to impose either different or additional enforcement measures” is “in contravention of Commission doctrine in enforcement actions, as approved in *Bellotti*”).

<sup>33</sup> See *State of Alaska*, 60 N.R.C. at 403.

<sup>34</sup> *Id.* at 405.

<sup>35</sup> *Id.* at 406.

<sup>36</sup> *Id.* at 408-09. The NRC’s ADR process was set up pursuant to the Administrative Dispute Resolution Act of 1996 (“ADRA”). See 5 U.S.C. §§ 571-84. The ADRA encourages alternative dispute resolution because it avoids “formal, costly, and lengthy” administrative proceedings and “can lead to more creative, efficient, and sensible outcomes.” *Id.* Sec. 2. This is the exact reason the Commission’s right to limit hearings related to enforcement proceedings was upheld in *Bellotti*. See *Bellotti* at 725 F.2d at 1382.

Just like the petitioner in *State of Alaska*, Petitioner is challenging that the SNC CO does not go far enough in redressing his personal situation and that a different order would be an improvement. Consequently, NRC case law is overwhelming that he has failed to establish standing.

### **III. PETITIONER HAS FAILED TO OFFER AN ADMISSIBLE CONTENTION**

As demonstrated above, Petitioner has failed to demonstrate standing. But even if Petitioner had standing, his proffered contentions are inadmissible because they fail to satisfy the criteria set forth in 10 C.F.R. § 2.309(f). Specifically, Petitioner has failed to raise a genuine issue of law or fact, failed to raise an issue that is within the scope of the proceeding, and failed to provide any factual basis to support his claims.

The contention admissibility requirements set forth in 10 C.F.R. § 2.309(f) require petitioners to “set forth with particularity the contentions sought to be raised.”<sup>37</sup> Specifically, the contentions 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 which support the requestor’s/petitioner’s position on the issue and on which the petitioner intends to rely at hearing, together with references to the specific sources and documents on which the requestor/petitioner intends to rely to support its position on the issue; [and]

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<sup>37</sup> 10 C.F.R. § 2.309(f)(1).



- (vi) In a proceeding other than one under 10 CFR 52.103, provide sufficient information to show that a genuine dispute exists with the applicant/licensee on a material issue of law or fact. This information must include references to specific portions of the application (including the applicant's environmental report and safety report) that the petitioner disputes and the supporting reasons for each dispute, or, if the petitioner believes that the application fails to contain information on a relevant matter as required by law, the identification of each failure and the supporting reasons for the petitioner's belief[.]<sup>38</sup>

These standards are rigorously enforced. "If any one...is not met, a contention must be rejected."<sup>39</sup> A presiding officer is not to overlook a deficiency in a contention or assume the existence of missing information. Where a petitioner has failed to do so, the presiding officer, "may not make factual inferences on [the] petitioner's behalf."<sup>40</sup> The contention may not be based on "mere speculation."<sup>41</sup> As discussed previously, the threshold question for contention admissibility in enforcement proceedings is whether the hearing request is within the scope of the proceeding as outlined in the order.

Instead of appropriately focusing on issues within the established scope of the SNC CO, Petitioner proposes that the "proper contentions" are:

- (1) What are the facts, as determined by the NRC Staff, that form the basis for the proposed Confirmatory Order Modifying License?
- (2) Whether the actions agreed upon in the Confirmatory Order(s) are sufficient to ensure that the Licensee, and its supervisors, managers, executives and support infrastructure, i.e., HR, Compliance and Concerns Department, and ECP, as well as all contractors, ensure that the workforce (employees and contractors), are free to raise safety concerns

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<sup>38</sup> 10 C.F.R. § 2.309(f)(1)(i)-(iv).

<sup>39</sup> *Arizona Public Service Co.* (Palo Verde Nuclear Generating Station, Units 1, 2, and 3), CLI-91-12, 34 N.R.C. 149, 155 (1991) (citation omitted); *USEC, Inc.* (American Centrifuge Plant), CLI-06-9, 63 N.R.C. 433, 437 (2006) ("These requirements are deliberately strict, and we will reject any contention that does not satisfy the requirements." (footnotes omitted)).

<sup>40</sup> *Private Fuel Storage, L.L.C.* (Independent Spent Fuel Storage Installation), LBP-98-7, 47 N.R.C. 142, 180 (1998) (explaining that a "bald assertion that a matter ought to be considered or that a factual dispute exists . . . is not sufficient;" rather, "a petitioner must provide documents or other factual information or expert opinion" "to show why the proffered bases support [a] contention" (citations omitted)).

<sup>41</sup> *Private Fuel Storage, LLC*, 47 N.R.C. at 180.

without fear of reprisal, in compliance with the NRC's requirements for Employee Protections 10 CFR 52.5, "Employee Protection."<sup>42</sup>

Neither of Petitioner's proffered contentions meet the admissibility requirements of 10 C.F.R. § 2.309(f).

**A. Petitioner's first proffered contention fails to specifically state a genuine issue of law or fact.**

Instead of stating an issue of law or fact, Petitioner's first proffered contention proposes an open-ended question that neglects to challenge any specific set of facts or raise any particular question related to facts within the SNC CO. While the exact issue is unclear from the language of the proffered contention itself, when combined with context elsewhere in the Motion to Intervene, Petitioner appears to be arguing that the NRC has failed to disclose the facts that support the SNC CO.<sup>43</sup> To the extent this is the correct characterization of the first proffered contention, Petitioner's assertion is demonstrably false. The facts forming the basis of the alleged retaliation against Petitioner – which are expressly incorporated into the SNC CO – have been set forth in the Investigation Report issued by the NRC OI on November 20, 2018. Furthermore, Petitioner has reviewed this report as evidenced by the fact he has included it as an attachment to the Motion to Intervene.<sup>44</sup> Contrary to Petitioner's proffered contention, this report proves that the NRC considered the facts gathered during its investigation and these facts document the basis for the SNC CO.<sup>45</sup>

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<sup>42</sup> Motion to Intervene at 7.

<sup>43</sup> See Motion to Intervene at 7.

<sup>44</sup> See Motion to Intervene at Attachment 1.

<sup>45</sup> A Confirmatory Order is the product of a settlement reached through ADR. Naturally, there will be disagreements over the facts or legal implications of the facts. However, there is no basis to challenge a Confirmatory Order just because the NRC and licensee disagree about some aspect of the Confirmatory Order's underlying facts. See *State of Alaska*, 60 N.R.C. at 408 (holding that once a licensee has agreed to the enforcement order, "a challenge to the facts themselves by a nonlicensee is not cognizable").

**B. Both of Petitioner’s proffered contentions raise issues that are outside the scope of the proceeding.**

As discussed above, the Commission has unequivocally held that the scope of enforcement proceedings is limited to the question of whether an order should be sustained.<sup>46</sup> The “critical inquiry” in a proceeding challenging a Confirmatory Order is “whether the order improves the licensee’s health and safety conditions.”<sup>47</sup> If it does, then no hearing is appropriate.<sup>48</sup> In response to the first proffered contention, the Commission has long held that petitioners are not allowed to challenge facts underlying a Confirmatory Order.<sup>49</sup> Petitioner’s second proffered contention is essentially a request for the NRC to take stronger enforcement action against SNC and, for the reasons discussed above, is likewise outside the scope of the proceeding. Petitioner’s motion unabashedly ignores longstanding case law and policy that clearly establishes his proffered contentions are outside the scope of this proceeding.

**C. Petitioner fails to provide any factual basis for either proffered contention.**

Moreover, Petitioner has not provided any factual basis, information or evidence to support either of his proffered contentions as required by 10 C.F.R. § 2.309(f)(1)(v). The Motion to Intervene makes vague references to alternative sets of facts and additional measures that could be established through a hearing and hypothetical Confirmatory Order, but provides no shred of support that the SNC CO is factually deficient or will not improve public health and safety. Petitioner seems most concerned that the SNC CO will not protect employees and contractors

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<sup>46</sup> See *supra* note 16.

<sup>47</sup> *State of Alaska*, 60 N.R.C. at 408.

<sup>48</sup> *Id.*

<sup>49</sup> *State of Alaska*, 60 N.R.C. at 408-09 (“[A]llowing a petitioner to attack a confirmatory order under the guise of a factual dispute would effectively permit an end run around *Bellotti*.”); *Florida Power & Light Co.*, LBP-08-14, 68 N.R.C. 279, 291-92 (2008).

seeking employment after being wrongfully terminated.<sup>50</sup> Petitioner states it is his “belief” that there are numerous employees and contractors who have been wrongfully terminated and are unable to be rehired into the SNC workforce.<sup>51</sup> However, the Motion to Intervene provides no specific information that SNC is engaging in any such practices against former employees and contractors. Mere belief or conjecture is, by definition, insufficient to satisfy NRC contention admissibility standards. Where a petitioner “has offered no tangible information, no experts, no substantive affidavits,” but only “bare assertions and speculations,” his contention may not be admitted.<sup>52</sup>

#### **IV. PETITIONER’S MOTION TO COMBINE SHOULD BE REJECTED**

Petitioner’s filing concludes with a request that the NRC consolidate the Motion to Intervene with a recently issued Confirmatory Order against Mr. Thomas Saunders (“Mr. Saunders”), the former Contracts and Procurement Director for Construction at Plant Vogtle, and a Notice of Violation (NOV) issued against Mr. Mark Rauckhorst (“Mr. Rauckhorst”), the former Vice President of SNC.<sup>53</sup> The Confirmatory Order against Mr. Saunders was issued by the NRC on October 21, 2019 and the NOV against Mr. Rauckhorst was issued on November 20, 2019.<sup>54</sup> Like the SNC CO, the Saunders CO and NOV against Mr. Rauckhorst allege willful violations of NRC Employee Protection requirements.<sup>55</sup>

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<sup>50</sup> Motion to Intervene at 8.

<sup>51</sup> *Id.*

<sup>52</sup> See *GPU Nuclear, Inc.* (Oyster Creek Nuclear Generating Station), CLI-00-6, 51 N.R.C. 193, 207 (2000).

<sup>53</sup> Motion to Combine at 8.

<sup>54</sup> See Confirmatory Order to Thomas Saunders (IA-19-027) (Oct. 21, 2019) (ADAMS Accession No. ML19269C005) (hereinafter the “Saunders CO”); Notice of Violation to Mark Rauckhorst (Nov. 20, 2019) (ADAMS Accession No. ML19301C710).

<sup>55</sup> Saunders CO at 1; Notice of Violation to Mark Rauckhorst at 1.

Petitioner filed the motion pursuant to 10 C.F.R. § 2.323(b), which provides that a motion must be rejected if the moving party does not certify that it made a “sincere effort” to contact the other parties in the proceedings.<sup>56</sup> Petitioner never made an attempt to contact counsel for SNC, Mr. Saunders and Mr. Rauckhorst. Petitioner’s motion should be rejected for this reason alone.<sup>57</sup> The ASLB has already denied an identical motion to consolidate filed by Petitioner in his challenge to the Saunders CO.<sup>58</sup> The ASLB concluded that Petitioner’s motion to consolidate must be denied due to his failure to comply with 10 C.F.R. § 2.323(b).<sup>59</sup> The ASLB went further, holding that even if Petitioner had complied with 2.323(b) the motion to consolidate should be denied for lack of good cause.<sup>60</sup> The ASLB concluded that the factual differences between the Saunders CO and the SNC CO did not warrant consolidation.<sup>61</sup> Accordingly, Petitioner’s Motion to Combine must be denied on the same grounds in this proceeding.<sup>62</sup>

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<sup>56</sup> 10 C.F.R. § 2.323(b).

<sup>57</sup> See *FirstEnergy Nuclear Operating Co.* (Davis-Besse Nuclear Power Station, Unit 1), LBP-11-34, 74 N.R.C. 685, 695 (2011) (holding that if a moving party fails to file a motion in accordance with 2.323(b), “[t]he motion can...be rejected on this ground alone”).

<sup>58</sup> Memorandum and Order Denying Motion to Consolidate, LBP-20-01 (Jan. 8, 2020) (ADAMS Accession No. ML20008D599).

<sup>59</sup> *Id.* at 8.

<sup>60</sup> Good cause is established, in part, when actions involve common questions of law or fact. *Id.* at 7, citing *Edlow Int’l Co.*, CLI-77-16, 5 N.R.C. at 1328.

<sup>61</sup> *Id.* at 9 (“In sum, [Petitioner] is challenging different COs, issued to different respondents, arising from different (albeit partly overlapping) facts, and containing different corrective actions tailored to provide different (albeit complementary) cures.”).

<sup>62</sup> The ASLB’s recent denial of Petitioner’s motion to consolidate did not address his request to consolidate with the Rauckhorst NOV. However, as has been pointed out by Mr. Saunders and the NRC in their answers opposing Petitioner’s motion in the Saunders CO proceeding, Mr. Rauckhorst’s NOV does not provide for an opportunity for a hearing and is entirely unrelated to the events involving Petitioner. See Answer of Thomas B. Saunders in Opposition to Leonard Sparks’ Motion to Intervene and Request for Hearing at 8 (Dec. 26, 2019) (ADAMS Accession No. ML19360A257); NRC Staff’s Answer to Request for Hearing by Leonard Sparks at 12, n.62 (Dec. 19, 2019) (ADAMS Accession No. ML19353D545). Petitioner’s request to consolidate this proceeding with the Rauckhorst NOV should be denied for the same reason.

**V. CONCLUSION**

Petitioner has failed to establish standing under 10 C.F.R. § 2.309(d). Even if Petitioner had standing, neither one of his proffered contentions satisfies the contention admissibility requirements in 10 C.F.R. § 2.309(f). Petitioner's request to combine the Motion to Intervene with separate matters also fails to meet NRC procedural requirements and is identical to a motion recently denied in a separate enforcement proceeding. Therefore, the Motion to Intervene and Motion to Combine should be rejected in their entirety.

Respectfully submitted,

/Signed (electronically) by Nick Theodore/

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**CERTIFICATE OF SERVICE**

Pursuant to 10 C.F.R. § 2.305, I certify that on this date copies of the foregoing Answer in Opposition to Leonard Sparks' Motion to Intervene and Motion to Combine were served upon the Electronic Information Exchange (the NRC's E-Filing System) in the above captioned matter.

Signed electronically by

/s/ Nick Theodore

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Date of Signature: January 13, 2020