

January 10, 2020

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

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

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 December 20, 2019 by Leonard Sparks (“Petitioner” or “Mr. Sparks”).¹ Mr. Sparks seeks a hearing to challenge a Confirmatory Order issued to Southern Nuclear Operating Company (SNC). His request for a hearing should be denied because the request is outside the scope of this proceeding, and he has not demonstrated how the measures to be taken under the Order would harm him.² Accordingly, Mr. Sparks lacks standing to

¹ Leonard Sparks’s Motion to Intervene and Motion to Combine Opposition with Related Proceeding at 1 (Dec. 20, 2019) (ADAMS Accession No. ML19354A884) (hereinafter “Sparks Petition II”).

² Mr. Sparks recently filed a nearly identical hearing request seeking to challenge a Confirmatory Order issued to Thomas Saunders, a former Southern Nuclear Operating Company executive. See 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 I”). As the Staff explained, that hearing request similarly fails to show how the measures in the Saunders Order would harm Mr. Sparks, and it is therefore outside the scope of the proceeding. See, e.g., NRC Staff’s Answer to Request for Hearing by Leonard Sparks at 1, 4, 8 (Dec. 19, 2019) (ADAMS Accession No. ML19353D545) (hereinafter “Staff Saunders Answer”).

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).³

BACKGROUND

On November 20, 2019, the Staff issued a Confirmatory Order Modifying License (EA-18-130 and EA-18-171) to SNC. This Order was the result of an agreement reached between the Staff and SNC during an Alternative Dispute Resolution (ADR) mediation session related to two apparent licensee violations of 10 C.F.R. § 52.5 at SNC's Vogtle Electric Generation Plant (Vogtle), Units 3 and 4.⁴ 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 management; revising

³ Both of Mr. Sparks's hearing requests characterize the SNC Order and the Saunders Order as related proceedings. See Sparks Petition I at 1, 4; Sparks Petition II at 1, 3. The Board in the *Thomas Saunders* proceeding has already denied, on several grounds, Mr. Sparks's motion to consolidate. *Thomas Saunders* (Confirmatory Order), LBP-20-1, 91 NRC __, __ (Jan. 8, 2020) (slip op. at 1, 10). In any event, as previously stated in the Staff Saunders Answer and reiterated below, both of Mr. Sparks's hearing requests must be denied for substantially the same reasons. See, e.g., Staff Saunders Answer at 1, 4, 8.

⁴ 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. See *id.* at 2. Mr. Sparks was involved in only one of the two cases encompassed in the SNC Order (as the concerned individual who the NRC determined was discriminated against by Mr. Saunders for engaging in protected activity).

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. As the Saunders Board has already noted, the NOV issued to Mr. Rauckhorst is not an agency enforcement order and does not include a provision providing hearing rights. See *Thomas Saunders*, LBP-20-1, 91 NRC at __ (slip op. at 7 n.13).

SNC SCWE policy to reflect lessons learned from these issues; presenting at industry forums; and obtaining two third-party, independent SCWE surveys.⁵

Separately, the Staff issued a Confirmatory Order (IA-19-027) to Mr. Thomas B. Saunders, the former Contracts and Procurement Director for Construction at Vogtle Units 3 and 4 on October 21, 2019. The Order was the result of an agreement reached during an ADR mediation session, which Mr. Saunders requested after the Staff identified his apparent willful violation of 10 C.F.R. § 52.5, “Employee Protection.”⁶ 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.⁷

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.”⁸ 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.*, SNC) may request a hearing within 30 calendar days of the issuance.⁹ 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).”¹⁰

⁵ SNC Order at 10–14.

⁶ Confirmatory Order to Thomas Saunders (IA-19-027) at 1 (Oct. 21, 2019) (ADAMS Accession No. ML19269C005) (hereinafter “Saunders Order”).

⁷ *Id.* at 5–6.

⁸ SNC Order at 18; Saunders Order at 10.

⁹ SNC Order at 14; Saunders Order at 7.

¹⁰ SNC Order at 18; Saunders Order at 10.

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 the SNC Order as “whether this Confirmatory Order should be sustained.”¹¹ Under both longstanding federal and Commission case law, Licensing Boards are not to consider whether enforcement orders need strengthening because it intrudes upon “the Staff’s discretion to select the enforcement action, which in its judgment, best fits the violation,”¹² and deters licensees from entering into agreements with the NRC to efficiently resolve matters without the need for costly litigation.¹³ 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

The Petitioner asserts that the actions outlined in the SNC Order, in addition to the Order issued to Mr. Thomas Saunders, do not “address the serious safety culture breakdown” and actually worsen the SCWE at Vogtle Units 3 and 4.¹⁴ He claims that the legally required actions in the SNC Order are “not related to any factual determination or any agreed upon

¹¹ SNC Order at 18.

¹² *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).

¹³ *See id.* at 408–409 (“[T]o allow third parties to contest enforcement settlements at hearing 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).

¹⁴ Sparks Petition II at 1.

misconduct.”¹⁵ Mr. Sparks asserts that because the Staff and SNC “agree to disagree as to whether the violations occurred,”¹⁶ and because the agreed upon future actions in the SNC Order only apply to current members of the workforce but do nothing to protect terminated employees who SNC refuses to rehire, the public will be better served and the SCWE will be better improved by first determining the underlying facts.¹⁷ As with the claims in his parallel challenge to the Saunders Order, these assertions are fundamentally attempts to challenge an enforcement order as “too weak or otherwise insufficient,” which the Commission has definitively held do not warrant a licensing board hearing.¹⁸

And just as in his parallel challenge to the Order for Mr. Saunders, Mr. Sparks’s assertion that his “position as an intervenor is consistent with existing case law” disregards controlling precedent.¹⁹ Both of his proffered contentions are analogous to those of the individual petitioner in the controlling *Alaska Department of Transportation (ADOT)*: one 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.²⁰ Further, Mr. Sparks has not demonstrated that the measures to be taken under the Order would *in themselves* harm him, which is necessary for a petitioner to obtain a hearing on an enforcement order.²¹

¹⁵ *Id.*

¹⁶ SNC Order at 1.

¹⁷ Sparks Petition II at 1–2.

¹⁸ *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 weak or otherwise insufficient. The answer, under a longstanding Commission policy upheld in *Bellotti v. NRC*, is no.”).

¹⁹ Sparks Petition II at 6.

²⁰ *Id.* at 7.

²¹ *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, 45 (2013) (emphasis on “in themselves” in original).

Mr. Sparks's first proposed contention is "What are the facts, as determined by the NRC Staff, that form the basis for the proposed Confirmatory Order Modifying License?"²² He claims that "the facts apparently became secondary if not irrelevant to the parties reaching agreement at ADR" and asserts that he can supply more direct, personal support to determine "whether the proposed sanction is supported by these facts."²³ The SNC Order indeed states that the parties "agree to disagree whether the violations occurred."²⁴ But this language, which is not uncommon in settlements resulting from ADR, merely means that the Staff and SNC disagree on whether the 10 C.F.R. § 52.5 violation took place: the Staff concluded that the facts supported an apparent violation, and SNC disputed that finding. Further, when parties agree to engage in ADR, the purpose of the mediation is not to dispute the underlying facts; rather, the goal of the process is for the parties to reach agreement on forward-looking actions that enhance safety and security.²⁵ The Staff concluded in its sound discretion that the agreed-upon corrective actions to address the apparent violation would better advance the agency's important safety mission and the objectives of its enforcement program, including by doing more to improve SCWE not only at the Vogtle site, but also across the entire SNC fleet, than would, for example, the imposition of a civil penalty.²⁶ Moreover, the factual circumstances that precipitated the 10 C.F.R. § 52.5 apparent violations are described in Section II of the SNC Order.²⁷ Without providing any explanation of what facts he specifically disputes, let alone how

²² Sparks Petition II at 7.

²³ *Id.*

²⁴ SNC Order at 1.

²⁵ See Scope Expansion of the Post-Investigation Alternative Dispute Resolution Program, 80 Fed. Reg. 11,693–94 (Mar. 4, 2015) (stating that historically, "the ADR Program has resulted in broader and more comprehensive corrective actions than would be expected using traditional enforcement means").

²⁶ See ADOT at 409 ("...the Staff's discretion to select the enforcement action, which in its judgment, best fits the violation.").

²⁷ See SNC Order at 1–3.

they reveal that he would be harmed by sustaining the Order, the Petitioner's first proposed contention amounts to the attempted "end run" around *Bellotti* that the Commission specifically and unequivocally rejected in *ADOT*.²⁸

In his second contention, Mr. Sparks claims that the corrective measures outlined in the Order are detrimental to public health and safety by creating a false impression that SNC is undertaking actions that will improve the SCWE at Vogtle. Namely, he complains that the future actions that SNC is required to take only apply to actions "that result in the termination or suspension against current members of the workforce," but do not protect employees who have been terminated for raising concerns.²⁹ However, contrary to the standard 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.³⁰ His claim that the SNC Order does not protect employees who now claim to be blacklisted from employment for raising safety concerns is ultimately a challenge to the sufficiency of the Order, which is precisely the claim that the Commission rejected in *ADOT*.³¹ Because it is within the Staff's discretion to select the enforcement action that best fits the violation,³² and because the Department of Labor is the

²⁸ *ADOT*, CLI-04-26, 60 NRC at 408.

²⁹ Sparks Petition II at 8.

³⁰ *Compare* Sparks Petition II at 7 (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).

³¹ *See ADOT*, CLI-04-26, 60 NRC at 404, 411. Further, while Mr. Sparks states that the Order accordingly does not address his own claim of "blacklisting," he specifically admits in his petition that this allegation is not yet "ripe for consideration." Sparks Petition II at 3 ("The OI conclusion regarding the Failure to Hire/Blacklisting case is not ripe for consideration, because the issue has been resubmitted to the RII allegation staff with additional information and evidence, and corrections to the investigation record.").

³² *ADOT*, CLI-04-26, 60 NRC at 409.

appropriate venue for Mr. Sparks to seek reinstatement, back pay, or other civil remedies,³³ his second proposed contention falls squarely outside the scope of an enforcement proceeding.

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 as in his parallel challenge to the Saunders Order, both of Mr. Sparks's contentions here are outside the scope of this proceeding. Mr. Sparks has also failed to demonstrate how sustaining the Order harms him. For these reasons, 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.³⁴ 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.”³⁵ The Commission applies contemporaneous judicial concepts of standing to evaluate whether the petitioner has demonstrated the requisite interest.³⁶ 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

³³ 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”).

³⁴ *See* Atomic Energy Act § 189a., 42 U.S.C. § 2239(a).

³⁵ 10 C.F.R. § 2.309(d)(1).

³⁶ *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).

decision.”³⁷ The injury must be “concrete and particularized” and “actual or imminent, not conjectural or hypothetical.”³⁸ It must be likely, rather than speculative, that a favorable decision will redress the injury.³⁹

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.”⁴⁰ Without an injury attributable to the Confirmatory Order itself, a petitioner does not have standing.⁴¹ Further, the individual requesting the hearing “must show that the petitioner would be adversely affected by the enforcement order as it exists, rather than adversely affected by the existing order as it might be compared to a hypothetical order that the petitioner asserts would be an improvement.”⁴²

As in his parallel challenge to the Saunders Order, 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 likely to be redressed by a favorable decision. Mr. Sparks alleges that the SNC Order has caused a personal injury with respect to his “professional reputation and credibility,” as well as a broader injury to the public health and safety by “promoting and regulating from a false or disputed narrative for the underlying facts in

³⁷ *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, 560–561 (1992).

³⁸ *Lujan*, 504 U.S. at 560.

³⁹ *Id.* at 561.

⁴⁰ *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.”).

⁴¹ *ADOT*, CLI-04-26, 60 NRC at 406.

⁴² *Fla. 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”).

these matters.”⁴³ He additionally argues that the SNC Order is flawed because it does not protect individuals who have been terminated for raising nuclear safety concerns and are unable to be rehired at the Vogtle site.⁴⁴ However, removing the safety requirements that were specifically crafted 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 Order was issued.⁴⁵ The SNC Order includes not only 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.⁴⁶ Rescinding the Order would effectively undo these public health and safety improvements.

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.⁴⁷ Petitioners like Mr. Sparks “simply [are] not adversely affected by a Confirmatory Order that improves the safety situation over what it was in the absence of the order,”⁴⁸ and petitions that cloak themselves as factual disputes would allow an impermissible end-run around *Bellotti*.⁴⁹ As such, it is unclear how what Mr. Sparks seeks – an “NRC determination of all the relevant facts regarding Mr. Saunders’ actions” – will redress what he asserts is “continuing damage to [his] reputation and credibility;”⁵⁰ his vague speculation about

⁴³ Sparks Petition II at 6.

⁴⁴ *See id.* at 8.

⁴⁵ *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”).

⁴⁶ SNC Order at 10–14.

⁴⁷ *ADOT*, CLI-04-26, 60 NRC at 406.

⁴⁸ *Id.*

⁴⁹ *Id.* at 408.

⁵⁰ Sparks’ Reply to Saunders’ Answer to Sparks Motion to Intervene at 4–5 (Jan. 3, 2020) (ADAMS Accession No. ML20003F259).

what the NRC might alternatively determine (and how it would affect his reputation) is simply not a concrete and particularized claim.⁵¹ Further, because he states that his blacklisting claim is “not ripe for consideration,” the claim is unequivocally not traceable to the Order and rescission would not redress his alleged injury.⁵² To the extent that Mr. 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.⁵³ In sum, because his speculative injuries are not traceable to the Order, and because a hypothetical substitute order is not to be considered, Mr. Sparks has not demonstrated standing to intervene.

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.”⁵⁴ 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 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.⁵⁵

⁵¹ See *Lujan*, 504 U.S. at 560.

⁵² Sparks Petition II at 3.

⁵³ 10 C.F.R. § 52.5(b); see also *ADOT*, CLI-04-26, 60 NRC at 407 n.35.

⁵⁴ *Entergy Nuclear Vermont Yankee, LLC* (Vermont Yankee Nuclear Power Station), LBP-06-14, 63 NRC 568, 571–572 (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”).

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

The failure to comply with any one of the 10 C.F.R. § 2.309(f) requirements is grounds for dismissal of a contention.⁵⁶

As in his petition to intervene on the Saunders Order, neither of Mr. Sparks's two proffered contentions satisfy the criteria set forth in 10 C.F.R. § 2.309(f) because both are outside the scope of this proceeding. 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 the *Bellotti* threshold.⁵⁷ In his parallel challenge to the Saunders Order, Mr. Sparks also implied that orders resulting from ADR are not governed by the *Bellotti* and *ADOT* standard.⁵⁸ But the genesis of the disputed enforcement Order is irrelevant to the controlling holding in *ADOT*: when a licensee has already agreed to an enforcement order at the time the notice of hearing was published, "a challenge to the facts themselves by a nonlicensee is not cognizable."⁵⁹ Because both contentions are an impermissible attempt to force the NRC to impose more stringent measures on the licensee, Mr.

⁵⁶ *Private Fuel Storage, L.L.C.* (Independent Spent Fuel Storage Installation), CLI-99-10, 49 NRC 318, 325 (1999).

⁵⁷ Mr. Sparks also claims that because the Agreement in Principle section of the Order is described as "preliminary," "[t]here is no indication there is a final settlement agreement, or what the process is that the Agency is undertaking to get to a final agreement." See Sparks Petition II at 4. However, as explained in the Staff's Answer to Mr. Sparks's parallel challenge to the Saunders Order, Section III of the SNC Order contains the Agreement in Principle reached at ADR, but Section V of the SNC Order is a legally binding license modification. Mr. Sparks's apparent misunderstanding of the Order's finality does not create any genuine material dispute with the Order under 10 C.F.R. § 2.309(f)(1)(vi).

⁵⁸ See Sparks' Reply to Saunders' Answer to Sparks Motion to Intervene at 5–6 (Jan. 3, 2020) (ADAMS Accession No. ML20003F259).

⁵⁹ *ADOT*, CLI-04-26, 60 NRC at 408. The Commission has the authority to limit issues in enforcement proceedings to "whether the facts as stated in the order are true and whether the remedy selected is supported by those facts." *Id.* However, the Commission explained in *ADOT* that the first portion of that language arose from enforcement proceedings that were still contestable by the licensees at the time of publication of the notice of hearing. By contrast, in *ADOT* – precisely as in the situation Mr. Sparks seeks to challenge here – the licensee had already agreed to the enforcement order at the time the notice of hearing was published. See *id.* Therefore, Mr. Sparks's attempt to distinguish his case from Mr. Farmer's in *ADOT* (and seek a hearing simply based on an asserted dispute with the facts underlying the Order) is unavailing.

Sparks's proffered contentions are outside the scope of the proceeding and do not meet the contention admissibility criteria set forth in 10 C.F.R. § 2.309(f).

CONCLUSION

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

Respectfully submitted,

/RA/

Lorraine Baer
Counsel for NRC Staff

Dated at Rockville, Maryland
this 10th day of January, 2020

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

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Vogtle Electric Generating Plant)	EA-18-130 and EA-18-171
Units 3 and 4)	

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 10th day of January, 2020.

Signed (electronically) by

Lorraine Baer
Counsel for the NRC Staff
U.S. Nuclear Regulatory Commission
Office of the General Counsel
Mail Stop: O-14-A44
Washington, D.C. 20555-0001
(301) 287-9111
Lorraine.Baer@nrc.gov