LBP-20-04

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

ATOMIC SAFETY AND LICENSING BOARD

Before Administrative Judges:

E. Roy Hawkens, Chairman
Michael M. Gibson
Dr. Sue H. Abreu

In the Matter of	Docket Nos. 52-025 and 52-026
SOUTHERN NUCLEAR OPERATING COMPANY	ASLBP No. 20-965-03-EA-BD01
(Vogtle Electric Generating Plant, Units 3 and 4)	February 11, 2020

MEMORANDUM AND ORDER
(Denying Intervention Request and Motion to Consolidate, and Terminating Proceeding)

Pending before this Licensing Board is an intervention request from Leonard Sparks[1] that challenges a Confirmatory Order (CO)[2] issued by the NRC Staff to the Southern Nuclear Operating Company (SNC). The CO is the product of an enforcement action arising from the NRC Staff's conclusion that SNC officials wrongfully discriminated against employees at the project site for SNC's Vogtle Electric Generating Plant, Units 3 and 4 (Vogtle). In his intervention request, Mr. Sparks also moves to consolidate this proceeding with two other

[1] See Motion to Intervene and Motion to Combine Opposition with Related Proceeding (Dec. 20, 2019) [hereinafter Sparks' Petition]. Pursuant to NRC regulations, pleadings requesting to intervene are characterized as "petitions to intervene." See 10 C.F.R. § 2.309(a). Accordingly, although Mr. Sparks labels his pleading as a motion to intervene, we will refer to it as a petition.

[2] A CO is an enforcement order issued by the NRC Staff pursuant to 10 C.F.R. § 2.202(d) whereby (as relevant here) a licensee consents to an order and waives its right to challenge the order. Such orders create a legally binding agreement between the NRC and the licensee to take specified corrective actions. See NRC Enforcement Manual at 151 (rev. 11 Oct. 1, 2019) (ADAMS Accession No. ML19274C228).

enforcement actions. See Sparks' Petition at 1, 8. For the reasons discussed below, we (1) deny Mr. Sparks' motion to consolidate; and (2) deny his request to intervene, thereby terminating this proceeding at the licensing board level.

I. BACKGROUND

On November 20, 2019, the NRC Staff issued a CO to SNC memorializing an agreement the two parties reached during an Alternative Dispute Resolution (ADR) mediation session.[3] The parties convened the ADR mediation session pursuant to SNC's request after the NRC Staff notified it of two apparent violations at Vogtle of the agency's employee protection regulation, 10 C.F.R. § 52.5.[4] See SNC CO at 1–2.

One alleged violation occurred when an SNC official, Mark Rauckhorst (a former SNC Vice President), "directed [that] a contract employee at the Vogtle Units 3 and 4 construction site be removed in December 2015, in part, for engaging in protected activity. The contract employee was subsequently [discharged] by his employer on February 3, 2016." SNC CO at 2.[5] The other alleged violation occurred when "a contract employee [i.e., the petitioner in this case, Mr. Sparks] was removed from the site by an SNC official [i.e., Thomas Saunders] on July 13,

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[3] See [CO to SNC] Modifying License Effective Upon Issuance (EA-18-130; EA-18-171) (Nov. 20, 2019) (ADAMS Accession No. ML19249B612) [hereinafter SNC CO], published at 84 Fed. Reg. 65,426 (Nov 27, 2019).

[4] Section 52.5(a) provides that "[d]iscrimination . . . against an employee for engaging in certain protected activities is prohibited." 10 C.F.R. § 52.5(a). "Protected activities" include the raising of safety-related concerns associated with the Atomic Energy Act of 1954 and the Energy Reorganization Act of 1974. See id. § 52.5(a)(1)(i).

[5] Mr. Rauckhorst is not identified by name in the SNC CO, but there is no dispute that he was the SNC official involved in the 2015 incident. See, e.g., Sparks' Petition at 4 n.3, 7 & n.6. The NRC Staff subsequently issued a Notice of Violation (NOV) to Mr. Rauckhorst advising him that, as relevant here, the NRC determined he had engaged in deliberate misconduct in December 2015 when, in violation of 10 C.F.R. § 52.5, he caused a contract employee to be removed from the Vogtle site. See [NOV] to Mr. Mark Rauckhorst at 1–2 (Nov. 20, 2019) (ADAMS Accession No. ML19301C710) [hereinafter Rauckhorst NOV].

As discussed infra in text, Mr. Sparks has moved to consolidate the Rauckhorst enforcement proceeding with this case. See Sparks' Petition at 8.

2017, in part, for engaging in protected activity . . . . [Mr. Sparks] was subsequently [discharged] by his employer on July 14, 2017."[6] Id. The NRC Staff and SNC agreed to include the 2015 Rauckhorst incident and the 2017 Saunders incident in a single mediation session, recognizing the "substantially similar broad corrective actions expected from the two cases." Id.

During the mediation session, the "NRC and SNC agree[d] to disagree as to whether the violations occurred." SNC CO at 1, 9. SNC nevertheless agreed to NRC modifications of its operating licenses for the Joseph M. Farley Nuclear Plant, the Edwin I. Hatch Nuclear Plant, and the Vogtle Electric Generating Plant to incorporate multiple corrective actions, including the following:

> (1) SNC will establish a fleetwide Employee Concerns Program that, inter alia, manages the intake of all construction concerns raised by employees and tracks corrective actions;
>
> (2) SNC will institute a fleetwide review process covering termination or suspension of SNC employees that will consider, prior to termination or suspension, whether such adverse actions were the result of protected activity;
>
> (3) SNC will maintain a Discipline Review Process that must be followed by SNC, contractors, and subcontractors at the Vogtle project site when removal or termination of a contract employee engaged in nuclear safety-related work is under consideration;

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[6] Mr. Sparks and Mr. Saunders are not identified by name in the SNC CO, but there is no dispute that they were the two individuals involved in the 2017 incident. See, e.g., Sparks' Petition at 3 n.2. In October 2019, the NRC Staff issued a CO to Mr. Saunders for wrongfully discriminating against Mr. Sparks. See [CO to Thomas B. Saunders] Effective Upon Issuance (IA-19-027) (Oct. 21, 2019) (ADAMS Accession No. ML19269C005) [hereinafter Saunders CO], published at 84 Fed. Reg. 57,778 (Oct. 28, 2019). Mr. Sparks petitioned to intervene in the Saunders case to challenge the Saunders CO, and in that petition he moved to consolidate the SNC and Rauckhorst enforcement proceedings with the Saunders case. See [Sparks'] Motion to Intervene [in the Saunders Proceeding] and Motion to Combine Opposition with Related Proceeding at 8–9 (Nov. 29, 2019). A licensing board denied Mr. Sparks' motion to consolidate, see Thomas B. Saunders (Confirmatory Order), LBP-20-01, 91 NRC __, __–__ (slip op. at 7–10) (Jan. 8, 2020), and it also denied his request to intervene in the Saunders case, thereby terminating that proceeding. See Thomas B. Saunders (Confirmatory Order), LBP-20-03, 91 NRC __, __–__ (slip op. at 8–12) (Jan. 29, 2020).

As discussed infra in text, Mr. Sparks has moved to consolidate the Saunders enforcement proceeding with this case. See Sparks' Petition at 8.

> (4) for three years, SNC will require all SNC employees who are onboarding to complete safety conscious work environment (SCWE) training, including training on the relevant NRC regulations protecting employees from discrimination based on protected activity;
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> (5) for three years, SNC will require all new SNC supervisors to receive SCWE training within six months of beginning work as a supervisor;
>
> (6) within four months, SNC will provide training to existing management at the Vogtle project site addressing SCWE and relevant NRC regulations protecting employees from discrimination based on protected activity;
>
> (7) within twelve months, SNC will present SCWE insights derived from these events to an industry-sharing forum (e.g., the NRC's Regulatory Information Conference, the National Association of Employee Concerns Professionals);
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> (8) within three months, SNC will revise its SCWE policy fleetwide to address lessons learned;
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> (9) within three months, a senior SNC executive will issue a written communication to all SNC employees and to contractors at the Vogtle project site reinforcing SNC's commitment to maintaining an SCWE and reaffirming SNC's insistence on the protection of employees' rights to raise safety issues without fear of retaliation; and
>
> (10) within six months, and again within thirty months, SNC will obtain a third-party, independent SCWE survey of the Vogtle project site, and the results of both surveys will be made available for inspection by the NRC staff.

See SNC CO at 1, 3–14.

The NRC Office of Enforcement concluded that SNC's commitments were "acceptable and necessary" and "that with these commitments the public health and safety are reasonably assured." SNC CO at 10. The CO stipulated that it "settle[d] the matter between the parties," id. at 9, and that SNC waived its right to a hearing. See id. The CO provided, however, that any person adversely affected by the CO may request a hearing, see id. at 14, and if a hearing were to be granted, "the issue to be considered . . . shall be whether this [CO] shall be sustained." Id. at 18.

Mr. Sparks petitioned to intervene, and he proffered two contentions. One contention challenged the sufficiency of the facts in the SNC CO, and the other challenged the sufficiency of the corrective actions. See Sparks' Petition at 7. His petition also included a motion to consolidate the Saunders and Rauckhorst enforcement proceedings with this case. See id. at

8–9; supra notes 5 & 6. The NRC Staff and SNC filed answers opposing Mr. Sparks' petition.[7] Mr. Sparks did not file a reply.

II. LEGAL STANDARDS

For Mr. Sparks' consolidation motion to be granted, he must show "good cause." For his intervention request to be granted, he must (1) demonstrate standing; (2) proffer an admissible contention; and (3) satisfy the Bellotti doctrine,[8] which impacts standing and contention admissibility analyses in the context of enforcement proceedings. We discuss the legal standards associated with these requirements below.

A. Consolidation

The NRC regulation governing consolidation provides in relevant part: "On motion and for good cause shown . . . the presiding officers of each affected proceeding may consolidate . . . two or more proceedings . . . if it is found that the action will be conducive to the proper dispatch of its business and to the ends of justice . . . ." 10 C.F.R. § 2.317(b). Good cause can be established by showing that the relevant proceedings "involve common questions of law or fact [such that] consolidation would 'avoid unnecessary costs or delay.'" Edlow Int'l Co. (Agency for the Gov't of India on Application to Export Special Nuclear Materials), CLI-77-16, 5 NRC 1327, 1328 (1977) (quoting Fed. R. Civ. P. 42(a)(3) (1966)).

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[7] See NRC Staff's Answer to Request for Hearing by Leonard Sparks (Jan. 10, 2020) [hereinafter NRC Staff's Answer]; [SNC's] Answer In Opposition to Leonard Sparks' Motion to Intervene and Motion to Combine (Jan. 13, 2020) [hereinafter SNC's Answer].

[8] The Bellotti doctrine derives its name from 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).

B. Standing

To intervene in an NRC adjudicatory proceeding, a petitioner must demonstrate standing. See 10 C.F.R. § 2.309(a).[9] In determining whether a petitioner has established standing, the Commission applies contemporaneous judicial concepts of standing that require a petitioner to show "(1) an injury in fact (2) that is fairly traceable to the challenged action and (3) is likely to be redressed by a favorable decision." Maine Yankee Atomic Power Co. (Maine Yankee Atomic Power Station), CLI-04-5, 59 NRC 52, 57 n.16 (2004) (internal quotation marks omitted).

C. Contention Admissibility

In addition to demonstrating standing, a petitioner who seeks to intervene in an NRC adjudicatory proceeding must proffer a contention that satisfies the Commission's regulatory six-factor standard for contention admissibility. Specifically, a petitioner must (1) provide a statement of the issue of law or fact being challenged; (2) provide a brief explanation of the basis for the contention; (3) demonstrate that the issue raised is within the scope of the proceeding; (4) demonstrate that the issue raised is material to the proceeding; (5) provide a concise statement of the alleged facts or expert opinions that support the petitioner's position on the issue; and (6) provide sufficient information to show that a genuine dispute exists on a material issue of law or fact. 10 C.F.R. § 2.309(f)(1)(i)–(vi). The Commission has emphasized

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[9] Under section 189a of the Atomic Energy Act, the NRC is required to "grant a hearing upon the request of any person whose interest may be affected by the proceeding." 42 U.S.C. § 2239(a)(1)(A). Pursuant to the agency's regulation implementing general standing requirements, a petitioner's hearing request must state:

> (i) The name, address and telephone number of the requestor or petitioner;
> (ii) The nature of the requestor's/petitioner's right under the [relevant statute] to be made a party to the proceeding;
> (iii) The nature and extent of the requestor's/petitioner's property, financial or other interest in the proceeding; and
> (iv) The possible effect of any decision or order that may be issued in the proceeding on the requestor's/petitioner's interest.

10 C.F.R. § 2.309(d)(1)(i)–(iv).

that the contention admissibility standard is "strict by design." Dominion Nuclear Conn., Inc. (Millstone Nuclear Power Station, Units 2 & 3), CLI-01-24, 54 NRC 349, 358 (2001). Failure to comply with any admissibility requirement "renders a contention inadmissible." Entergy Nuclear Operations, Inc. (Indian Point, Unit 2), CLI-16-5, 83 NRC 131, 136 (2016).

D. The *Bellotti* Doctrine

Pursuant to the Bellotti doctrine,[10] the threshold question in an enforcement proceeding, "intertwined with both standing and contention admissibility issues, is whether the hearing request is within the scope of the proceeding outlined in the enforcement order itself, i.e., whether the [CO] should be sustained." FirstEnergy Nuclear Operating Co. (Davis-Besse Nuclear Power Station, Unit 1), CLI-04-23, 60 NRC 154, 157 (2004). Regarding standing, an "injury alleged as a result of failure to grant more extensive relief is not cognizable in a proceeding on a [CO]," because such an assertion fails to establish harm that is traceable to the CO. Id. at 158. Regarding contention admissibility, a contention challenging a CO will be rejected as outside the scope of the proceeding unless it "oppose[s] the issuance of the order as unwarranted, so as to require relaxation, or [as] affirmatively detrimental to the public health and safety, so as to require rescission (as opposed to supplementation)." Id. (quoting Davis-Besse, LBP-04-11, 59 NRC 379, 385 (2004)).

[10] In the Bellotti case, the Attorney General of Massachusetts, Francis Bellotti, challenged an enforcement order the NRC Staff had issued to the licensee of the Pilgrim Nuclear Power Station. The enforcement order limited the scope of any challenge brought by a third party to the issue of whether "this Order should be sustained." Bellotti, 725 F.2d at 1382 n.2. Bellotti challenged the adequacy of the order (not its issuance), arguing that the order should be strengthened by adding corrective actions. See id. at 1382 & n.2. The Commission denied Bellotti's intervention request because (1) he failed to assert injuries that were traceable to the order and thus failed to establish standing; and (2) his challenge to the adequacy of the order was outside the scope of the proceeding. See Pilgrim, CLI-82-16, 16 NRC at 45–46 & n.*. The United States Court of Appeals for the District of Columbia Circuit affirmed. See Bellotti, 725 F.2d at 1381–82.

III. ANALYSIS

A. Mr. Sparks' Motion to Consolidate Lacks Merit

Mr. Sparks moves to consolidate the Saunders and Rauckhorst enforcement proceedings with this case. See Sparks' Petition at 8–9; supra notes 5 & 6. We need not consider whether Mr. Sparks' motion satisfies the "good cause" standard in 10 C.F.R. § 2.317(b), see supra Part II.A, because his challenges to the Saunders and Rauckhorst enforcement proceedings are not litigable and his motion therefore must be denied.

Regarding the Saunders enforcement proceeding, as mentioned supra note 6, in January 2020, a licensing board (1) denied Mr. Sparks' request to challenge the Saunders CO; and (2) terminated the Saunders enforcement proceeding. See LBP-20-03, 91 NRC at __–__ (slip op. at 8–12). Because the Saunders enforcement proceeding is no longer a live case, we deny as moot Mr. Sparks' motion to consolidate that case with this one.

We likewise deny Mr. Sparks' motion to consolidate the Rauckhorst enforcement proceeding with this case. As mentioned supra note 5, the NRC issued a Notice of Violation (NOV) to Mr. Rauckhorst in November 2019. An NOV constitutes notice that the NRC Staff has determined that a violation of NRC requirements occurred; it is not an agency enforcement order and, thus, does not provide third parties with an opportunity to intervene or seek a hearing. See Rauckhorst NOV at 1–2; see also NRC Enforcement Manual at 13–15. We therefore deny Mr. Sparks' motion to consolidate the Rauckhorst proceeding with this case.[11] See Saunders, LBP-20-01, 91 NRC at __ n.13 (slip op. at 7 n.13) (rejecting Mr. Sparks' request to consolidate Rauckhorst enforcement proceeding with Saunders enforcement proceeding).[12]

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[11] If the NRC Staff were to issue an enforcement order to Mr. Rauckhorst, that order—like the SNC CO that is being challenged here—would provide third parties with an opportunity to intervene or seek a hearing. Any third-party claim based on an NOV, however, is not ripe and therefore not litigable.

[12] Mr. Sparks' motion to consolidate also suffers from a procedural infirmity. 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 in the

B. The *Bellotti* Doctrine Mandates Denial of Mr. Sparks' Intervention Request

Mr. Sparks challenges the sufficiency of facts and the sufficiency of the corrective actions in the SNC CO. See Sparks' Petition at 7. His proffered contentions state in full:

> 1. What are the facts, as determined by the NRC Staff, that form the basis for the proposed [CO] Modifying License?
>
> 2. Whether the actions agreed upon in the [CO] are sufficient to ensure that the Licensee, and its supervisors, managers, executives and support infrastructure, i.e., [the SNC Office of Human Resources], Compliance and Concerns Departments, and [Employee Concerns Program], as well as all contractors, 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 [C.F.R. §] 52.5 "Employee Protection."

Id. (emphasis omitted).

The NRC Staff and SNC argue that Mr. Sparks' intervention request should be denied because, pursuant to the Bellotti doctrine, Mr. Sparks lacks standing and fails to proffer an admissible contention. See NRC Staff's Answer at 4–13; SNC's Answer at 4–12. We agree.

1. The Commission's Application of *Bellotti* in the *Alaska DOT* Decision

We begin our analysis by reviewing the Commission's 2004 decision in Alaska Dept. of Transp. and Pub. Facilities (Confirmatory Order Modifying License), CLI-04-26, 60 NRC 399 (2004), which, in our view, is identical in all material respects to this case. In that case, the NRC Staff issued an NOV in which it concluded that the Alaska Department of Transportation and Public Facilities [hereinafter Alaska DOT] had discriminated against Robert Farmer, a Statewide Radiation Safety Officer, in retaliation for his having raised safety concerns. See id. at 402. Rather than contest the NOV, Alaska DOT agreed to comply with a CO that required it to take planning and training actions designed to ensure future compliance with the NRC's employee protection regulation. See id.

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motion, and that the movant's efforts to resolve the issue(s) have been unsuccessful." 10 C.F.R. § 2.323(b). Motions that fail to include such a certification "must be rejected." Id.

Farmer filed an intervention request with two contentions arguing that the CO should be rescinded and its corrective actions "replace[d] or supplement[ed] . . . with civil penalties and enforcement actions against individual managers." CLI-04-26, 60 NRC at 402. Contention 1 included an attack on the adequacy of the CO because it allegedly failed to address the "illegal retaliatory actions and behaviors of Licensee managers, [and] the failure of the managers to address employee concerns about safety and compliance." Id. Contention 2 asserted that the CO should be rescinded because "it is not based upon an accurate assessment and analysis of all the facts available to the Commission, or on a correct interpretation and application of [regulation and policy]." Id.[13]

The Commission held that "Bellotti means that Farmer lacks 'standing' to seek a hearing and also lacks admissible contentions." CLI-04-26, 60 NRC at 404. Regarding standing, the Commission observed that the CO "mandates numerous actions for [Alaska DOT] to take to ensure [an SCWE]. These actions, including independent policy review, training, and a plan for assuring compliance with [NRC regulatory policy], cannot conceivably cause Farmer to suffer any injury." Id. at 406. Absent injury attributable to the CO, held the Commission, "Farmer does not have standing." Id. Regarding contention admissibility, the Commission concluded that both of Farmer's contentions were outside the scope of the proceeding "because he speculates that other remedies would be more effective. This is really a request to impose either different or additional enforcement measures—in contravention of . . . Bellotti." Id. at 405.

[13] The Alaska DOT licensing board rejected Contention 1, concluding that it impermissibly sought to strengthen the relief in the CO, contrary to the Bellotti doctrine. See Alaska DOT, LBP-04-16, 60 NRC 99, 117 (2004). However, a majority of the board found that Contention 2 supported standing and raised a legitimate factual question that warranted a hearing. See id. at 117–18. Judge Bollwerk dissented from the latter ruling, concluding that the Bellotti doctrine precluded the admission of Contention 2. See id. at 120–23 (Separate Views of Bollwerk, J., Dissenting in Part). On appeal, the Commission "agree[d] with Judge Bollwerk's dissent." Alaska DOT, CLI-04-26, 60 NRC at 401.

2. As Applied in Alaska DOT, the Bellotti Doctrine Mandates Denial of Mr. Sparks' Intervention Request for Lack of Standing and Lack of an Admissible Contention

Applying Bellotti, the Commission in Alaska DOT held that a petitioner lacks standing to challenge a CO that improves the licensee's health and safety conditions because a petitioner "is not adversely affected by a [CO] that improves the safety situation over what it was in the absence of the order." CLI-04-26, 60 NRC at 406. That principle mandates denial of Mr. Sparks' intervention request for lack of standing.[14]

Here, as in Alaska DOT, the challenged CO requires the licensee to implement extensive corrective actions to improve the SCWE. See supra Part I; compare SNC CO at 3–8 (describing corrective actions in the SNC CO that promote safety), with Alaska DOT, CLI-04-26, 60 NRC at 406 (describing corrective actions in the Alaska DOT CO that promote safety). Significantly, Mr. Sparks does not dispute that the SNC CO will enhance safety. Indeed, he concedes that the SNC CO includes "enhancements" to "[SNC's] Employee Concerns Program, Corrective Action program, senior leadership training, and an updated SCWE policy. In addition, SNC agreed to further enhancements to the [Employee Concerns Program] presence at Vogtle [], and other changes to the Adverse Action review processes [and] training . . . ." Sparks' Petition at 4–5. Pursuant to Bellotti, Mr. Sparks' concession that the SNC CO enhances safety is fatal to his assertion of standing because remedial measures that improve safety "cannot conceivably cause [him] to suffer any injury." Alaska DOT, CLI-04-26, 60 NRC at 406. Absent injury traceable to the CO, Mr. Sparks "does not have standing." Id.[15]

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[14] That principle also explains why "it is unlikely that petitioners will often obtain hearings on [COs]. That's because such orders presumably enhance rather than diminish public safety." Alaska DOT, CLI-04-26, 60 NRC at 406 n.28.

[15] As the Commission made clear in Alaska DOT, "[t]he critical concept . . . is that, with the [CO] in place, [Alaska DOT's] employees undoubtedly have considerably more whistleblower protection than without it. Accordingly, [petitioner] does not have standing to contest the order." CLI-04-26, 60 NRC at 408. The same "critical concept" applies here and defeats Mr. Sparks' assertion of standing.

Mr. Sparks also fails to proffer an admissible contention under the Bellotti doctrine. Both of his contentions challenge the adequacy of the corrective actions in the CO,[16] and that is precisely what Bellotti forbids. See Alaska DOT, CLI-04-26, 60 NRC at 405. Pursuant to Bellotti, a contention challenging a CO must be rejected as outside the scope of the proceeding unless it claims that (1) the CO is unwarranted and, accordingly, its terms should be relaxed; or (2) the CO should be rescinded (as opposed to supplemented) because it is affirmatively detrimental to public health and safety. See Davis-Besse, CLI-04-23, 60 NRC at 158; accord Alaska DOT, CLI-04-26, 60 NRC at 406. Mr. Sparks' contentions do not assert that the corrective measures in the SNC CO should be relaxed or that the CO itself should be rescinded (as opposed to supplemented) for being detrimental to public health and safety. His contentions thus fail to satisfy the Bellotti standard and, therefore, are inadmissible pursuant to 10 C.F.R. § 2.309(f)(1)(iii) as outside the scope of this proceeding.

Mr. Sparks nevertheless claims that the Bellotti doctrine does not preclude him from arguing in Contention 1 that the SNC CO should be rescinded for "failing to set out the facts and circumstances within SNC that led to his retaliatory termination." Sparks' Petition at 5.[17] We disagree. In Alaska DOT, the Commission held that a third party cannot circumvent the Bellotti

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[16] Contention 1 challenges the sufficiency of the facts in the SNC CO, see Sparks' Petition at 7, and is based on Mr. Sparks' view that additional facts "will improve the [SCWE]." Id. at 2. Contention 2 challenges the sufficiency of the corrective actions in the CO for ensuring compliance with the NRC's employee protection regulation. See id. at 7.

[17] Mr. Sparks claims that the absence of facts in the SNC CO renders it "fatally defective," Sparks' Petition at 6, but he fails to identify any support for that assertion, as required by 10 C.F.R. § 2.309(f)(1)(vi). This failure is not surprising insofar as the CO was the product of an ADR mediation session. See SNC CO at 1. That ADR session was facilitated by a professional mediator who assisted the parties in their efforts to resolve differences and reach an agreement. See id. at 2–3. As the NRC Staff states, when parties engage in this type of ADR, the purpose of the mediation is not to resolve factual disputes and establish a factual record; "rather, the goal of the process is for the parties to reach agreement on forward-looking actions that enhance safety and security." NRC Staff's Answer at 6; accord Alaska DOT, CLI-04-26, 60 NRC at 407. In any event, the factual circumstances that precipitated the NRC Staff's enforcement action are described in Section II of the SNC CO. See SNC CO at 1–2.

doctrine by asserting a factual dispute with the CO. More specifically, the Commission concluded that when a licensee in an enforcement action (here, SNC) has agreed to the terms of a CO, "a challenge to the facts themselves by a nonlicensee is not cognizable." CLI-04-26, 60 NRC at 408. As the Commission explained, allowing a third party "to attack a [CO] under the guise of a factual dispute would effectively permit an end run around Bellotti," and would also "undercut our salutary policy favoring enforcement settlements." Id. at 408, 409. That rationale applies with equal force to all fact-based challenges to a CO (including Mr. Sparks' claim of factual insufficiency) and mandates the rejection of Contention 1 as "not cognizable." Id. at 408.[18]

We are not insensitive to the fact that Mr. Sparks, like the petitioner in Alaska DOT, "appears to have been a victim of retaliatory misbehavior," or that, also like the petitioner in Alaska DOT, "the corrective measures outlined in the [CO] do not improve [his] personal situation." CLI-04-26, 60 NRC at 406, 407; see also Saunders, LBP-20-03, 91 NRC at __–__ (slip op. at 10–11). But for purposes of considering Mr. Sparks' intervention request, those facts are beside the point. The NRC's "charter does not include providing a personal remedy." Alaska DOT, CLI-04-26, 60 NRC at 407. Rather, the NRC's role "is to procure corrective action for the Licensee's program, and by example, other licensee's programs." Id. The enforcement measures in the SNC CO serve that purpose.

[18] SNC correctly observes that, even putting the Bellotti doctrine aside, Mr. Sparks' two contentions are inadmissible because he fails to provide adequate supporting facts, as required by 10 C.F.R. § 2.309(f)(1)(v), and he fails to show a genuine dispute exists on a material issue of law or fact, as required by 10 C.F.R. § 2.309(f)(1)(vi). See SNC's Answer at 8–12.

Mr. Sparks' avenue for seeking a personal remedy for alleged wrongful termination is through the United States Department of Labor, see Alaska DOT, CLI-04-26, 60 NRC at 407 & n.35,[19] and he declares that he is pursuing relief through that channel. See Sparks' Petition at 3. And insofar as Mr. Sparks maintains that additional NRC enforcement action is necessary to remedy employee discrimination within SNC, he can seek relief under 10 C.F.R. § 2.206, which provides that "[a]ny person may file a request to institute a proceeding pursuant to § 2.202 to modify, suspend, or revoke a license, or for any other action as may be proper." 10 C.F.R. § 2.206(a); see also Alaska DOT, CLI-04-26, 60 NRC at 407 n.35.

[19] See 10 C.F.R. § 52.5(b) (describing the process for seeking a remedy from the Department of Labor for any employee who believes he or she was discharged or otherwise discriminated against for engaging in protected activities). In addition to his claim of wrongful termination, Mr. Sparks asserts in passing that SNC is guilty of "blacklisting." Sparks' Petition at 3. He states, however, that this latter claim is under review by the NRC Office of Investigations and, thus, "is not ripe for consideration." Id. If Mr. Sparks ultimately wishes to seek a personal remedy for blacklisting, his recourse for that claim also lies with the Department of Labor.

IV. CONCLUSION

For the foregoing reasons, we (1) deny Mr. Sparks' motion to consolidate; and (2) deny his petition to intervene, thereby terminating this proceeding at the licensing board level. This Memorandum and Order is subject to appeal in accordance with the provisions in 10 C.F.R. § 2.311(b) and (c).

It is so ORDERED.

THE ATOMIC SAFETY
AND LICENSING BOARD

/RA/

E. Roy Hawkens, Chairman
ADMINISTRATIVE JUDGE

/RA/

Michael M. Gibson
ADMINISTRATIVE JUDGE

/RA/

Dr. Sue H. Abreu
ADMINISTRATIVE JUDGE

Rockville, Maryland
February 11, 2020

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

In the Matter of	)	
	)	
Southern Nuclear Operating Company	)	52-025 and 52-026-EA
	)	
Vogtle Electric Generating Plant, Units 3 and 4	)	
(Confirmatory Order Modifying License)	)	
	)	

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing **MEMORANDUM AND ORDER (Denying Intervention Request and Motion to Consolidate, and Terminating Proceeding) (LBP-20-04)** have been served upon the following persons by Electronic Information Exchange.

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[Original signed by Clara Sola]
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Dated at Rockville, Maryland,
this 11th day of February 2020.