



March 23, 2009

U.S. Nuclear Regulatory Commission
ATTN: Document Control Desk
One White Flint North
11555 Rockville Pike
Rockville, MD 20852-2738

SUBJECT: NuScale Power Re-Submittal of Proprietary Codes and Methods Slides from Pre-Application Review Meeting on November 20, 2008 (NRC Project No. 0769)

REFERENCE: 1. Notice of Forthcoming Closed Pre-Application Meeting with NuScale Power, Inc. to Discuss Codes and Analysis Efforts on the NuScale Reactor Design. ADAMS ML083040292

As indicated in the meeting notice dated November 4, 2008 (Reference 1), NuScale Power, Inc. met with NRC staff on November 20, 2008, in both an open and closed session, to discuss the application of codes and methods for analyzing the NuScale reactor design. During the closed portion of the meeting proprietary information was presented to the NRC.

A letter dated December 10, 2008 (NP-CO-08-12-138), was submitted to the NRC to provide (1) the affidavit requesting NRC to withhold the proprietary information in the proprietary version of the slides (NP-DEM-PT-000001) that were handed out at the November 4, 2008, meeting and (2) a non-proprietary version of the slides (NP-DEM-PT-000001-NP). However, based on its review of the attachments to the December 10, 2008, letter and the requirements of 10 CFR 2.390, the NRC requested a new affidavit and new slides to be submitted.

The new affidavit and slides are attached hereto and replace what was previously submitted to the NRC in the December 10, 2008, letter. We ask that the NRC destroy all copies of the affidavit and slides that were previously submitted in the letter dated December 10, 2008, from NuScale to the NRC.

Questions concerning this submittal may be directed to:

NuScale Power, Inc.
Chief Operating Officer
Attn: Thomas F. Marcille (541-207-3931)
E-Mail: tmarcille@nuscalepower.com
201 NW 3rd Street
Corvallis, OR 97330

Sincerely,

A handwritten signature in black ink, appearing to read "T. Marcille", written over a horizontal line.

Thomas F. Marcille

cc: Thomas J. Kenyon, NRC, TWFN- 6 C34
William D. Reckley, NRC, TWFN-6 C34
Edward T. Baker III, NRC, OWFN-6 F15
James Curtiss, Curtiss Law
David Repka, Winston & Strawn, LLP

Document components: NP-DEM-PT-000001.pdf, 5,297,848 bytes
NP-DEM-PT-000001-NP.pdf, 2,299,918 bytes
affidavit_nuscale_codes_methods_slides.pdf, 96,647 bytes
NuScale Power, Inc.

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NuScale Power, Incorporated

AFFIDAVIT

I, **Thomas F. Marcille**, state as follows:

- (1) I, Chief Operating Officer, NuScale Power, Incorporated ("NSP"), have been delegated the function of reviewing the information described in Paragraph (2) which is sought to be withheld, and have been authorized to apply for its withholding.
- (2) The information sought to be withheld is contained in the attachments to NSP letter from Thomas F. Marcille dated March 23, 2009, to the NRC, *NuScale Power Re-Submittal of Proprietary Codes and Methods Slides from Pre-Application Review Meeting on November 20, 2008 (NRC Project No. 0769)*, (NP-OLM-LO-09-03-029), that were handed out in the meeting of November 20, 2008, to the NRC. The proprietary information in the slides is contained within brackets "[]". The basis for the proprietary determination is Paragraph (3) of this affidavit. The specific category of information that fit into the definition of proprietary information and is the basis of the slides being classified proprietary are given Paragraph (4) of this affidavit and is a superscript in the upper right corner of the proprietary-designated brackets of the slides.
- (3) In making this application for withholding of proprietary information of which it is the owner, NSP relies upon the exemption from disclosure set forth in the Freedom of Information Act ("FOIA"), 5 USC Sec. 552(b)(4), and the Trade Secrets Act, 18 USC Sec. 1905, and NRC regulations 10 CFR 9.17(a)(4), and 2.790(a)(4) for "trade secrets" (Exemption 4). The material for which exemption from disclosure is here sought also qualifies under the narrower definition of "trade secret", within the meanings assigned to those terms for purposes of FOIA Exemption 4.
- (4) Some examples of categories of information which fit into the definition of proprietary information are:
 - a. Information that discloses a process, method, or apparatus, including supporting data and analyses, where prevention of its use by NSP's competitors without license from NSP constitutes a competitive economic advantage over other companies;
 - b. Information which, if used by a competitor, would reduce his expenditure of resources or improve his competitive position in the design, manufacture, shipment, installation, assurance of quality, or licensing of a similar product. Information which reveals aspects of past, present, or future NSP customer-funded development plans and programs, resulting in potential products to NSP;
 - c. Information which discloses patentable subject matter for which it may be desirable to obtain patent protection.

The information sought to be withheld is considered to be proprietary for the reasons set forth in paragraphs (4)a. and (4)b. above.

- (5) To address 10 CFR 2.390 (b) (4), the information sought to be withheld is being submitted to NRC in confidence. The information is of a sort customarily held in confidence by NSP, and is in fact so held. The information sought to be withheld has, to the best of my knowledge and belief, consistently been held in confidence by NSP, no public disclosure has been made, and it is not available in public sources. All disclosures to third parties including any required transmittals to NRC, have been made, or must be made, pursuant to regulatory provisions or proprietary agreements which provide for maintenance of the information in confidence. Its initial designation as proprietary information, and the subsequent steps taken to prevent its unauthorized disclosure, are as set forth in paragraphs (6) and (7) following.

- (6) Initial approval of proprietary treatment of a document is made by the manager of the originating component, the person most likely to be acquainted with the value and sensitivity of the information in relation to industry knowledge. Access to such documents within NSP is limited on a "need to know" basis.
- (7) The procedure for approval of external release of such a document typically requires review by the staff manager, project manager, principal scientist or other equivalent authority, by the manager of the cognizant marketing function (or his delegate), and by the Legal Operation, for technical content, competitive effect, and determination of the accuracy of the proprietary designation. Disclosures outside NSP are limited to regulatory bodies, customers, and potential customers, and their agents, suppliers, and licensees, and others with a legitimate need for the information, and then only in accordance with appropriate regulatory provisions or proprietary agreements.
- (8) The information identified in paragraph (2), above, is classified as proprietary because it describes the models and methodologies NSP uses in evaluating design basis accidents (DBAs) for the NuScale Power Module. NSP and its partners performed significant additional research and evaluation to develop a basis for these revised methodologies to be used in evaluating the NuScale Power Module over a period of several years at a cost of over one million dollars.
- (9) Public disclosure of the information sought to be withheld is likely to cause substantial harm to NSP's competitive position and foreclose or reduce the availability of profit-making opportunities. The information is part of NSP's comprehensive PWR safety and technology base, and its commercial value extends beyond the original development cost. The value of the technology base goes beyond the extensive physical database and analytical methodology and includes development of the expertise to determine and apply the appropriate evaluation process. In addition, the technology base includes the value derived from providing analyses done with NRC-approved methods.

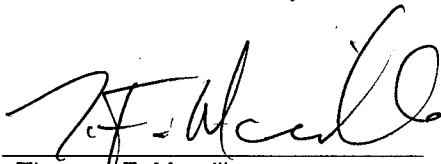
The research, development, engineering, analytical and NRC review costs comprise a substantial investment of time and money by NSP. The precise value of the expertise to devise an evaluation process and apply the correct analytical methodology is difficult to quantify, but it clearly is substantial.

NSP's competitive advantage will be lost if its competitors are able to use the results of the NSP experience to normalize or verify their own process or if they are able to claim an equivalent understanding by demonstrating that they can arrive at the same or similar conclusions.

The value of this information to NSP would be lost if the information were disclosed to the public. Making such information available to competitors without their having been required to undertake a similar expenditure of resources would unfairly provide competitors with a windfall, and deprive NSP of the opportunity to exercise its competitive advantage to seek an adequate return on its large investment in developing these very valuable analytical tools.

I declare under penalty of perjury that the foregoing affidavit and the matters stated therein are true and correct to the best of my knowledge, information, and belief.

Executed on this 23th day of March 2009.



Thomas F. Marcille
Chief Operating Officer
NuScale Power, Incorporated