

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 attachments to NSP letter from Thomas F. Marcille, dated June 25, 2010, to the NRC, *NuScale Submittal of Preliminary Loss-of-Coolant Accident Thermal-Hydraulics and Neutronics Phenomena Identification and Raking Table Licensing Topical Report*, NP -LO-0610-102. The attachment, NP-TR-0610-289, contains the designation "NuScale Proprietary Class 2" on the top of each page. The information considered by NuScale to be proprietary is identified within double brackets, "[[]]", in the document and 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.
- (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) 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 (5) and (6) following.
- (5) 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. A non-proprietary, redacted version of the document is also created.
- (6) 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.
- (7) The information identified in paragraph (2), above, is classified as proprietary because it discloses information about the methods by which input models for safety analysis are developed. NSP and its contractors performed significant research and evaluation to develop a basis for these methods.
- (8) 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. NSP's unique

approach to analyzing postulated transients and accidents in the NuScale plant represents a competitive economic advantage over other companies. Although the exact financial value of this information is difficult to quantify, NuScale-specific safety analysis methods have a significant financial value as they are a key element of the design basis for a NuScale plant.

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 25th day of June, 2010.

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

Thomas F. Marcille
Chief Operating Officer
NuScale Power, Incorporated