

NuScale Power, Incorporated

AFFIDAVIT OF THOMAS F. MARCILLE

STATE OF OREGON

CITY OF CORVALLIS

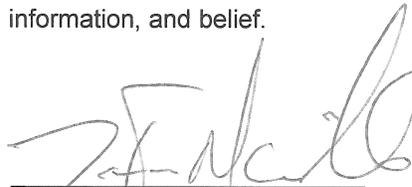
I, Thomas F. Marcille, state as follows:

- (1) I am the Chief Operating Officer of NuScale Power, Inc. (NSP). I have personal knowledge of the facts set forth in this affidavit, and if called and sworn as a witness in a deposition or before any court, I could and would testify competently under oath to these facts. I am authorized to execute this affidavit on behalf of NSP.
- (2) I have personal knowledge of the criteria and procedures used by NSP in designating confidential commercial information as proprietary and have been delegated the function of reviewing the information described in this affidavit which NSP seeks to have withheld from public inspection. I have been authorized to apply for the withholding of this information on behalf of NSP.
- (3) The harm that would result if the information sought to be withheld is disclosed to the public is as follows:
  - (a) The information discloses information about the processes by which NSP develops phenomena identification and ranking tables associated with a loss-of-coolant accident. NSP has performed significant research and evaluation to develop a basis for these phenomena identification and associated ranking tables and has invested significant human and financial resources in such development.
  - (b) NSP's unique process method provides NSP with a competitive economic advantage over other companies. Public disclosure of the information would cause substantial harm to NSP's competitive position and reduce or foreclose opportunities for NSP to generate a return on its investment in research and development. Although the exact financial value of the information is difficult to quantify, the phenomena identification and ranking tables associated with a loss-of-coolant accident are a key element of the design basis for an NSP plant and therefore have substantial value to NSP.
  - (c) If the information were disclosed to the public, NSP's competitors would have access to the information without having been required to undertake a similar expenditure of resources. Such disclosure would constitute a misappropriation of NSP's intellectual property, would unfairly provide NSP's competitors with a windfall, and would deprive NSP of the opportunity to seek an adequate return on its investment.
- (4) The information sought to be withheld is contained in the enclosure to NSP letter from Edward G. Wallace, dated March 8, 2011, to the NRC, NuScale Preliminary Loss-of-Coolant Accident (LOCA) Thermal-Hydraulic and Neutronics Phenomena Identification and Ranking Table (PIRT). The enclosure, NP-TR-0610-289-P (Revision 1), contains the designation "NuScale Proprietary Class 2" on the top of each page. The information considered by NSP to be proprietary is identified within double brackets, "[[ ]]" in the document, and discloses the development of this small-break loss-of-coolant accident phenomena identification and ranking table (PIRT) for the NuScale passive integral power reactor.
- (5) The basis for proposing that the information be withheld is that NSP treats the information as trade secrets and commercial information that are privileged and confidential. NSP relies upon the exemption from disclosure set forth in the Freedom of Information Act

("FOIA"), 5 USC § 552(b)(4), as well as exemptions applicable to the NRC under 10 CFR §§ 2.390(a)(4) and 9.17(a)(4).

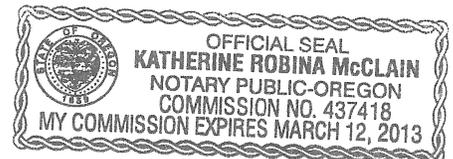
- (6) With respect to the considerations set forth in 10 CFR § 2.390(b)(4):
- (a) The information sought to be withheld has been held in confidence by NSP.
  - (b) The information is of a sort customarily held in confidence by NSP and, to the best of my knowledge and belief, consistently has been held in confidence by NSP. Access to the information within NSP is limited on a "need to know" basis. The procedure for approval of external release of such information 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 to maintain confidentiality.
  - (c) The information is being transmitted to and received by the NRC in confidence.
  - (d) No public disclosure of the information 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 that provide for maintenance of the information in confidence.
  - (e) Public disclosure of the information is likely to cause substantial harm to the competitive position of NSP, taking into account the value of the information to NSP, the amount of effort and money expended by NSP in developing the information, and the difficulty others would have in acquiring or duplicating the information. The information sought to be withheld is part of NSP's technology that provides NSP with a competitive advantage over other firms in the industry. NSP has invested significant human and financial capital in developing this technology and NSP believes it would difficult for others to duplicate the technology without access to the information sought to be withheld.

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.

  
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Thomas F. Marcille

State of Oregon, County of Benton.

Subscribed and sworn to before me this 6<sup>th</sup> day of April, 2011



  
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Notary Public

My commission expires: March 12<sup>th</sup>, 2013