



UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D.C. 20555-0001

July 29, 2021

Mr. James Joosten
Connect-USA LLC
25131 Chambliss Court
Gaithersburg, MD 20878

SUBJECT: NRC STAFF RESPONSE TO REQUEST FOR ACCESS TO PROPRIETARY INFORMATION AND SAFEGUARDS INFORMATION RELATED TO THE NUSCALE SMR STANDARD DESIGN CERTIFICATION APPLICATION

Dear Mr. Joosten:

The U.S. Nuclear Regulatory Commission (NRC) staff is responding to your request for access to proprietary information and Safeguards Information (SGI) contained in the application for design certification of the NuScale standard design.

In your email dated July 19, 2021 (Agencywide Document Access and Management System Accession No. ML21203A035), you requested access to non-public information related to the design features and safety/safeguards analyses that protect the owner/operators and public from acts of terrorism, sabotage, insider threat, vehicle and aircraft impacts, and certain beyond-design-basis accidents.

The NRC staff evaluated your request pursuant to the procedures established in the *Federal Register* notice for the proposed NuScale design certification rule published on July 1, 2021 (86 FR 34999) and NRC regulations governing access to SGI. For the reasons stated below, the NRC has determined that your request does not satisfy the NRC's procedures governing how individuals may request access to proprietary information or SGI.

Legitimate Need for Access to Proprietary Information/Need to Know for Safeguards Information

Your request did not identify the issue or subject matter on which to comment with sufficient specificity for the NRC to evaluate whether the publicly available information would be insufficient for you to prepare meaningful comments. Although there are different standards for legitimate need for access to proprietary information and need to know for access to SGI, the reasons that your request is insufficient are the same for both.

In requests for access to proprietary information, the requester must demonstrate a legitimate need for the information in order to prepare meaningful comments on the design certification. To evaluate whether the requester has a legitimate need for access, the NRC's procedures established in the *Federal Register* notice require the request to describe the specific issue or subject matter on which the requester wishes to comment and why the publicly available information is insufficient to provide the basis for developing meaningful comment on the NuScale design certification proposed rule. Similarly, for requests for access to SGI, the request must include specifically why the requester believes that the information is necessary to enable the requester to prepare meaningful comments.

Your request for access to “those plant design, analysis, and emergency response related documents which have been withheld from the general public review and which address physical security, safeguards, and national security concerns” is broad in nature. The information related to these areas is found in multiple locations in the application, including separate reports, and the corresponding NRC staff evaluation in the final safety evaluation report (FSER). The majority of the relevant information is publicly available. Although some parts of your request indicate interest in specific aspects of this information, for example “vehicle and aircraft impacts,” the request does not indicate to what non-public information related to these matters you need access. The publicly available design certification document (DCD) and related reports are explicitly redacted to indicate where information is withheld, but your request does not indicate which of the redactions prevent you from preparing meaningful comments. In addition, the NRC staff’s publicly available FSER describes in detail the information in the application, the acceptance criteria used to determine whether the design meets the regulations, and the NRC staff’s conclusions.

The NRC staff also notes that your request appears to be seeking information on at least one aspect of the design that is outside the scope of the design certification and that will be resolved in a future application referencing the design. For example, the emergency planning zone (EPZ) size is not evaluated or approved in the design certification that is currently out for public comment.

In addition to lacking specificity, your request did not explain why the publicly available information is insufficient to allow you to develop meaningful comments. Your request stated simply, “These analyses and design features are not fully described in the information that has been publicly released.” As mentioned above, the vast majority of the relevant information is publicly available. Although the NRC staff recognizes that some information is withheld, a request for access must demonstrate that the specific information requested is necessary for the requester to prepare meaningful comments. Your request did not explain why the publicly available information would not enable you to evaluate, for example, “the capabilities of the plant instrumentation and accident monitoring systems to deal with ... loss of power events.”

For these reasons, the NRC staff has determined that your request does not establish a legitimate need for access to proprietary information or a need to know for access to SGI.

Timeliness

As stated in the *Federal Register* notice:

Within 10 days after publication of this proposed rule, any individual or entity who believes access to proprietary information or SGI is necessary in order to submit comments on this proposed rule may request access to such information. Requests for access to proprietary information or SGI submitted more than 10 days after publication of this document will not be considered absent a showing of good cause for the late filing explaining why the request could not have been filed earlier.

Your request was submitted more than 10 days after the publication of the FRN but included a description of the reasons for the lateness of your request.

Your request included several reasons based on the quantity and type of information in the application: “I could not practically identify missing material and generate the request sooner

given the enormous quantity of material to be reviewed for this DCA [design certification application] rulemaking;” “the applicant’s decision to exclude unusual quantities of design information from general public review; the uniqueness of the new reactor design, [and] the unusually large number of regulatory waivers requested by the applicant[.]” The NRC staff acknowledges the large volume of information related to the certification of the design. However, the search capability of electronically available public information provides a highly effective way for members of the public to review the publicly available information to determine whether access to proprietary information or SGI will be needed to develop comments.

In addition, the NRC published notice of NuScale Power’s design certification application in 2017 (82 FR 11372), with multiple notices related to preapplication and application activities published since 2010. Since receipt of the NuScale application, the NRC has continuously updated its public website as revisions to the application and other information have become available. In addition, the NuScale standard design approval was noticed in the *Federal Register* in September of 2020 (85 FR 61038). Therefore, the public had ample notice that the design certification would include proprietary information and SGI and ample opportunity to determine whether access to that information would be necessary to prepare comments.

In your request, you stated that part of the reason for your untimely request was difficulty accessing information. Specifically, you cited “the fact that many of the NRC website hyperlinks to this DCA information (e.g., RAIs) are broken or inoperable[.]” and “the difficult access to the NRC Public Document Room and Technical Library[.]” The NRC did not receive any other feedback regarding inoperable weblinks for information related to the rule on the NRC public rulemaking site (<https://www.nrc.gov/reading-rm/doc-collections/rulemaking-ruleforum/rulemaking-dockets/2017/index.html>) or design certification review site (<https://www.nrc.gov/reactors/new-reactors/smr/nuscale.html>). The NRC staff reviewed these NRC public websites but was unable to find any broken links on these websites. In addition, although the NRC public document room (PDR) and the NRC technical library are physically closed, the NRC website provides the publicly available information related to the NuScale design and the NRC staff’s evaluation supporting the proposed rule. Further, as noted in the *Federal Register* notice, NRC PDR staff are available at 1-800-397-4209, at 301-415-4737, or by email to PDR.resource@nrc.gov for accessing publicly available information. The *Federal Register* notice also provided telephone and email contact information for two NRC staff.

In addition, your request mentions “restrictions on accessing the NuScale website.” The NRC staff is unaware of any relevant information that is not provided in the NRC’s *Federal Register* notice or the NRC public website.

For these reasons, the NRC concludes that you did not have good cause for the lateness of your request.

Conclusion

In conclusion, the NRC staff has determined that your request for access to proprietary information and SGI was not timely and did not demonstrate a legitimate need for access to proprietary information or need to know for SGI. Therefore, your request for access to proprietary and SGI is denied. Based on the NRC staff’s adverse determination on your need to know SGI, the NRC’s Office of Administration did not process any part of the request with respect to trustworthiness and reliability for access to SGI.

Appealing Adverse Determination

Pursuant to the procedures established in the *Federal Register* notice, you may appeal the NRC staff's adverse determination with respect to access to proprietary information or with respect to need to know for SGI. If you elect to file such an appeal, you must file a challenge within 5 days of receipt of this determination with the NRC's Executive Director for Operations under 10 CFR 9.29(d). In the event that an appeal document contains sufficient information to establish that you meet the requirements for access to the proprietary and SGI information, the NRC staff will not oppose providing you access to pertinent material consistent with the SGI regulations and access procedure pursuant of the NuScale proposed rule. If you have any questions concerning this matter, please contact Dennis Andrukat of my staff at 301-415-3561 or via email at dennis.andrukat@nrc.gov.

Sincerely,



Signed by Tappert, John
on 07/29/21

John R. Tappert, Director
Division of Rulemaking, Environmental,
and Financial Support
Office of Nuclear Material Safety
and Safeguards

Docket No. NRC-2017-0029; RIN 3150-AJ98

cc: gbecker@nuscalepower.com (Gary Becker)

SUBJECT: NRC RESPONSE TO REQUEST FOR PROPRIETARY INFORMATION AND SAFEGUARDS INFORMATION RELATED TO THE NUSCALE SMR STANDARD DESIGN CERTIFICATION APPLICATION DATED JULY 29, 2021

DISTRIBUTION:

Public
 MSpencer, OGC
 SVrahoretis, OGC
 JMaltese, OGC
 JTappert, NMSS
 KCoyne, NMSS
 CBladey, NMSS
 YMalave, NMSS
 GLappert, NMSS
 ABradford, NRR
 GCranston, NRR
 CLauron, NRR
 DParsons, NSIR
 TBowers, NSIR
 LCubellis, NSIR
 LWatson, ADM
 RidsNrrDnrl Resource
 RidsNsirDso Resource
 RidsNrrOd Resource
 RidsNsirOd Resource
 RidsNmssOd Resource

ADAMS Accession Number: ML21209A761

***via email**

OFFICE	NMSS/REFS/ RRPB	NMSS/REFS/ RRPB*	NSIR/DPCP/ RSB*	NSIR/DSO*	NRR/DNRL*	OGC*	NMSS/REFS
NAME	DAndrukat	GLappert	TBowers	TKeene	ABradford	MSpencer (SClark for)	JTappert
DATE	07/29/2021	07/29/2021	07/29/2021	07/29/2021	07/29/2021	7/29/2021	7/29/2021

OFFICIAL RECORD COPY