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August 8, 2021 Via email and fax

Margaret M. Doane
Executive Director for Operations
U.S. Nuclear Regulatory Commission
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**SUBJECT: APPEAL TO THE EDO REGARDING NRC STAFF RESPONSE TO REQUEST FOR ACCESS TO PROPRIETARY, SECURITY, AND SAFEGUARDS INFORMATION RELATED TO THE NUSCALE EXPERIMENTAL SMR STANDARD DESIGN CERTIFICATION APPLICATION [ Docket ID NRC-2017-0029; RIN 3150-AJ98; FR-2021-07-01]**

Dear Director Doane,

Let me begin by first thanking you and the NRC Staff for your service to our Nation. I appreciate the challenges that you face in trying to adapt old regulations to the new advanced reactor designs. So, despite the critical comments that I provide below, my appreciation of the NRC staff's overall work has not been lost.

Secondly, the Staff's intent to carefully protect both NuScale's proprietary information and National Security information is absolutely necessary and highly commendable. Only those individuals with an established level of Public Trust and appropriate non-disclosure agreements should be allowed access to these materials.

Third, I support your efforts and those of NEI to make the regulatory process more efficient. However, I believe the staff must use caution to ensure that the "proprietary" and "classified" designations in its record systems are not abused or used as a tool to obstruct proper public oversight. The Department of Energy reports that over 2 million pages of regulatory support documents related to NuScale's DCA were submitted to the NRC. My initial review of the NuScale Design Certification Application (DCA) suggested that nearly all documents related to common defense and security issues and perhaps more than 90 percent of the total regulatory support documents have been withheld from the American public's review. This is an unusually high percentage of hidden documents. The sheer volume of NuScale's secret material raises concerns about the NRC's proprietary document review process 10CFR2.390(b) and its public withholding policies 2.390(b)(4)(i)).

Clearly, to their credit both NuScale and the NRC have spent considerable resources examining and documenting the public safety aspects of this novel reactor design. However, there is comparatively little open-source evidence that the NRC's responsibilities for common defense and security have been adequately addressed. Even the highly regarded Advisory Committee on

Reactor Safeguards (ACRS) analysis in July 2020 seems to have focused on safety rather than safeguards. Some security and safeguards analyses surely exist but even an index of their document titles or redacted versions could not be located.

Admittedly, I have not examined all documents in the record. However, based on my 40-years of experience in the industry and government, including the inspection of over 150 nuclear facilities worldwide, *I believe there are significant concerns with the NuScale standard nuclear plant design regarding physical security, safeguards, and proliferation.* The largest potential vulnerabilities may arise from the design's heavy reliance on computerized instrumentation, electronic intrusion detection systems, and its lack of assured, safety grade (Class 1E) power systems. While the probability for a severe reactor accident in NuScale's novel passive reactor may be vanishingly small, the probability for a deliberate terrorist, disgruntled employee, or other human induced event can approach 100%. These nuclear plant design issues, as they relate to the common defense and security of our nation, need to be addressed in a more transparent manner by the NRC.

Accordingly, on July 19, 2021, I requested access to review and comment on the adequacy of the NRC security and safeguards determinations for the NuScale SMR plant. I asked to review those documents that have been withheld from public viewing due to either proprietary or SGI classification. However, the NRC staff quickly evaluated my request and determined that it did satisfy the NRC's procedures governing how individuals may request access to proprietary information or SGI. The staff concluded that I did not have a "legitimate need for access" to NuScale's Proprietary information or a "need to know" the safeguards information. Their determination obstructs a meaningful independent public review by a highly qualified American expert. Unfortunately, the Staff's stated reasons for the access denial appear to be hastily drafted, illogical in places, and at odds with the Administrative Procedures Act, Executive Orders, and the Commission's own Strategic Plan. Rather than work with the public to find opportunities for cooperation, my access request seems to have been simply dismissed out of hand:

> "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."

With this letter, I appeal to you to review and overturn the Staff's well intended but maybe hasty Adverse Determination. I have attached a more detailed response to the determination below and a more specific information request in Appendix A.

Finally, as a former member of the EDO staff myself and knowing your prior background with OIP and OGC, you seem to be the ideal person for an appeal. It is my hope that you take a minute to personally review this issue. Thank you in advance.

Sincerely,

James K. Joosten Jr.
Managing Partner

## I. SPECIFIC RESPONSES TO THE STAFF'S STATEMENT OF REASONS

### 1. 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.<<**

RESPONSE: The staff contends that the public's request for access to review the NRC's NuScale decisionmaking process is illegitimate. However, this contention is not consistent with federal law and Presidential Directives to the agencies. My request for the information underpinning the Agency's NuScale rulemaking arises under the Administrative Procedures Act (APA), Executive Order 13563, Executive Order 12866, the Federal Register Guidelines, and the NRC's own Strategic Vision for 2018-2022. The Administrative Procedure Act (APA) applies to all executive branch and independent agencies[1]. In an effort to ensure public participation in the informal rulemaking process, agencies are required to provide the public with adequate notice of a proposed rule followed by a *meaningful opportunity to comment* on the rule's content.[2]

The staff additionally contends that the public's request to review the NRC's decisionmaking process lacked "sufficient specificity". However, neither the APA, nor the Executive Orders set a litmus test on minimal "specificity" for screening out public access and commentary.

The notion of asking someone to very specifically identify documents which have been hidden or withheld from his knowledge is also illogical. It is an impossible requirement since the public commenter must divine the contents of the withheld materials or hire a psychic numerologist in order to submit the "specific" request. Under the Administrative Procedure Act, an agency action, finding, or conclusion can be set aside where it is "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law" or is "unsupported by substantial evidence." 5 U.S.C. § 706(2)(A), (E).

Additionally, Section XVI (4) (a) of the proposed rule provides no detailed guidance to the public on what "specificity" means when someone applies for proprietary and SGI access:

> " Each of the following areas must be addressed with *specificity*: (a) The *specific* issue or subject matter on which the requester wishes to comment.

The rule's guidance is an illogical circular definition that relies upon references to the term itself without providing actual information. To understand the Staff's intent behind this circular definition, a member of the public would need a crystal ball. Consequently, the "specificity" litmus test is arbitrary and capricious.

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[1] 5 U.S.C. § 551(1)

[2] 5 U.S.C. § 553 (b)-(c). Also see: See, e.g., Forester v. CPSC, 559 F.2d 774, 787 (D.C. Cir. 1977).

The staff's "specificity" litmus test is also contrary to national security. As a former Senior Reactor Operator, control room supervisor, fuel handler, IAEA safety inspector, NRC staffer, etc. I am fully capable of identifying *very specific* nuclear plant vulnerabilities. I know where to look. I have personally examined over 150 nuclear facilities in 24 countries worldwide. I hold Masters degrees in Nuclear Engineering and National Security. However, being forced to openly identify "very specific" vulnerabilities in the NuScale design and very specific security analysis gaps would be irresponsible. Accordingly, I chose to more broadly list several specific security and safeguards issues (sabotage, terrorism, truck bombs, aircraft impacts, lack of Class 1E power systems, etc.) for which I intended to offer positive or negative comment. I even identified one document by name and number (i.e., TR-0416-48929 (NuScale Design of Physical Security Systems)). Yet the Staff rejected even this precise level of "specificity" without so much as an explanation. In short, the staff's litmus test for "specificity" was ambiguous and inconsistently applied.

Also, contrary to the Staff's many back and forth interactions with NuScale, the Staff never attempted to contact the public requester for a clarification or to request more "specific" information before making its adverse determination.

Nevertheless, given the time constraints of this rulemaking and the staff's desire for greater specificity, I have provided a pared down list of more specific subject matter documents in **Appendix A** that I am requesting access to. Note that only those documents that have been *withheld* until now from public review are requested. Because they have been withheld, there are no substitutes in the public domain. This narrower document set is necessary to meaningfully evaluate the security and safeguards impact of a loss of power to one or more of the plant electrical systems. Most of these systems are normally high reliability, quality assured, nuclear safety grade, class 1-E systems. However, in the novel NuScale design they are not safety grade. Since the probability of failure in non-safety grade components may be higher, I would like to assess the security vulnerabilities and consequences of component failures in these electrical systems, I would also like to examine electrical systems interaction events involving multiple NuScale reactor power units. It does not appear that NuScale ever completed or submitted the typical studies on systems interaction events or security events involving multiple (simultaneous) reactors. Human induced or accidental failures in these electrical systems may also lead to cascading failures of critical security and safeguards systems due to erroneous plant instrumentation displays and operator error. By identifying the vulnerabilities and possible operator/security force recovery actions, a more secure NuScale design may be identified.

**>> 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.<<**

RESPONSE: The Staff erred in its determination that a public request for information access was not a "legitimate need". A request from the public to review major rulemaking is legally consistent with the Administrative Procedures Act, Executive Order 12866, Executive Order

13563, Federal Register Guidance[3], and the Commission's own stated goal of placing a high priority on keeping the public informed of its work by encouraging public participation and comments.

The NRC Strategic Plan[4] also states:

> *"All available facts and opinions must be sought openly from licensees and other interested members of the public. The many and possibly conflicting public interests involved must be considered...Nuclear regulation is the public's business, and it must be transacted publicly and candidly. The public must be informed about and have the opportunity to participate in the regulatory processes as required by law."*

The Staff's proposed rulemaking procedure cannot supersede federal laws, Presidential orders, and Directives from the Commissioners. The requester does not have to demonstrate a legitimate need for information access in a proceeding. Federal law mandates his access. Where there are other laws (e.g., protection of national security information, proprietary information, etc.) the Agency has an obligation to review the requested material to ensure it was properly classified and it has an obligation to redact or release as much information as possible. In any event, an index of the withheld documents should be provided to the requestor. There is no evidence that the NRC ever properly reviewed and assessed the 2+ million NuScale documents for correct classification (10CFR2.390) or declassification. The Staff never provided an index of the withheld materials. It simply and inappropriately denied the public information request.

**>> 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,<<**

RESPONSE: The APA does not contain "need to know" and "meaningful comment" litmus tests in order to establish the public's right to review and comment on Agency rulemaking. The specificity issue was addressed in the amended information request (bullet 1) and in Appendix A.

**>>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.**

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[3] Office of the Federal Register. *A Guide to the Rulemaking Process.* https://www.federalregister.gov/uploads/2011/01/the_rulemaking_process.pdf. p(5)

[4] [4] USNRC. *Strategic Plan Fiscal Years 2018-2022.* NUREG-1614 Vol. 7 p.5

RESPONSE: The request was "broad" only in a relative sense amongst nuclear experts. It was not broad in terms of the general public's level of nuclear expertise. The APA applies to the general public. Also, as stated several times, the requested information is that which has been withheld on these subjects. Therefore it is not in the public domain by definition. The staff's claim that the majority of this withheld information is in the public records is illogical and incorrect. None of the withheld information is in the public record. Again, this stated denial reason by the staff is arbitrary and capricious.

**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.**

RESPONSE: This is an illogical response. As stated previously, it is impossible for anyone in the public to "indicate" or otherwise precisely identify what hidden, non-public information they need access to. Rather the request was made for all those publicly "withheld" documents relating to a specific issue or subject matter. Several specific subject areas were described and provided to the Staff.

**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.<<**

RESPONSE: This is an illogical response. The analyst would need to see the un-redacted withheld material in order to correctly whether or not the redaction prevented him from making. A meaningful comment. Having held an SRPO license and having reviewed about a dozen SERS while working at the NRC, I am well aware of what is in an FSER. Again, my request was for information that was withheld from public review, not what was released to the public.

**>> 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. <<**

RESPONSE: The Staff is trying to direct, limit, and control the public oversight process. There are at least three problems with this: (a) it is inappropriate and not within the intent of the APA for an agency to play the role of the public and be the overseer of itself; (b) clearly the public has a right to evaluate and comment on any gaps and omissions in the proposed rulemaking; and (c) the applicant's proposal to address several design deficiencies outside the DCA during the COL process is problematic. It is a problem because there are no U.S. COL applicants at present. Also the applicant proposes to market the design outside the United States wherein the NRC will not review the plant COL. Additionally, the EPZ is tightly linked to the plant layout, the designed protected areas, vehicle barriers, security forces, off-site support resources, plant communications systems, the power module source term, and many other security related design features of the plant. These should not all be omitted from a DCA.

**>> 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." <<**

RESPONSE: This is an inverted argument. The request was for information withheld from public review so that the public could identify gaps in analysis and comment on the security and safeguards sufficiency of the rulemaking. However, the Staff has flipped the issue around and would like to direct the public expert to review all of the publicly available instead and identify any insufficiencies in that material. These are two different data sets and two different problems. The Staff is inappropriately trying to play the role of the public oversight and direct the public examination process. I am interested in reviewing the gaps and omissions in the security/ safeguards analyses gaps not the properly completed portions of the plant safety analysis.

**>>As mentioned above, the vast majority of the relevant information is publicly available<<**

RESPONSE: This statement is false. The U.S. Department of Energy (DOE) has stated that the NuScale DCA comprises over 12,000-pages with an additional 2+ million-pages of regulatory support documents. The 2+ million additional regulatory support documents do not appear to have been indexed, analyzed for proper classification, or recorded in ADAMS. Accordingly, the 12,000-pages of publicly available 'docketed information' comprises less than 1 percent of the total information provided to the NRC to support the DCA. Over 99% of the relevant rulemaking support information apparently has been withheld from the public under the pretense that it is "proprietary". This is a highly unusual amount of withheld documents especially considering that the NuScale nuclear plant is advertised for its simplicity.

Contrary to the requirements of 2.390(b); the NRC Staff has never generated a publicly available index of the withheld materials much less released redacted copies of them.

**>>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. <<**

RESPONSE: The Staff is attempting to inappropriately screen out independent review and oversight of its activities by applying an arbitrary filter called "meaningful" comments. The Staff doesn't define the "meaningful" filter but rather establishes itself as the sole, subjective arbitrator. The staff appears to be confusing the security requirements of 10CFR73.2 and 10CFR73.22(b)(1) with the public role in rulemaking. In the CFRs, it is the originator of the classified material that determines need to know, not the public.

**>>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." <<**

RESPONSE: Neither the APA, nor Executive Orders require the public to justify their analytical methods or capabilities as a precondition to reviewing and commenting on Agency rulemaking. Moreover, the NRC has not issued any specific guidance on what would constitute an enabling analytical capabilities. Consequently, this screening requirement is arbitrary and capricious. It is being used inappropriately to obstruct public review and commentary on major rulemaking.

This is also a straw-man argument in which the Staff artificially assigns a need to the requester (i.e., to evaluate the sufficiency of public information), then argues that the requester failed to meet that need. When in fact, the need to evaluate the sufficiency of public information never existed in the first place.

**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 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.<<**

RESPONSE: The public expert's plainly requested to review that proprietary, security and safeguards information that had been *withheld* from public disclosure. The Staff's argument that the expert should review more than a decade of unrelated non-withheld published records in order to identify what may be missing is an irrational demand.

First, the data sets are not equivalent. There is no logical reason to expect that the information within the publicly available reports will specifically reference and identify the withheld reports.

Secondly, the Staff's argument that the publicly available material could be reviewed and analyzed within the 10-day rule so as to identify the missing documents is an impossible demand. As such, it meets the legal definition of being an arbitrary and capricious demand. The Staff acknowledges the large volume of information in the public domain. The U.S Department

of Energy (DOE) also reports that the NuScale Design Certification Application back in 2017 itself consisted of 12,000 pages and included more than 2 million pages of additional documents for regulatory support.[5] Research from universities in United States and Europe, suggest that even an above average educated person can only read advanced, scientific and/or technical material at 13 pages per hour.[6] Assuming the individual takes no break from reading over an 8 hour work day, it still would take 115 straight days to read just the 12,000-page application, and over 52 years to read the remaining 2 million pages of regulatory supporting documents just to see what is missing in it.

**>> In addition, the NRC published notice of NuScale Power's design certification application in 2017 (82 FR 11372), with multiple notices related to pre-application 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.<<**

RESPONSE: The Staff's definition of the "public" is irrational and inconsistent with definitions codified into public law. Here the staff is effectively assuming that the public is one, all encompassing, ever present being, similar to a God. The staff is assuming that the public have no other life and nothing other to do than to monitor their activities and various iterations of document submittals. This is unrealistic. A more realistic example of the public can be seen by looking at the crowd in a football stadium. Also, the NuScale DCA alone has undergone 5 major revisions. The more logical use of one's public time would be to review the final version of a rule rather than draft versions especially for extremely large documents. In short, similar to a straw-man argument, the 2900+ member NRC Staff is attempting to equate a single member of the the public to itself and then is criticizing that particular public member for not living up to it. This is an illogical, arbitrary and capricious argument.

**>> 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/rulemakingruleforum/rulemaking-dockets/2017/index.html) or design certification review site (https://www.nrc.gov/reactors/new-reactors/smr/**

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[5] DOE (Sept. 2, 2020). *NRC Approves First US Small Modular Reactor Design*. Retrieved July 23, 2021 from https://www.energy.gov/ne/articles/nrc-approves-first-us-small-modular-reactor-design

[6] Shepard University. *Reading Speed Charts*. Retrieved July 23, 2021 from http://catalog.shepherd.edu/mime/media/12/913/SU+Credit+Hour+Policy+Appendix+B.pdf.

**nuscale.html). The NRC staff reviewed these NRC public websites but was unable to find any broken links on these websites.<<**

RESPONSE: The NRC staff acknowledges that the PDR and Technical Library were closed to public access due to Covid concerns. Moreover, such access puts an unreasonable transportation demand /cost on the public to access that information. The Staff claims that it did not receive any other feedback regarding inoperable weblinks. However, it failed to explain how this is relevant to the public expert's inability to access the weblinks on the days he tried. The staff provided no evidence that other members of the public used the same equipment on the same days as the expert to access the same RAIs. Likewise, the Staff failed to indicate why its access to the NRC internal server should be identical to the public expert's external server.

In short, the staff is attempting to discredit the expert's claim of inoperable hyperlinks broken links by using irrelevant associations. The expert made many attempts to access the documents. Only two succeeded. Evidence of an unsuccessful attempt is attached.

**>> 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. <<**

RESPONSE: This is a circular argument. If the public cannot find the materials on the website, they have a fall back to the PDR and Technical Library. But since these are closed, the fall back is to the website.

**>>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.**

RESPONSE: It is not realistic to conduct a search and review of 12,000+ documents via phone or email. Especially within the rule's 10-day restriction placed on proprietary, security and safeguards information.

**>> 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.<<**

RESPONSE: During a public comment process, it is generally not up to the NRC Staff to decide what is "relevant". This is a public review not an NRC directed review of itself. Additionally, contrary to the Staff suggestion, not all relevant safeguards and proliferation related information is found on the NRC website. There is no mention for example, of the current FBI investigation into NuScale's owner nor complete information on NuScale's many technology transfer agreements with foreign entities. The latter may have important safeguards relevance.

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

RESPONSE: The rule fails to provide guidance or a sufficient description of the "good cause" litmus test. Therefore the staff's determinations of insufficiency appear to be arbitrary. If the Expert's submittal failed to adequately illustrate "good cause", the Staff should have contacted the Public Expert to describe the insufficiency before making the adverse determination. The staff's disparate handling of public versus applicant issues is inappropriate. Additionally, as established above, the 10-day requirement of the proposed rule for accessing missing documents was an impossible demand to meet. Taking 6 extra days to file the SGI document request was reasonable given that it would take 115 straight days just to read the original 12,000-page application to identify which proprietary, security or safeguards analyses were withheld. Also, the Staff offered no rational explanation why the 60-day public comment period was truncated to 10-days for comments addressing proprietary, security and SGI related issues.

**>>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.<<**

RESPONSE: According to federal security procedures, the staff was obligated to begin processing the Public Trust Access Eligibility request when it was made. Instead, it inappropriately blocked the access determination process by conducting a 'need to know' assessment out of sequence and by the wrong individuals.

**>>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).<<**

RESPONSE: The appeal process 10CFR 9.29(d) refers to a FOIA or Privacy Act request. This is clearly not consistent with or applicable to the public comment process referenced in the Administrative Procedures Act. It would appear that in its rush to issue new rulemaking for advanced reactors, the NRC has not updated the regulations which underpin its administrative processes.

## II. APPENDIX a

### I. SPECIFIC SUBJECT MATTER REQUESTED

A. A copy of the NuScale Design Basis Threat description and all vulnerability analyses

B. All Non-Public (Withheld) Proprietary, Security, and safeguards related applicant submittals and NRC Correspondence Concerning the NuScale Design's 120v, 240v, 4kv, and higher voltage AC electrical systems. Including design specifications for the site high voltage switchyard, incoming transmission systems, outgoing transmission systems, diesel generators, backup power systems. Include all studies and security related analyses of the AC electrical system vulnerabilities to nuclear material diversion, insider threats, sabotage events, terrorist threats, aircraft impacts, truck bombs, foreign paramilitary and domestic militia threats.

C. All Non-Public (Withheld) Proprietary, Security, and safeguards related applicant submittals and NRC Correspondence concerning the NuScale Design's DC electrical systems. Include fixed battery systems, mobile battery systems, fuel cells, inverters, and any portable power systems. Include all studies and security related analyses of the DC electrical system vulnerabilities to nuclear material diversion attempts, insider threats, sabotage events, terrorist threats, aircraft impacts, severe weather, truck bombs; foreign paramilitary and domestic militia threats.

D. All Non-Public (Withheld) Proprietary, Security, and safeguards related applicant submittals and NRC Correspondence concerning the NuScale Design's reactor instrumentation, balance of plant instrumentation, engineered safeguards systems monitoring instrumentation, plant radiation monitoring systems; off-gas, waste gas, liquid and solid radioactive waste instrumentation systems, and electrical emergency response communication systems. Include the instrumentation electrical power supplies and any instrumentation backup power systems.

E. All Non-Public (Withheld) Proprietary, Security, and safeguards related applicant submittals and NRC Correspondence concerning the NuScale Design's physical security instrumentation systems, plant perimeter and access point monitoring systems; and their associated electrical power systems. Include a description of the plant protected area, plant access points and intrusion barriers, barriers design to delay intruders; plant intrusion detection systems (e-field systems, thermal, audio, and video surveillance systems, communications systems, and systems for monitoring access to safeguarded areas such as the fresh fuel and spent fuel pool areas, dry storage casks, radwaste and radioactive source storage areas. Include the electrical power system descriptions for these systems. Include all studies and security related analyses of the above site security system's electrical system vulnerabilities to nuclear material diversion, insider threats, aircraft threats, sabotage events, terrorist threats, foreign paramilitary and domestic militia threats.

CC:

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