



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

September 14, 2021

Mr. James Joosten
Connect-USA LLC
25131 Chambliss Court
Gaithersburg, MD 20882

SUBJECT: RESPONSE TO APPEAL TO THE EDO REGARDING 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:

On behalf of the U.S. Nuclear Regulatory Commission (NRC), I am responding to your August 8, 2021, letter¹ appealing the agency's July 29, 2021, denial² of your July 19, 2021, email³ request for access to proprietary information and Safeguards Information (SGI) contained in the application for design certification of the NuScale standard design and reports incorporated by reference in the proposed rule. Your request, which was denied by the staff, indicated that you were interested in reviewing and commenting "on the design features and safety/safeguards analyses which 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 appreciates your interest in commenting on this proposed rule. I have evaluated your appeal pursuant to the procedures established in the *Federal Register* notice (FRN) for the proposed NuScale design certification rule published on July 1, 2021,⁴ and NRC regulations governing access to SGI and appeals from initial determinations. For the reasons set forth below, while the agency's July 29, 2021, decision to deny access to the non-public information was appropriate, I have determined that, based on the additional information provided in your appeal, it is in the public interest in this instance to grant access to certain information responsive to the portions of your appeal that provide sufficient justification.

As established in the agency's July 29, 2021, response, the original request was not submitted within the 10 days after publication of the proposed rule as required by NRC procedures set forth in the FRN. Moreover, the original request failed to establish good cause for the delayed filing. The original request suggests that the delay was a result of the large number of documents and difficulty accessing those documents in a timely manner. However, as the staff explained in the response, the NRC has continuously made available the most recent versions of the design certification application (DCA) and technical and topical reports. The appeal correctly states that the NuScale DCA has undergone 5 revisions; however, NuScale Power submitted the final revision of the NuScale DCA, Revision 5, in July 2020,⁵ and NRC completed

¹ Agencywide Documents Access and Management System (ADAMS) Accession No. ML21237A029.

² ADAMS Accession No. ML21209A761.

³ ADAMS Accession No. ML21203A035.

⁴ 86 FR 34999.

⁵ ADAMS Accession No. ML20225A071.

its final safety evaluation report (FSER) for the DCA in August 2020⁶ and referenced the FSER in the issuance of the standard design approval in September 2020.⁷ The underlying technical information in the FSER is the same information supporting the NuScale design certification proposed rule.⁸ The public final versions of these documents have been available at least since September 2020 and members of the public following the NuScale design should be aware that the NRC staff would rely on those documents as a basis for certifying the design, and that portions of these documents had been withheld since their original issuance. Finally, the proposed rule FRN⁹ provided ADAMS Accession numbers for publicly available versions of all but one of the 45 documents that contain non-public information. For every non-public document provided, there is a public version available with redactions in order to allow for the public to examine the redacted version. Thus, identification of the redacted information is not overly burdensome in the 10-day period to request access.

Notwithstanding the timeliness issue, in this instance I have determined that the public interest in obtaining meaningful public participation in the NuScale design certification rulemaking weighs in favor of the NRC providing you access to certain information referenced below.

Although the staff's denial of the original request correctly determined that the request failed to establish the requisite "need to know" for SGI information and the specificity needed for access to proprietary information, the appeal provided additional detail on your request to access information on one issue. The appeal states that access to the withheld information

...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....

(Appeal, pg. 4). This information provided in the appeal included a request at the level of specificity necessary to allow the agency to understand the information needed to assist you with formulating comments in this area. Therefore, I am granting access to the information contained in those documents associated with this specific issue, subject to appropriate protective provisions. That information is identified in Appendix A. This information is responsive to your appeal; note, however, more specific information may be available at the licensing stage for a specific applicant. Additionally, certain information you expressed interest in commenting on may be found in documents that are publicly available and contain no SGI or proprietary information—those documents are also listed in Appendix A. To facilitate your

⁶ ADAMS Accession No. ML20023A318.

⁷ 85 FR 61038.

⁸ For example, FSER Chapter 8, Electrical Power, notes that NuScale's design certification application referenced topical report TR-0815-16497-P-A, Revision 1, "Safety Classification of Passive Nuclear Power Plant Electrical Systems," issued February 23, 2018 (ADAMS Accession No. ML18054B607); and the FSER further states that the staff reviewed this topical report separately (ADAMS Accession No. ML17170A201) and relied on it in the review of the design certification application. The NuScale design certification proposed rule relies upon and would incorporate by reference the publicly available version of the same topical report.

⁹ 86 FR 34999 at 35014.

access to this information, we ask that you contact Dennis Andrukat at 301-415-3561 or via email at dennis.andrukat@nrc.gov within 10 days of the date of this letter. As stated in the FRN, you will have 25 days after access to the information, or the close of the public comment period, whichever is later, to comment on that information in the proposed rule.

Upon receiving your call or email, the NRC staff will provide instructions for onsite controlled access at NRC headquarters, including signing of a non-disclosure agreement. NRC staff will maintain oversight during your review of the selected documentation and will provide a process to submit comments on the proposed rule in a similarly controlled manner consistent with the designation of the information.

The remainder of the appeal does not include additional information that would support providing access to additional non-public information. The one additional document that was identified specifically by name, in both the original request and the appeal, TR-0416-48929, "NuScale Design of Physical Security Systems," is SGI in its entirety. Although this document was specifically identified by name, neither the original request nor the appeal explains why you "believe the information is necessary to enable" meaningful commenting on the proposed rule, as required by the FRN and 10 CFR 73.2 and 73.22(b)(1) for obtaining access to SGI information. To the extent the intent in the appeal was for the more specific request quoted above to apply to this SGI document, the SGI document does not contain information regarding security vulnerabilities or consequences of component failures in electrical systems.

This is the final agency action. You may seek judicial review of this decision as set forth in 10 CFR 9.29(d). Additionally, for your awareness, the comment period for the NuScale design certification rulemaking was originally scheduled to close on August 30, 2021, but has been extended until October 14, 2021 to allow additional time for members of the public to submit comments.¹⁰ We welcome your comments on all aspects of the proposed rule.

Sincerely,

Margaret M. Doane
Executive Director for Operations

¹⁰ 86 FR 47251.

Appendix A – Information Granted to Mr. Joosten on Appeal for Public Comment on NuScale Design Certification Proposed Rule

Documents containing responsive non-public information:

- TR-0815-16497, Revision 1, “Safety Classification of Passive Nuclear Power Plant Electrical Systems”

Documents containing responsive publicly available information:

- TR-0816-50796, Revision 1, “Loss of Large Areas Due to Explosions and Fires Assessment”
- TR-0816-50797, Revision 3, “Mitigation Strategies for Loss of All AC Power Event”