

Enclosure 3 to TEUSA Letter #240209

Terrestrial Energy USA Affidavit for Enclosure 1

AFFIDAVIT

I, **David Hill**, state as follows:

- (1) I am the Chief Technology Officer of Terrestrial Energy USA (“TEUSA”) and have reviewed the information described in paragraph (2) which is sought to be withheld, and I am the authorizing official for TEUSA to apply for its withholding.
- (2) The information sought to be withheld is contained in Enclosure 1 of TEUSA Letter #240209, “*Uncertainty Quantification Methodology for Calculation of IMSR Off-Gas Source Term – Revision 2.*” The disclaimer included in the footer of each page of the technical report refers to paragraph (3) of this affidavit, which provides the basis for the commercially sensitive determination.
- (3) In making this application for withholding of commercially sensitive information of which it is the owner or licensee, TEUSA relies upon the exemption from disclosure set forth in the *Freedom of Information Act* (“FOIA”), 5 U.S.C. Sec. 552(b)(4), and the *Trade Secrets Act*, 18 U.S.C. Sec. 1905, and NRC regulations 10 CFR 9.17(a)(4), and 2.390(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 in, respectively, *Critical Mass Energy Project v. Nuclear Regulatory Commission*, 975 F.2d 871 (D.C. Cir. 1992), and *Public Citizen Health Research Group v. FDA*, 704 F.2d 1280 (D.C. Cir. 1983).
- (4) The information sought to be withheld is considered commercially sensitive for the reasons set forth in paragraphs (4)b and (4)c shown below. Some examples of categories of information that fit into the definition of commercially sensitive information are:
 - a. Information that discloses a process, method, or apparatus, including supporting data and analyses, where prevention of its use by TEUSA's competitors without license from TEUSA constitutes a competitive economic advantage over other companies;
 - b. Information that, if used by a competitor, would reduce their expenditure of resources or improve their competitive position in the design, manufacture, shipment, installation, assurance of quality, or licensing of a similar product;
 - c. Information that reveals aspects of past, present, or future TEUSA development plans and programs, resulting in potential products to TEUSA;
 - d. Information that discloses trade secrets or potentially patentable subject matter, or both, for which it may be desirable to obtain patent protection.
- (5) 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 TEUSA, 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 TEUSA, not been disclosed publicly, and not been made available in public sources. All disclosures to third parties, including any required transmittals to the NRC, have been made, or must be made, pursuant to regulatory provisions, or to proprietary or confidentiality agreements that provide for maintaining the information in confidence. The initial designation of this

information as commercially sensitive, and the subsequent steps taken to prevent its unauthorized disclosure, are as set forth in the following paragraphs (6) and (7).

- (6) Initial approval of commercially sensitive treatment of a document is made by the manager of the originating component, who is the person most likely to be acquainted with the value and sensitivity of the information in relation to industry knowledge, or who is the person most likely to be subject to the terms under which it was licensed to TEUSA. Access to such documents within TEUSA is limited to a “need to know” basis.
- (7) The procedure for approval of external release of such a document typically requires review by a vice president for technical content, competitive effect, and determination of the accuracy of the commercially sensitive designation. Disclosures outside TEUSA 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 or confidentiality agreements, or both.
- (8) The information identified in paragraph (2), above, is classified as commercially sensitive because it contains detailed information regarding TEUSA’s licensing plans.
- (9) Public disclosure of the information sought to be withheld is likely to cause substantial harm to TEUSA's competitive position and foreclose or reduce the availability of profitmaking opportunities. The information is part of TEUSA's licensing strategy. The development of TEUSA’s chosen licensing path comprises a substantial investment of time and money by TEUSA. The precise value of the expertise to use in devising this licensing path is difficult to quantify, but it clearly is substantial. TEUSA's competitive advantage will be lost if its competitors are able to use the results of the TEUSA’s experience to normalize or verify their own process or if they are able to claim an equivalent understanding by demonstrating that they can arrive at the same or similar conclusions. The value of this information to TEUSA would be lost if the information were disclosed to the public. Making such information available to competitors without them having been required to undertake a similar expenditure of resources would unfairly provide competitors with a windfall, and deprive TEUSA of the opportunity to exercise its competitive advantage to seek an adequate return on its large investment in developing its licensing strategy.

I, David Hill, affirm that I am the Chief Technology Officer of Terrestrial Energy USA, Inc. (TEUSA), that I am authorized by TEUSA to sign and file with the Nuclear Regulatory Commission the technical report on *Uncertainty Quantification Methodology for Calculation of IMSR Off-Gas Source Term – Revision 2*, described in TEUSA Letter #240209, that I am familiar with the contents thereof, and that the statements made and matters set forth therein, and in this affidavit, are true and correct to the best of my knowledge, information, and belief.

Executed on the February 9, 2024



David Hill
Chief Technology Officer
Terrestrial Energy USA, Inc.

Notary

James Gulley
2/8/2024

