

RECEIVED

By Docket Room at Mon 6/13/2022 4:20 PM

**UNITED STATES OF AMERICA
BEFORE THE
DEPARTMENT OF ENERGY**

Magnolia LNG, LLC

)
)
)
)
)

FE Docket No. 13-132-LNG

**MOTION FOR LEAVE TO ANSWER AND ANSWER OF MAGNOLIA LNG,
LLC TO REQUEST FOR REHEARING OF SIERRA CLUB**

I. Introduction

Pursuant to Rule 302 of the Rules of Practice and Procedure of the Department of Energy (“DOE”),¹ Magnolia LNG, LLC (“Magnolia”) respectfully request leave to answer, and answers Sierra Club’s May 27, 2022 Request for Rehearing (“Rehearing Request”).² Sierra Club seeks rehearing of DOE’s April 27, 2022 “Order Amending Long-Term Authorization to Export Liquefied Natural Gas to Non-Free Trade Agreement Nations”³ (“NFTA Amendment Order”), which amended Magnolia’s existing authorization,⁴ increasing Magnolia’s authorized export capacity to nations with which the United States does not have a free trade agreement (“NFTA” nations) by 54.8 billion cubic feet per year (Bcf/yr), equivalent to 0.8 million metric tons per annum (“mtpa”) of liquefied natural gas (“LNG”). As discussed herein, the Rehearing Request largely consists of Sierra Club repeating arguments it has made previously, and which DOE, and the U.S. Court of Appeals for the District of Columbia Circuit (“D.C. Circuit”) have repeatedly and unequivocally rejected. In support of this Answer, Magnolia states the following:

¹ 10 C.F.R. § 590.302 (2022).

² Request for Rehearing of Sierra Club, FE Docket No. 13-132-LNG (May 27, 2022) (“Rehearing Request”).

³ *Magnolia LNG, LLC*, DOE/FE Order No. 3909-C (Apr. 27, 2022) (“NFTA Amendment Order”).

⁴ *Magnolia LNG, LLC*, DOE/FE Order No. 3909 (Nov. 30, 2016) (“NFTA Authorization”).

II. Background

On December 31, 2018, Magnolia submitted an application to DOE's Office of Fossil Energy and Carbon Management ("DOE/FE") seeking authorization under Section 3 of the Natural Gas Act ("NGA") to amend its authorized export capacity.⁵ As explained in the Amendment Application, due to the optimization of the design of Magnolia's proposed LNG export facility, ("Facility") the Facility would be capable of exporting up to 449 Bcf/yr (equivalent to 8.8. mtpa) of LNG on a non-additive basis.⁶ Magnolia previously received authorization from DOE to export up to 8 mtpa, equivalent to 394.2 Bcf/yr.⁷ Relatedly, on November 19, 2018, Magnolia filed an application with the Federal Energy Regulatory Commission ("FERC") seeking authorization to increase the total LNG production capacity of the Facility from 8 mtpa (934.2 Bcf/yr) to 8.8 mtpa, or 449 Bcf/yr ("FERC Amendment").⁸ To satisfy its obligations under the National Environmental Policy Act ("NEPA"), FERC staff prepared a supplemental environmental impact statement ("SEIS") to assess the environmental impacts of the FERC Amendment. On June 18, 2020, FERC approved the FERC Amendment, and found that Magnolia's proposed amendment would not have significant impacts on the environment.⁹ Sierra Club was not a party to this proceeding, nor did Sierra Club file any comments regarding the FERC Amendment.

⁵ Magnolia LNG LLC, *Application for Amendment to Long-Term Authorizations to Export Liquefied Natural Gas to Non-Free Trade Agreement and Free Trade Agreement Nations*, Docket Nos. 13-132-LNG, *et al.* (Dec. 31, 2018) ["Amendment Application"].

⁶ Amendment Application at 1-2.

⁷ *Id.* at 3-5.

⁸ Magnolia LNG LLC, *Application of Magnolia LNG LLC for Limited Amendment to Authorization Granted Under Section 3 of the Natural Gas Act*, FERC Docket No. CP19-19-000 (Nov. 19, 2018) ["FERC Amendment Application"].

⁹ *Magnolia LNG LLC*, 171 FERC ¶ 61,231 (2020) ("FERC Amendment Order").

III. Motion for Leave to Answer Rehearing Request

Although DOE's rules do not generally allow answers to applications for rehearing, DOE has permitted answers to applications for rehearing where the answer is "relevant to [DOE's] consideration of the issues" in the application for rehearing.¹⁰ Magnolia LNG submits that the instant Answer is relevant to DOE's consideration of Sierra Club's Rehearing Request because the Answer responds directly to the misplaced assertions of fact and law that Sierra Club proffers in its Rehearing Request. Therefore, Magnolia LNG respectfully requests that DOE grant Magnolia LNG's Motion for Leave to Answer.

IV. Answer to Rehearing Request

While Sierra Club's Rehearing Request merely repeats arguments that it has raised previously, Sierra Club's continued general opposition to U.S. LNG exports should not be confused with genuine arguments that the NFTA Amendment Order was in any way insufficient or deficient.¹¹ DOE and the D.C. Circuit have considered such arguments, and explicitly rejected them. DOE should do the same here. Moreover, Sierra Club's sole argument that is specific to this proceeding—that DOE's reasoning that authorizing the additional export capacity would assist in Europe's efforts to reduce and eventually eliminate reliance on Russian natural

¹⁰ See *Alaska LNG Project LLC*, FE Docket No. 14-196-LNG, DOE/FE Order No. 3643-B at 11, Ordering Paragraph A (granting Alaska Development Corporation's Motion for Leave to Answer Sierra Club's rehearing request because it was relevant to DOE's consideration of the issues raised in the rehearing request) (April 15, 2021); see also *Magnolia LNG, LLC*, DOE/FE Order No. 3909-A at n. 23 and Ordering Paragraph (A) (Mar. 30, 2018) (granting Motion for Leave to Answer because it "is relevant to our consideration of the issues raised in Sierra Club's Rehearing Request"); *Golden Pass Products LLC*, DOE/FE Order No. 3978-A at n. 23 and Ordering Paragraph (A) (Mar. 30, (2018) (granting Motion for Leave to Answer because it "is relevant to our consideration of the issues raised in Sierra Club's Rehearing Request).

¹¹ To this end, Magnolia notes that on the same day Sierra Club submitted the Rehearing Request, Sierra Club submitted to DOE/FE a request for rehearing of DOE/FE's Order 3978-E, amending Golden Pass LNG, LLC's long-term authorization to export LNG to NFTA nations. Sierra Club's request for rehearing of Order 3978-E consists almost entirely of *identical* arguments Sierra Club raises in the Rehearing Request.

gas was arbitrary—demonstrates a real lack of understanding of both the situation in Europe and how the U.S. LNG industry can assist our European allies, as well as DOE’s public interest standard under the NGA. For these reasons, explained further herein, DOE should deny Sierra Club’s request for rehearing.

A. DOE’s Analysis of Upstream and Downstream Impacts was Sufficient.

The bulk of the Rehearing Request is nothing more than an attempt by Sierra Club to continue its campaign against the U.S. LNG industry by seeking to re-litigate issues which have been settled for nearly five years, and which DOE acknowledges in the NFTA Amendment Order.¹² Sierra Club contends that the NFTA Amendment Order was fatally flawed as it did not properly take into account the upstream and downstream greenhouse gas (“GHG”) emissions associated with the increased LNG export volumes approved in the NFTA Amendment Order.¹³ Sierra Club has raised these arguments previously, and the D.C. Circuit expressly rejected them in its precedential *Freeport* opinion.¹⁴

In *Freeport*, the D.C. Circuit upheld DOE’s finding that the indirect effects associated with LNG exports—including alleged export-induced upstream natural gas production and downstream emissions “resulting from transport and usage abroad”¹⁵—were not reasonably foreseeable such that they were required to have been considered in DOE’s NEPA review. The *Freeport* panel accepted DOE’s finding that while it could describe the upstream impacts from export-induced natural gas production *generally*, DOE was unable to make “specific projections about environmental impacts stemming from...export-induced natural gas production” at either

¹² NFTA Amendment Order at 20-22.

¹³ Rehearing Request at 5-11, 15-18.

¹⁴ *Sierra Club v. U.S. Dep’t of Energy*, 867 F.3d 189 (D.C. Cir. 2017) (“*Freeport*”).

¹⁵ *Freeport*, 867 F.3d at 202.

the local or regional level.¹⁶ The D.C. Circuit explained that DOE was not obligated to delve into the types of minutia Sierra Club asserted DOE must in order to assess upstream impacts from export-induced natural gas production, characterizing Sierra Club's arguments as "not serious[]," and the type of analysis insisted upon by Sierra Club as "more misleading than informative."¹⁷ The D.C. Circuit in *Freeport* further noted that Sierra Club acknowledged that DOE's 2014 Life Cycle Analysis ("2014 LCA") provided precisely the type of information regarding upstream GHG emissions from export-induced natural gas production that Sierra Club insisted was necessary.¹⁸

With regard to, The D.C. Circuit's holding in *Freeport* also squarely addresses Sierra Club's arguments assailing DOE's assessment of downstream emissions from U.S. LNG exports. In *Freeport*, the D.C. Circuit upheld DOE's use of the 2014 *Addendum to Environmental Review Documents Concerning Exports of Natural Gas from the United States* ("Addendum")¹⁹ and the 2014 LCA.²⁰ The D.C. Circuit defined Sierra Club's insistence that DOE's analysis was deficient for not having explored whether U.S. LNG would compete with renewables in foreign markets as nothing more than "'flyspecking'" and would result in an analysis that was far too speculative to be useful.²¹ The D.C. Circuit ultimately held that there was "nothing arbitrary" about DOE's downstream GHG emissions analysis.²² So comprehensive and conclusive was the D.C. Circuit's careful dismantling of Sierra Club's arguments in *Freeport* that shortly after

¹⁶ *Id.* at 201.

¹⁷ *Id.* at 211.

¹⁸ *Id.* at 202.

¹⁹ 79 Fed. Reg. 48,132 (Aug. 15, 2014).

²⁰ 79 Fed. Reg. 32,260 (June 4, 2014).

²¹ *Freeport*, 867 F.3d at 214 (citing *Myersville Citizen for a Rural Cmty., Inc. v. FERC*, 783 F.3d 1301, 1324 (D.C. Cir. 2015)).

²² *Id.*

Freeport was issued, Sierra Club voluntarily withdrew a remaining petition for review of a DOE LNG export authorization.²³

DOE's NFTA Amendment Order in this proceeding was precisely in line with the analysis the D.C. Circuit upheld in *Freeport*. In the NFTA Amendment Order, DOE explained that while there are environmental impacts associated with natural gas production, these impacts generally do not require a finding that exports of LNG to NFTA nations are inconsistent with the public interest.²⁴ DOE further appropriately reasoned that location-specific environmental impacts are addressed by the proper federal, state, or local regulators, and per *Freeport*, are not reasonably foreseeable indirect effects under NEPA.²⁵ The NFTA Amendment Order similarly relied on the Addendum, 2014 LCA, as well as a 2019 update to the 2014 LCA²⁶ to again determine, consistent with *Freeport*, that while U.S. LNG exports offsetting global coal use for power production could lower GHG emissions on a "per unit of energy consumed basis," DOE was unable to determine specifically whether U.S. LNG exports overall would lower global GHG emissions, as U.S.-exported LNG will compete with different fuel sources in different countries, each with different market dynamics.²⁷ Any attempt to model how U.S. LNG exports would impact global GHG emissions, DOE explained, would be far too speculative to be useful²⁸—and therefore not required under NEPA.

²³ *Sierra Club v. U.S. Dep't of Energy*, No. 16-1426, Per Curiam Order (D.C. Cir. Jan. 30, 2018) (granting Sierra Club's unopposed motion for voluntarily dismissal). Magnolia notes that while DOE denied Sierra Club's request for rehearing of the NFTA Authorization, authorizing Magnolia to export 8.0 mtpa of LNG to NFTA Nations, Sierra Club did not seek review of these orders at federal court.

²⁴ NFTA Amendment Order at 55-56.

²⁵ *Id.* (citing *Freeport*, 367 F.3d at 198-199). Not insignificantly, the D.C. Circuit in *Freeport* also acknowledged that DOE's obligation to assess alleged export-induced upstream production impacts is further limited by the fact that DOE "lacks any authority to control the locale or amount of export-induced gas production, much less any of its harmful effects." *Freeport*, 367 F.3d at 212.

²⁶ *Life Cycle Greenhouse Gas Perspective on Exporting Liquefied Natural Gas From the United States: 2019 Update*, (DOE/NETL-2019/2041) (Sept. 12, 2019) ("2019 LCA Update").

²⁷ NFTA Amendment Order at 56-58.

²⁸ *Id.* at 58.

Sierra Club offers no serious arguments that the NFTA Amendment Order was insufficient under either the NGA or NEPA. As discussed above, the vast majority of the arguments in the Rehearing Request are ones that DOE and the D.C. Circuit have expressly and repeatedly rejected. -Sierra Club now contends that the NFTA Amendment Order is arbitrary and capricious because it failed to take into account U.S. and international GHG emissions reductions targets.²⁹ This latest concocted argument from the Sierra Club fails for multiple reasons. Despite Sierra Club's suggestions to the contrary, the United States currently does not have a binding, enforceable GHG emissions reporting and reduction scheme against which DOE could compare LNG export applications such as Magnolia's. Nor does Sierra Club cite to any legally enforceable global GHG reduction schemes that DOE is required to comply with. In fact, the opposite of what Sierra Club suggests is true—if a federal regulatory agency such as DOE were to reject a proposal as being inconsistent with aspirational, non-binding domestic or international GHG reduction goals, such a rejection would assuredly be found to be arbitrary and capricious upon appeal. Moreover, Sierra Club's insistence that the NFTA Amendment Order was arbitrary because it did not recognize that increased exports of U.S. LNG would increase global emissions ignores DOE's finding, upheld by the D.C. Circuit in *Freeport*, that the impact (positive or negative) of U.S. LNG exports on domestic or global GHG emissions cannot be estimated with any reasonable degree of certainty.³⁰ If the increase or decrease in domestic or global GHG emissions from U.S. LNG exports cannot be estimated accurately, then such exports cannot be inconsistent with non-binding emissions reduction goals.

²⁹ Rehearing Request at 5-11.

³⁰ NFTA Amendment Order at 55-58.

B. **DOE's Public Interest Finding Appropriately Considered the European Situation.**

Magnolia respectfully urges DOE to disregard Sierra Club's assertion that the NFTA Amendment Order was arbitrary in stating that the increase in export capacity would assist efforts to help international markets, including Europe, reduce and eliminate reliance on Russian natural gas.³¹ Sierra Club contends that the Facility will enter commercial service too late to help Europe in the short-term, and that Europe's long-term natural gas needs can be met by existing authorizations, as well as switching from natural gas to renewable energy.³² Sierra Club's arguments demonstrate a fundamental misunderstanding of the global energy market, as well as the reasoning behind DOE's discussion of the benefits of the global trade of U.S. LNG in the NFTA Amendment Order. DOE properly stated that generally a "transparent international market for natural gas with diverse sources of supply" provides benefits to both the U.S. and its allies.³³ The NFTA Amendment Order did not rely *solely* on President Biden's commitment to provide additional supplies of LNG to Europe through at least 2030 in making this statement, however.³⁴ Rather, DOE simply cited the situation in Ukraine and the desire for European nations to eliminate their reliance on Russian natural gas as an example of the benefits of exports of U.S. LNG to NFTA nations. Allowing additional U.S. LNG to continue to diversify international markets not only reduces global reliance on gas from nations such as Russia, but also increases the volume of LNG available globally.³⁵ With European demand for U.S. LNG

³¹ Rehearing Request at 12-15.

³² *Id.*

³³ NFTA Amendment Order at 53.

³⁴ White House, *FACT SHEET: United States and European Commission Announce Task Force to Reduce Europe's Dependence on Russian Fossil Fuels*, (Mar. 25, 2022) available at <https://www.whitehouse.gov/briefing-room/statements-releases/2022/03/25/fact-sheet-united-states-and-european-commission-announce-task-force-to-reduce-europes-dependence-on-russian-fossil-fuels/>.

³⁵ NFTA Amendment Order at 53.

already at high levels,³⁶ and with international demand for LNG projected to outpace supply for years to come,³⁷ additional U.S. supplies of LNG will be necessary to ensure that our international partners have access to sufficient supplies of LNG, and are not forced to rely on Russian gas. Magnolia looks forward to furthering the efforts DOE set forth to ensure adequate supplies of U.S. LNG are available to America's trading partners for the foreseeable future.

Despite Sierra Club's disingenuous attempt to characterize the NFTA Amendment Order's public interest determination as relying solely or even heavily on the ability of the additional volumes of LNG aiding Europe,³⁸ this was just one aspect of DOE's public interest finding. As DOE explained in the NFTA Amendment Order, increasing U.S. LNG exports to NFTA nations is a factor that "advance[s] the public interest" that is "distinct from and additional to" the other economic benefits of the international trade of LNG that DOE discussed in the NFTA Amendment Order.³⁹ Sierra Club raises no issue with those benefits. Moreover, Sierra Club fails to acknowledge the fact that Section 3 of the NGA sets forth a "general presumption favoring [export] authorization" and that DOE considers various factors in its public interest reviews.⁴⁰ Sierra Club's prior attempts to cast doubt on DOE's public interest findings by focusing on a single issue have been rejected,⁴¹ and DOE should remain steadfast in its approach to the public interest benefits of the export of U.S. LNG and reject Sierra Club's efforts

³⁶ U.S. Energy Information Administration, *U.S. Liquefied Natural Gas Exports to Europe Increased During the First 4 Months of 2022*, (June 7, 2022) available at <https://www.eia.gov/todayinenergy/detail.php?id=52659>

³⁷ Shell, *LNG Outlook 2022* at 28, available at <https://www.shell.com/energy-and-innovation/natural-gas/liquefied-natural-gas-lng-outlook-2022.html#i>

³⁸ Rehearing Request at 12-15.

³⁹ NFTA Amendment Order at 53.

⁴⁰ *Freeport*, 867 F.3d at 216.

⁴¹ *Id.* (noting that whereas DOE considers several factors in its public interest determination, Sierra Club only claimed that environmental factors weighed against the public interest finding, and that this was insufficient "to overcome the presumption in favor of exports.")

to challenge that approach, knowing that DOE’s approach is sound and would be upheld on review.

C. **DOE’s Adoption of FERC’s SEIS was Appropriate.**

Sierra Club argues that DOE’s environmental analysis was insufficient under NEPA, as it adopted and relied upon FERC’s flawed SEIS.⁴² Sierra Club contends that the SEIS failed to assess the upstream and downstream impacts of exports, and that DOE cannot have “cured” this “defective NEPA document” by incorporating other materials (*i.e.*, the Addendum, 2014 LCA, and 2019 LCA Update.)⁴³ Sierra Club further argues that “NEPA does not permit DOE to fragment its environmental review across multiple documents[.]”⁴⁴ These arguments again—either intentionally or inadvertently—misstate and/or ignore precedent and seek to mislead DOE.

At the outset, Magnolia notes that Sierra Club’s assertion that NEPA does not permit DOE to adopt FERC’s SEIS and add its own independent analysis to it is inconsistent with the D.C. Circuit’s opinion in *Freeport*. There, the D.C. Circuit stated that “[w]here multiple federal agencies have authority over different aspects of the same project, agencies may coordinate review, and may incorporate one another’s analysis.”⁴⁵ With FERC acting as the lead agency for purposes of conducting the NEPA analysis, and DOE as a cooperating agency, NEPA allows DOE to “adopt [FERC’s] environmental analysis as its own for purposes of any *additional* NEPA review triggered by an export-authorization request.”⁴⁶ By stating that DOE was allowed to adopt FERC’s environmental analysis, and determine whether any “additional NEPA review” was necessary, the D.C. Circuit clearly authorized DOE to supplement the SEIS with the

⁴² Rehearing Request at 16-17.

⁴³ *Id.*

⁴⁴ *Id.* at 17.

⁴⁵ *Freeport*, 367 F.3d at 205.

⁴⁶ *Id.* (citing *Sierra Club v. FERC*, 827 F.3d 36, 42 (D.C. Cir. 2016) (“*Freeport 2016*”) (emphasis added)).

Addendum, 2014 LCA, and 2019 LCA Update. Regarding the Sierra Club’s assertion that FERC’s SEIS was flawed for not assessing the “upstream or downstream impacts of exports,” it is well settled that FERC is under no obligation to do so.⁴⁷

D. Sierra Club’s Categorical Exclusion Argument Should be Discarded.

Finally, Sierra Club states that while “DOE does not claim that [the NFTA Amendment Order] could be categorically excluded from NEPA review,” it would be unlawful if DOE were to find that such increases in authorized export capacity were categorically excluded.⁴⁸ Sierra Club itself acknowledges that DOE never stated that this project was categorically excluded from NEPA review, and that this was “not an error.”⁴⁹ As this argument does not raise an issue with regard to a finding in the NFTA Amendment Order, and is not germane to this proceeding, DOE should dismiss it summarily.

⁴⁷ See *Freeport 2016*, 827 F.3d at 49 (stating that because DOE’s decision of whether to allow an export “breaks the NEPA causal chain and absolves [FERC] of responsibility to include in its NEPA analysis” factors FERC cannot act on - *i.e.*, impacts from upstream natural gas production); see also *Sierra Club v. FERC*, 827 F.3d 59, 68-69 (D.C. Cir. 2016) (explaining that *Freeport 2016* established the principle that because FERC only authorizes the construction and operation of LNG terminals - not the export of LNG as a commodity - FERC is not required to consider the indirect effects of the export of LNG); *WildEarth Guardians v. Zinke*, 368 F. Supp.3d 41, 73 (D.D.C. 2019) (noting that *Freeport 2016* held that “FERC, in authorizing upgrades to natural gas shipping terminals, was not required to address the environmental effects of gas exports flowing through the terminals.”)

⁴⁸ Rehearing Request at 18-19.

⁴⁹ *Id.* at 18.

V. Conclusion

WHEREFORE, for the foregoing reasons, DOE should grant Magnolia's Motion for Leave to Answer, and deny Sierra Club's Rehearing Request. DOE should reaffirm its authorization for Magnolia LNG to export LNG to non-free trade agreement nations.

Respectfully submitted,

/s/ David L. Wochner

David L. Wochner

Timothy J. Furdyna

K&L Gates LLP

1601 K Street, N.W.

Washington, DC 20006

(202) 778-9000

david.wochner@klgates.com

tim.furdyna@klgates.com

Counsel for Magnolia LNG, LLC

Dated: June 13 2022

CERTIFICATE OF SERVICE

I certify that I have this 13th day of June, 2022, serviced copies of the foregoing document filed with DOE/FE on the designated representatives of all of the parties to this proceeding, in accordance with 10 C.F.R. § 590,107(a)

Dated: June 13, 2022

/s/ Timothy J. Furdyna
Timothy J. Furdyna
Counsel for Magnolia LNG, LLC