

UNITED STATES OF AMERICA

DEPARTMENT OF ENERGY

OFFICE OF FOSSIL ENERGY AND CARBON MANAGEMENT

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MAGNOLIA LNG, LLC

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DOCKET NO. 13-132-LNG

ORDER DENYING REQUEST FOR REHEARING OF  
ORDER AMENDING LONG-TERM AUTHORIZATION TO EXPORT LIQUEFIED  
NATURAL GAS TO NON-FREE TRADE AGREEMENT NATIONS

DOE/FECM ORDER NO. 3909-D

JUNE 24, 2022

## I. INTRODUCTION

On April 27, 2022, the Office of Fossil Energy and Carbon Management of the Department of Energy (DOE/FECM)<sup>1</sup> issued DOE/FECM Order No. 3909-C (the Order or Order No. 3909-C)<sup>2</sup> to Magnolia LNG, LLC (Magnolia LNG), under section 3(a) of the Natural Gas Act (NGA).<sup>3</sup> In the Order, DOE amended Magnolia LNG’s existing long-term authorization to export domestically produced liquefied natural gas (LNG) to non-free trade agreement (non-FTA) countries<sup>4</sup> by increasing Magnolia LNG’s approved export volume from the equivalent of 394.2 to 449 billion cubic feet per year (Bcf/yr) of natural gas.<sup>5</sup>

DOE gave public notice of Magnolia LNG’s application for limited amendment<sup>6</sup> (Amendment Application) in the *Federal Register* on February 1, 2019 (Notice of Amendment Application), and invited interested persons to submit protests, comments, motions to intervene, or notices of intervention addressing the Amendment Application no later than April 2, 2019.<sup>7</sup> DOE stated in the Notice of Amendment Application that “[a] decisional record on the [Amendment] Application will be developed through responses to this Notice by parties, including the parties’ written comments and replies thereto.”<sup>8</sup>

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<sup>1</sup> The Office of Fossil Energy changed its name to the Office of Fossil Energy and Carbon Management on July 4, 2021.

<sup>2</sup> *Magnolia LNG, LLC*, DOE/FECM Order No. 3909-C, Docket No. 13-132-LNG, Order Amending Long-Term Authorization to Export Liquefied Natural Gas to Non-Free Trade Agreement Nations (April 27, 2022) [hereinafter Order or Order No. 3909-C].

<sup>3</sup> 15 U.S.C. § 717b(a). The authority to regulate the imports and exports of natural gas, including liquefied natural gas, under section 3 of the NGA has been delegated to the Assistant Secretary for FECM in Redefinition Order No. S4-DEL-FE1-2021, issued on March 25, 2021.

<sup>4</sup> Non-FTA countries are countries with which the United States has not entered into a free trade agreement (FTA) requiring national treatment for trade in natural gas, and with which trade is not prohibited by U.S. law or policy.

<sup>5</sup> All other terms and conditions of Order No. 3909, as amended, remained the same. *See* Order No. 3909-C, at 67.

<sup>6</sup> Magnolia LNG LLC, Application for Amendment to Long-Term Authorization to Export Liquefied Natural Gas to Non-Free Trade Agreement Nations, Docket No. 13-132-LNG (Dec. 31, 2018).

<sup>7</sup> Magnolia LNG LLC, Application for Amendment to Long-Term Authorization to Export Liquefied Natural Gas to Non-Free Trade Agreement Nations, 84 Fed. Reg. 1111 (Feb. 1, 2019).

<sup>8</sup> *Id.* at 1112.

DOE only received a timely filing by Industrial Energy Consumers of America (IECA)<sup>9</sup> opposing Magnolia LNG's Amendment Application in response to the Notice of Amendment Application. DOE construed IECA's filing as a motion to intervene and protest and granted IECA's motion to intervene.<sup>10</sup> DOE issued Order No. 3909-C on April 27, 2022. On May 27, 2022 — the last day of the rehearing period — Sierra Club filed a request for rehearing of Order No. 3909-C.<sup>11</sup> In its Request, Sierra Club did not address any procedural basis for its filing but made three chief substantive arguments, alleging (i) DOE's climate change analysis was deficient under the National Environmental Policy Act of 1969 (NEPA)<sup>12</sup> and NGA; (ii) DOE's conclusions on the additional exports benefits for Europe were arbitrary; and (iii) DOE's NEPA analysis was insufficient.<sup>13</sup> For purposes of the instant order, DOE only addresses the procedural issues.

On June 13, 2022, Magnolia LNG filed a Motion for Leave to Answer (Motion) and Answer to Sierra Club's Request for Rehearing (Answer), in which Magnolia LNG opposed the Request on only substantive grounds.<sup>14</sup> Magnolia LNG asks DOE to reject Sierra Club's Request because of Sierra Club's repeated arguments made previously and which DOE and the U.S. Court of Appeals for the District of Columbia have repeatedly and unequivocally rejected.<sup>15</sup> Upon review, DOE finds that Sierra Club's Request raising new or repeated arguments in opposition to

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<sup>9</sup> Industrial Energy Consumers of America, Notice of Intervention, Protest and Comment, Docket No. 13-132-LNG (Apr. 2, 2019).

<sup>10</sup> Order No. 3909-C at 30, 72.

<sup>11</sup> Sierra Club, Request for Rehearing of DOE/FECM Order No. 3909-C, Amending Long-Term Authorization to Export Liquefied Natural Gas to Non-Free Trade Agreement Nations, Docket No. 13-132-LNG (May 27, 2022) [hereinafter Request].

<sup>12</sup> 42 U.S.C. § 4321 *et seq.*

<sup>13</sup> Request at 3.

<sup>14</sup> Magnolia LNG, LLC, Motion for Leave to Answer and Answer of Magnolia LNG, LLC to Request for Rehearing of Sierra Club, Docket No. 13-132-LNG (June 13, 2022) [hereinafter Magnolia LNG Motion and Answer].

<sup>15</sup> Magnolia LNG Motion and Answer at 1, 3.

Order No. 3909-C does not comply with the procedures contained in DOE's regulations.<sup>16</sup>

Accordingly, for the reasons discussed below, DOE grants Magnolia LNG's Motion as responsive to the Request and for completeness of the record and dismisses Sierra Club's Request in its entirety.

## **II. BACKGROUND**

In 2013, Magnolia LNG filed its original application seeking to export LNG from the proposed Magnolia LNG Terminal to non-FTA countries.<sup>17</sup> Sierra Club timely filed a motion to intervene and protest that application.<sup>18</sup> In November 2016, DOE granted Magnolia LNG's application in Order No. 3909<sup>19</sup> and, in doing so, granted Sierra Club's motion to intervene to oppose Magnolia LNG's 2013 application. Sierra Club timely sought rehearing of Order No. 3909, which DOE denied in Order No. 3909-A in April 2018, finding that it had not been shown that a grant of the requested authorization is inconsistent with the public interest.<sup>20</sup>

Subsequently, on December 31, 2018, Magnolia LNG filed the new Amendment Application, seeking to amend its existing non-FTA order to export an increased volume of LNG.<sup>21</sup> DOE published a Notice of Application in the *Federal Register*, inviting interested parties to file protests, motions to intervene or notices of intervention (as applicable), and written comments on the Amendment Application. DOE provided a 60-day comment period ending on

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<sup>16</sup> 10 C.F.R. Part 590.

<sup>17</sup> Magnolia LNG, LLC, Application for Long-Term Authorization to Export Liquefied Natural Gas to Non-Free Trade Agreement Countries, Docket No. 13-132-LNG (Oct. 15, 2013).

<sup>18</sup> Sierra Club, Motion to Intervene, Protest, and Comment, Docket 13-132-LNG (May 23, 2014).

<sup>19</sup> *Magnolia LNG, LLC*, DOE/FE Order No. 3909, Docket No. 13-132-LNG, Opinion and Order Granting Long-Term, Multi-Contract Authorization to Export Liquefied Natural Gas by Vessel from the Proposed Magnolia LNG Terminal to be Constructed in Lake Charles, Louisiana, to Non-Free Trade Agreement Nations (Nov. 30, 2016).

<sup>20</sup> *See Magnolia LNG, LLC*, DOE/FE Order No. 3909-A, Docket No. 13-132-LNG, Opinion and Order Granting Motion for Leave to Answer Request for Rehearing and Denying Request for Rehearing, at 8 (Apr. 2, 2018); *See also* Order No. 3909-C at 1-7 (discussing background of proceeding).

<sup>21</sup> 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 No. 13-132-LNG (Dec. 31, 2018).

April 2, 2019.<sup>22</sup> Only IECA submitted a Notice of Intervention, Protest, and Comment in response to the Notice of Amendment Application that DOE granted in Order No. 3909-C.<sup>23</sup> Sierra Club submitted no filing in response to the Notice of Amendment Authorization to be made a part of the decisional record of the Amendment Application.

On May 27, 2022—the last day of the rehearing period and nearly 38 months after the comment period closed on the Notice of Amendment Application—Sierra Club filed a Request for Rehearing, raising arguments opposing Magnolia LNG’s Amendment Application for the first time.

### **III. DISCUSSION AND CONCLUSIONS**

On June 13, 2022, Magnolia LNG filed its Motion and Answer to Sierra Club’s Request.<sup>24</sup> Magnolia LNG’s Answer is responsive to Sierra Club’s Request. Sierra Club did not oppose Magnolia LNG’s Motion. Accordingly, we grant Magnolia LNG’s Motion for completeness of the record.

Moreover, under NGA section 19(a), a party aggrieved by an order issued by DOE may file a request for rehearing within 30 days after the issuance of the order.<sup>25</sup> When acting upon such request, DOE has the “power to grant or deny rehearing or to abrogate or modify its order without further hearing.”<sup>26</sup>

However, after reviewing the record, we find that Sierra Club did not comply with DOE’s procedures in several respects.

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<sup>22</sup> See supra note 7.

<sup>23</sup> Order 3909-C at 72.

<sup>24</sup> See supra note 14.

<sup>25</sup> 15 U.S.C. § 717r(a).

<sup>26</sup> *Id.*

Specifically, Sierra Club disregarded the requirements on protests set forth in DOE's procedures at 10 C.F.R. §§ 590.304(c) and 590.304(e) which provide the following respectively:

A protest shall be made part of the official [DOE] docket file in the proceeding and shall be considered as a statement of position of the person filing the protest, but not as establishing the validity of any assertion upon which the decision would be based.

Protests may be filed at any time following the filing of an application, but no later than the date fixed for filing protests in the applicable [DOE] notice or order, unless a later date is permitted by the Assistant Secretary for good cause shown.

In *Sabine Pass Liquefaction, LLC (Sabine Pass)*, DOE explained that “the instant matter was publicly noticed in the Federal Register and interested persons were given sixty days from the date of the notice in which to file motions to intervene.”<sup>27</sup> DOE stated that it established a “sixty day notice period ... in recognition of the need to afford the public sufficient time to consider the precedential nature of the proceeding.”<sup>28</sup> DOE explained that, “at some point, the opportunity for interested persons to intervene as parties in a proceeding must close” to “ensure that the resolution of a proceeding and the issuance of a final order are not unduly delayed by inattentiveness or intentional delay.”<sup>29</sup>

Similar reasoning applies here, where Sierra Club did not protest the Amendment Application within the 60-day comment period set forth in the Notice of Amendment Application. Instead, Sierra Club waited until DOE issued its final Order 3909-C to challenge the increased export volume. Almost 10 years ago, DOE concluded in *Sabine Pass* that “Sierra Club, like other members of the public, had a responsibility to comply with the filing deadlines established in the Notice of Application if it wanted to raise issues regarding the environmental

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<sup>27</sup> *Sabine Pass Liquefaction, LLC*, Docket No. 10-111-LNG, Procedural Order on Late Filed Proceedings, at 5 (March 25, 2011).

<sup>28</sup> *Id.*

<sup>29</sup> *Id.*

impacts of granting the instant application.”<sup>30</sup> There, Sierra Club filed its protest 16 months out of time, and DOE dismissed the motion to intervene, noting that allowing a 16-month late protest “would unnecessarily delay the final agency action and unfairly prejudice the parties to the proceeding.”<sup>31</sup> In the instant application, Sierra Club filed its protest to the Amendment Application nearly 38 months out of time — a lateness significantly longer than the 16-months delay in *Sabine Pass* — raising issues for the first time after DOE issued its final Order 3909-C.

By contrast, Sierra Club’s submissions in prior proceedings demonstrate its awareness of the requirement to timely file its protest opposing Magnolia LNG’s Amendment Application during the comment period set forth in the Notice of Amendment Application and not for the first time upon rehearing of final Order 3909-C. For example, in *Jordan Cove Energy Project, L.P.* (Jordan Cove), Sierra Club filed in 2012<sup>32</sup> a motion to intervene, comment, and protest Jordan Cove’s original application in Docket No. 12-32-LNG<sup>33</sup> that DOE granted in its conditional order, DOE/FE Order No. 3413.<sup>34</sup>

Subsequently, in 2015, Jordan Cove filed an application to amend Order No. 3413 to increase the authorized export volume from 292 Bcf/yr to 350 Bcf/yr of natural gas.<sup>35</sup> In

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<sup>30</sup> *Sabine Pass Liquefaction, LLC*, Order No. 2961-A, Docket No. 10-111-LNG, Final Opinion and Order Granting Long-Term Authorization to Export Liquefied Natural Gas from Sabine Pass LNG Terminal to Non-Free Trade Agreement Nations, at 25 (Aug. 7, 2012).

<sup>31</sup> *Id.* at 26.

<sup>32</sup> Sierra Club, Motion to Intervene, Protest, and Comments, Docket No. 12-32-LNG, at 1 (Aug. 6, 2012).

<sup>33</sup> *Jordan Cove Energy Project, L.P.*, Application of Jordan Cove Energy Project, L.P. for Long-Term Authorization to Export Liquefied Natural Gas to Non-Free Trade Agreement Nations, Docket No. 12-32-LNG (Mar. 23, 2012). See also *Alaska LNG Project LLC*, Order No. 3643-B, Docket No. 14-96-LNG, Order on Rehearing, at 2, fn 7, and at 5 (Apr. 15, 2021) (noting DOE’s grant of Sierra Club’s request for rehearing, where Sierra Club timely filed for rehearing on Sept. 21, 2020, after it had earlier moved to intervene and protest on Nov. 17, 2014 within the comment period of the notice of application).

<sup>34</sup> *Jordan Cove Energy Project L.P.*, DOE/FE Order No. 3413, Docket No. 12-32-LNG, Order Conditionally Granting Long-Term Multi-Contract Authorization to Export Liquefied Natural Gas by Vessel from the Jordan Cove LNG Terminal in Coos Bay, Oregon, to Non-Free Trade Agreement Nations at 136 and at 158 (Ordering Para. Q). (Mar. 24, 2014); amended by DOE/FE Order No. 3413-A, Final Opinion and Order Granting Long-Term Authorization to Export Liquefied Natural Gas to Non-Free Trade Agreement Nations at 9 (July 6, 2020).

<sup>35</sup> See *Jordan Cove Energy Project L.P.*, Amendment of Application for Long-Term Authorization to Export Liquefied Natural Gas to Non-Free Trade Agreement Nations, Docket No. 12-32-LNG (Oct. 5, 2015).

response to the notice of amendment in the Federal Register, Sierra Club timely filed an “Answer to Amendment to Application and Protest” expressing opposition to Jordan Cove’s amendment to increase its requested export volume. In that answer, Sierra Club states that it “protested the initial application, and protests this amendment.”<sup>36</sup>

Further, in 2018, Jordan Cove filed yet another application to amend Order No. 3413,<sup>37</sup> and Sierra Club timely filed yet another protest to that application. In that protest, Sierra Club stated that, “[t]his protest is submitted in response to the [Federal Register] notice issued by DOE on April 19, 2018,<sup>38</sup> ... Sierra Club has already been granted intervenor status in [this docket].”<sup>39</sup>

In the instant Amendment Application, Sierra Club chose not to contest it and, in any event, has not made any arguments to show good cause for its actions and inaction. Where an intervenor or person did not timely contest an application and fails to show good cause for its failure but raises objections for the first time on rehearing of a final order, DOE finds that reconsideration of Order No. 3909-C would upend DOE’s established administrative process, undermining the public interest in administrative efficiency and finality and rendering its comment period meaningless.<sup>40</sup> It would also exacerbate fairness and due process concerns for parties seeking finality in administrative decisions.

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<sup>36</sup> Sierra Club, Answer to Amendment to Application and Protest, Docket No. 12-32-LNG, at 1 (Mar. 23, 2016).

<sup>37</sup> Jordan Cove Energy Project L.P., Application to Amend Long-Term Authorizations to Export Liquefied Natural Gas to Free Trade Agreement Countries and Non-Free Trade Agreement Countries and Amendment to Application for Long-Term Authorization to Export Liquefied Natural Gas to Non-Free Trade Agreement Countries, Docket Nos. 11-127-LNG and 12-32-LNG (Feb. 6, 2018).

<sup>38</sup> *Jordan Cove Energy Project, L.P.*, Application to Amend Long-Term, Conditional Authorization to Export Liquefied Natural Gas to Non-Free Trade Agreement Nations and to Amend Application for Long-Term Authorization to Export Liquefied Natural Gas to Non-Free Trade Agreement Nations, 83 Fed. Reg. 17,406 (Apr. 19, 2018).

<sup>39</sup> Sierra Club, Protest, Docket No. 12-32-LNG, at 1 (May 9, 2018).

<sup>40</sup> See, generally, *Tennessee Gas Pipeline Company v. Federal Energy Regulatory Commission*, 871 F.2d 1099 (D.C. Cir. 1989).



In addition, under 10 C.F.R § 590.310, DOE may limit the time a party may seek additional procedures and may prohibit such requests after issuance of an order if DOE sets no earlier time limit. Section 590.310 provides in relevant part as follows:

Failure to request additional procedures within the time specified in the notice of application or in the notice of procedure, if applicable, shall constitute a waiver of that right unless the Assistant Secretary for good cause shown grants additional time for requesting additional procedures. If no time limit is specified in the notice or order, additional procedures may be requested at any time prior to the issuance of a final opinion and order.

Sierra Club’s “wait-and-see” approach to objecting to the Amendment Application upon rehearing after DOE issues an order is improper. Sierra Club has not offered a procedural basis for its actions nor shown good cause. For the same reason, DOE rejects Sierra Club’s suggestion<sup>41</sup> that DOE amend and/or rescind existing export authorizations under 15 U.S.C. § 717o in the context of a single authorization holder’s proceeding.

### **ORDER**

Pursuant to Sections 3 and 19 of the Natural Gas Act, and for the reasons set forth above, it is ordered that:

- A. Magnolia LNG’s Motion for Leave to Answer Sierra Club’s Request for Rehearing is granted.
- B. Sierra Club’s Request for Rehearing is denied.

Issued in Washington, D.C. on June 24, 2022.

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Amy R. Sweeney  
Director, Office of Regulation, Analysis, and Engagement  
Office of Resource Sustainability

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<sup>41</sup> Request at 14.