

**UNITED STATES OF AMERICA  
DEPARTMENT OF ENERGY  
OFFICE OF FOSSIL ENERGY AND CARBON MANAGEMENT**

---

MAGNOLIA LNG, LLC

---

)  
)  
)  
FE Docket No. 13-132-LNG

ANSWER OF MAGNOLIA LNG, LLC IN OPPOSITION TO THE MOTION TO INTERVENE  
AND PROTEST OF PUBLIC CITIZEN, INC. AND MOTION TO DISMISS

Pursuant to Sections 590.303(e), 590.304(f), and 590.302(a) of the Department of Energy’s (“DOE”) regulations,<sup>1</sup> Magnolia LNG, LLC (“Magnolia”) submits this Answer to the Motion to Intervene and Protest of Public Citizen, Inc. (“Public Citizen”) and Motion to Dismiss Public Citizen’s protest, filed with DOE’s Office of Fossil Energy and Carbon Management (“DOE/FECM”) on May 4, 2023 in FE Docket No. 13-132-LNG.<sup>2</sup> In support of this Answer and Motion to Dismiss, Magnolia states the following:

**I. Background**

Through two separate authorizations, Magnolia is authorized to export up to 8.8 million metric tonnes per annum (“MTPA”) of liquefied natural gas (“LNG”) to non-free trade agreement (“non-FTA”) nations.<sup>3</sup> Order Nos. 3909 and 3909-C require Magnolia to commence

---

<sup>1</sup> 10 C.F.R. §§ 590.302(a), 590.303(e), 590.304(f).

<sup>2</sup> *Magnolia LNG, LLC*, Motion to Intervene and Protest of Public Citizen, Inc., FE Docket No. 13-132-LNG (May 4, 2023) (“Public Citizen Filing”). This Answer and Motion to Dismiss is only with regard to the Public Citizen Filing; Magnolia reserves the right to respond to other comments, interventions, or protests filed in this docket.

<sup>3</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) (“Order No. 3909”) (authorizing the export of up to 8.0 MTPA of LNG to non-FTA nations); *Magnolia LNG, LLC*, DOE/FE 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) (“Order No. 3909-C”) (authorizing the export of an additional 0.8 MTPA of LNG to non-FTA nations, for a non-FTA export capacity of 8.8 MTPA).

service from its facility no later than November 30, 2023. On March 20, 2023, Magnolia filed with DOE/FECM a request for a limited extension of the deadline to commencement service (“Commencement Deadline”) under its non-FTA export authorizations, until April 15, 2026.<sup>4</sup>

On April 14, 2023, DOE/FECM issued notice of the Extension Request, and set a deadline of May 15, 2023 for all protests, motions to intervene, and comments in response to the Extension Request.<sup>5</sup> The April 15 Notice states specifically that all protests and motions to intervene “must meet the requirements specified by the regulations in 10 CFR Part 590.”<sup>6</sup> On May 4, 2023, Public Citizen filed a motion to intervene and protest of the Extension Request.<sup>7</sup>

## **II. Answer**

### **a. Public Citizen’s Motion to Intervene Should be Rejected**

Section 590.303 of DOE’s regulations states that motions to intervene shall “set[] out clearly and concisely the facts upon which the petitioner's claim of interest is based” as well as “the position taken by the movant and the factual and legal basis for such positions in order to advise the parties and the Assistant Secretary as to the specific issues of policy, fact, or law to be raised or controverted.”<sup>8</sup> The April 15 Notice informed all interested parties that motions to intervene in this proceeding must meet these requirements.<sup>9</sup>

Public Citizen makes no attempt to meet the requirements of Section 590.303. In seeking to intervene, the Public Citizen Filing merely states that Public Citizen “moves to intervene in this proceeding” and briefly describes the nature of Public Citizen, as well as the expertise of

---

<sup>4</sup> *Magnolia LNG, LLC*, Request of Magnolia LNG, LLC for Limited Extension to Start Date of Term of Authorization, DOE/FECM Docket No. 13-132-LNG (Mar. 20, 2023) (“Extension Request”).

<sup>5</sup> *Magnolia LNG, LLC*, Request of Magnolia LNG, LLC for Limited Extension to Start Date of Term of Authorization, 88 Fed. Reg. 23020 (Apr. 15, 2023) (“April 15 Notice”).

<sup>6</sup> *Id.*

<sup>7</sup> See Public Citizen Filing.

<sup>8</sup> 10 C.F.R. §§ 590.303(b)-(c).

<sup>9</sup> April 15 Notice at 23021.

Public Citizen’s Energy Program Director.<sup>10</sup> By providing such a bare, unsupported motion to intervene, Public Citizen fails to inform DOE/FECM of (1) Public Citizen’s “claim of interest” in this case, much less the facts upon which it would be based, or (2) the position of Public Citizen in this proceeding, or the factual and/or legal basis for this position. Contrary to DOE’s regulations, Public Citizen does not “advise [Magnolia] or the Assistant Secretary as to the specific issues of policy, fact, or law to be raised or controverted.”<sup>11</sup>

DOE/FECM has recently denied an attempt by Public Citizen to intervene in a commencement deadline extension proceed for failing to meet the requirements of 590.303, and should do the same here.<sup>12</sup> In *Port Arthur*, DOE/FECM found that Public Citizen, in merely stating that it “moves to intervene” in Port Arthur LNG’s own extension proceeding, “fail[ed] to set out facts upon which its claim of interest is based,” as required by 590.303.<sup>13</sup> DOE/FECM further explained that its notice of Port Arthur LNG’s application to extend its commencement deadline put Public Citizen on notice of its responsibility to meet these requirements.

This is precisely the same scenario as in *Port Arthur*. Here, Public Citizen did not set forth any claim of interest in these proceeding, let alone facts supporting such a claim. Public Citizen’s failure to do so is all the more glaring in light of Public Citizen’s acknowledgement that it “frequently intervene[s] in U.S. Department of Energy Proceedings,” and the fact here Public Citizen again filed a bare, generic intervention two weeks after DOE/FECM rejected such an intervention in *Port Arthur*.

Consistent with DOE regulations and precedent, DOE/FECM must deny Public Citizen’s motion to intervene in this proceeding. Between the April 15 Notice and Public Citizen’s participation in prior DOE/FECM proceedings, Public Citizen was aware of the requirements for

---

<sup>10</sup> Public Citizen Filing at 1.

<sup>11</sup> 10 C.F.R. §§ 590.303(b)-(c).

<sup>12</sup> *Port Arthur LNG, LLC*, Order Granting Application to Extend Term to Begin Exports of Liquefied Natural Gas to Free Trade Agreement Countries and to Extend Deadline to Commence Exports of Liquefied Natural Gas to Non-Free Agreement Countries” (Apr. 21, 2023), DOE/FECM Order Nos. 3698-C, 4372-B (“*Port Arthur*”).

<sup>13</sup> *Port Arthur* at 11.

interventions in DOE/FECM LNG export proceedings. Public Citizen chose not to abide by these requirements and therefore must not be rewarded by being granted party status and the rights attendant to such status in this proceeding.<sup>14</sup>

**b. Public Citizen’s Sole Reason for Protest Fails to Apply Appropriate DOE Policy**

Public Citizen’s protest of the Extension Request must also be rejected. In protesting the Extension Request, the Public Citizen Filing offers a *single* reason for its protest—that the Extension Request fails to meet the requirements of DOE’s April 21, 2023 “Policy Statement on Export Commencement Deadlines in Natural Gas Export Authorizations” (“Policy Statement”). Specifically, Public Citizen alleges that DOE/FECM must deny the Extension Request because Magnolia has not yet commenced physical construction of its facility, as required by the Policy Statement.<sup>15</sup> Public Citizen identifies no other grounds for protesting the Extension Request, only that it does not comply with the Policy Statement.

Public Citizen’s protest is entirely inconsistent with what DOE/FECM expressly stated in the Policy Statement. The Policy Statement states specifically that because the Magnolia LNG Extension Request was “filed before the issuance of this Policy Statement, *[it] will not be reviewed under this Policy Statement.*”<sup>16</sup> Because Public Citizen’s sole justification for protesting the Extension Request has no basis in fact or law, and Public Citizen offers no other rationale, Public Citizen’s protest must be rejected, as Public Citizen failed to identify a cognizable justification for its protest.

Section 590.304(a) of DOE’s regulations states that protests shall include a concise statement of the reasons for the protest,<sup>17</sup> and as noted above, the April 15 Notice set forth the

---

<sup>14</sup> 15 U.S.C. §§ 717r(a),(b) (providing intervenors in Natural Gas Act proceedings with the right to see rehearing and/or appeal of DOE orders).

<sup>15</sup> Public Citizen Filing at 2.

<sup>16</sup> Policy Statement at 20-21 (emphasis added).

<sup>17</sup> 10 C.F.R. § 590.304(a).

requirement that protests meet the requirements of 10 C.F.R. Part 590.<sup>18</sup> Eliminating Public Citizen’s blatantly erroneous assertion that the Policy Statement necessitates DOE/FECM rejecting the Extension Request, Public Citizen offers no other reason for its protest, and therefore fails to satisfy the requirements of DOE regulations. Public Citizen’s failure to meet the requirements of Section 590.304(a) of DOE’s regulations, and the express directive of the April 15 Notice, is a sufficient basis to reject Public Citizen’s protest.

Magnolia further notes, however, that Section 590.304(c) of DOE’s regulations provides that a protest “shall be considered a statement of the position of the person filing the protest.”<sup>19</sup> The April 15 Notice also states that “protests and comments received from persons who are not parties will be considered in determining the appropriate action to be taken on the [Extension] Request.”<sup>20</sup> It would be inappropriate for DOE/FECM to accept Public Citizen’s protest, and determine the appropriate action to be taken in response to the Extension Request, where Public Citizen’s protest consists of a single misapplication of DOE’s Policy Statement, and nothing more. For these reasons, Public Citizen’s protest cannot be afforded any weight in this proceeding, and must be denied.

### **III. Motion to Dismiss**

Because Public Citizen’s intervention and protest fail to comply with the requirements of 10 C.F.R. Section 590.303, thereby giving DOE/FECM nothing to consider or respond to, DOE/FECM should dismiss the Public Citizen Filing in its entirety.

In *Port Arthur*, although DOE/FECM denied Public Citizen’s motion to intervene for failing to meet DOE’s regulatory requirements for interventions, DOE/FECM accepted Public Citizen’s protest.<sup>21</sup> In accepting Public Citizen’s protest, DOE/FECM noted that DOE regulations do not specify a “particular form” for a protest, “so long as the protest

---

<sup>18</sup> April 15 Notice at 23021.

<sup>19</sup> 10 C.F.R. § 590.304(c).

<sup>20</sup> April 15 Notice at 23021.

<sup>21</sup> *Port Arthur* at 11-12.

identifies...‘a concise statement of the reasons for the protest.’”<sup>22</sup> In protesting Port Arthur’s extension request, Public Citizen explained that DOE could not extend Port Arthur’s commencement deadline without examining the impacts of such an extension on domestic energy poverty, and other impacts to the domestic energy market, including raising natural gas prices and straining energy supplies.<sup>23</sup> This, DOE/FECM found, satisfied DOE’s requirements that Public Citizen provide a “concise statement of reasons for the protest.”<sup>24</sup>

In this proceeding, unlike in *Port Arthur*, Public Citizen provides no such explanation. As discussed above, in protesting the Extension Request, Public Citizen makes the *single, erroneous* point that the Extension Request is inconsistent with the Policy Statement. Such an argument is entirely at odds with the express terms of the Policy Statement,<sup>25</sup> and therefore cannot be accepted by DOE/FECM. Aside from (incorrectly) asserting that the Policy Statement requires DOE/FECM to reject the Extension Request, Public Citizen (unlike in *Port Arthur*) does not offer any other reason for protesting the Extension Request, and evidently does not take issue with the Extension Request except for its concern that it is inconsistent with the Policy Statement. Put simply, Public Citizen does not offer a valid reason for protesting the Extension Request.

In its April 15 Notice, DOE/FECM explained that the decisional record on the Extension Request will be developed by responses to the Extension Request.<sup>26</sup> As Magnolia has demonstrated throughout this filing, the Public Citizen Filing contributes nothing of merit to this proceeding or DOE/FECM. It would be inappropriate for DOE/FECM to allow such an infirm

---

<sup>22</sup> *Id.* (citing 10 C.F.R. § 590.304(a)).

<sup>23</sup> *Port Arthur LNG, LLC*, Motion to Intervene and Protest of Public Citizen, Inc., FE Docket No. 15-95-LNG (Jan. 17, 2023).

<sup>24</sup> *Port Arthur* at 11.

<sup>25</sup> Policy Statement at 20-21 (explaining that the Extension Request will not be reviewed under the Policy Statement as it was filed prior to the issuance of the Policy Statement).

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

filing to mar its decisional record in considering the Extension Request. Accordingly, Magnolia respectfully requests<sup>27</sup> that in addition to denying Public Citizen's motion to intervene and protest of its Extension Request, that DOE entirely dismiss the Public Citizen Filing from the docket.

#### **IV. Conclusion**

For the foregoing reasons, Magnolia respectfully requests that DOE/FECM deny Public Citizen's motion to intervene and protest, and dismiss the Public Citizen Filing.

Respectfully submitted,

/s/ David L. Wochner

Adam Prestidge  
Senior Vice President  
Head of Legal and Corporate Affairs  
9950 Woodloch Forest Drive  
Suite 1500  
The Woodlands, TX 77380  
Telephone: (646) 630-0262  
legalnoticesgaslng@glenfarnecompanies.com

David L. Wochner  
Timothy J. Furdyna  
K&L Gates LLP  
1601 K Street NW  
Washington, DC 20006  
Telephone: (202) 778-9014  
david.wochner@klgates.com  
tim.furdyna@klgates.com

*Counsel for Magnolia LNG, LLC*

May 18, 2023

---

<sup>27</sup> 10 C.F.R. 590.302(a) (requiring filers of procedural motions to set forth the relief requested).

### **CERTIFICATE OF SERVICE**

I certify that I have this 18th day of May, 2023, 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)

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