

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

MAGNOLIA LNG, LLC

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FE Docket No. 13-132-LNG

**ANSWER OF MAGNOLIA LNG, LLC IN OPPOSITION TO THE MOTION TO INTERVENE
AND PROTEST OF SIERRA CLUB, ET AL. AND SUPPLEMENT TO REQUEST TO
EXTEND COMMENCEMENT DEADLINE**

Pursuant to Sections 590.303(e) and 590.304(f) of the Department of Energy’s (“DOE”) regulations,¹ Magnolia LNG, LLC (“Magnolia”) submits this Answer in Opposition (“Answer”) to the Motion to Intervene and Protest of Sierra Club, et al.,² filed with DOE’s Office of Fossil Energy and Carbon Management (“DOE/FECM”) on May 15, 2023, in FE Docket No. 13-132-LNG,³ and hereby supplements⁴ its March 20, 2023 request to extend the start date of the term of its export authorization (“Supplement”).⁵ Through this Answer and Supplement, Magnolia is providing DOE/FECM with additional information demonstrating that good cause exists to grant the Extension Request, and that the delays Magnolia has suffered in developing its

¹ 10 C.F.R. §§ 590.303(e), 590.304(f).

² Sierra Club filed on behalf of itself, Healthy Gulf, For A Better Bayou, The Vessel Project of Louisiana, and Micah 6:8 Mission. For the purposes of this filing, Magnolia refers to these groups collectively as “Sierra Club.”

³ *Magnolia LNG, LLC*, Motion to Intervene and Protest of Sierra Club, Healthy Gulf, For A Better Bayou, The Vessel Project of Louisiana, and Micah 6:8 Mission, FE Docket No. 13-132-LNG (May 15, 2023) (referred to as the “Protest”).

⁴ 10 C.F.R. § 590.204(a) (permitting supplements to applications, and requiring such supplements to be filed “whenever there are changes in material facts or conditions upon which the proposal is based”).

⁵ *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”).

project are unique to Magnolia and were due to extenuating circumstances far outside Magnolia's control, despite its diligent efforts to timely develop the project. In addition, as discussed further herein, Magnolia is clarifying that it is seeking an extension of 60 months (5 years), until November 30, 2028, to commence commercial operations. In support of this Answer, Magnolia states the following:

I. Background

Through two separate authorizations issued in 2016 and 2022, 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.⁶ Under its Non-FTA Authorization, Magnolia is required to commence service from the Magnolia LNG Project (referred to as the "Facility") no later than November 30, 2023 (referred to as the "Commencement Deadline"). On March 20, 2023, Magnolia filed the Extension Request, seeking for the first time since the original Non-FTA Authorization a limited extension of the Commencement Deadline until April 15, 2026. As explained in the Extension Request, Magnolia sought to extend its Commencement Deadline until April 15, 2026, in order to directly align its Commencement Deadline with its deadline to

⁶ *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) ("Non-FTA Authorization") (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) ("Amendment Authorization") (authorizing the export of an additional 0.8 MTPA of LNG to non-FTA nations, for a total non-FTA export capacity of 8.8 MTPA) (collectively, "Non-FTA Authorization").

complete construction under its FERC Authorization (“Construction Deadline”),⁷ as this had been a pivotal factor in DOE/FECM’s prior considerations of such requests.⁸

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.⁹

On April 21, 2023, DOE issued its new Policy Statement, which substantially altered DOE/FECM’s approach in determining whether to grant a request to extend the deadline to commence commercial operations under a non-FTA export authorization.¹⁰ In the Policy Statement, however, DOE/FECM expressly states that because Magnolia’s Extension Request was filed prior to the issuance of the Policy Statement, it would not be reviewed under the Policy Statement.¹¹ Rather, as explicated further in Section II.a. below, DOE rightly provides that the Extension Request would be reviewed under DOE’s “prior practice,” in which DOE considers,

⁷ *Magnolia LNG, LLC*, Order Granting Authorization Under Section 3 of the Natural Gas Act and Issuing Certificates, 155 FERC ¶ 61,033 (2016); *Magnolia LNG, LLC*, Order Amending Authorization Under Section 3 of the Natural Gas Act, 171 FERC ¶ 61,231 (2020) (collectively, “FERC Authorization”); *Magnolia LNG, LLC*, FERC Staff Letter Order “Re: Request for Extension of Time,” issued Oct. 7, 2020 (accession no. 2020011007-3041) (“FERC Extension of Time Order”) (extending Magnolia’s Construction Deadline to April 15, 2026).

⁸ Extension Request at 5; *U.S. Dept. of Energy*, Policy Statement on Export Commencement Deadlines in Authorizations to Export Natural Gas to Non-Free Trade Agreement Countries, 88 Fed. Reg. 25272 (issued Apr. 21, 2023) (“Policy Statement”) at 11-12.

⁹ *Magnolia LNG, LLC*, Notice of Request of Magnolia LNG, LLC for Limited Extension to Start Date of Term of Authorization, 88 Fed. Reg. 23020 (Apr. 15, 2023).

¹⁰ Policy Statement at 17-19.

¹¹ *Id.* at 20-21.

among other factors, “the project-specific factors presented in the extension application” including “unique delays and challenges faced by the authorization holder.”¹²

On May 4, 2023, Public Citizen filed a motion to intervene and protest of the Extension Request.¹³ On May 15, 2023, Sierra Club filed its Protest. On May 18, 2023, Magnolia filed an Answer in Opposition and Motion to Dismiss the Public Citizen’s Protest.¹⁴ On May 18, 2023, Public Citizen filed a motion to supplement the Public Citizen Protest.¹⁵

II. Answer

a. Standard of Review

Magnolia appreciates DOE’s express determination in the Policy Statement that the Magnolia Extension Request will not be reviewed under the new Policy Statement, but instead will be reviewed under DOE’s historic approach of assessing whether the applicant has demonstrated good cause for such an extension.¹⁶ This is the legally correct approach. Historically, U.S. jurisprudence has strongly disfavored retroactive application of agency actions, particularly where the agency action “represents an abrupt departure from well-established

¹² *Id.* at 12.

¹³ *Magnolia LNG, LLC*, Motion to Intervene and Protest of Public Citizen, Inc., FE Docket No. 13-132-LNG (May 4, 2023) (“Public Citizen Protest”).

¹⁴ *Magnolia LNG, LLC*, Answer of Magnolia LNG, LLC in Opposition to the Motion to Intervene and Protest of Public Citizen, Inc. and Motion to Dismiss, Docket No. 13-132-LNG (May 18, 2023).

¹⁵ *Magnolia LNG, LLC*, Motion to Supplement May 4 Protest, Docket No. 13-132-LNG (May 18, 2023) (“Public Citizen Supplement”). Through this Answer, Magnolia also responds to the allegations raised in the Public Citizen Supplement.

¹⁶ Policy Statement at 12, 20-21.

practice” and “the extent to which the party against whom the new rule is applied relied on the former rule.”¹⁷ Moreover, the very definition of “rule” in the federal Administrative Procedure Act (“APA”) expressly recognizes that agency action should be prospective, not retroactive.¹⁸ Judicial precedent from the U.S. Court of Appeals for the D.C. Circuit fully supports this reading and should prohibit DOE from applying the new Policy Statement in any manner retroactively to the Extension Request, which was submitted prior to DOE’s issuance of the Policy Statement and without any knowledge that such a change in policy was being considered, and was based on an entirely different standard of review that the agency previously had used consistently for a number of years.¹⁹ And while DOE/FECM issued the new guidance for the LNG industry as a policy statement and not as a rule that would be required to undergo formal notice-and-comment rulemaking procedures, the APA’s prohibition on retroactive application should certainly apply to policy statements since such guidance documents can be—and in this case were—issued with no input from affected parties. To review Magnolia’s Extension Request under the framework of the new Policy Statement—or apply any aspects of the new Policy Statement to the Extension Request—would not only violate this rule against retroactivity, it would also be profoundly

¹⁷ *Retail, Wholesale, and Dept. Store Union, AFL-CIO v. NLRB*, 466 F.2d 380, 390 (D.C. Cir. 1972).

¹⁸ 5 U.S.C. § 551(4) (2023) (“‘rule’ means the whole or a part of an agency statement of general or particular applicability *and future effect* designed to implement, interpret, or prescribe law or policy”) (emphasis added).

¹⁹ *City of Dothan v. FERC*, 684 F.2d 159, 162 n.2 (D.C. Cir. 1982) (quoting *Retail, Wholesale and Dept. Store Union v. NLRB*, 466 F.2d 380, 388 (D.C. Cir. 1972)). Accord *Clark-Cowlitz Joint Operating Agency v. FERC*, 826 F.2d 1074, 1082 (D.C. Cir. 1987) (citing 5 U.S.C. §§ 551(4)-(7), 553, 554) (“[T]he Administrative Procedure Act generally contemplates that when an agency proceeds by adjudication, it will apply its ruling to the case at hand; when, on the other hand, it employs rulemaking procedures, its orders ordinarily are to have only prospective effect.”) (*Clark-Cowlitz*).

unfair to Magnolia, as Magnolia prepared its Extension Request with the understanding that it would be reviewed under DOE’s traditional “good cause” standard.²⁰

Accordingly, DOE must review the Extension Request under the “good cause” standard of review, under which DOE considers “project-specific facts” presented by the developer, including (1) efforts to develop the project, (2) the additional time needed, and (3) “any unique delays and challenges faced by the authorization holder.”²¹ Magnolia provides ample support herein for each of these three elements of DOE’s “good cause” standard.

b. Good Cause Exists to Grant the Requested Extension

Sierra Club contends that Magnolia did not demonstrate good cause²² to grant the Extension Request, alleging that Magnolia has not provided DOE/FECM with sufficient evidence that Magnolia is working to develop the project, or an explanation of why Magnolia is unable to commence service by November 20, 2023, as required in Magnolia’s original Non-FTA Authorization.²³

²⁰ *Clark-Cowlitz*, 826 F.2d at 1081 (“retrospective application can properly be withheld when to apply the new rule to past conduct or prior events would work a ‘manifest injustice.’” (quoting *Thorpe v. Housing Auth. of the City of Durham*, 393 U.S. 268, 282 (1969)) (other citations omitted)).

²¹ Policy Statement at 12.

²² Magnolia notes that Sierra Club itself appears to concede that the Magnolia LNG Extension Request must be reviewed under DOE’s historic standard for extensions, as it contends that Magnolia failed to meet DOE’s “good cause” standard for considering requests to extend the commencement deadline.

²³ Protest at 8-10.

Contrary to Sierra Club’s assertions, good cause exists to grant the Extension Request. As explained previously, Magnolia and its parent company Glenfarne Energy Transition, LLC (“Glenfarne”)²⁴ have worked consistently and aggressively to develop the Facility and commence operations since receiving its FERC Authorization and Non-FTA Authorization, including refining the facility design to increase production and export capacity without increasing environmental impacts, ensuring an adequate supply of feed gas to the facility, and working with FERC to physically develop the project site, including obtaining its notice to proceed with site preparation.²⁵ These activities have included:

- investing approximately \$150 million in regulatory and permitting costs to develop the Facility;
- investing approximately \$60 million in engineering, procurement and construction (“EPC”) to refine the Facility’s design;
- obtaining and maintaining all necessary state and federal permits to construct and operate the facility, including the Letter of Recommendation from the U.S. Coast Guard, Clean Water Act Section 404 and Rivers and Harbors Act Section 10 permits from the U.S. Army Corps of Engineers, the Louisiana Coastal Use Permit, and Title V air permits from the Louisiana Department of Environmental Quality;
- maintaining an active purchase order with Siemens Energy for supply of the Feed Gas Booster Compressors (1 per train, 2 total) and motor drivers, Ammonia Refrigeration Compressors (2 per train, 4 total) and steam turbine drivers, and Mixed Refrigerant Compressors (2 per train, 4 total) and gas turbine drivers, all for Trains 1 and 2;

²⁴ Glenfarne is a New York-based developer, owner-operator, and industrial manager of energy and infrastructure assets throughout the world.

²⁵ Extension Request at 6.

- maintaining an active purchase order with Chart Industries for the supply of the Cold Boxes (2 per train, 4 total) and brazed aluminum heat exchangers for Trains 1 and 2;
- engaging in detailed evaluations and negotiations for a new EPC contractor after Magnolia’s prior EPC contractor, KBR, abruptly left the LNG EPC industry, disrupting multiple years of work;²⁶
- continuing to make payments to the Port of Lake Charles to maintain its land lease for the project site;
- developing processes by which Magnolia’s parent, Glenfarne Energy Transition, can utilize the Facility’s emissions to produce blue hydrogen and blue ammonia;²⁷ and
- marketing Magnolia’s—and its sister project, Texas LNG’s—LNG to offtakers around the globe, with a particular focus on our European allies.

Specifically with regard to advancement of EPC-related activities, Glenfarne and Magnolia LNG have taken substantial measures and spent a significant amount of private capital. The early EPC phase of the project has advanced the project design beyond front-end engineering design (“FEED”) and brought the project solidly into the EPC phase, with EPC engineering reaching 30% completion, with the EPC 30% three-dimensional model review completed, hazard and operability study (“HAZOPS”) review completed, plot plan frozen, and the piping and implementation design “Management of Change” implemented following HAZOP. This enables the project to obtain highly competitive pricing as the equipment, bulk

²⁶ *Rigzone*, “KBR to Exit Most Energy, LNG Projects” (June 24, 2020), *available at* https://www.rigzone.com/news/kbr_to_exit_most_lng_energy_projects-24-jun-2020-162519-article/.

²⁷ *Businesswire*, “Glenfarne Energy Transition Launches Hydrogen Fuels Initiative” Apr. 12, 2023), *available at* <https://www.businesswire.com/news/home/20230412005539/en/Glenfarne-Energy-Transition-Launches-Hydrogen-Fuels-Initiative> (“Hydrogen Fuels Initiative”).

material (pipe, valves, instrumentation, electrical, steel, concrete, piles) and associated construction costs can be established. In addition, a highly detailed schedule with over 6,900 line items has been established, providing a detailed pathway to commissioning and operations. Notably, it is common for design developments during the FEED phase to generate updates and refinements to the design of the facility beyond what is included in the FERC FEED submittal, as the FEED/EPC contractor incorporates vendor information, additional design development and position the project for binding lump sum EPC execution. Magnolia has subsequently taken every single design update developed to date and obtained FERC approval of each item. This puts the project in the position of having the current final design exactly aligned with the FERC approved design, positioning the project for rapid and efficient advancement through EPC into commissioning and operations.

Despite Magnolia's and Glenfarne's efforts, however, circumstances far outside Magnolia's control and unique to Magnolia have had a significant negative impact on its ability to construct the Facility and begin service on its initial schedule. As Magnolia explained in its Extension Request, the COVID-19 pandemic substantially upset the global energy market and impacted Magnolia's ability to effectively market its LNG as a result of travel restrictions, in some geographies for nearly three years.²⁸ DOE has demonstrated an understanding of the considerable, widespread impacts the COVID-19 pandemic has had on the ability of Non-FTA authorization holders to negotiate offtake agreements and otherwise commercially and physically

²⁸ Extension Request at 7.

advance a project, and has acknowledged these impacts as evidence of good cause to extend an authorization holder's commencement deadline.²⁹

Shortly after the onset of the COVID-19 pandemic, Magnolia's efforts to timely develop its project were further hampered by the bankruptcy of its former non-U.S. parent company, Australia-based LNG Limited. Prior to Magnolia's acquisition by Glenfarne in May 2020, Magnolia's non-U.S. parent company had largely prioritized reducing the costs of Magnolia's Facility as a means of delaying or preventing bankruptcy,³⁰ reducing Magnolia's ability to effectively market its LNG to foreign buyers. The onset of COVID-19 in early 2020 exacerbated the parent company's existing financial difficulties, despite the inherent advantages of Magnolia LNG and its Facility.³¹ When the parent company could no longer secure the required Directors & Officers Insurance due to financial concerns, LNG Limited's Board of Directors and several senior members of the management team that had been developing the project resigned just after

²⁹ See, i.e. *Port Arthur LNG, LLC*, DOE/FECM Order Nos. 3698-C and 4372-B, Docket Nos. 15-53-LNG, 15-96-LNG, and 18-62-LNG, 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 Trade Agreement Countries at 12 (Apr. 21, 2023) (hereinafter "*Port Arthur*") (explaining in its grant of Port Arthur's request to extend its commencement deadline that Port Arthur cited to "adverse market conditions and logistical issues associated with COVID-19").

³⁰ See, i.e. *1012 Industry Report*, "New signs point to bankruptcy or liquidation for Magnolia LNG developer" (May 5, 2020) (quoting LNG Limited that it "only had enough cash to fulfill its obligations until May" of 2020), available at <https://www.1012industryreport.com/export/new-signs-point-to-bankruptcy-or-liquidation-for-magnolia-lng-developer/>.

³¹ *S&P Global*, "Australia's LNG Limited Appoints Voluntary Administrators in Sign of Potential Insolvency," (May 1, 2020) (explaining that LNG Limited faced "weak global LNG market conditions that have been exacerbated by the coronavirus pandemic"), available at <https://www.spglobal.com/commodityinsights/en/market-insights/latest-news/natural-gas/050120-australia-s-lng-limited-appoints-voluntary-administrators-in-sign-of-potential-insolvency>.

the Board of Directors voted to put the company into “administration”—roughly equivalent to U.S. bankruptcy proceedings—whereby PwC was appointed as administrator and the company assets, including the Magnolia LNG Facility and the advantageous, U.S.-patented optimized single mixed-refrigerant (“OSMR™”) liquefaction process technology (described further below), were sold. Glenfarne recognized the benefits that Magnolia’s Facility offered, and in May 2020, at the height of the COVID-19 pandemic, stepped in to rescue the project company, allowing Glenfarne to incorporate Magnolia’s Facility, including the OSMR™ liquefaction technology, into its LNG export platform and overall energy transition portfolio.

In addition, while Magnolia was already dealing with the impacts of the COVID-19 pandemic and had just experienced the bankruptcy of its non-U.S. parent, its selected EPC contractor, KBR, unexpectedly abandoned the LNG EPC industry³² after nearly five years of work on the Magnolia LNG project. Magnolia LNG and KBR had previously executed a fully wrapped EPC agreement that included a full process guaranty for the OSMR™ liquefaction technology.³³ As a result of this significant upset in the summer of 2020, Magnolia has committed material amounts of time and resources, and made significant progress, with the selection of a new EPC contractor, a lengthy process with a heavy emphasis on due diligence, contract structuring, and contract negotiation. Negotiations with EPC contractors are still underway, and Magnolia expects to announce its new EPC contractor in the near future.

³² *See infra*. n. 26.

³³ *KBR website*, “KBR Signs Major Engineering, Procurement and Construction Contract for Magnolia LNG Project” (Nov. 16, 2015), *available at* <https://www.kbr.com/en/insights-news/press-release/kbr-signs-major-engineering-procurement-and-construction-contract>.

Since purchasing Magnolia in May 2020, Glenfarne has worked aggressively to transition Magnolia within its larger energy transition portfolio. Glenfarne has been primarily focused on the energy transition since its inception, and LNG exports from the United States provide an important part of the company's existing energy assets portfolio designed to address the "here and now" global energy transition through complementary global LNG solutions, grid stability, and renewables businesses. Glenfarne currently has under the ownership and operation of affiliate and subsidiary companies:

- 333 megawatts of renewable energy across 29 renewable assets, with the potential for over 2 gigawatts ("GW") of additional renewable growth;
- 1.8 GW in operational grid stability assets across 14 grid stability plants, with the potential for over 5 GW of additional grid stability growth;
- 12.8 MTPA (between the 8.8 MTPA Magnolia Facility, and the 4.0 MTPA Texas LNG export facility) in LNG export capacity;
- over 4,500 miles of gas gathering pipeline assets, with over 200 million cubic feet per day of gas processing capacity; and
- the Hydrogen Fuels Initiative, which will allow Glenfarne to offer offtakers green or blue hydrogen-based fuels and feedstocks from its LNG platform.

Glenfarne currently employs approximately 700 people across its companies who are actively delivering energy transition solutions to people across multiple countries, and Magnolia's Facility is an important long-term piece of the energy transition puzzle that Glenfarne is solving.

Responsibly sourced and environmentally sensible U.S. LNG from facilities such as Magnolia LNG and Texas LNG are at the forefront of Glenfarne's mission to lead the energy

transition. Magnolia is the sole owner of the U.S.-patented OSMR™ liquefaction process, which will allow Magnolia to produce LNG for offtakers with significantly reduced greenhouse gas (“GHG”) emissions compared to traditional liquefaction processes, while also increasing the efficiency of Magnolia’s facility.³⁴ OSMR™ process liquefaction technology represents the next generation of LNG liquefaction facilities, delivering LNG to market with a substantial reduction in the commodity’s environmental footprint, including the GHG emissions profile. As indicated in the extensive information provided to FERC during the review of the project under Section 3 of the NGA, Magnolia is able to load LNG on ships while delivering up to 30 percent lower specific CO₂ emissions (tons of CO₂ per tons of LNG) than the most recent LNG trains commissioned and put into service in the U.S. Gulf Coast.

Magnolia’s highly compact design also enables a substantially reduced physical footprint including reduced temporary construction and laydown areas due to the high percentage of modularization, further reducing environmental impacts. It is critical that Magnolia reach the market as the initial demonstration of this evolution of new application of liquefaction technology for use on future plants, even though the technical elements that underpin the OSMR™ liquefaction process are all well-proven individually through decades of use in industrial applications, including ammonia refrigeration and combined-cycle gas turbine operation. The patented liquefaction process arrangement itself has been proven commercially for over 15 years, since 2007, through the Maitland LNG fuels facility located in Karratha, Australia, which produces LNG for truck transport to four small regional power plants.

³⁴ *Magnolia LNG, et al.*, Final Environmental Impact Statement, at 3-34 - 3-35, FERC Docket No. CP14-347-000 (Nov. 13, 2015).

As Magnolia’s facility will be the first in the nation to utilize Magnolia’s OSMR™ liquefaction process on such a scale and demonstrate its effectiveness to other LNG developers, Glenfarne and Magnolia will then be able to offer this U.S.-patented technology to other developers for use in their facilities, enabling widespread, significant air emissions reductions across the industry. Such reduction in emissions will undoubtedly enhance European demand for U.S. LNG, thereby helping to facilitate the Biden Administration’s commitment to our European allies.³⁵ Magnolia’s Facility particularly satisfies the objectives of the Biden Administration to offer LNG to global allies with reduced carbon intensity, as Magnolia’s proprietary OSMR™ liquefaction process utilizes anhydrous ammonia as the heat transfer coolant, whereas typical LNG liquefaction processes utilize propane, a GHG, as the coolant. This novel liquefaction process is also precisely in-line with one of the express objectives of the new Policy Statement, which is to remove barriers to entrants to the U.S. export market “that seek to utilize newer technology and to adopt better environmental practices.”³⁶

³⁵ See “FACT SHEET: United States and European Commission Announce Task Force to Reduce Europe’s Dependence on Russian Fossil Fuels,” noting two of its primary objectives as:

“The United States will work with international partners and strive to ensure additional LNG volumes for the EU market of at least 15 bcm in 2022, with expected increases going forward.

The United States and the European Commission will undertake efforts to reduce the greenhouse gas intensity of all new LNG infrastructure and associated pipelines, including through using clean energy to power onsite operations, reducing methane leakage, and building clean and renewable hydrogen-ready infrastructure.”

<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/> (issued Mar. 25, 2022) (emphasis added).

³⁶ Policy Statement at 16.

Further, as part of Glenfarne’s Hydrogen Fuels Initiative, Glenfarne, Magnolia and Texas LNG are developing methods by which emissions from the Facility will be utilized to produce blue hydrogen and blue ammonia, in support of increased market demand for lower-carbon intensity hydrogen-based fuels and feedstocks. This too fully aligns with the Biden Administration’s goal of building out a clean hydrogen value chain, as evidenced in the recently enacted Infrastructure Investment and Jobs Act³⁷ and the Inflation Reduction Act,³⁸ which DOE/FECM’s sister department, the Hydrogen and Fuel Cell Technologies Office, is robustly advancing,³⁹ including through a series of funding opportunity announcements.⁴⁰

DOE should not take any action that would negatively impact efforts to achieve these important policy goals. A five-year extension of Magnolia LNG’s original authorization is appropriate and will advance these critical objectives.

³⁷ Infrastructure Investment and Jobs Act, Pub. Law 117-58 (Nov. 15, 2021) at §40311 *et seq.*

³⁸ Inflation Reduction Act, 136 Stat. 1936, Pub. Law 117-169 (Aug. 16, 2022) at §13204.

³⁹ See U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, H2@Scale Program, (“H2@Scale is a U.S. Department of Energy (DOE) initiative that brings together stakeholders to advance affordable hydrogen production, transport, storage, and utilization to enable decarbonization and revenue opportunities across multiple sectors.”) at <https://www.energy.gov/eere/fuelcells/h2scale#:~:text=H2%40Scale%20is%20a%20U.S.,revenue%20opportunities%20across%20multiple%20sectors>). Magnolia’s deployment of lower carbon-intensity ammonia from green or blue hydrogen will accomplish two goals: creating an additional demand sink for hydrogen in the Gulf region and result in the production of lower carbon LNG.

⁴⁰ See “Hydrogen and Fuel Cell Technologies Office Funding Opportunities,” available at <https://www.energy.gov/eere/fuelcells/hydrogen-and-fuel-cell-technologies-office-funding-opportunities>.

Despite the arguments of Sierra Club,⁴¹ no matter how experienced and committed an energy infrastructure company such as Glenfarne is to timely developing and constructing the Facility, it takes time for any company to diligently orient itself with the commercial and regulatory status of a complex facility such as Magnolia's and transition the project to within Glenfarne's larger portfolio and goal of leading the global energy transition. It cannot be overstated that all of this took place during the COVID-19 pandemic, which otherwise negatively impacted all efforts to advance the project commercially.

Public Citizen raises essentially conspiratorial assertions that Glenfarne has no interest in advancing Magnolia, and is solely concerned with advancing its other Texas LNG project.⁴² This is simply untrue, as evidenced by the information provided in the Extension Request and as supplemented herein highlighting the substantial, continuing efforts of Glenfarne and Magnolia to develop the project. Prior to purchasing Magnolia in May 2020, Glenfarne purchased the Texas LNG project from its prior owner in March 2019, and although Magnolia and Texas LNG are separately docketed and approved projects for the purposes of FERC and DOE, these two projects operate in tandem with the Hydrogen Fuels Initiative within Glenfarne's portfolio, and together form Glenfarne's LNG export platform. As DOE is aware, it takes time to advance LNG infrastructure and Glenfarne has been working diligently to do so since its relatively recent acquisition of both projects. Glenfarne is incorporating these complex facilities into Glenfarne's overall energy transition portfolio, and executing on a particular cadence to its development,

⁴¹ Protest at 9 (alleging that Magnolia's purchase by Glenfarne should have accelerated development).

⁴² Public Citizen Supplement at 1-2.

construction, and commencement of operations of these facilities, including the allocation of Glenfarne's development resources in the most efficient way given each project's unique development timeline.

Given the circumstances underlying the bankruptcy of Magnolia LNG's foreign parent, LNG Limited, including the departure of LNG Limited's board and a majority of the staff that had developed the Magnolia LNG project, Magnolia's acquisition by Glenfarne amounted to a "reset" of the development timeline for Magnolia's Facility. Accordingly, as demonstrated above, although Glenfarne is absolutely committed to the expedient development of the Magnolia Facility, practical considerations, including the unique extenuating circumstances outlined above, may result in the Texas LNG facility commencing commercial service prior to Magnolia. This fact is not in any way an indication that Glenfarne is not actively developing the Magnolia Facility in order to enable it to commence service as quickly as is feasible.

Glenfarne's LNG export platform is essential to Glenfarne's overall portfolio and mission to lead the energy transition, and the Magnolia LNG export project is a critical component of this platform. By taking advantage of Glenfarne's LNG export platform across two LNG export facilities in Louisiana and south Texas, offtakers will have the ability to diversify their sources of LNG supply by contracting with Glenfarne for offtake from Magnolia and Texas LNG, while also having the option, through Glenfarne's Hydrogen Fuels Initiative, to access supplies of green and blue hydrogen-based fuels and feedstocks, which will be vital for countries and offtakers to meet their net-zero ambitions. The critical importance of the ability of an LNG offtaker to obtain LNG supply diversification and reliability recently was made all the more

apparent by the explosion and resulting cessation of LNG production at the Freeport LNG terminal.⁴³

Accordingly, in light of the challenges Magnolia has faced as a result of extenuating circumstances outside its own control, and its efforts to continue to develop the project in light of these challenges, good cause exists to extend Magnolia's Commencement Deadline.

c. Length of Extension

In addition to arguing that good cause does not exist to extend the Commencement Deadline, Sierra Club contends that the Extension Request should not be granted because the 29-month extension Magnolia sought in the Extension Request would not be a sufficient length of time to allow Magnolia to commence service, thus requiring Magnolia to seek a second such extension.⁴⁴

Magnolia sought a 29-month extension in the Extension Request because such an extension (from November 30, 2023 to April 15, 2026) aligned precisely with Magnolia's extended Construction Deadline granted by FERC.⁴⁵ As DOE explains in the recent Policy Statement, historically DOE has placed a heavy emphasis on whether a holder of a Non-FTA export authorization (referred to as an "Authorization Holder") seeking an extension of their

⁴³ See, *i.e.* Reuters "Japan's Osaka Gas posts 9-month, \$10-million Loss on Freeport LNG Project," (Feb. 6, 2023) available at <https://www.reuters.com/business/energy/japans-osaka-gas-posts-9-month-10-mln-loss-freeport-lng-project-2023-02-06/>.

⁴⁴ Protest at 10.

⁴⁵ Extension Request at 7-8 (explaining that Magnolia is seeking to extend its Commencement Deadline until April 15, 2026 in order to align its Commencement Deadline with its Construction Deadline).

commencement deadline had a corresponding extension of their FERC construction deadline.⁴⁶

Magnolia’s belief that in seeking to extend its Commencement Deadline it was required by DOE/FECM policy to align the dates of its Commencement Deadline with its Construction Deadline was not unique to Magnolia—and certainly was reasonable as it was filed prior to the issuance of the new Policy Statement. This understanding of DOE/FECM policy was shared by the entire domestic LNG export industry, as evidenced by the fact that nearly all applications to extend commencement deadlines sought to precisely align their commencement deadlines with their FERC-extended completion of construction deadlines.⁴⁷ Importantly, Magnolia relied on

⁴⁶ Policy Statement at 11-12.

⁴⁷ See *Lake Charles LNG Export Company, LLC*, DOE/FE Order Nos. 3868-A and 4010-A, Docket Nos. 13-04-LNG and 16-109-LNG, Order Granting Application for Extension of Commencement Deadlines (Oct. 6, 2020) (hereinafter “*Lake Charles*”) (extending commencement deadlines in two non-FTA orders from July 29, 2023 or June 29, 2024, respectively, to December 16, 2025, the same date as Lake Charles LNG Export Company’s extended FERC construction deadline (*Lake Charles LNG Export Company, LLC, et al.*, Letter Order, Docket Nos. CP14-119-000, et al. (issued Dec. 5, 2019))); *Lake Charles Exports, LLC*, DOE/FE Order Nos. 3324-B and 4011-A, Docket Nos. 11-59-LNG and 16-110-LNG, Order Granting Application to Amend Long-Term Authorizations (Oct. 6, 2020) (extending commencement deadlines in two non-FTA orders from July 29, 2023 or June 29, 2024, respectively, to December 16, 2025, the same date as Lake Charles LNG Export Company’s extended FERC construction deadline (*Lake Charles LNG Export Company, LLC, et al.*, Letter Order, Docket Nos. CP14-119-000, et al. (issued Dec. 5, 2019))); *Cameron LNG, LLC*, DOE/FE Order No. 3846-A, Docket No. 15-90-LNG, Order Granting Application for Extension of Commencement Deadlines (Nov. 2, 2020) (extending commencement deadline from July 15, 2023, to May 5, 2026, aligning with Cameron’s request to FERC to extend its completion of construction deadline to May 5, 2026 (*Cameron LNG, LLC*, Request for Extension of Time to Construct and Place Facilities into Service, FERC Docket No. CP15-560-000 (Jan. 24, 2020))) (hereinafter “*Cameron*”); *Port Arthur* (extending commencement deadline for a Non-FTA order from May 2, 2026 to June 18, 2028, the same date as Port Arthur’s extended FERC completion of construction deadline (*Port Arthur LNG, LLC*, Order Granting Extension of Time Request, FERC Docket Nos. CP17-20-001, et al., 181 FERC ¶ 61,024 (2022))); *Lake Charles LNG Export Co., LLC*, Application for Amendment to Long-Term Authorizations to Export Liquefied Natural Gas to Non-Free Trade Agreement Countries, Docket Nos. 13-04-LNG and 16-109-LNG (June 21, 2022) (seeking a second extension of Lake Charles’ commencement deadline, from Dec. 15, 2025 to Dec. 16, 2028, to align Lake Charles’ commencement deadline with its second-extended FERC completion of construction deadline

this continuous historical practice of DOE/FECM in its Extension Request. Such reasonable reliance should not now be penalized by the DOE/FECM because of a fundamental shift articulated by the agency *after* Magnolia submitted its Extension Request.

Accordingly, the 29-month extension sought by Magnolia in the Extension Request was in light of the unique delays and challenges faced by Magnolia, but also sought to be consistent with the understanding that Magnolia and indeed all Authorization Holders had based on applicable DOE/FECM precedent: Any request to extend the commencement deadline must align with the Authorization Holder's extended FERC construction deadline. Now, based on the new Policy Statement, Magnolia understands that going forward DOE/FECM will no longer necessarily act in-concert with FERC extensions, and will in fact consider requests to extend commencement deadlines separately from the FERC construction deadline.⁴⁸ Although DOE has explained that Magnolia's Extension Request will not be reviewed under the new Policy Statement, and as explained above DOE is prohibited from applying the new Policy Statement to the Extension Request, Magnolia nonetheless seeks to be responsive to DOE's revised approach in considering requests to extend commencement deadlines.⁴⁹

DOE now has further explained that in instances where an Authorization Holder believes it may need a longer extension than was initially envisioned, it is DOE's strong preference that the Authorization Holder make that request at the outset, instead of seeking a second such

(*Lake Charles LNG Export Co., LLC*, Order Granting Extension of Time Request), FERC Docket Nos. CP14-119-001, *et al.* 179 FERC ¶ 61,086 (2022)).

⁴⁸ *Lake Charles* at 18-19 (explaining that DOE does not "ha[ve] an obligation to match every FERC extension.")

⁴⁹ *Id.* at 5-6, n. 26.

extension.⁵⁰ Specifically, in *Lake Charles* DOE/FECM explained that where an Authorization Holder is “experiencing difficult circumstances that further delay[] advancement” of the project while a commencement deadline extension request is pending, the Authorization Holder could adjust their extension request accordingly, as opposed to seeking a second extension.⁵¹

In light of DOE’s express guidance that (1) it will no longer pair requests to extend commencement deadlines with corresponding extensions of an Authorization Holder’s construction deadline,⁵² and (2) Authorization Holders seeking an extension of their commencement deadline should request a single extension that encompasses the time the Authorization Holder deems needed to commence service (as opposed to seeking an additional extension), Magnolia hereby clarifies that it is seeking an extension of 5 years or 60 months, until November 30, 2028, to commence service from its facility. As explained herein and in its Extension Request, good cause exists to extend Magnolia’s commencement deadline to this date, given Magnolia’s efforts to timely develop the project despite the unique, significant extenuating circumstances that hampered Magnolia’s ability to do so.

Granting the Extension Request and extending Magnolia’s Commencement Deadline to November 30, 2028, will not impact or otherwise modify DOE/FECM’s prior finding that the export of LNG from Magnolia’s facility is not inconsistent with the public interest.⁵³ In fact the opposite is true, as additional time is needed to enable Magnolia to secure long-term offtake

⁵⁰ *Id.* at 15.

⁵¹ *Id.*

⁵² *Id.* at 18-19.

⁵³ Non-FTA Authorization at 167.

contracts to reach its final investment decision (“FID”) for the project, which is a critical prerequisite to commencing construction. Once construction commences, Magnolia is dedicated to ensuring construction progress will continue apace, to enable Magnolia to provide foreign allies with much-needed supplies of low-carbon intensity LNG. Magnolia notes that under standard LNG EPC contracts, once a developer has given the EPC contractor notice to proceed with construction, there are significant penalties and serious cost implications for the developer in the event construction is halted. Moreover, standard EPC contracts feature detailed schedules for the disbursement of funds for payment of EPC costs, and project investors expect that once construction has begun, it will continue on schedule to allow for the earliest practicable commencement of commercial operations. Therefore, once a developer moves forward with construction, it is highly unlikely it will stop or otherwise delay construction. Magnolia urges DOE/FECM to do all that is in its power to ensure that domestic LNG reaches the markets that depend on it, and granting this Extension Request is just such an action DOE/FECM can take in this endeavor.

Magnolia acknowledges that if approved, its Commencement Deadline of November 30, 2028, will be further out than its April 15, 2026 Construction Deadline. Although DOE/FECM explains in *Lake Charles* that “an authorization holder obtaining an extension of its FERC deadline is a *prerequisite* to DOE considering an extension of the export commencement deadline,”⁵⁴ nowhere does DOE state that these dates must match in order for DOE to consider and approve an extension request. In fact, DOE/FECM precedent instructs that DOE/FECM will

⁵⁴ Policy Statement at 18-19 (emphasis added).

grant a request to extend the commencement deadline even where the extended commencement deadline is further out in time than the construction deadline.⁵⁵ Magnolia will, of course, seek and obtain an extension of time from FERC of Magnolia's April 15, 2026 Construction Deadline, ensuring Magnolia's FERC and DOE authorizations are valid and in full force and effect throughout the construction and commissioning processes.⁵⁶

Given (1) the unique extenuating circumstances Magnolia has been forced to contend with; (2) Magnolia and Glenfarne's continuing efforts to develop, construct, and commence service from the Facility as soon as is practicable; and (3) the critical role of Magnolia and Glenfarne's other LNG export asset, Texas LNG, in Glenfarne's clean energy transition strategy, Magnolia strongly maintains that a 60-month extension of the Commencement Deadline is reasonable and not inconsistent with the public interest.

d. DOE Should Reject Sierra Club's Attempts to Re-Litigate the Underlying Proceeding

In addition to the above issues raised that are specific to the Extension Request, Sierra Club raises numerous generalized arguments opposing LNG exports, and on that basis avers that

⁵⁵ See, *i.e.* *Cameron*, DOE/FE Order No. 3680-A and 3846-A at 6 (approving Cameron's request to extend its commencement deadline until May 5, 2026, where FERC had only extended its construction deadline until May 5, 2024).

⁵⁶ Magnolia notes that as FERC has recently reaffirmed, FERC has no such policy against granting second extensions to completion of construction deadlines. See, *i.e.* *Freeport LNG Development L.P., et al.*, Order Granting Extension of Time Request, 181 FERC ¶ 61,023 (Oct. 13, 2022) (granting Freeport's second request for an extension of its completion of construction deadline, even where Freeport had not yet commenced construction of the authorized facilities) ("*Freeport*").

DOE/FECM “must revisit numerous findings underlying its initial public interest determinations.”⁵⁷ In particular, Sierra Club alleges that:

- 1) LNG exports will have negative impacts on domestic energy price and supply;⁵⁸
- 2) Global demand for U.S. LNG will wane in coming years;⁵⁹ and
- 3) DOE/FECM must review the environmental impacts of the Extension Request.⁶⁰

Sierra Club’s “generalized opposition” to LNG exports, including DOE/FECM export policies, does not “address in any meaningful way the only action before” DOE/FECM: Magnolia’s request to extend its Commencement Deadline.⁶¹ Sierra Club’s Protest offers DOE/FECM with nothing more than a restatement of its overall opposition to LNG exports writ large, and its desire to entirely re-litigate Magnolia’s Non-FTA Authorization.⁶² Sierra Club’s interest in utilizing a commencement deadline extension proceeding to collaterally attack Magnolia’s Non-FTA Authorization is further highlighted by Sierra Club’s decision not to appeal Magnolia’s original Non-FTA Authorization for 8.0 MTPA, or otherwise participate in the proceeding for Magnolia’s Amendment Authorization for an additional 0.8 MTPA in

⁵⁷ Protest at 11.

⁵⁸ *Id.* at 12-17.

⁵⁹ *Id.* at 17-19.

⁶⁰ *Id.* at 20-33.

⁶¹ *Port Arthur* at 13-14.

⁶² Protest at 11-12.

authorized export volumes, for which DOE rightly rejected Sierra Club’s request for rehearing of the Amendment Authorization.⁶³

Sierra Club offers no support for its allegations that extending Magnolia’s Commencement Deadline will somehow strain energy supplies or increase domestic energy prices, and similarly provides only baseless assertions that the global LNG market has changed to such a degree that extending the Commencement Deadline would be inconsistent with the public interest.⁶⁴ DOE/FECM has rejected such unfounded arguments in recent orders granting extensions of commencement deadlines, and should do so similarly in this proceeding.⁶⁵

Nor is there any merit to Sierra Club’s argument that DOE/FECM’s review of the Extension Request necessitates additional or supplemental review under the National Environmental Policy Act (“NEPA”).⁶⁶ NEPA is clear that supplemental environmental analysis is only necessary where “a major Federal action remains to occur” and there are either (1) substantial changes to the proposed action relevant to environmental concerns, or (2) significant new circumstances or information relevant to environmental concerns.⁶⁷ Neither of these factors are met here, as DOE/FECM’s consideration of the Extension Request is a simple administrative

⁶³ *Magnolia LNG, LLC*, 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 at 5-9, Docket No. 13-132-LNG (June 24, 2022) (denying Sierra Club’s request for rehearing of the Amendment Authorization, as Sierra Club did not protest or comment on Magnolia’s amendment application until after the Amendment Authorization was issued, as required by DOE regulations).

⁶⁴ Protest at 11-19.

⁶⁵ *Port Arthur* at 13-14.

⁶⁶ Protest at 20-33.

⁶⁷ 40 C.F.R. § 1502.9(d)(1).

action,⁶⁸ and does not entail (nor does Sierra Club identify) any substantial change to its project or significant new circumstance relevant to environmental concerns. Magnolia further notes that, given that its Non-FTA Authorization is not for a set term of years, but rather extends through December 31, 2050,⁶⁹ extending Magnolia's deadline to commence service will, in fact, reduce the window of time Magnolia has to export LNG under its FTA and Non-FTA Authorizations, absent a modification which Magnolia is not currently seeking, lowering the overall amount of LNG that Magnolia may export, and any resulting environmental or other concerns Sierra Club may have regarding such exports.

⁶⁸ Magnolia notes that such determination is fully consistent with FERC's treatment of the same argument. *See, i.e. Freeport*, 181 FERC ¶ 61,023 at P 14; *see also Rio Grande LNG, LLC*, 182 FERC ¶ 61,027 at P 10 (2023).

⁶⁹ *Magnolia LNG, LLC*, Order Extending Export Term for Authorizations to Free Trade and Non-Free Trade Agreement Nations Through December 31, 2050, and Amending Pending Amendment Application, DOE/FE Order Nos. 3245-B, 3406-B, and 3909-B, Docket Nos. 12-183-LNG, 13-131-LNG, and 13-132-LNG (Dec. 10, 2020).

III. Conclusion

For the foregoing reasons, Magnolia respectfully submits this Answer to Sierra Club's Protest and Public Citizen's Supplement to its protest of its Extension Request, and supplements and clarifies its Extension Request, as discussed herein.

Respectfully submitted,

/s/ David L. Wochner

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May 30, 2023

CERTIFICATE OF SERVICE

I certify that I have this 30th 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

EXHIBIT A - VERIFICATION

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

In the Matter of)	
)	
Magnolia LNG, LLC)	FE Docket No. 13-132-LNG

VERIFICATION

I, Adam Prestidge, declare that I am Senior Vice President – Head of Legal and Corporate Affairs for Glenfarne Energy Transition, LLC and am duly authorized to make this Verification; that I have read the foregoing instrument and that the facts therein stated are true and correct to the best of my knowledge, information, and belief.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed in The Woodlands, Texas on May 30, 2023.

/s/ Adam Prestidge
Adam Prestidge
Senior Vice President
Head of Legal and Corporate Affairs
Glenfarne Energy Transition, LLC