

August 1, 2023

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Ms. Amy Sweeney  
U.S. Department of Energy  
Office of Regulatory, Analysis and Engagement  
Forrestal Building, FE-34  
1000 Independence Avenue, S.W.  
Washington, DC 20585

**Re: Magnolia LNG, LLC**  
**FE Docket No. 13-132-LNG**  
**Response to July 19, 2023 Protest of Sierra Club**

Dear Ms. Sweeney:

On March 20, 2023, Magnolia LNG, LLC ("Magnolia") submitted a request ("Extension Request") to the U.S. Department of Energy, Office of Fossil Energy and Carbon Management ("DOE") for a limited extension of the deadline to commence commercial operations ("Commencement Deadline") under Magnolia's authorization to export liquefied natural gas to non-free trade agreement nations.<sup>1</sup> Under the Extension Request, Magnolia sought to extend its Commencement Deadline from November 30, 2023 to April 15, 2026. On May 15, Sierra Club<sup>2</sup> filed a Motion to Intervene and Protest of the Extension Request ("Sierra Club Protest"); and on May 30, 2023, Magnolia filed an Answer in Opposition to the Sierra Club Protest.<sup>3</sup> In addition, in

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<sup>1</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) ("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).

<sup>2</sup> 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."

<sup>3</sup> *Magnolia LNG, LLC*, 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, DOE/FECM Docket No. 13-132-LNG (May 30, 2023) ("May 30 Filing")

response to DOE issuances after Magnolia filed its March 20, 2023 Extension Request, Magnolia supplemented its Extension Request through the May 30 Filing, clarifying that it was seeking an extension of its Commencement Deadline until November 30, 2028.<sup>4</sup>

On June 20, 2023, DOE informed Magnolia via email that pursuant to Rule 590.204 of DOE's regulations,<sup>5</sup> DOE was requiring Magnolia to submit its May 30 Filing as an amendment to its Extension Request because Magnolia's May 30 Filing included a request to increase the length of the extension beyond that initially sought in the Extension Request. In response to this email, via letter submitted to DOE on July 13, 2023, Magnolia requested that DOE treat the portion of the May 30 Filing that sought a longer extension of the commencement deadline than was initially requested in the Extension Request as a formal amendment of the Extension Request ("July 13 Letter").<sup>6</sup>

On July 19, 2023, Sierra Club filed a motion to intervene and protest of the July 13 Letter ("July 19 Protest").<sup>7</sup> In protesting the July 13 Letter, Sierra Club alleges that the form of Magnolia's July 13 Letter fails to comply with DOE regulations, which "require[] that the applicant amend its application whenever there are changes in material facts."<sup>8</sup> Sierra Club contends that the July 13 Letter is somehow "procedurally improper" and that Magnolia must now "submit a proper amendment request."

Sierra Club's argument is little more than an attempt to put form over function. DOE's June 20 email simply stated that for DOE to consider Magnolia's revised request to extend its commencement deadline until November 30, 2028, Magnolia would need to seek to amend its March 20 Extension Request. Magnolia's July 13 Letter informed DOE that it accepted DOE's

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<sup>4</sup> These issuances include DOE's April 21, 2023 "Policy Statement on Export Commencement Deadlines in Authorizations to Export Natural Gas to Non-Free Trade Agreement Countries" (88 Fed. Reg. 25272), as well as orders in the Lake Charles (*Lake Charles Exports, LLC*, DOE/FECM Order Nos. 3324-C and 4011-B, Docket Nos. 11-59-LNG and 16-110-LNG, Order Denying Application for Second Extension of Deadline to Commence Exports of Liquefied Natural Gas to Non-Free Trade Agreement Countries (Apr. 21, 2023), *reh'g denied*, DOE/FECM Order Nos. 3324-D and 4011-C (June 21 2023); *Lake Charles LNG Export Co., LLC*, DOE/FECM Order Nos. 3868-C and 4010-C, Docket Nos. 13-04-LNG and 16-109-LNG, Order Denying Application for Second Extension of Deadline to Commence Exports of Liquefied Natural Gas to Non-Free Trade Agreement Countries (Apr. 21, 2023), *reh'g denied*, DOE/FECM Order Nos. 3868-C and 4010-C (June 21, 2023)), and Port Arthur (*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)) proceedings.

<sup>5</sup> 10 C.F.R. § 590.204.

<sup>6</sup> *Magnolia LNG, LLC*, Request to Redesignate May 30, 2023 Supplement as Amendment of March 20, 2023 Request to Extend Commencement Deadline, DOE/FECM Docket No. 13-132-LNG (July 13, 2023) ("July 13 Letter").

<sup>7</sup> *Magnolia LNG, LLC*, Intervention and Protest of Sierra Club in Response to Magnolia LNG, LLC Amendment Request, DOE/FECM Docket No. 13-132-LNG (July 13, 2023) ("Sierra Club Protest").

<sup>8</sup> Sierra Club Protest at 1-2.

determination on this point and requested that DOE treat its May 20 Filing as a request to amend its March 20 Extension Request, to the extent that the May 30 Filing sought a longer extension of the commencement deadline than was initially contemplated in the Extension Request. Accordingly, Magnolia provided DOE with precisely what DOE requested. Although Sierra Club insists that Magnolia must submit a “proper” amendment request, Sierra Club is unable to describe what would constitute such a “proper” request. Indeed, the fact that DOE requested this of Magnolia via email, as opposed to a formal issuance posted to Magnolia’s Non-FTA docket, suggests that DOE would agree that where DOE’s objectives are met, there is little use of needlessly putting form over function.

Sierra Club next argues that because Magnolia’s amendment was submitted after DOE issued its April 21, 2023 “Policy Statement on Export Commencement Deadlines in Natural Gas Export Authorizations,”<sup>9</sup> DOE should apply its policy statement to Magnolia’s request to extend its commencement deadline to November 30, 2028.

Sierra Club does not offer any support for its contention that because Magnolia’s revised extension term was submitted after DOE issued its Policy Statement, Magnolia’s underlying Extension Request (filed over a month before DOE issued the Policy Statement) must then be subject to the Policy Statement. No such support exists. If there were any legal justification for Sierra Club’s insistence that an amendment to an application impacts or otherwise modifies the date of the underlying application, Sierra Club would have provided such support. In the absence of clear regulatory or legal guidance, then, this question is wholly within DOE’s discretion—and in DOE’s discretion, DOE stated explicitly that because Magnolia’s extension request was filed prior to DOE’s issuance of the Policy Statement, DOE would review the application “under DOE’s prior practice based on the record in each commencement extension proceeding.”<sup>10</sup> Magnolia’s May 30 Filing supplemented, and indeed amended the record in this commencement extension proceeding, which began with the filing of Magnolia’s Extension Request on March 20. It did not, however, commence a *new* extension proceeding, which would be reviewed under the Policy Statement, and the date of Magnolia’s request to extend its commencement deadline remains March 20, 2023. Consistent with DOE’s guidance in this regard, all of Magnolia’s filings in this proceeding to-date have been prepared and submitted with the understanding that DOE would review Magnolia’s request under its pre-Policy Statement guidance.

Finally, Sierra Club continues to argue that Magnolia has not justified its Extension Request, and raises concern regarding DOE’s public interest analysis going stale should Magnolia’s commencement deadline be extended to November 30, 2028.<sup>11</sup> Regarding Sierra Club’s assertion that Magnolia has not justified its Extension Request, as amended, Magnolia already

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<sup>9</sup> 88 Fed. Reg. 25272 (Apr. 21, 2023) (“Policy Statement”).

<sup>10</sup> Policy Statement at 20-21.

<sup>11</sup> Sierra Club Protest at 2-3.

has provided DOE with substantial evidence in support of the requested extension.<sup>12</sup> As Magnolia explained, despite the uncontrollable, unprecedented delays Magnolia has faced,<sup>13</sup> Magnolia has diligently continued to develop the facility, including

Regarding Sierra Club's assertion that DOE's public interest analysis will go stale should DOE extend the commencement deadline until November 30, 2028, such concerns are not present in this proceeding.<sup>14</sup> DOE stated in *Lake Charles* that the purpose of the seven-year commencement deadline is to ensure that "DOE is making decisions utilizing the latest market information and analytical tools available, and not based on stale analysis."<sup>15</sup> Such a position is reasonable. Here, however, DOE has had the opportunity to revisit Magnolia LNG's proposed export facility and apply its most up-to-date policies and analyses to Magnolia's proposed exports, thus ensuring DOE's analysis has not gone stale with the passage of time. Specifically, DOE has recently reviewed Magnolia's December 21, 2018 application to amend its Non-FTA Authorization to increase its authorized export volumes from 8.0 MTPA to 8.8 MTPA ("Uprate Amendment"). After reviewing Magnolia's Uprate Amendment for over three years, just over one year ago on April 27, 2022, DOE issued the Amendment Authorization. In reviewing the Uprate Amendment and issuing the Amendment Authorization, DOE considered exports from Magnolia's facility in light of the current natural gas market (particularly in the wake of Russia's invasion of Ukraine) and future trends, as well as DOE's 2018 LNG Export Study, and DOE's Life Cycle Greenhouse Gas Perspective on Exporting Liquefied Natural Gas From the United States: 2019 Update, and in so doing ensured that Magnolia's export authorization meets current DOE standards. Thus, Sierra Club's concerns that DOE's public interest analysis would go stale should Magnolia's commencement deadline be extended to November 30, 2028, are obviated in this proceeding.

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<sup>12</sup> See, e.g. Extension Request at 6-8; May 30 Filing at 6-9 (development efforts), 9-12 (delays outside Magnolia's control), 18-23 (length of extension sought).

<sup>13</sup> See May 30 Filing at 9-12.

<sup>14</sup> Sierra Club Protest at 3.

<sup>15</sup> *Lake Charles Exports, LLC*, Order Denying Application for Second Extension of Deadline to Commence Exports of Liquefied Natural Gas to Non-Free Trade Agreement Countries, DOE/FECM Order Nos. 3324-C, 4011-B, Docket Nos. 11-59-LNG, 16-110-LNG (Apr. 21, 2023) ("*Lake Charles*"), *reh'g denied*, DOE/FECM Order Nos. 3868-C, 4010-C ("*Lake Charles Rehearing*").

Magnolia offers this response to the Sierra Club Protest pursuant to Section 590.304(f) of DOE's regulations,<sup>16</sup> which expressly permits answers to protests within fifteen (15) days of filing. As explained herein, DOE should disregard the arguments raised by Sierra Club in its July 19, 2023 protest.

Any questions regarding this letter may be directed to the undersigned at (202) 778-9014 or at [david.wochner@klgates.com](mailto:david.wochner@klgates.com).

Best regards,

A handwritten signature in black ink, appearing to read "D. L. Wochner". The signature is fluid and cursive, with the first name "D." and last name "Wochner" clearly distinguishable.

David L. Wochner  
*Counsel for Magnolia LNG, LLC*

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<sup>16</sup> 10 C.F.R. § 590.304(f).

## **CERTIFICATE OF SERVICE**

I certify that I have this 1st day of August, 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*

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

**In the Matter of**  
  
**Magnolia LNG, LLC**

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**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 August 1, 2023.

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