

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

NOTICE REGARDING MAGNOLIA LNG, LLC'S  
AMENDED REQUEST FOR AN  
EXPORT COMMENCEMENT EXTENSION

AUGUST 23, 2023

## I. INTRODUCTION AND BACKGROUND

In DOE/FE Order No. 3909,<sup>1</sup> as amended most recently in DOE/FECM Order No. 3909-C, the Department of Energy’s (DOE) Office of Fossil Energy (now the Office of Fossil Energy and Carbon Management)<sup>2</sup> authorized Magnolia LNG, LLC (Magnolia) to export domestically produced liquefied natural gas (LNG) to non-free trade agreement (non-FTA) countries under section 3(a) of the Natural Gas Act (NGA).<sup>3</sup>

Under Order No. 3909-C, Magnolia is required to “commence export operations using the planned liquefaction facilities no later than seven years from the date of issuance of Order No. 3909 (*i.e.*, by November 30, 2023).”<sup>4</sup> On March 20, 2023, Magnolia filed a “Request for Limited Extension to Start Date of Term Authorization” (Request),<sup>5</sup> in which Magnolia asked DOE to extend this export commencement deadline from November 30, 2023, to April 15, 2026—an extension of 28.5 months. DOE published a notice of the Request in the *Federal Register* (Notice of Request).<sup>6</sup> The Notice of Request called on interested persons to submit

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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), *reh’g denied*, Order No. 3909-A (Apr. 2, 2018), *amended by* Order No. 3909-B (Dec. 10, 2020) (extending export term), *further amended by* Order No. 3909-C (Apr. 27, 2022) (increasing export volume), *reh’g denied*, Order No. 3909-D (June 24, 2022). On August 22, 2022, Sierra Club filed a petition for review of DOE/FECM Order Nos. 3909-C and 3909-D in the United States Court of Appeals for the District of Columbia Circuit. That case is ongoing. *See Sierra Club v. U.S. Dep’t of Energy*, No. 22-217, Order (D.C. Cir. Feb. 28, 2023).

<sup>2</sup> The Office of Fossil Energy (FE) changed its name to the Office of Fossil Energy and Carbon Management (FECM) on July 4, 2021. The authority to regulate the imports and exports of natural gas, including liquefied natural gas, under section 3 of the Natural Gas Act (NGA), 15 U.S.C. § 717b, has been delegated to the Assistant Secretary for FECM in Redelegation Order No. S4-DEL-FE1-2023, issued on April 10, 2023.

<sup>3</sup> 15 U.S.C. § 717b(a). 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. The United States currently has FTAs requiring national treatment for trade in natural gas with Australia, Bahrain, Canada, Chile, Colombia, Dominican Republic, El Salvador, Guatemala, Honduras, Jordan, Mexico, Morocco, Nicaragua, Oman, Panama, Peru, Republic of Korea, and Singapore. FTAs with Israel and Costa Rica do not require national treatment for trade in natural gas.

<sup>4</sup> *See Magnolia LNG, LLC*, DOE/FECM Order No. 3909-C, at 68 (Ordering Para. D) (citing *Magnolia LNG, LLC*, DOE/FE Order No. 3909, at 161 (Term and Condition B), 168 (Ordering Para. D)).

<sup>5</sup> *Magnolia LNG, LLC*, Request for Limited Extension to Start Date of Term of Authorization, Docket No. 13-132-LNG, at 1, 5 (Mar. 20, 2023) [hereinafter Request].

<sup>6</sup> U.S. Dep’t of Energy, *Magnolia LNG LLC; Request for Limited Extension to Start Date of Term of Authorization*, 88 Fed. Reg. 23,020 (Apr. 14, 2023) [hereinafter Notice of Request].

protests, motions to intervene, notices of intervention, and comments by May 15, 2023.<sup>7</sup> As relevant here, Intervenors Sierra Club, Healthy Gulf, For a Better Bayou, the Vessel Project of Louisiana, and Micah 6:8 Mission (collectively, Sierra Club) timely filed a “Motion to Intervene and Protest” opposing Magnolia’s Request.<sup>8</sup>

On April 21, 2023, DOE issued a “Policy Statement on Export Commencement Deadlines in Authorizations to Export Natural Gas to Non-Free Trade Agreement Countries” (Policy Statement) that applies to all existing and future long-term non-FTA authorizations (including Magnolia’s current authorization in Order No. 3909-C).<sup>9</sup> In the Policy Statement, DOE reaffirmed the existing seven-year deadline for authorization holders to commence exports of domestically produced LNG to non-FTA countries, and established a two-part demonstration requirement for DOE to consider an application for a commencement deadline extension.<sup>10</sup> DOE stated, however, that Magnolia’s pending Request would not be reviewed under the Policy Statement because Magnolia had filed the Request before DOE issued the Policy Statement.<sup>11</sup> Rather, DOE stated that it would “issue an order taking action on [Magnolia’s] application under DOE’s prior practice based on the record in [the] commencement extension proceeding.”<sup>12</sup>

The following month, on May 30, 2023, Magnolia submitted a combined pleading entitled “Answer in Opposition to the Motion to Intervene and Protest of Sierra Club *et al.* and

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<sup>7</sup> *See id.*

<sup>8</sup> Sierra Club *et al.*, Motion to Intervene and Protest, Docket No. 13-132-LNG (May 15, 2023). Public Citizen, Inc. also filed a Motion to Intervene and Protest opposing Magnolia’s Request.

<sup>9</sup> U.S. Dep’t of Energy, Policy Statement on Export Commencement Deadlines in Authorizations to Export Natural Gas to Non-Free Trade Agreement Countries, 88 Fed. Reg. 25,272 (Apr. 26, 2023) [hereinafter Policy Statement]. The Policy Statement does not apply to those authorizations for which an application requesting an export commencement extension was filed before April 21, 2023, when the Policy Statement was issued. *See id.* at 25,278.

<sup>10</sup> *See id.*

<sup>11</sup> *Id.*

<sup>12</sup> *Id.*

Supplement to Request to Extend Commencement Deadline.”<sup>13</sup> In the Supplement portion of this pleading (also referred to as “section C”), Magnolia states that it is “clarifying that it is seeking an extension of 60 months (5 years), until November 30, 2028, to commence commercial operations,” instead of the 28.5-month extension sought in its pending Request.<sup>14</sup> As support for this 60-month extension request, Magnolia cites DOE’s statements in both the Policy Statement and recent proceedings for Lake Charles Exports, LLC and Lake Charles LNG Export Company, LLC (together, the Lake Charles entities) in which DOE denied the Lake Charles entities’ second request for an export commencement extension.<sup>15</sup>

On June 20, 2023, DOE responded to Magnolia in an email posted to the docket. DOE stated that, under 10 C.F.R. § 590.204, Magnolia’s Supplement constitutes “a material change in the requested commencement extension (from 28.5 months to 60 months), and thus requires an amendment of Magnolia’s pending Request.”<sup>16</sup> DOE further informed Magnolia that its request for the 60-month commencement extension “will need to be filed as an amendment to the pending Request ... (or, in the alternative, as a new request for an extension, with the original Request withdrawn).”<sup>17</sup> DOE added that, “[i]n either case, the filing will be submitted for notice in the *Federal Register*, consistent with DOE precedent.”<sup>18</sup>

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<sup>13</sup> Magnolia LNG, LLC, Answer in Opposition to the Motion to Intervene and Protest of Sierra Club *et al.* and Supplement to Request to Extend Commencement Deadline, Docket No. 13-132-LNG (May 30, 2023) [hereinafter Magnolia Supp. for purposes of this Notice].

<sup>14</sup> *Id.* at 2; *see also id.* at 21.

<sup>15</sup> *See id.* at 19-21 (citations omitted).

<sup>16</sup> Email from DOE/FECM to Counsel for Magnolia LNG, LLC, Docket No. 13-132-LNG (June 20, 2023) [hereinafter DOE Response to Magnolia Supp.].

<sup>17</sup> *Id.*

<sup>18</sup> *Id.*

In response to DOE’s email, Magnolia submitted a letter to DOE on July 14, 2023 (Supplement Letter).<sup>19</sup> In relevant part, Magnolia asks DOE to “redesignate” its Supplement as an amendment of its Request.<sup>20</sup> Magnolia also states that, “[a]side from this procedural change, Magnolia’s March 20, 2023 Extension Request and May 30 Filing remain unaltered ....”<sup>21</sup>

On July 19, 2023, Sierra Club submitted a letter to DOE in response to Magnolia’s filings, in which Sierra Club opposes Magnolia’s Supplement (and related Supplement Letter) on both procedural and substantive grounds (Procedural Protest).<sup>22</sup> First, Sierra Club notes that it is resubmitting its Motion to Intervene and Protest filed on May 15, 2023, and expresses uncertainty about whether “re-intervention is necessary.”<sup>23</sup> Next, Sierra Club argues that it is “procedurally improper” for Magnolia to ask DOE to consider Magnolia’s Supplement as an amendment to its Request. Sierra Club asserts that, if DOE treats the Supplement as an amendment, “DOE should issue public notice and allow a new opportunity for public interventions, protests, and other comments.”<sup>24</sup> Sierra Club also contends that, because Magnolia submitted the Supplement after the Policy Statement was issued, the Policy Statement should apply to Magnolia’s request for a 60-month extension of its export commencement deadline until November 30, 2028.<sup>25</sup>

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<sup>19</sup> Magnolia LNG, LLC, Request to Redesignate May 30, 2023 Supplement as Amendment of March 20, 2023 Request to Extend Commencement Deadline, Docket No. 13-132-LNG (July 14, 2023) [hereinafter Magnolia Supp. Ltr.].

<sup>20</sup> *Id.* at 1 (subject line).

<sup>21</sup> *Id.* at 2.

<sup>22</sup> Sierra Club *et al.*, Letter in Response to Magnolia LNG, LLC Amendment Request, Docket No. 13-132-LNG (July 19, 2023) [hereinafter Sierra Club Procedural Protest].

<sup>23</sup> *Id.* at 1.

<sup>24</sup> *Id.* at 2.

<sup>25</sup> *Id.* at 3.

On August 1, 2023, Magnolia submitted a letter to DOE in response to Sierra Club's Procedural Protest (Procedural Response).<sup>26</sup> Magnolia denies that it was "procedurally improper" to ask DOE to treat the Supplement as an amendment to its Request.<sup>27</sup> Magnolia also disputes Sierra Club's argument that DOE should review Magnolia's Supplement under the Policy Statement, stating that Sierra Club provides no legal justification for this position.<sup>28</sup>

DOE finds that the filings by Magnolia and Sierra Club raise several procedural issues that will benefit from resolution at this time. Below, we address these issues and provide notice of DOE's intended process for evaluating the Supplement. Any substantive arguments raised in the filings concerning Magnolia's requested commencement extension under NGA section 3(a) are not addressed herein, as they are outside the scope of this Notice and will be addressed as appropriate in a future order.

## **II. DISCUSSION**

### **A. Magnolia's Supplement Filings Constitute an Amendment of Magnolia's Pending Request**

Sierra Club argues that it would be "procedurally improper" for DOE to treat the portion of Magnolia's May 30, 2023 filing referred to as the Supplement as an amendment to Magnolia's pending Request, as sought by Magnolia in its Supplement Letter.<sup>29</sup> According to Sierra Club, treating the Supplement as an amendment "directly conflicts with the DOE's standard operating procedures, which require[] that the applicant amend its application whenever there are changes in material facts."<sup>30</sup>

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<sup>26</sup> Magnolia LNG, LLC, Response to July 19, 2023 Protest of Sierra Club (Aug. 1, 2023) [hereinafter Magnolia Procedural Response].

<sup>27</sup> *Id.* at 3.

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

<sup>29</sup> Sierra Club Procedural Protest at 2.

<sup>30</sup> *Id.* (citing 10 C.F.R. § 590.204).

We agree with Sierra Club’s suggestion that this procedural posture by Magnolia is unusual, as applicants typically file a standalone amendment to an application. However, we cannot agree that Magnolia’s approach—asking DOE to treat the Supplement as an amendment to its Request—is procedurally improper. The regulation governing the amendment of applications, 10 C.F.R. § 590.204, states that an applicant “shall amend ... the application whenever there are changes in material facts or conditions upon which the proposal is based,” but it does not require a specific format for an amendment. Therefore, we reaffirm our prior determination that Magnolia’s Supplement filed on May 30, 2023 (as supported by the Supplement Letter filed on July 14, 2023) constitutes an amendment to Magnolia’s Request under 10 C.F.R. § 590.204.<sup>31</sup> We note that Magnolia has “accepted DOE’s determination on this point.”<sup>32</sup> Accordingly, DOE refers herein to Magnolia’s Supplement as its Amended Request (or Amendment).

**B. DOE Will Provide Notice of Magnolia’s Amended Request in the *Federal Register***

Sierra Club next asserts that, if DOE treats Magnolia’s Amended Request as an amendment, DOE “should issue public notice and allow a new opportunity for public interventions, protests, and other comments.”<sup>33</sup> Sierra Club adds that “[e]xisting movant-intervenors must have an opportunity to supplement prior filings with opposition to the increased duration of this extension,” whereas “[i]nterested stakeholders who did not previously intervene or protest should have an opportunity to do so.”<sup>34</sup> We agree. As indicated in DOE’s Response to Magnolia’s Supplement, DOE will publish notice of Magnolia’s Supplement (*i.e.*, Amended

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<sup>31</sup> See DOE Response to Magnolia Supp.

<sup>32</sup> Magnolia Procedural Response at 2-3.

<sup>33</sup> Sierra Club Procedural Protest at 2.

<sup>34</sup> *Id.*

Request), together with Magnolia’s Supplement Letter, in the *Federal Register*. Consistent with the Policy Statement<sup>35</sup> (as well as Magnolia’s Request),<sup>36</sup> the notice will provide a period of 30 days in which any person may submit comments, protests, motions to intervene, or notices of intervention addressing Magnolia’s Amended Request for a 60-month extension to its export commencement deadline.<sup>37</sup>

### **C. DOE Accepts Sierra Club’s Procedural Protest of Magnolia’s Amended Request**

In its Procedural Protest, Sierra Club states that it “has already intervened in this docket” and adds that, “although resubmission is not necessary, Sierra Club has done so out of an abundance of caution.”<sup>38</sup> Because Sierra Club submitted a Motion to Intervene and Protest on May 15, 2023, in response to Magnolia’s Request and that filing remains pending,<sup>39</sup> we agree that Sierra Club does not need to resubmit the motion or protest. Additionally, DOE accepts Sierra Club’s Procedural Protest filed on July 19, 2023, as a protest of the Amended Request.<sup>40</sup>

### **D. DOE Will Evaluate Magnolia’s Amended Request Under the Policy Statement**

In the Policy Statement, DOE stated that the new policy on export commencement extensions “will apply to all existing and future long-term non-FTA authorizations, except for those authorizations for which an application requesting an export commencement extension was filed prior to issuance of this Policy Statement on April 21, 2023.”<sup>41</sup> DOE further stated that it “will review and act on those applications filed before April 21, 2023 ... using the case-by-case factual review undertaken by DOE prior to issuance of this Policy Statement.”<sup>42</sup> Thus, DOE

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<sup>35</sup> Policy Statement, 88 Fed. Reg. at 25,277.

<sup>36</sup> See Notice of Request, 88 Fed. Reg. at 23,020-21 (establishing 30-day public comment period for Magnolia’s Request).

<sup>37</sup> See also 10 C.F.R. § 590.205(a).

<sup>38</sup> Procedural Protest at 1 (reattaching Motion to Intervene and Protest filed on May 15, 2023).

<sup>39</sup> See *supra* note 8.

<sup>40</sup> See 10 C.F.R. § 590.304(e).

<sup>41</sup> Policy Statement, 88 Fed. Reg. at 25,278 (emphasis added).

<sup>42</sup> *Id.*



carved out a very limited exception to the applicability of the Policy Statement for the few entities that had already submitted applications for export commencement extensions—including Magnolia.<sup>43</sup>

Citing DOE’s Policy Statement and actions in the recent Lake Charles proceedings, Magnolia subsequently explained that it is changing its extension request from 28.5 months to 60 months “[i]n 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, 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).”<sup>44</sup> Magnolia argues that it had filed its original Request based on DOE’s “continuous historical practice,” and thus Magnolia “should not now be penalized by the DOE/FECM because of a fundamental shift articulated by the agency *after* Magnolia submitted its Extension Request.”<sup>45</sup>

In its Procedural Protest, Sierra Club responds by arguing that, “[w]hile the DOE stated its intention to treat Magnolia’s pending 28.5-month extension request as exempt from the Policy Statement, Magnolia is now attempting to avoid application of the Policy Statement to a second, 31.5-month extension by belatedly shoehorning it into this prior extension.”<sup>46</sup> Sierra Club further contends that Magnolia’s effort to avoid application of the Policy Statement to its Amended Request “represents an abuse of the DOE’s limited exemption and runs counter to the

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<sup>43</sup> *See id.*

<sup>44</sup> Magnolia Supp. at 21 (emphasis in original).

<sup>45</sup> *Id.* at 19-20 (emphasis in original).

<sup>46</sup> Sierra Club Procedural Protest at 3.

rationale established in the Policy Statement itself.”<sup>47</sup> In conclusion, Sierra Club states that, “[b]ecause Magnolia submitted this amendment after the Policy Statement was issued, the Policy Statement should apply to Magnolia’s amendment request.”<sup>48</sup>

In its Procedural Response, Magnolia counters that Sierra Club offers no support for this position, and that “[n]o such support exists.”<sup>49</sup> Magnolia states that, “[i]n 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>50</sup> Magnolia further asserts that its Amended Request “did not . . . commence a *new* extension proceeding, which would be reviewed under the Policy Statement.”<sup>51</sup> According to Magnolia, because the Amended Request is not a “new” proceeding, but instead a modification to its pending Request, “the date of [the] request to extend its commencement deadline remains March 20, 2023”—*i.e.*, prior to issuance of the Policy Statement on April 21, 2023.<sup>52</sup> Magnolia adds that it had prepared and submitted “all of [its] filings in this proceeding to-date . . . with the understanding that DOE would review Magnolia’s request under its pre-Policy Statement guidance,” and that this approach is “[c]onsistent with DOE’s guidance in this regard.”<sup>53</sup>

Based on DOE’s language in the Policy Statement and upon a review of both parties’ arguments, we agree with Sierra Club that, because Magnolia submitted its Amendment Request for a 60-month extension *after* the Policy Statement was issued (based on its knowledge of

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<sup>47</sup> *Id.*

<sup>48</sup> *Id.*

<sup>49</sup> Magnolia Procedural Response at 3.

<sup>50</sup> *Id.* (quoting Policy Statement, 88 Fed. Reg. at 25,278).

<sup>51</sup> *Id.* (emphasis in original).

<sup>52</sup> *Id.*

<sup>53</sup> *Id.*

DOE’s new policy and criteria set forth therein), the Policy Statement should apply to the Amended Request.

DOE’s exceptions to the Policy Statement were intentionally limited—as relevant here, to the commencement extension application “filed recently by ... Magnolia LNG, LLC (on ... March 20, 2023 ....)”<sup>54</sup> Contrary to Magnolia’s assertions, the limited exception made for Magnolia’s pending Request cannot be expanded later based on new information set forth in the Policy Statement. Although DOE’s regulations allow applicants to amend their pending applications, this does not mean, by extension, that DOE’s limited exception in the Policy Statement must be read to be inclusive of any and all amendments to Magnolia’s Request. For DOE to apply its limited exception for Magnolia’s Request to the Amended Request would not only be inconsistent with DOE’s language in the Policy Statement, but also would provide an unfair advantage for Magnolia.

For these reasons, DOE is hereby providing notice that it will evaluate Magnolia’s Amended Request for a 60-month commencement extension, through November 30, 2028, under the criteria set forth in the Policy Statement.<sup>55</sup>

### **III. CONCLUSION**

With these procedural matters resolved, DOE will move forward with providing notice in the *Federal Register* of Magnolia’s Amended Request and Supplement Letter. The Amended Request will supersede the pending Request, such that DOE will no longer consider the pending Request. If, for any reason, Magnolia determines that it does not wish to proceed with its

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<sup>54</sup> Policy Statement, 88 Fed. Reg. at 25,278.

<sup>55</sup> See *id.* at 25,277-78.

Amended Request, Magnolia may withdraw it and proceed with its Request for an export commencement extension of 28.5 months.<sup>56</sup>

Issued in Washington, D.C., on August 23, 2023.

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

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<sup>56</sup> See 10 C.F.R. § 590.204(c) (“After written notice to [FECM] and service upon the parties of that notice an applicant may withdraw an application.”). Should Magnolia choose to withdraw the Amended Request, DOE would review Magnolia’s original Request under the case-by-case factual review undertaken by DOE prior to issuance of the Policy Statement. See Policy Statement, 88 Fed. Reg. at 25,278.