

**UNITED STATES OF AMERICA
BEFORE THE
DEPARTMENT OF ENERGY**

Magnolia LNG, LLC

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FECM Docket No. 23-137-LNG

**ANSWER OF MAGNOLIA LNG, LLC IN OPPOSITION TO MOTION TO
INTERVENE AND PROTEST OF FOR A BETTER BAYOU, HABITAT RECOVERY
PROJECT, HEALTHY GULF, LOUISIANA BUCKET BRIGADE, MICAH SIX EIGHT
MISSION, THE VESSEL PROJECT OF LOUISIANA, PROPERTY RIGHTS AND
PIPELINE CENTER, AND SIERRA CLUB**

I. Introduction

Pursuant to Sections 590.303(e) and 590.304(f) of the Rules of Practice and Procedure of the Department of Energy (“DOE”),¹ Magnolia LNG, LLC (“Magnolia”) respectfully offers this answer in opposition (“Answer”) to the February 20, 2024 Motion to Intervene and Protest of For a Better Bayou, Habitat Recovery Project, Healthy Gulf, Louisiana Bucket Brigade, Micah Six Eight Mission, the Vessel Project for Louisiana, Property Rights and Pipeline Center, and Sierra Club’s (collectively, “Environmental Litigants”).² Environmental Litigants’ Protest expresses opposition to Magnolia’s November, 29, 2023 application³ for authorization from the DOE Office of Fossil Energy and Carbon Management (“DOE/FECM”) to export LNG from the Magnolia LNG Project (the “Project” or “Terminal”) to countries with which the United States does not have a free trade agreement, but trade is not prohibited (“non-FTA” countries). For the

¹ 10 C.F.R. §§ 590.303(e) & 590.304(f) (2024).

² *Magnolia LNG, LLC*, Motion to Intervene and Protest of For a Better Bayou, Habitat Recovery Project, Healthy Gulf, Louisiana Bucket Brigade, Micah Six Eight Mission, the Vessel Project for Louisiana, Property Rights and Pipeline Center, and Sierra Club, DOE/FECM Docket No. 23-137-LNG (February 20, 2024) (“Protest”).

³ *Magnolia LNG, LLC*, Application of Magnolia LNG, LLC for Long-Term Authorization to Export LNG to Non-Free Trade Agreement Countries and Request for Expedited Consideration, DOE/FECM Docket No. 23-137-LNG (Nov. 29, 2023) (“Application”).

reasons discussed below, Magnolia respectfully requests that DOE/FECM deny Environmental Litigants’ motion to intervene and dismiss their arguments raised in the Protest.

In support of this Answer, Magnolia states the following:

II. Background

Magnolia incorporates by reference the background discussion of the Magnolia LNG Project provided in the Application.⁴ On February 20, 2024, the Environmental Litigants filed their Protest, opposing the Application and seeking to intervene in this proceeding.

III. Procedural Issues

Environmental Litigants’ motion to intervene fails to meet DOE’s requirements for intervention and should therefore be denied. Specifically, Section 590.303 provides that “[a]ny other person who seeks to become a party to a proceeding shall file a motion to intervene, which sets out clearly and concisely the facts upon which the petitioner’s claim of interest is based.”⁵ In seeking to intervene, however, the Environmental Litigants fail to demonstrate how the proposal in front of DOE—specifically Magnolia’s request to export LNG, as a commodity, to non-FTA countries—harms them. To the contrary, the Environmental Litigants state only that they will be harmed by the “construction and operation” of the Magnolia LNG Project.⁶ As Magnolia discusses in greater detail below, it is well settled that issues related to the construction and operation of an LNG export terminal like Magnolia’s is strictly within the jurisdiction of the

⁴ Application at 3-24.

⁵ 10 C.F.R. §590.303(b).

⁶ See Protest at Section I.1. (citing new “shipping traffic” and “new infrastructure with significant direct environmental impacts”); Section I.3 (“directly affected by the construction and operation of the Magnolia LNG Project”); Section I.4 (“directly affected by the construction and operation of the proposed Magnolia LNG Project”); Section I.7 (“directly affected by the construction and operation of the proposed facility”); Section I.8 (the organization “will be impacted by the operation of the Magnolia LNG Project”).

Federal Energy Regulatory Commission (“FERC”); whereas DOE’s authority is limited to the export of LNG as a commodity. None of the Environmental Litigants explain how Magnolia exporting LNG as a commodity to non-FTA nations will harm them. Siting, construction, and operation of the Magnolia LNG Project cannot serve as legitimate justification for an intervention in a DOE proceeding to export the LNG commodity.

We also note that Magnolia is already authorized to export 8.8 million tonnes per annum (“MTPA”) of LNG to free trade agreement nations. The Environmental Litigants raise nothing about Magnolia’s exports to non-FTA nations that would give them standing to intervene here that is different than our existing exports authorized. The only claims they make to prove their standing pertain to the construction and operation of the physical Magnolia LNG Terminal, which is not within DOE’s jurisdiction and not the subject of this proceeding. Accordingly, Environmental Litigants have failed to meet DOE’s requirements for intervention, and Magnolia respectfully requests DOE deny Environmental Litigants motion to intervene.

IV. Answer⁷

Magnolia is astounded at the shocking assertions and approach that the Environmental Litigants urge DOE take in this proceeding. Make no mistake—the Environmental Litigants are asking DOE to intentionally violate the law and binding judicial precedent, usurp authority from FERC, and centralize so much authority in DOE that it can only be described as a governmental

⁷ At the outset, Magnolia notes that many of the issues raised by the Environmental Litigants are issues that DOE recently has indicated it will be addressing as part of its refresh of past studies and analyses related to LNG exports. DOE also has stated that when it has completed its studies, it will seek public comment on the studies. *See* Testimony of David Turk, Deputy Secretary of DOE, before a Full Committee Hearing of the Senate Committee on Energy and Natural Resources, (DOE will partner with our National Laboratories on this analysis, which, once updated, will be officially shared for public comment before it is finalized.”) (Feb. 8, 2024) *available at* <https://www.energy.senate.gov/services/files/12C4B00D-BFF3-4D11-9CD7-E462B156BF61>. As a result, Magnolia reserves the right to provide additional comments on aspects of the Environmental Litigants Protest or future filings in this docket, as appropriate.

take-over of the LNG industry. This cannot be tolerated and DOE must reject such egregious claims.

Where the Environmental Litigants are not asserting novel and dangerous arguments, the Protest is a resuscitation of previously raised and rejected arguments regarding U.S. LNG, seemingly reinvigorated because of DOE's recent pause to its review of non-FTA exports.⁸ DOE must continue to dismiss these repetitive and previously rejected claims.

A. **The Environmental Litigants Efforts to Instill Panic and Fear Around US Natural Gas Prices Should Be Rejected as Unsubstantiated, Hyperbolic Assertions That Do Not Overcome Their Public Interest Burden.**

After decades of unsuccessful arguments over and over again before DOE and FERC about unproven and alleged environmental impacts and a parade of other horrors as a result of the advancement of U.S. LNG, the Environmental Litigants now have shifted their focus to natural gas market dynamics and hyperbolic assertions about a dystopian future with natural gas prices so high that American consumers can no longer afford to heat their homes. Magnolia LNG agrees with the Environmental Litigants that DOE should consider the U.S. domestic natural gas market, including natural gas prices, in its assessment of proposed LNG exports. However, as is the usual practice of the Sierra Club and the Environmental Litigants, their focus on increased domestic natural gas prices cherry picks data points and sources.

As DOE is aware, natural gas is a global commodity, and just as any other globally traded commodity, the price for natural gas is subject to fluctuations as a result of myriad factors occurring every hour of every day all over the world—including weather, infrastructure outages, conflicts, availability of other energy sources, political decisions, demand, and yes, also imports

⁸ DOE to Update Public Interest Analysis to Enhance National Security, Achieve Clean Energy Goals and Continue Support for Global Allies (Jan. 26, 2024), available at <https://www.energy.gov/articles/doe-update-public-interest-analysis-enhance-national-security-achieveclean-energy-goals>.

and exports. The Environmental Litigants' efforts to convince DOE that authorizing Magnolia LNG to export 8.8 MTPA of LNG "will harm US consumers," and "increas[e] energy prices by the billions for American families" are based entirely on data points and information taken out of context and speculative projections from sources with particularized agendas.

For example:

- The Environmental Litigants cite to the U.S. Energy Information Administration ("EIA") for their assertion that there is a connection that is harmful and destructive to the American economy and consumers between higher LNG exports and higher domestic natural gas prices that will continue through 2050. In their footnote citation, the Environmental Litigants provide the following quote from AEO2023 in a parenthetical to support their assertion: "We project that through 2050 additional U.S. LNG exports would increase the natural gas spot price at the Henry Hub," which will "ultimately affect natural gas prices for consumers in all U.S. end-use sectors to some degree."⁹ Magnolia does not dispute that LNG exports could impact domestic natural gas prices. Supply and demand are fundamental principles of economics. But the Environmental Litigants have not provided any evidence to the DOE that would tie exports of LNG from the Magnolia LNG Project to increased natural gas prices for U.S. consumers in 2030, 2050 or any other time. Such connection simply cannot exist as it is purely conjecture, because natural gas prices are subject to fluctuation. The mere fact that LNG exports *could* impact domestic natural gas prices cannot overcome the burden that Environmental Litigants have under the Natural Gas Act

⁹ Environmental Litigants' Protest at p. 17, fn.52.

(“NGA”) to affirmatively demonstrate that Magnolia’s proposed LNG exports are inconsistent with public interest.

Moreover, when one reviews the actual AEO2023 report that Environmental Litigants cite to, it becomes clear that they omit a key part of the EIA’s assessment which unsurprisingly does not align with the their extremist speculation.

“We project that through 2050 additional U.S. LNG exports would increase the natural gas spot price at the Henry Hub, the benchmark natural gas spot price in the United States, ***although not beyond recent history or the highest AEO2023 case*** (Figure 2). Because end-use natural gas prices are influenced by spot prices, rising natural gas spot prices ultimately affect natural gas prices for consumers in all U.S. end-use sectors to some degree. Delivered natural gas prices for industrial and electric power consumers tend to cause changes in spot prices more directly because delivery costs to those sectors incorporate less fixed charges compared with the residential and commercial sectors.”¹⁰

The omitted phrase caveats the increase in U.S. natural gas spot prices by noting that such an increase is not inconsistent with historical pricing, a point that would smash the Environmental Litigants’ thesis that LNG exports are having a continuous and outsized impact on domestic natural gas prices.

- Environmental Litigants cite on multiple occasions to the Institute for Energy Economics and Financial Analysis (“IEEFA”)¹¹ and its assertions of catastrophic linkages between U.S. LNG exports and increased prices for domestic natural gas.¹² Yet, IEEFA acknowledges that the underlying point—that U.S. natural gas prices in 2022 were significantly higher—is directly tied to two unique events, the COVID pandemic and the Russian invasion of Ukraine:

According to the Energy Information Administration, total U.S. spending on natural gas soared to \$269 billion in 2022, up from \$150 billion in 2019, the last

¹⁰ AEO2023 at p. 8 (*emphasis added*).

¹¹ IEEFA is a think tank focused on the advancement of renewable energy and “steadily eroding reliance on fossil fuels,” and is funded by multiple organizations with a similar bent. See <https://ieefa.org/what-we-do>.

¹² See Protest at fn. 45, 48, 51, 58-59.

“normal” year before COVID-19 and Russia roiled U.S. gas markets. It’s impossible to know exactly how much U.S. consumers would have spent if Russia hadn’t upended global gas markets. But there’s absolutely no doubt that surging LNG exports helped trigger the surge in U.S. gas prices.¹³

Russia invaded Ukraine and the United States made every effort to send LNG to our strategic European allies as Russia cut off gas supplies and European nations sought to reduce and eliminate reliance on Russian gas. There will always exist the possibility of events that cause price spikes. Hurricanes, tornadoes, winter snow storms, wars, strikes, infrastructure incidents—the list goes on. The mere possibility of such events and a potential for a corresponding increase in U.S. natural gas prices simply cannot be sufficient to overcome the burden of proving that Magnolia LNG’s exports are inconsistent with the public interest. In fact, the Environmental Litigants’ very argument in this respect would mean that all LNG exports are inconsistent with the public interest—something that simply cannot be since the U.S. Congress already has declared in the NGA that there is a presumption that LNG exports *are* consistent with the public interest. They offer nothing in their Protest to suggest that exports from the Magnolia LNG Project would be the cause of some future prices increase in U.S. natural gas prices.

- Environmental Litigants cite to a Public Citizen website posting from September 2023, that “calculates that domestic consumers will face \$14.3 billion in higher annual natural gas costs in 2050 as a result of LNG exports.”¹⁴ The number of

¹³ Clark Williams-Derry, “Gas exports cost U.S. consumers more than \$100 billion over 16-month period,” IEEFA (Jan. 29, 2024), *available at* <https://ieefa.org/resources/gas-exports-cost-us-consumers-more-100-billion-over-16-month-period>.

¹⁴ Protest at 15, citing Tyson Slocum, “LNG Exports Cause Domestic Energy Insecurity,” Public Citizen (Sept. 2023), *available at* <https://www.citizen.org/wp-content/uploads/LNG-Consumer-Cost-Fact-Sheet-09.11.23.pdf> (herein, “Public Citizen “Report””)

variables that could impact such a number over the next 27 years is infinite. This is the definition of speculative, and certainly not “evidence” sufficient to overcome a statutory presumption in favor of exports. The Public Citizen “report” cites to a Wall Street Journal article when noting that “U.S. natural gas price volatility is at the highest levels since the 1990s.”¹⁵ A closer review of the article, however, reveals a multitude of reasons for such volatility, including increased LNG exports:

“Coal-fired power plants have been retired en masse without wind and solar farms ready to replace their output, pressuring utilities to pay up for gas. Infrastructure to export more gas is being built, but pipeline projects to move more gas within the country have been slowing. The Kremlin’s invasion of Ukraine last year sent global markets haywire, sparking a scramble by European buyers to replace Russian supplies and tethering U.S. prices to international events even more.”¹⁶

Magnolia assumes that Environmental Litigants would even support some of these reasons for natural gas price volatility (*e.g.*, the retirement of coal-fired power plants and a slow-down in pipeline permitting), just not LNG exports. This is another example of cherry-picked information and data points to serve their singular mission to stop all LNG, despite clear statements by Congress in the law that exports are presumed to be consistent with the public interest.

Ultimately, despite pages of “evidence” about natural gas prices and gas markets, the Environmental Litigants offer DOE no evidence that would tie Magnolia’s proposed exports of 8.8 MTPA to natural gas price impacts on American consumers, and therefore have not provided adequate support to overcome the burden to demonstrate that Magnolia’s LNG proposed exports are inconsistent with the public interest.

¹⁵ Public Citizen “Report” at p. 2, fn.13.

¹⁶ David Uberti and Ryan Dezember, “Why Gas Bills Are Going Crazy—With No End in Sight,” March 15, 2023, www.wsj.com/articles/natural-gas-prices-energy-bills-ea3ea9da.

Finally, Magnolia directs DOE to the information from the EIA—not from special-interest sources—included in its non-FTA Application clearly indicating that current and expected U.S. natural gas production efforts are and will continue to be more than sufficient to meet both domestic needs and supply LNG for export.¹⁷ As Magnolia noted:

For instance, EIA’s AEO2023 forecasts that domestic consumption of natural gas is anticipated to remain “relatively stable—ending recent growth in most cases.”¹⁸ The most recent AEO2023 data continues to support the conclusion that the United States will continue to experience net benefits from the issuance of LNG exports. While increased LNG exports are expected through the year 2050, the 2023 Reference Case shows moderately higher natural gas production from the lower-48 and significantly lower domestic U.S. consumption, which is more favorable than the AEO 2017 Reference that formed the basis for the 2018 LNG Export Study.¹⁹ The increased LNG exports expected in 2050 are offset by the fact that the total amount of LNG exports is anticipated to fall below the difference between production and total consumption, meaning that there will be sufficient natural gas supply to support both domestic consumption and the anticipated volume of LNG exports.²⁰

It is not just that there is adequate supply to meet both overseas demand for U.S. LNG and domestic demand, but also importantly that despite a recognition that all three LNG case studies examined by EIA “found that LNG export volumes affected the resulting annual average U.S. natural gas price, ... [t]he resulting variation in natural gas prices in these three cases, however, was narrower than recent in history and our AEO2023, despite a wide variety of U.S. LNG

¹⁷ See Application at pp. 34-37.

¹⁸ U.S. Energy Info. Admin., AEO2023 at 6 (Mar. 16, 2023) (finding that “continued growth in U.S. production, [] combined with relatively little growth in domestic consumption, allows the United States to remain a net exporter of... natural gas through 2050 in all AEO2023 cases,” available at <https://www.eia.gov/outlooks/aeo/> (footnote in original)).

¹⁹ See *id.* at table 59 (Lower 48 Natural Gas Production and supply Prices by Supply Region) & 61 (Natural Gas Consumption by End-Use Sector and Census Division) (Reference Case Projections Tables), available at https://www.eia.gov/outlooks/aeo/tables_ref.php; compare *Freeport* Order No. 4961, at 63-64, table. 1 (footnote in original).

²⁰ See, U.S. Energy Info. Admin., AEO2023 at 27 (footnote in original).

export volumes.”²¹ Specifically, each modeled natural gas price in the different scenarios was well within the low and high natural gas prices for the years 2018-2022.²²

In short, there is no evidence that U.S. LNG exports are impacting U.S. domestic natural gas prices in such a way that would cause Magnolia’s proposed LNG exports to be deemed inconsistent with the public interest. Price increases caused by one-off and crisis events that have a short-term but strong impact on prices are insufficient to overcome the rebuttable presumption.

Finally, Environmental Litigants allege that “extensive” tax subsidies that Magnolia has received “undermine any argument that tax revenue from LNG terminal operations provides economic benefits.”²³ Environmental Litigants then cursorily explain that there “appear to be three different tax exemptions related to Magnolia LNG”²⁴ and allege that the estimated “\$50.2 million in *ad valorem* tax relief in [Magnolia’s] first year of operation...severely undermine the benefits” of Magnolia’s Project to the region.²⁵ Environmental Litigants then go on to complain about tax incentives other LNG developers—not Magnolia LNG—have received.²⁶

Environmental Litigants’ assertions are patently false. Magnolia currently holds only one tax incentive contract with the State of Louisiana, for a property tax abatement. Even acknowledging Magnolia’s \$50.2 million in tax relief during its first year of operations, this number is dwarfed by the estimated \$86 million Magnolia will pay in state and local taxes during

²¹ U.S. Energy Info. Admin., *AEO2023 Issues in Focus: Effects of Liquefied Natural Gas Exports on the U.S. Natural Gas Market*, at p. 3 (May 2023).

²² *Id.* at Table 1. “Summary of results in 2050, Annual Energy Outlook 2023,” indicating that the prices across the three cases ranged from \$3.28 to \$4.81, as compared to the 2018-2022 Range which saw a low price of \$2.23 and a high price of \$6.52.

²³ Protest at 23-24.

²⁴ *Id.* at 23.

²⁵ *Id.*

²⁶ *Id.* at 24.

its first year of construction, and of course, there will be a number of other taxes that Magnolia will be responsible for paying during the course of its operations. Furthermore, and directly contrary to Environmental Litigants' charge that Magnolia leased its site for the purposes of avoiding paying property taxes,²⁷ inventory for the Magnolia LNG Project is not eligible for a property tax exemption, and the Project will still be subject to Louisiana income and franchise taxes.

B. The Environmental Litigants Suggestions That DOE Should Step In and Control the Commercial Terms of LNG Exports Should Be Rejected.

In at least two locations in the Protest, Environmental Litigants assert that the DOE should actively step in and exercise control over the private, commercial arrangements governing the LNG industry. This is an alarming suggestion—and with such strong socialist overtones, it must be rejected by DOE.

First, in discussing energy markets and their insistence that DOE has failed to properly analyze energy markets in the past, the Environmental Litigants emphasize that DOE must be particularly careful going forward “given DOE’s refusal, to date, to exercise supervisory authority over already-approved exports. Although DOE retains authority to amend and/or rescind existing export authorizations, DOE has stated its reluctance to exercise such authority.”²⁸ In footnote 68 attached to this statement, Environmental Litigants go shockingly further, stating “Although DOE has not exercised this authority yet, DOE *should* carefully consider doing so, given the severe impact already-authorized exports are having on domestic

²⁷ *Id.* at 23-24.

²⁸ Protest at 21. Magnolia takes issue with and does not concede that DOE has authority under the NGA to rescind existing export authorizations, absent any violation of such authorization. As then-D.C. Circuit Judges Antonin Scalia, Ruth Bader Ginsberg, and Kenneth Starr noted in a 1985 opinion, the question of whether DOE has the right to revoke an LNG import or export authorization is a “nettlesome issue.” *Ass’n of Bus. Advocating Tariff Equity v. Hanzlik*, 779 F.2d 697, 702 at fn. 7 (D.C. Cir. 1985).

gas prices.”²⁹ The Environmental Litigants would have the federal government essentially expropriate private property and deprive private businesses of their ability to engage in business and earn a return, based solely on cherry-picked data arising out of the first war on the European continent in decades and the first global pandemic in over 100 years.

The Environmental Litigants also directly assert that if DOE is going to find that Magnolia LNG’s exports are in the public interest because Europe will need the gas, “then DOE should ensure that the gas goes to Europe” and “should explore whether to impose conditions that ensure that the authorization is actually used for that purpose.”³⁰ This is yet another stunning assertion of governmental intervention into private commercial contracts that is anathema to our form of government and a free enterprise system. DOE is no doubt fully aware of the shock it would send through world markets in the event that the federal government stepped in and essentially abrogated a commercial contract between a U.S. exporter and its non-U.S. counterparty. DOE must soundly reject these suggestions that it intervene in private contracts and commercial markets.

C. **DOE Should Disregard Environmental Litigants’ Unsupported, Intentionally Misleading Claims Regarding Environmental Impacts of Approving Magnolia LNG’s Exports.**

As a continuation of its campaign against the U.S. LNG industry, Environmental Litigants contend that in reviewing Magnolia’s Application, DOE must overhaul its entire environmental analysis of all exports of US LNG, and in so doing, will assuredly find that “more LNG exports are not in the public interest.”³¹ Environmental Litigants’ arguments have little to do with Magnolia’s actual Application, and are instead recitations of arguments members of the

²⁹ Protest at 21, and fn.69 (emphasis in original).

³⁰ Protest at 30.

³¹ Protest at 35.

Environmental Litigants have raised in other proceedings.³² As discussed herein, however, Environmental Litigants’ arguments are based on a fundamental misunderstanding (or purposeful mischaracterization) of DOE’s authority under the NGA and resulting responsibilities under the National Environmental Policy Act (“NEPA”), and otherwise raise generalized concerns with DOE policy and LNG exports writ large, which do not lie in this proceeding.

1. Environmental Litigants’ Arguments Regarding DOE’s Lifecycle GHG Studies Are Irrelevant and Contrary to D.C. Circuit Precedent

Environmental Litigants, as they have in other proceedings,³³ take issue with DOE’s 2014 Life Cycle Analysis (“2014 LCA”),³⁴ as well as DOE’s 2019 update to the 2014 LCA³⁵ and allege that DOE’s reliance on these studies in reviewing the environmental impacts of LNG exports is insufficient under NEPA. As an initial matter, Environmental Litigants have tried – and failed – to raise these arguments before, and DOE should disregard them no mind in considering Magnolia’s Application, as this issue has been settled for nearly seven years. In *Sierra Club v. U.S. Dep’t of Energy*,³⁶ the D.C. Circuit upheld DOE’s finding that the indirect effects associated with LNG exports—including alleged export-induced upstream natural gas production and downstream emissions “resulting from transport and usage abroad” —were not reasonably foreseeable such that they were required to have been considered in DOE’s NEPA review. The *Freeport* panel accepted DOE’s finding that while it could describe the upstream impacts from export-induced natural gas production *generally*, DOE was unable to make

³² Compare Protest at 35-72, with *Magnolia LNG, LLC*, Motion to Intervene of Sierra Club, Healthy Gulf, For a Better Bayou, The Vessel Project of Louisiana, and Micah 6:8 Mission, at pp 20-33, DOE/FECM Docket No. 13-132-LNG (May 15, 2023) (“Sierra Club Extension Protest”).

³³ See Sierra Club Extension Protest at 25-33.

³⁴ *Life Cycle Greenhouse Gas Perspective on Exporting Liquefied Natural Gas From the United States*, DOE/NETL-2014-1649 (May 29, 2014).

³⁵ *Life Cycle Greenhouse Gas Perspective on Exporting Liquefied Natural Gas From the United States: 2019 Update*, (DOE/NETL-2019/2041) (Sept. 12, 2019) (“2019 LCA Update”).

³⁶ 867 F.3d 189 (D.C. Cir. 2017) (“*Freeport*”).

“specific projections about environmental impacts stemming from...export-induced natural gas production” at either the local or regional level.³⁷ The D.C. Circuit explained that DOE was not obligated to delve into the types of minutia Sierra Club asserted DOE must in order to assess upstream impacts from export-induced natural gas production, characterizing Sierra Club’s arguments as “not serious[],” and the type of analysis insisted upon by Sierra Club as “more misleading than informative.”³⁸ The D.C. Circuit in *Freeport* further noted that Sierra Club acknowledged that DOE provided precisely the type of information regarding upstream GHG emissions from export-induced natural gas production that Sierra Club insisted was necessary.³⁹

The D.C. Circuit’s holding in *Freeport* also squarely addresses Sierra Club’s arguments assailing DOE’s assessment of downstream emissions from U.S. LNG exports. In *Freeport*, the D.C. Circuit upheld DOE’s use of the 2014 *Addendum to Environmental Review Documents Concerning Exports of Natural Gas from the United States* (“Addendum”)⁴⁰ and the 2014 LCA. The D.C. Circuit defined Sierra Club’s insistence that DOE’s analysis was deficient for not having explored whether U.S. LNG would compete with renewables in foreign markets as nothing more than “flyspecking” and would result in an analysis that was far too speculative to be useful.⁴¹ The D.C. Circuit ultimately held that there was “nothing arbitrary” about DOE’s downstream GHG emissions analysis.⁴² So comprehensive and conclusive was the D.C. Circuit’s careful dismantling of Sierra Club’s arguments in *Freeport* that shortly after *Freeport*

³⁷ *Id.* at 201.

³⁸ *Id.* at 211.

³⁹ *Id.* at 202.

⁴⁰ 79 Fed. Reg. 48,132 (Aug. 15, 2014).

⁴¹ *Freeport*, 867 F.3d at 214 (citing *Myersville Citizen for a Rural Cmty., Inc. v. FERC*, 783 F.3d 1301, 1324 (D.C. Cir. 2015)).

⁴² *Id.*

was issued, Sierra Club voluntarily withdrew a remaining petition for review of a DOE LNG export authorization.⁴³

Furthermore, although DOE would be on firm footing to consider Magnolia's application under its 2014 LCA and 2019 Update, Environmental Litigants' arguments regarding these studies are entirely irrelevant, as DOE has publicly announced that it is going to update its environmental analyses used in considering non-FTA export applications.⁴⁴ Whatever concerns Environmental Litigants may have raised in its Protest regarding the 2014 LCA and 2019 Update are now immaterial, as DOE is preparing new studies. Environmental Litigants' blind recitation of prior arguments raised regarding the 2014 LCA and 2019 Update is little more than a demonstration that Environmental Litigants' are not concerned with whether DOE, in considering Magnolia's Application, abides by its statutory mandates under the NGA and NEPA, but is solely concerned with ending the entire U.S. LNG export industry.

2. Environmental Litigants Misstate The Scope Of DOE's Review Of The Application Under The NGA And NEPA.

Environmental Litigants, in complete contravention of long standing D.C. Circuit precedent, argue in their Protest that "Magnolia has proposed several changes to the project" that DOE must review under NEPA, including Magnolia's exploration of whether carbon capture facilities may be used at the Project, and its current plan to develop a blue hydrogen/ammonia plant near the Project in order to synergize infrastructure.⁴⁵ Environmental Litigants argue that

⁴³ *Sierra Club v. U.S. Dep't of Energy*, No. 16-1426, Per Curiam Order (D.C. Cir. Jan. 30, 2018) (granting Sierra Club's unopposed motion for voluntarily dismissal). Magnolia notes that while DOE denied Sierra Club's request for rehearing of the NFTA Authorization, authorizing Magnolia to export 8.0 mtpa of LNG to NFTA Nations, Sierra Club did not seek review of these orders in federal court.

⁴⁴ U.S. Dep't of Energy, DOE to Update Public Interest Analysis to Enhance National Security, Achieve Clean Energy Goals and Continue Support for Global Allies, (issued January 26, 2024), available at <https://www.energy.gov/articles/doe-update-public-interest-analysis-enhance-national-security-achieve-clean-energy-goals> (hereinafter referred to as the "Pause").

⁴⁵ Application at 18-19.

these “proposals,” as well Magnolia’s U.S.-patented and highly energy efficient Optimized Single Mixed Refrigerant (“OSMR[®]”) liquefaction process technology must be reviewed by DOE in an environmental impact statement (“EIS”), as well as other impacts from the construction and operation of the Project.⁴⁶

As Environmental Litigants should no doubt be aware by now, DOE and FERC have shared—though distinct—authority over the liquefaction and export of domestically produced LNG. The D.C. Circuit explained this sharing of authority succinctly in *Sierra Club v. FERC*, providing that “[DOE] maintains exclusive authority over the export of natural gas as a commodity” but that FERC has authority to ““approve or disapprove the construction and operation” of LNG export terminals.⁴⁷

With blatant disregard of this distinction, and in contravention of this statutory construction, Environmental Litigants assert that DOE, in assessing Magnolia’s Application to export LNG as a commodity to non-FTA nations, must stray far outside its authority under the NGA and consider impacts resulting from aspects of the physical construction and operation of the Project. Magnolia’s consideration of co-locating a green ammonia/hydrogen plant near the Project, or incorporating carbon capture into the Project’s design, have nothing to do with Magnolia’s export of the LNG commodity to non-FTA nations; these are physical aspects of the project which, if Magnolia elects to implement would be reviewed by FERC pursuant to its NGA Section 3 authority to approve the siting and construction of LNG export terminals.⁴⁸ Moreover,

⁴⁶ Protest at 52-68 (arguing that DOE must consider the Project’s air impacts, potential impacts on Rice’s whale, GHG emissions, and the potential risks of sea rise on the Project).

⁴⁷ 827 F.3d 36, 40-41 (D.C. Cir. 2016) (“*Freeport I*”).

⁴⁸ Consistent with all of their legal efforts in attempting to stop LNG for years, Environmental Litigants’ Protest is devoid of any meaningful legal or regulatory support. Instead, the parties attempt to confuse and distort the record before the agency presumably in the hope that out of fear DOE will take up some of the alleged harms. DOE need look no further for evidence of this than the Environmental Litigants absurd attempt at misdirection with its statement “Ammonia production can be extremely dangerous.” Protest at p.50. Magnolia LNG agrees that

the green ammonia/hydrogen facility and potential carbon capture system are not “proposals” as Magnolia has not sought FERC review and approval of these facilities, rather, these are development concepts that are still under preliminary consideration by Magnolia and/or Glenfarne. Finally, Environmental Litigants allege, despite a complete lack of support, that Magnolia’s OSMR® liquefaction process “poses significant additional safety concerns”⁴⁹ and merely cite to Magnolia’s description of OSMR® in the Application. FERC, in approving the construction and operation of the Terminal, reviewed⁵⁰ and approved⁵¹ the use of OSMR® at the Terminal, and this approval should therefore be viewed by DOE as dispositive of the safety, and benefits, of OSMR® liquefaction technology, and it would be outside the scope of DOE’s authority under the NGA to do anything other than to afford OSMR® the same weight as FERC.

Likewise, issues regarding the risks sea level rise poses to the Project,⁵² potential impacts of the Project on Rice’s whale,⁵³ and the project’s direct GHG emissions⁵⁴ deal with the physical

ammonia production can be dangerous. That is precisely why it is highly regulated by the U.S. Environmental Protection Agency (“EPA”) and the Occupational Safety and Health Administration (“OSHA”). *See* EPA regulations at 40 C.F.R. Part 68 (General Guidance for Facilities on Risk Management Programs), Appendix E: Supplemental Risk Management Program Guidance for Ammonia Refrigeration Facilities (May 2004); OSHA regulations at 29 C.F.R. § 1910.111 (Storage and Handling of Anhydrous Ammonia). It is also why FERC—the agency with authority over the siting, construction, and operation of Magnolia LNG’s export terminal—extensively studied Magnolia’s use of anhydrous ammonia and coordinated with EPA and OSHA in its review, ultimately finding that “the hazards associated with anhydrous ammonia are well understood, can be mitigated to safe levels with additional mitigation measures, and would be subject to the regulation of a number of federal agencies. *Magnolia LNG, LLC*, Final Environmental Impact Statement, at 3-34, Docket No. CP14-347-000 and CP14-511-000 (published Nov. 13, 2015).

⁴⁹ Protest at 51

⁵⁰ *Magnolia LNG, et al.*, Final Environmental Impact Statement, at 3-34 - 3-35, FERC Docket No. CP14-347-000 (Nov. 13, 2015).

⁵¹ *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).

⁵² Protest at 56-61.

⁵³ *Id.* at 61-63.

⁵⁴ *Id.* at 64

impacts of the Project itself, not the export of LNG as a commodity, and are therefore strictly within the jurisdiction of FERC to consider.⁵⁵

Shockingly, however, despite the clear delineation of authority between DOE and FERC under Section 3 of the NGA, Environmental Litigants argue that “DOE has authority over the entire process of LNG exports and should exercise that authority – and conduct requisite NEPA reviews – accordingly.”⁵⁶ The gravity of the Environmental Litigants’ suggestion here should not be taken lightly; they suggest nothing less than DOE usurp FERC’s statutory authority, afforded to them by Congress via the NGA, to consider the environmental impacts of the construction and operation of LNG export facilities like Magnolia’s.

DOE cannot, and should not, countenance a party to one of its proceedings encouraging DOE to act *ultra vires* and perform the actions of another agency. Environmental Litigants’ suggestion is an affront to the rule of law, and DOE must reject this suggestion in the strongest possible manner.

D. Environmental Litigants’ Categorical Exclusion Argument Should be Discarded.

Finally, Environmental Litigants argue that DOE’s “categorical exclusion for exports not involving new construction”⁵⁷ should not apply to the Application, and goes on to oppose DOE’s categorical exclusion.⁵⁸ This argument has nothing to do with the Application, and Magnolia has not argued to DOE that its Application qualifies as a categorical exclusion under DOE’s

⁵⁵ *Freeport I*, 827 F.3d 36, 40-41 (explaining that under Section 3 of the NGA, approval of the construction and operation of LNG terminals is under FERC’s authority).

⁵⁶ Protest at 52, n.222.

⁵⁷ Protest at 68, citing 10 C.F.R. Part 1021 Part D, Appendix B, B5.7.

⁵⁸ *Id.* at 68-73.

regulations. Therefore, this argument is not germane to this proceeding, and DOE should dismiss it summarily.

V. Conclusion

WHEREFORE, for the foregoing reasons, DOE should deny Environmental Litigants' motion to intervene and reject their meritless and unsupported arguments, and find that Magnolia's Application to export U.S. LNG to non-FTA nations is not inconsistent with the public interest.

Respectfully submitted,

/s/ David L. Wochner

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Counsel for Magnolia LNG, LLC

Dated: March 6, 2024

CERTIFICATE OF SERVICE

I certify that I have this 6th day of March, 2024, serviced copies of the foregoing document filed with DOE/FECM on the designated representatives of all of the parties to this proceeding, in accordance with 10 C.F.R. § 590,107(a).

Dated: March 6, 2024

/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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FECM Docket No. 23-137-LNG

VERIFICATION

I, Adam Prestidge, declare that I am Senior Vice President – Head of Legal and Corporate Affairs for Magnolia LNG, 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 March 6, 2024.

/s/ Adam Prestidge

Adam Prestidge

Senior Vice President

Head of Legal and Corporate Affairs

Magnolia LNG, LLC