

UNITED STATES OF AMERICA

DEPARTMENT OF ENERGY

OFFICE OF FOSSIL ENERGY

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MAGNOLIA LNG, LLC

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) FE DOCKET NO. 12-183-LNG

) FE DOCKET NO. 13-131-LNG

) FE DOCKET NO. 13-132-LNG

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 NO. 3245-B

DOE/FE ORDER NO. 3406-B

DOE/FE ORDER NO. 3909-B

DECEMBER 10, 2020

## **I. DESCRIPTION OF REQUEST**

On October 2, 2020, Magnolia LNG, LLC (Magnolia LNG) filed a “consolidated application” (Application)<sup>1</sup> with the Office of Fossil Energy (FE) of the Department of Energy (DOE) under section 3 of the Natural Gas Act (NGA).<sup>2</sup> As explained below, DOE/FE construes the Application as asking DOE/FE to take the following actions pursuant to DOE/FE’s policy statement entitled, “Extending Natural Gas Export Authorizations to Non-Free Trade Agreement Countries Through the Year 2050” (Policy Statement):<sup>3</sup>

- (i) To extend the export term set forth in Magnolia LNG’s three existing long-term authorizations; and
- (ii) To amend the pending portion of Magnolia LNG’s application to amend one of its long-term authorizations (Amendment Application).<sup>4</sup>

Between 2013 and 2016, DOE/FE issued three long-term authorizations approving Magnolia LNG’s export of domestically produced liquefied natural gas (LNG) from the proposed Magnolia LNG Terminal, to be located in Lake Charles, Louisiana, as follows:

- DOE/FE Order No. 3245,<sup>5</sup> authorizing exports to any country with which the United States currently has, or in the future will have, a free trade agreement (FTA) requiring national treatment for trade in natural gas (FTA countries) under NGA section 3(c),<sup>6</sup> in a volume equivalent to 197.1 billion cubic feet per year (Bcf/yr) of natural gas;

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<sup>1</sup> Magnolia LNG, LLC, Consolidated Application to Amend Pending Amendment and Amend Existing Authorizations in Order to Increase Authorized Export Term Through December 31, 2050, FE Docket Nos. 12-183-LNG, *et al.* (Oct. 2, 2020) [hereinafter App.].

<sup>2</sup> 15 U.S.C. § 717b. Authority to regulate the imports and exports of natural gas, including liquefied natural gas, under NGA section 3 has been delegated to the Assistant Secretary for FE in Redelegation Order No. 00-002.04G, issued on June 4, 2019.

<sup>3</sup> U.S. Dep’t of Energy, Extending Natural Gas Export Authorizations to Non-Free Trade Agreement Countries Through the Year 2050; Notice of Final Policy Statement and Response to Comments, 85 Fed. Reg. 52,237 (Aug. 25, 2020) [hereinafter Policy Statement].

<sup>4</sup> Magnolia LNG, LLC, Application for Amendment to Long-Term Authorizations to Export Liquefied Natural Gas to Non-Free Trade Agreement and Free Trade Agreement Nations, FE Docket Nos. 13-132-LNG, *et al.* (Dec. 31, 2018) [hereinafter Amendment App.]; *see also* App. at 2.

<sup>5</sup> *Magnolia LNG, LLC*, DOE/FE Order No. 3245, FE Docket No. 12-183-LNG, Order Granting Long-Term Multi-Contract Authorization to Export Liquefied Natural Gas by Vessel from the Proposed Magnolia LNG Terminal in Lake Charles, Louisiana, to Free Trade Agreement Nations (Feb. 26, 2013).

<sup>6</sup> 15 U.S.C. § 717b(c). 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,

- DOE/FE Order No. 3406,<sup>7</sup> authorizing exports to FTA countries under NGA section 3(c) in a volume equivalent to 197.1 Bcf/yr of natural gas; and
- DOE/FE Order No. 3909,<sup>8</sup> authorizing exports to any other country with which trade is not prohibited by U.S. law or policy (non-FTA countries) under NGA section 3(a), in a volume equivalent to 394.2 Bcf/yr of natural gas.<sup>9</sup>

Under these orders, the FTA volumes are not additive to the non-FTA volume. Magnolia LNG is authorized to export the FTA volumes for a 25-year term under DOE/FE Order Nos. 3245 and 3406, and the non-FTA volume for a 20-year term under DOE/FE Order No. 3909.<sup>10</sup>

Subsequently, on December 31, 2018, Magnolia LNG submitted the Amendment Application, requesting that DOE/FE amend Magnolia LNG’s three long-term authorizations to increase the approved LNG export volume in each order.<sup>11</sup> On March 21, 2019, in Order Nos. 3245-A and 3406-A, DOE/FE granted the FTA portion of the Amendment Application under NGA section 3(c).<sup>12</sup> Specifically, DOE/FE amended both Order Nos. 3245 and 3406 to authorize the export of LNG in a volume equivalent to 224.5 Bcf/yr of natural gas under each order, for a total combined FTA volume of 449 Bcf/yr.<sup>13</sup>

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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>7</sup> *Magnolia LNG, LLC*, DOE/FE Order No. 3406, FE Docket No. 13-131-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 Free Trade Agreement Nations (Mar. 5, 2014).

<sup>8</sup> *Magnolia LNG, LLC*, DOE/FE Order No. 3909, FE 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).

<sup>9</sup> 15 U.S.C. § 717b(a).

<sup>10</sup> App. at 2. Additional information is set forth in each order.

<sup>11</sup> *See id.* at 3-4; *see also* Amendment App. at 1-2 (stating that Magnolia LNG “seeks to align the authorized export volumes of LNG from the Magnolia LNG Terminal with the optimized production capacity design of the facilities”).

<sup>12</sup> *See Magnolia LNG, LLC*, DOE/FE Order Nos. 3245-A and 3406-A, FE Docket Nos. 12-183-LNG, *et al.*, Order Amending Long-Term, Multi-Contract Authorizations to Export Liquefied Natural Gas by Vessel from the Proposed Magnolia LNG Terminal to Free Trade Agreement Nations (Mar. 21, 2019).

<sup>13</sup> *See id.* at 5 (stating that the amended FTA orders represent an increase of 54.8 Bcf/yr of natural gas above the total combined volume authorized in DOE/FE Orders No. 3245 and 3406); *see also id.* at 6-7.

As part of the Amendment Application, Magnolia LNG also requested an amendment to its non-FTA order, Order No. 3909, to increase its approved non-FTA export volume to 449 Bcf/yr (or 1.23 Bcf per day) on a non-additive basis.<sup>14</sup> That portion of the Amendment Application is still pending in FE Docket No. 13-132-LNG.

In the current Application, Magnolia LNG first asks DOE/FE to amend each of its three long-term authorizations—Order No. 3245 (as amended by Order No. 3245-A), Order No. 3406 (as amended by Order No. 3406-A), and Order No. 3909—to extend the existing export term through December 31, 2050.<sup>15</sup>

In this Order, DOE/FE grants this request and authorizes the requested term extension for all three orders. Specifically, DOE/FE grants the FTA portion of the Application under NGA section 3(c). Section 3(c) was amended by section 201 of the Energy Policy Act of 1992 (Pub. L. 102-486) to require that FTA applications “shall be deemed to be consistent with the public interest” and granted “without modification or delay.”<sup>16</sup> The FTA portion of the Application falls within NGA section 3(c) and, therefore, DOE/FE approves the requested term extension for the FTA authorizations (Order Nos. 3245 and 3406, both as amended) without modification or delay. Accordingly, none of the public interest analysis discussed below applies to the FTA portion of this authorization.

DOE/FE also grants the non-FTA portion of the Application applicable to DOE/FE Order No. 3909 under NGA section 3(a). As discussed below, DOE/FE received no filings in response to the Application, and therefore the Application is uncontested.<sup>17</sup> Upon review of the record in this proceeding, DOE/FE finds that it has not been shown that the term extension for Order No.

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<sup>14</sup> App. at 3 & n.6.

<sup>15</sup> *Id.* at 2, 4-5.

<sup>16</sup> 15 U.S.C. § 717b(c).

<sup>17</sup> 10 C.F.R. § 590.102(b); *see infra* § III.

3909 is inconsistent with the public interest, as would be required to deny this portion of the Application under NGA section 3(a).

In sum, DOE/FE is amending Magnolia LNG's long-term authorizations (Order Nos. 3245 and 3406, both as amended, and Order No. 3909) to extend each existing export term through December 31, 2050 (inclusive of any make-up period), with an attendant increase in the total export volume over the life of each authorization owing to the additional period that exports may occur.<sup>18</sup> These three orders remain unchanged in all other respects.

Next, as part of the Application, Magnolia LNG asks DOE/FE to amend<sup>19</sup> (or supplement<sup>20</sup>) the pending non-FTA portion of the Amendment Application to request a non-FTA export term lasting through December 31, 2050. Magnolia LNG also urges DOE/FE to grant the non-FTA portion of the Amendment Application with this extended export term.<sup>21</sup> DOE/FE will evaluate the Amendment Application in a separate order.<sup>22</sup> However, pursuant to 10 C.F.R. § 590.204(a), DOE/FE hereby accepts Magnolia LNG's amendment to the pending non-FTA portion of the Amendment Application (FE Docket No. 13-132-LNG) to reflect a requested export term lasting through December 30, 2050.

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<sup>18</sup> See Policy Statement, 85 Fed. Reg. at 52,247. In many long-term FTA and non-FTA authorizations, DOE/FE has approved a three-year "make-up period" following the end of the original export term, during which the authorization holder may continue to export any "make-up volume" that it was unable to export during the export term. See *id.* at 52,239.

<sup>19</sup> App. at 2.

<sup>20</sup> *Id.* at 8.

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

<sup>22</sup> See U.S. Dep't of Energy, Magnolia LNG, LLC; Application to Amend Export Term Through December 31, 2050, for Existing Non-Free Trade Agreement Authorization, 85 Fed. Reg. 67,342, 67,343 & n.5 (Oct. 22, 2020) [hereinafter Notice of Application] (stating that "DOE will evaluate both the current Application and the pending 2018 Amendment Application at the appropriate time," separate from DOE's review of the term extension request for DOE/FE Order No. 3909).

## **II. APPLICANT’S PUBLIC INTEREST ANALYSIS FOR REQUESTED NON-FTA TERM EXTENSION**

Magnolia LNG states that the requested term extension is in the public interest for the reasons set forth in the Policy Statement—namely, because the United States will experience net economic benefits associated with exporting LNG through the period between 2020 and 2050.<sup>23</sup> Citing the Policy Statement, Magnolia LNG adds that, to the extent U.S. exports can diversify global LNG supplies and increase the volumes of LNG available globally, these exports will improve energy security for many U.S. allies and trading partners.<sup>24</sup>

Additionally, Magnolia LNG states that the requested term extension for its export authorizations will provide greater certainty about the long-term regulatory support for LNG exports from the Magnolia LNG Terminal. According to Magnolia LNG, this enhanced regulatory certainty will assist Magnolia LNG “in marketing its liquefaction and export capacity on a long-term basis, and facilitating a final investment decision and ultimate construction and operation of the Magnolia LNG Project,” thus allowing the benefits associated with Magnolia LNG’s exports to accrue to the United States.<sup>25</sup>

## **III. DOE/FE PROCEEDING**

On October 22, 2020, DOE/FE published a notice of the non-FTA portion of the Application in the *Federal Register* (Notice of Application).<sup>26</sup> The Notice of Application invited interested persons to submit protests, motions to intervene, notices of intervention, or comments addressing the requested term extension by November 6, 2020.<sup>27</sup> DOE/FE received no filings in response to the Notice of Application.

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<sup>23</sup> App. at 5.

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

<sup>25</sup> *Id.* at 5-6.

<sup>26</sup> See Notice of Application, *supra* note 22.

<sup>27</sup> *Id.* DOE finds that the requirement for public notice of applications and other hearing-type procedures in 10 C.F.R. Part 590 is applicable only to non-FTA applications under NGA section 3(a).

#### IV. DISCUSSION FOR REQUESTED NON-FTA TERM EXTENSION

##### A. Standard of Review

Section 3(a) of the NGA sets forth the applicable standard of review for the non-FTA portion of the Application. Section 3(a) provides:

[N]o person shall export any natural gas from the United States to a foreign country or import any natural gas from a foreign country without first having secured an order of the [Secretary of Energy] authorizing it to do so. The [Secretary] shall issue such order upon application, unless after opportunity for hearing, [he] finds that the proposed exportation or importation will not be consistent with the public interest. The [Secretary] may by [the Secretary's] order grant such application, in whole or part, with such modification and upon such terms and conditions as the [Secretary] may find necessary or appropriate.<sup>28</sup>

DOE, as affirmed by the U.S. Court of Appeals for the District of Columbia Circuit, has consistently interpreted NGA section 3(a) as creating a rebuttable presumption that a proposed export of natural gas is in the public interest.<sup>29</sup> Accordingly, DOE will conduct an informal adjudication and grant a non-FTA application unless DOE finds that the proposed exportation will not be consistent with the public interest.<sup>30</sup>

NGA section 3(a) does not define “public interest” or identify criteria that must be considered in evaluating the public interest. In prior decisions, DOE has identified a range of factors that it evaluates when reviewing an application for export authorization. These factors include economic impacts, international impacts, security of natural gas supply, and

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<sup>28</sup> 15 U.S.C. § 717b(a).

<sup>29</sup> See *Sierra Club v. U.S. Dep't of Energy*, 867 F.3d 189, 203 (D.C. Cir. 2017) (“We have construed [NGA section 3(a)] as containing a ‘general presumption favoring [export] authorization.’”) (quoting *W. Va. Pub. Serv. Comm'n v. U.S. Dep't of Energy*, 681 F.2d 847, 856 (D.C. Cir. 1982)).

<sup>30</sup> See *id.* (“there must be ‘an affirmative showing of inconsistency with the public interest’ to deny the application” under NGA section 3(a)) (quoting *Panhandle Producers & Royalty Owners Ass'n v. Econ. Regulatory Admin.*, 822 F.2d 1105, 1111 (D.C. Cir. 1987)).

environmental impacts, among others. To conduct this review, DOE looks to record evidence developed in the application proceeding.

Before reaching a final decision, DOE must also comply with the National Environmental Policy Act of 1969 (NEPA).<sup>31</sup> DOE's environmental review process under NEPA may result in the preparation or adoption of an environmental impact statement (EIS) or environmental assessment (EA) describing the potential environmental impacts associated with the application. In other cases, DOE may determine that an application is eligible for a categorical exclusion from the preparation or adoption of an EIS or EA, pursuant to DOE's regulations implementing NEPA.

#### **B. Public Interest Review Under NGA Section 3(a)**

In the Policy Statement, DOE/FE discontinued its practice of granting a standard 20-year export term for long-term authorizations to export domestically produced natural gas, including LNG, from the lower-48 states to non-FTA countries.<sup>32</sup> On the basis of the record evidence, DOE/FE adopted a term through December 31, 2050, as the standard export term for long-term non-FTA authorizations.<sup>33</sup> DOE/FE implemented this policy change after considering its obligations under NGA section 3(a), the public comments supporting and opposing the proposed Policy Statement,<sup>34</sup> and a wide range of information bearing on the public interest—including the 2018 LNG Export Study that analyzed exports of U.S. LNG through the year 2050, the U.S. Energy Information Administration's (EIA) most recent projections for U.S. natural gas, and

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<sup>31</sup> 42 U.S.C. § 4321 *et seq.*

<sup>32</sup> Policy Statement, 85 Fed. Reg. at 52,247.

<sup>33</sup> *Id.*; *see also id.* at 52,239-40 (summarizing reasons supporting the term extension).

<sup>34</sup> *See* U.S. Dep't of Energy, Extending Natural Gas Export Authorizations to Non-Free Trade Agreement Countries Through the Year 2050; Notice of Proposed Policy Statement and Request for Comments, 85 Fed. Reg. 7,672 (Feb. 11, 2020).

relevant environmental issues.<sup>35</sup> DOE/FE stated that, for applications to amend existing authorizations submitted pursuant to this Policy Statement, DOE/FE would provide notice and an opportunity for comment on the requested term extension. DOE/FE further stated that, following the notice and comment period, it would conduct a public interest analysis under NGA section 3(a) limited to the requested term extension.<sup>36</sup>

In this uncontested proceeding, Magnolia LNG asks DOE/FE to amend the export term in its non-FTA authorization—Order No. 3909—through December 31, 2050, pursuant to the Policy Statement. DOE/FE notes that this term extension will increase Magnolia LNG’s total volume of exports over the life of the authorization (by extending the duration of Order No. 3909 through December 31, 2050), but it will not affect the day-to-day liquefaction and export operations of the Magnolia LNG Terminal previously approved by DOE and the Federal Energy Regulatory Commission (FERC).<sup>37</sup> Upon review, DOE/FE has determined that it has not been demonstrated that the requested term extension will be inconsistent with the public interest, as would be required to deny the non-FTA portion of Magnolia LNG’s Application.

### **C. Environmental Review Under NEPA**

Magnolia LNG states that approval of the term extension will not require new construction or operational changes to the Magnolia LNG Terminal.<sup>38</sup> DOE’s regulations at 10 C.F.R. Part 1021, Subpart D, Appendix B provide a list of categorical exclusions from preparation of either an EA or EIS under NEPA. Categorical exclusion B5.7 applies to natural gas import or export approvals that do not involve new construction but may require minor

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<sup>35</sup> See Policy Statement, 85 Fed. Reg. 52,247; see also *id.* at 52,240 (discussing the 2018 LNG Export Study and DOE’s most recent life cycle analysis of greenhouse gas emissions associated with exports of U.S. LNG), 52,243-44 (discussing EIA’s *Annual Energy Outlook 2020*), 52,244-45 (discussing additional environmental issues).

<sup>36</sup> See *id.* at 52,239, 52,247.

<sup>37</sup> See *id.* at 52,247; see also App. at 4 (citing FERC orders).

<sup>38</sup> App. at 7.

operational changes to existing projects. On December 9, 2020, DOE/FE issued a categorical exclusion under this provision.<sup>39</sup> This Order grants the non-FTA portion of the Application, in part, on the basis of this categorical exclusion.

## V. FINDINGS

(1) Section 3(c) of the NGA was amended by section 201 of the Energy Policy Act of 1992 (Pub. L. 102-486) to require that applications requesting authority for (a) the import and export of natural gas, including LNG, from and to a nation with which there is in effect an FTA requiring national treatment for trade in natural gas, and/or (b) the import of LNG from other international sources, be deemed consistent with the public interest and granted without modification or delay. The portion of Magnolia LNG's Application requesting an amendment to its FTA authorizations (DOE/FE Order Nos. 3245 and 3406, both as amended) falls within NGA section 3(c), as amended.<sup>40</sup> Therefore, DOE/FE is charged with granting the requested term extension for these orders without modification or delay.

(2) Upon a review of the record, DOE/FE finds that a grant of the non-FTA portion of the Application has not been shown to be inconsistent with the public interest under NGA section 3(a).<sup>41</sup> Additionally, the non-FTA portion of the Application qualifies for a categorical exclusion under NEPA, such that no EA or EIS will be required. DOE/FE therefore grants the requested term extension for Magnolia LNG's non-FTA authorization, Order No. 3909.

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<sup>39</sup> U.S. Dep't of Energy, Categorical Exclusion Determination, *Magnolia LNG, LLC*, FE Docket No. 13-132-LNG (Dec. 9, 2020) [hereinafter Categorical Exclusion].

<sup>40</sup> 15 U.S.C. § 717b(c).

<sup>41</sup> *Id.* § 717b(a).

## ORDER

Pursuant to section 3 of the Natural Gas Act, it is ordered that:

A. Magnolia LNG, LLC's (Magnolia LNG) Application to amend the respective export terms set forth in its three long-term authorizations is granted.

B. In DOE/FE Order No. 3245, as amended by Order No. 3245-A (FE Docket No. 12-183-LNG), Ordering Paragraph A is amended to state:

Magnolia LNG is authorized to export domestically produced LNG by vessel from the proposed Magnolia LNG Terminal in Lake Charles, Louisiana, up to the equivalent of 0.615 Bcf/d, or 224.5 Bcf/yr, of natural gas for a term beginning on the earlier of the date of first export or 10 years from the date the authorization is issued (February 26, 2023), and extending through December 31, 2050. Magnolia LNG is authorized to export this LNG on its own behalf or as agent for other entities who hold title to the natural gas, pursuant to one or more long-term contracts (a contract greater than two years).

This amended Ordering Paragraph A supersedes Ordering Paragraph A in DOE/FE Order No. 3245-A in its entirety.

C. In DOE/FE Order No. 3406, as amended by Order No. 3406-A (FE Docket No. 13-131-LNG), Ordering Paragraph A is amended to state:

Magnolia LNG is authorized to export domestically produced LNG by vessel from the proposed Magnolia LNG Terminal, to be located near Lake Charles, Louisiana. The volume authorized in this Order

is up to the equivalent of 0.615 Bcf/d, or 224.5 Bcf/yr, of natural gas for a term beginning on the earlier of the date of first export or 10 years from the date the authorization is issued (March 5, 2024), and extending through December 31, 2050. Magnolia LNG is authorized to export this LNG on its own behalf or as agent for other entities who hold title to the natural gas, pursuant to one or more long-term contracts (a contract greater than two years).

This amended Ordering Paragraph A supersedes Ordering Paragraph A in DOE/FE Order No. 3406-A in its entirety.

D. In DOE/FE Order No. 3909 (FE Docket No. 13-132-LNG), the relevant sentence in Ordering Paragraph B is amended to state:

The authorization period will commence when Magnolia LNG commences commercial export of domestically sourced LNG from the Magnolia Terminal and will extend through December 31, 2050.

This term extension supersedes any references to a 20-year export term in the Terms and Conditions and Ordering Paragraphs of DOE/FE Order No. 3909.

E. These export terms lasting through December 31, 2050, are inclusive of any make-up period previously authorized in the orders, during which the authorization holder may continue to export any make-up volume that it was unable to export during the original export term.<sup>42</sup> Accordingly, as relevant here, any references to make-up periods and make-up volumes in the Terms and Conditions and Ordering Paragraphs of DOE/FE Order No. 3909 are now moot.

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<sup>42</sup> See *supra* at 5; see also Policy Statement, 85 Fed. Reg. at 52,239, 52,247.

F. All other obligations, rights, and responsibilities established by DOE/FE Order Nos. 3245 and 3406 (as amended by Order Nos. 3245-A and 3406-A, respectively) and DOE/FE Order No. 3909 remain in effect.

G. The pending non-FTA portion of the Amendment Application (FE Docket No. 13-132-LNG) is amended to reflect Magnolia LNG's request for an export term lasting through December 31, 2050.

Issued in Washington, D.C., on December 10, 2020.

A handwritten signature in black ink, appearing to read "Steven Eric Winberg", is centered on a light blue horizontal line.

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Steven Eric Winberg  
Assistant Secretary  
Office of Fossil Energy