

**UNITED STATES OF AMERICA
DEPARTMENT OF ENERGY
OFFICE OF FOSSIL ENERGY**

Magnolia LNG LLC)
) DOE/FE Docket Nos. 13-132-LNG
)

**MAGNOLIA LNG LLC’S REQUEST TO REJECT INDUSTRIAL ENERGY
CONSUMERS OF AMERICA’S NOTICE OF INTERVENTION AND ANSWER TO
MOTION TO INTERVENE, PROTEST AND COMMENT**

Pursuant to Sections 590.303(e) and 590.304(f) of the United States Department of Energy’s (“DOE”) regulations,¹ Magnolia LNG LLC (“Magnolia LNG”) hereby submits this Request that DOE reject Industrial Energy Consumers of America’s (“IECA”) April 2, 2019 Notice of Intervention and Answer to IECA’s putative motion to intervene, Protest and Comment. IECA’s submission of a “Notice of Intervention” does not conform to DOE’s regulations. If DOE deems IECA’s submission to be a motion to intervene, then Magnolia LNG requests that DOE deny IECA’s motion because IECA has not met DOE’s standards for a motion to intervene that are set out in the agencies regulations.² Furthermore, DOE should reject IECA’s arguments in its Protest and Comment as irrelevant to the present proceeding and unsupported by the record in this proceeding or legal precedent.

In support of this Request and Answer, Magnolia LNG states the following:

I. Background

Magnolia LNG proposes to export natural gas as liquefied natural gas (“LNG”) from a liquefaction and export facility to be constructed near Lake Charles, Louisiana (“Magnolia LNG Project”). In accordance with the Natural Gas Act, the Federal Energy Regulatory Commission

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

² 10 CFR 590.303(b)-(d).

("FERC") and DOE have fully authorized the LNG export facilities³ and the export of the LNG to nations that have a free trade agreement ("FTA") with the United States that require national treatment for trade in natural gas⁴ and to those nations with which the United States does not have such an FTA in place, but with whom trade is not prohibited by U.S. law or policy ("Non-FTA").⁵

On December 31, 2019, Magnolia LNG submitted an application ("Application") to DOE seeking an amendment to DOE's previous long-term authorizations to export natural gas as LNG to FTA and Non-FTA nations.⁶ The Application describes process improvements that will permit Magnolia LNG to convert a greater proportion of its feed gas to LNG that can be exported and, accordingly, proposes to increase the amount of natural gas that DOE has authorized Magnolia LNG to export as LNG from 8.0 million tonnes per annum ("MTPA") to 8.8 MTPA.⁷ Magnolia LNG has filed an application with FERC requesting a similar adjustment to the nameplate liquefaction capacity for the facilities that FERC has authorized for the Magnolia LNG Project.⁸

³ *Magnolia LNG, LLC*, 155 FERC ¶ 61,033 (2016), *reh'g denied* 157 FERC ¶ 61,149 (2016).

⁴ *Magnolia LNG, LLC*, DOE/FE Order No. 3245 (2013); *Magnolia LNG, LLC*, DOE/FE Order No. 3406 (2014) (approving LNG exports to FTA nations).

⁵ *Magnolia LNG, LLC*, DOE/FE Order No. 3909 (2016), *reh'g denied* DOE/FE Order No. 3909-A (2018).

⁶ *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, DOE/FE Docket Nos. 12-183-LNG, 13-131-LNG, and 13-132-LNG (Dec. 31, 2019).

⁷ Application at 4. On March 26, 2019, Magnolia LNG filed a letter with DOE to clarify that Magnolia LNG proposes to export up to 8.8 MTPA, equivalent to approximately 1.23 billion cubic feet per day. *Magnolia LNG LLC*, Clarification to Pending Application to Modify DOE/FE Order No. 3909, DOE/FE Docket No. 13-132-LNG (Mar. 26, 2019).

⁸ *Magnolia LNG LLC*, Application for Limited Amendment to Authorization Granted under Section 3 of the Natural Gas Act, FERC Docket No. CP19-19-000 (Nov. 19, 2019).

DOE approved Magnolia LNG's production capacity increase for LNG exports to FTA nations on March 21, 2019.⁹ DOE issued a public notice of the portion of Magnolia LNG's Application for increased capacity to export to Non-FTA nations on February 1, 2019, setting the deadline for comments, protests, and interventions for April 2, 2019.¹⁰ In response to DOE's public notice, one entity, IECA, filed a "Notice of Intervention, Protest and Comment" on April 2, 2019 ("IECA's Protest"). Magnolia LNG hereby offers its response to IECA's Protest.

II. Objection to Intervention

Magnolia LNG objects to IECA's intervention in this proceeding. IECA's submission of a "Notice of Intervention" does not comply with DOE's regulations. Furthermore, even if DOE construes IECA's submission as a motion to intervene, IECA's submission does not meet DOE's standards for granting a motion for intervention set forth in its regulations. DOE should not grant IECA's intervention and should not permit IECA to participate as a party in this proceeding.

A. DOE Should Reject IECA's "Notice of Intervention."

IECA styles its submission in this proceeding as a "Notice of Intervention." DOE's regulations only permit state commissions to file a "notice of intervention" and participate in a proceeding at DOE as a "matter of right."¹¹ IECA is not a state commission, and does not purport to be one, so it is ineligible to participate in a DOE proceeding via a "notice of intervention." Therefore, DOE should reject IECA's "Notice of Intervention."

⁹ *Magnolia LNG LLC*, DOE/FE Order Nos. 3245-A and 3406-A (Mar. 21, 2019).

¹⁰ Dep't of Energy, *Magnolia LNG LLC Application for Amendment to Long-Term Authorization*, 84 Fed. Reg. 1,111 (Feb. 1, 2019).

¹¹ 10 C.F.R. § 590.303(a).

B. DOE Should Deny IECA's Protest as a "Motion to Intervene."

DOE could construe IECA's Protest as a "motion to intervene," even though, beyond a passing reference at the end of its filing, IECA does not indicate an intent for its filing to serve as a motion to intervene.¹² More specifically, the submission does not style itself as a "motion," IECA does not use the terms "motion to intervene" or "move to intervene" in its submission, and IECA's Protest does not attempt to meet DOE's standards for granting a motion to intervene. But even if DOE decides to recast IECA's Protest as containing a motion to intervene, DOE should deny such a motion.

DOE's regulations require a movant seeking intervention in a proceeding to "set[] out clearly and concisely the facts upon which the petitioner's claim of interest is based."¹³ The regulations provide further that a motion to intervene must "state, to the extent known, the position taken by the movant and the factual and legal basis for such positions in order to advise the parties and the Assistant Secretary [for Fossil Energy] as to the specific issues of policy, fact, or law to be raised or controverted."¹⁴ IECA's Protest neither sets out the facts upon which IECA's interest in this proceeding is based, nor does it state the factual and legal basis for IECA's positions to inform other parties, including Magnolia LNG, of the specific issues of policy, fact, or law that IECA desires to raise in this proceeding.

In its submission, IECA describes itself as an advocacy organization for manufacturing companies, but it does not explain what IECA's or its members' interest is in this specific

¹² IECA's submission contains language to the effect that it "wishes to intervene and be made a party to this proceeding, with all the rights attendant to such status pursuant to 10 C.F.R. 590.303(b)." IECA's Protest at 9. This language is the only indication that IECA may recognize that its participation in this proceeding is subject to DOE's rules for motions to intervene.

¹³ 10 C.F.R. § 590.303(b).

¹⁴ 10 C.F.R. § 590.303(c).

proceeding. The remainder of IECA's Protest raises numerous macroeconomic concerns that it believes DOE should examine more closely. However, as set forth in greater detail in Section III below, Magnolia LNG's Application does not implicate these macroeconomic issues. DOE and FERC already have considered the impacts of Magnolia LNG's use of U.S.-sourced natural gas as feed gas for the Magnolia LNG Project. Magnolia LNG's Application does not propose to increase the amount of gas that it accepts from the interstate pipeline grid. Further, Magnolia LNG's proposal in this proceeding will not have a direct effect on the economy-wide issues that IECA raises because Magnolia LNG is not requesting authorization to increase feed gas deliveries to the Magnolia LNG Project. IECA has not offered any explanation for how Magnolia LNG's Application to increase export capacity from already authorized feed gas volumes through process design efficiencies will affect these domestic economic interests. IECA has not offered this explanation because it cannot: the Application will not affect the economic interests IECA claims to represent.

Instead, IECA inappropriately seeks to convert this proceeding into a broad referendum on DOE's LNG export policy and to remedy its past failure to intervene in the original Magnolia LNG dockets. IECA's arguments are not specific to the limited scope of Magnolia LNG's Application and are irrelevant to this proceeding. IECA had the opportunity to raise these issues when DOE considered the broader economic issues that Magnolia LNG's export activities might implicate,¹⁵ but IECA did not intervene and participate in Magnolia LNG's original docket and

¹⁵ DOE accepted motions to intervene, comments, and protests regarding Magnolia LNG's original application for LNG exports to Non-FTA nations until May 23, 2014. Dep't of Energy, Magnolia LNG, LLC Application for Long-Term Authorization, 79 Fed. Reg. 15,980 (Mar. 24, 2014).

thus did not raise these issues then.¹⁶ Nonetheless, IECA raised many of these arguments in other proceedings and contexts over many years,¹⁷ including recently: (1) in a LNG export docket for a greenfield LNG project;¹⁸ (2) in comments regarding DOE's latest study of the macroeconomic impacts of LNG exports;¹⁹ and (3) in a policy critique that IECA submitted to U.S. Secretary of Energy Rick Perry, U.S. Secretary of Commerce Wilbur Ross, and U.S. Trade Representative Robert Lighthizer.²⁰

IECA now attempts to use the comment period for the Application as an opportunity to ignore DOE's established procedures for public participation in export application reviews in order to make a collateral attack on DOE's settled orders authorizing Magnolia LNG's exports to FTA and non-FTA nations. This is not an appropriate forum to debate broad issues of LNG export. In this proceeding, DOE is considering a limited adjustment to the LNG export volumes via the Magnolia LNG Project that DOE has already considered and approved. IECA's Protest demonstrates no interest in this limited amendment to Magnolia LNG's export authorization.

¹⁶ IECA was aware of these issues at least as far back as December 13, 2010, when IECA filed a motion to intervene with similar comments in the first LNG export proceeding for the Lower 48. *Sabine Pass Liquefaction, LLC*, DOE/FE Docket No. 10-11-LNG, IECA Mot. to Intervene (Dec. 13, 2010).

¹⁷ Based on Magnolia LNG's review of multiple dockets, at a minimum, IECA intervened and filed similar comments from 2010 through 2016, in the non-FTA dockets for Sabine Pass, Freeport, Lake Charles, Cove Point, and Jordan Cove, as well as on the 2012 and 2014 DOE macroeconomic studies.

¹⁸ *Driftwood LNG LLC*, DOE/FE Docket No. 16-144-LNG, Notice of Intervention, Protest and Comment (Nov. 20, 2018).

¹⁹ IECA, Comments on Dep't of Energy Study on Macroeconomic Outcomes of Market Determined Levels of U.S. LNG Exports, Docket No. 2018-12621 (July 27, 2018), <https://fossil.energy.gov/app/DocketIndex/docket/DownloadFile/569>.

²⁰ IECA, Letter re EIA AEO 2018 Cumulative Natural Gas Demand to 2050 Consumes 69 Percent of all EIA Known Technically Recoverable Resources in Lower 48 (Mar. 1, 2018), https://www.ieca-us.com/wp-content/uploads/03.01.18_Letter-on-EIA-Natural-Gas-Cumulative-Demand_FINAL.pdf.

Therefore, if DOE deems IECA's filing to contain a motion to intervene, DOE should deny IECA's motion to intervene in this proceeding.

III. Answer to Protest

IECA has not demonstrated that Magnolia LNG's proposed export capacity increase at issue in this proceeding is inconsistent with the public interest and therefore DOE should reject IECA's arguments.

A. IECA's Economy-Wide Assertions Are Irrelevant to Magnolia LNG's Proposal to Increase the Magnolia LNG Project's LNG Production Capacity.

IECA's Protest raises broad, macroeconomic concerns with DOE's approach to LNG exports and proffers arguments that relate to potential impacts of U.S. LNG exports on domestic gas consumers as a result of LNG projects' attracting U.S.-sourced natural gas into liquefaction terminals for export.²¹ These arguments are not relevant to this proceeding and DOE should reject them.

DOE concluded in Order No. 3909 that Magnolia LNG's proposed exports described in Magnolia LNG's October 15, 2015 Non-FTA application would be in the public interest.²² The exports authorized in Order No. 3909 are predicated on receipt of 1.4 billion cubic feet of natural gas per day (Bcf/d) at the Magnolia LNG Project.²³ Magnolia LNG's Application does not

²¹ IECA's Protest at 1, 5-9.

²² DOE/FE Order No. 3909 at 157.

²³ DOE's initial evaluation of Magnolia LNG's LNG export application reflects the same feed gas volume at issue in this proceeding -- DOE incorporated the federal environmental review documents into the agency's review process. In its original application in this proceeding, Magnolia LNG proposed to export the equivalent of 8.0 MTPA of LNG. FERC detailed feed gas facilities and volumes in the Final Environmental Impact Statement ("FEIS") for the Magnolia LNG Project, noting the feed gas supply of 1.4 Bcf/d to support this 8.0 MTPA export volume. *Magnolia LNG, LLC*, Final Environmental Impact Statement, FERC Docket Nos. CP14-347-000 and CP14-511-000 at p 2-3 (2015). FERC coordinated the preparation of the FEIS and DOE participated in the preparation of and adopted the FEIS, including the feed gas calculations, as part of its record for the Magnolia LNG Project. DOE/FE Order No. 3909 at 141-42.

require, or even propose, an increase in the volume of natural gas to be received at the Magnolia LNG Project for liquefaction. Instead, Magnolia LNG has made clear that the increase in LNG export volumes it requests in the Application is tied to design refinements that have resulted in process efficiencies that the company can use to convert more of the 1.4 Bcf/d of feed gas to LNG for export.²⁴ Applications similar to Magnolia LNG's are not uncommon in the LNG sector²⁵ and DOE has not found these applications to be inconsistent with the public interest.²⁶

The increased LNG production capacity underlying the Application is not the result of the receipt of additional quantities of natural gas at the Magnolia LNG Project and the arguments regarding domestic impacts in IECA's Protest therefore are not germane to the authorization Magnolia LNG requests in the Application. Moreover, IECA fails to provide support for its assertions and relies instead on conclusory statements and information that DOE already has evaluated and found insufficient to support a determination that proposed exports are inconsistent with the public interest.²⁷ As such, DOE should reject IECA's arguments.

²⁴ Exhibit A to Application at 3.

²⁵ See, e.g., *Port Arthur LNG, LLC*, Application to Amend Application for Long-Term, Multi-Contract Application Authorization to Export Liquefied Natural Gas to Non-Free Trade Agreement Nations, DOE/FE Docket No. 15-96-LNG (Oct. 18, 2018) (requesting a "design increase" to align DOE's authorized LNG export volume with the Port Arthur LNG Project's maximum LNG production capacity under optimal conditions); *Sabine Pass Liquefaction, LLC*, Application for Long-Term Authorization to Export Liquefied Natural Gas to Non-Free Trade Agreements, DOE/FE Docket No. 15-63-LNG (Apr. 20, 2015) (proposing to increase LNG exports from Trains 1-4 of the Sabine Pass Liquefaction Project without needing any adjustment to its physical facilities).

²⁶ See, e.g., *Sabine Pass Liquefaction, LLC*, DOE/FE Order No. 3792 at 188 (Mar. 11, 2016), *reh'g denied*, DOE/FE Order No. 3792-A (Oct. 20, 2016).

²⁷ For example, IECA's Protest refers to a chart excerpted from the 2012 report entitled *Macroeconomic Impacts of LNG Exports from the United States* (although IECA's Protest refers to the report as considering "Microeconomic Impacts," the report considers "Macroeconomic Impacts"). NERA ECON. CONSULTING, *MACROECONOMIC IMPACTS OF LNG EXPORTS FROM THE UNITED STATES* 8 (2012), https://www.energy.gov/sites/prod/files/2013/04/f0/nera_lng_report.pdf. DOE has considered

B. DOE’s Application of the “Public Interest” Standard is Appropriate and Consistent with Legal Precedent.

IECA also asserts that DOE has incorrectly defined and misapplied the “public interest” standard from Section 3 of the Natural Gas Act in the agency’s consideration of applications to export LNG to Non-FTA nations.²⁸ However, DOE’s definition of the “public interest” standard is a matter of the agency’s discretion. In exercising that discretion, DOE has applied the standard in a reasonable manner to Magnolia LNG’s previous LNG export applications and all other LNG export proposals that the agency has considered.

Section 3(a) of the Natural Gas Act provides that DOE “shall issue” an order authorizing the export of natural gas unless it “finds that the proposed exportation ... will not be consistent with the public interest.”²⁹ DOE has acknowledged that the Natural Gas Act does not define the term “public interest” or list the factors that the agency must consider when evaluating an application under Section 3(a)³⁰ and DOE has long recognized that the Natural Gas Act provides “broad discretion to the government in establishing [such] criteria.”³¹ More recently, DOE has

arguments that the LNG Export Studies it has commissioned suggest that the net economic benefits from increased LNG exports will spread unevenly throughout the U.S. economy and DOE has rejected the assertion that proposed exports therefore are not consistent with the public interest. *See, e.g., Magnolia LNG LLC*, DOE/FE Order No. 3909 at 136. This has included the 2012 macroeconomic study that IECA references and, in responding to such claims, DOE has explained that the LNG Export Studies “show that the proposed exports are likely to generate net economic benefits for the United States.” *Id.*

²⁸ IECA’s Protest at 1, 3-7.

²⁹ 15 U.S.C. § 717b(a). Courts have recognized that this statutory language creates a general presumption favoring export authorizations and that opponents of an export proposal must make an affirmative showing of inconsistency with the public interest in order to compel the agency to deny an export application. *See e.g., Sierra Club v. Dep’t of Energy*, 867 F.3d 189 at 203 (D.C. Cir. 2017).

³⁰ Dep’t of Energy, New Policy Guidelines and Delegation Orders, 49 Fed. Reg. 6,684 at 6,687 (Feb. 22, 1984).

³¹ Dep’t of Energy, New Policy Guidelines and Delegation Orders, 49 Fed. Reg. 6,684 at 6,687 (Feb. 22, 1984).

described its public interest inquiry as including “economic impacts, international impacts, security of natural gas supply, and environmental impacts, among others.”³²

IECA’s efforts to discredit DOE’s application of the “public interest” standard to LNG export applications do not undercut the agency’s reasonable practice of considering economic and non-economic issues in evaluating an LNG export proposal. Congress has given DOE responsibility for balancing the variety of interests at play in the natural gas export and import contexts. DOE has developed a reasonable framework for evaluating those interests. Moreover, in upholding DOE’s decisions on LNG export applications, courts have accepted that DOE may balance various factors in making its public interest determination.³³

IECA’s arguments do not demonstrate that DOE should adjust its framework for evaluating the “public interest” and IECA again fails to provide support for its assertions. As such, DOE should reject IECA’s arguments.

C. The Record in this Proceeding Does Not Support an Affirmative Showing that Magnolia LNG’s Requested Export Capacity Increase Is Inconsistent with the Public Interest.

IECA’s Protest offers a litany of claims that it asserts are “risks” to “the economy.”³⁴ However, DOE repeatedly has determined that LNG exports, including LNG exports via the Magnolia LNG Project, will create net economic benefits for the U.S. economy.³⁵ DOE’s recent study of economic impacts of reiterates this conclusion, finding that increases in LNG exports

³² See, e.g., *Magnolia LNG, LLC*, DOE/FE Order No. 3909 at 10-11 (2016).

³³ See e.g., *Sierra Club v. Dep’t of Energy*, 703 Fed. Appx. 1 at 3 (D.C. Cir. 2017).

³⁴ IECA’s Protest at 7.

³⁵ *Magnolia LNG, LLC*, DOE/FE Order No 3909 at 136. See also *Golden Pass Products LLC*, DOE/FE Order No. 3978 at 140 (Apr. 25, 2017).

lead to increases in economic welfare for the average U.S. household.³⁶

By failing to provide any support for its vague assertions, IECA's Protest fails to refute DOE's longstanding findings. For example, IECA does not point to any information in the record of this proceeding, or any extra-record information, to support the claim that foreign state-owned utility buyers are distorting the global gas market, that future domestic gas production or transportation markets may become constrained, or that changes in the financial stability of some domestic gas producers will affect the continued viability of the U.S. natural gas production sector. IECA offers nothing more than bald, conclusory statements that do not demonstrate that Magnolia LNG's proposed LNG liquefaction and export capacity increase is inconsistent with the public interest.

Therefore, DOE should reject the arguments in IECA's Protest.

IV. Conclusion

For the foregoing reasons, Magnolia LNG respectfully requests that DOE reject IECA's Notice of Intervention, deny IECA's putative motion to intervene, and reject IECA's Protest.

Respectfully submitted,

/s/ David L. Wochner
David L. Wochner
Sandra E. Safro
Michael L. O'Neill
Counsel for Magnolia LNG LLC

Dated: April 17, 2019

³⁶ NERA ECONOMIC CONSULTING, MACROECONOMIC OUTCOMES OF MARKET DETERMINED LEVELS OF U.S. LNG EXPORTS 65-67 (June 7, 2018).

CERTIFICATE OF SERVICE

I hereby certify that I have this 17th day of April 2019 served the foregoing document upon each person designated on the official service list compiled by the Secretary in this proceeding.

A handwritten signature in black ink, appearing to read "D. L. Wochner". The signature is fluid and cursive, with a horizontal line extending from the end of the name.

David L. Wochner
Counsel for Magnolia LNG LLC