

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. 13-131-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

DOE/FE ORDER NO. 3406

MARCH 5, 2014

## I. DESCRIPTION OF REQUEST

On October 15, 2013, Magnolia LNG, LLC (Magnolia) filed an application (Application) with the Office of Fossil Energy (FE) of the Department of Energy (DOE) under section 3 of the Natural Gas Act (NGA)<sup>1</sup> for long-term, multi-contract authorization to export liquefied natural gas (LNG) produced from domestic sources in a volume equivalent to approximately 0.54 billion cubic feet per day (Bcf/d) of natural gas, or 197.1 Bcf per year (Bcf/yr), which Magnolia states is equivalent to 4 million metric tons per annum (mtpa) of LNG.<sup>2</sup> Magnolia seeks authorization to export the LNG by vessel for a 25-year term from the proposed Magnolia LNG Terminal, which Magnolia intends to construct, own, and operate near Lake Charles, Louisiana (Liquefaction Project). Magnolia seeks to export this LNG 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,<sup>3</sup> and with which trade is not prohibited by U.S. law or policy (FTA countries). Magnolia seeks to export this LNG on its own behalf and as agent for other entities who hold title to the LNG at the time of export. Magnolia requests that this authorization commence on the earlier of the date of first export or 10 years from the date the authorization is issued (*i.e.*, March 5, 2024).

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<sup>1</sup> The authority to regulate the imports and exports of natural gas, including liquefied natural gas, under section 3 of the NGA (15 U.S.C. § 717b) has been delegated to the Assistant Secretary for FE in Redelelegation Order No. 00-002.04F, issued on July 11, 2013.

<sup>2</sup> As explained below, this amount would be additive to the same volume previously authorized for export in *Magnolia LNG, LLC*, DOE/FE Order. No. 3245, 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. 27, 2013) [hereinafter *Magnolia LNG*].

<sup>3</sup> 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.

## II. BACKGROUND

**Applicant.** Magnolia states that it is a Delaware limited liability company with its principal place of business in Houston, Texas. Magnolia further states that it is a wholly-owned indirect subsidiary of Liquefied Natural Gas Limited (LNG Limited). According to Magnolia, LNG Limited is a publicly listed Australian company formed with the objective of identifying and developing LNG projects overseas and in Australia.

**Procedural History.** Previously, on February 27, 2013, DOE/FE issued Order No. 3245, in which it authorized Magnolia to export LNG produced from domestic sources to FTA countries in a volume equivalent to approximately 197.1 Bcf/yr of natural gas (0.54 Bcf/d), or 4 mtpa of LNG.<sup>4</sup> In the current Application, Magnolia requests a second, additive FTA export authorization of 197.1 Bcf/yr of natural gas, which would double its authorized export volume to a total of 394.2 Bcf/yr of natural gas (1.08 Bcf/d), or 8 mtpa of LNG.

Concurrently, Magnolia also submitted an application seeking authorization to export the same volume of domestically produced LNG—equivalent to approximately 394.2 Bcf/yr of natural gas (1.08 Bcf/d)—to any country with which the United States does not have a free trade agreement requiring national treatment for trade in natural gas and LNG (non-FTA countries).<sup>5</sup> In that application, Magnolia states that its requested non-FTA export authorization is not additive to any FTA authorizations.<sup>6</sup> Therefore, Magnolia seeks a total authorized export volume for the Magnolia LNG Terminal of 394.2 Bcf/yr of natural gas, or 8 mtpa of LNG. DOE/FE will review Magnolia's non-FTA application separately. 15 U.S.C. § 717b(a).

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<sup>4</sup> *Magnolia LNG*, DOE/FE Order No. 3245, at 9-13, cited *supra* at 1 n.2.

<sup>5</sup> See *Magnolia LNG, LLC, Application of Magnolia LNG, LLC for Long-Term Authorization to Export LNG to Non-Free Trade Agreement Countries*, FE Docket No. 13-132-LNG (Oct. 11, 2013).

<sup>6</sup> See *id.* at 2 n.3.

**Liquefaction Project.** Magnolia seeks long-term authorization to export domestically produced LNG from the Magnolia LNG Terminal, which Magnolia proposes to construct, own, and operate. Magnolia states that the Liquefaction Project will be constructed on Industrial Canal South Shore PLC Tract 475, a parcel of land approximately 120 acres in size located in Calcasieu Parish, south of Lake Charles, Louisiana. Magnolia notes that the Terminal will be located in an area zoned for heavy industrial use.

Magnolia states that, on March 6, 2013, it secured property from the Port of Lake Charles to construct the Magnolia LNG Terminal. Specifically, it signed an exclusive, binding four-year Real Estate Lease Option Agreement with the Lake Charles Harbor & Terminal District for the opportunity to assess the project site for the purpose of locating, constructing, operating, and maintaining the proposed Liquefaction Project.<sup>7</sup> Magnolia states that, subject to compliance with the terms of the Option Agreement, it may exercise the option and enter into the ground lease with the Port at any time.

Magnolia states that the Liquefaction Project is anticipated to include four LNG trains, two LNG storage tanks each with capacity of approximately 160,000 m<sup>3</sup>, and vessel loading facilities. According to Magnolia, each of the LNG trains will be capable of producing up to 2 mtpa of LNG, for a total capacity of 8 mtpa of LNG. Magnolia further states that it plans to receive natural gas by pipeline at the Magnolia LNG Terminal, liquefy the gas, and load the LNG from the storage tanks onto an LNG carrier berthed alongside the Magnolia LNG Terminal.

**Source of Natural Gas.** Magnolia states that the Magnolia LNG Terminal will be situated within approximately three miles of four major interstate/intrastate natural gas pipelines owned by Trunkline Gas Company, Kinder Morgan Louisiana Pipeline (KMLP), Gulf South Pipeline Company, LP, and Chevron Pipe Line Company, respectively. Magnolia states that it is

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<sup>7</sup> The Real Estate Lease Option is attached to Magnolia's Application as Exhibit A.

in advanced discussions with KMLP to provide the direct connection to the Magnolia LNG Terminal through which feed gas supplies will flow, and for the compression required to transport the feed gas to the terminal. Magnolia states that, through KMLP, its tolling customers will be able to directly access other interstate natural gas pipelines and storage facilities, thus providing stable and economical supply options.

According to Magnolia, the sources of natural gas will include conventional and unconventional supplies from various regions, including recent shale gas discoveries in the Haynesville, Eagle Ford, Barnett, Floyd-Neal/Conasauga, and Marcellus shale plays. Magnolia emphasizes that the size of traditional and emerging natural gas supply sources in close proximity to the Magnolia LNG Terminal will provide Magnolia's customers with diverse and reliable alternative gas supply options.

**Business Model.** As stated above, Magnolia requests long term, multi-contract authorization to engage in exports of LNG on its own behalf or as agent for other entities. Magnolia states that it will comply with all DOE/FE requirements for exporters and agents, including registration requirements articulated in recent DOE/FE orders. Magnolia also states that it will file with DOE/FE under seal any relevant long-term commercial agreements it enters into with the LNG title holders on whose behalf the exports will be performed.

Magnolia states that the terms and conditions related to the use of the Magnolia LNG Terminal facilities will be set forth in agreements with customers of the Liquefaction Project. Magnolia LNG anticipates that these agreements will be for terms of up to 25 years in duration and will run concurrently with Magnolia's export authorization. Magnolia states that it has not yet entered into such agreements because a long-term export authorization is required to finalize agreements with prospective customers. Magnolia states that DOE/FE has previously found that

this commitment conforms to the requirements of its regulations at 10 C.F.R. § 590.202(b), which calls upon applicants to supply transaction specific information “to the extent practicable.”

**Environmental Review.** Magnolia states that, on March 20, 2013, the Federal Energy Regulatory Commission (FERC) accepted Magnolia’s request to commence FERC’s pre-filing process. Magnolia states that, consistent with the National Environmental Policy Act (NEPA), 42 U.S.C. § 4321 *et seq.*, FERC will act as the lead agency for the environmental review, with DOE acting as a cooperating agency. Magnolia states that it will also seek any necessary permits from other federal, state, and local agencies, as well as conduct any necessary consultations.

### **III. 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 authorizing (a) the import and export of natural gas, including LNG, from and to a nation with which there is in effect a FTA requiring national treatment for trade in natural gas, and (b) the import of LNG from other international sources, be deemed consistent with the public interest and granted without modification or delay. This Application falls within section 3(c), as amended, and therefore, DOE/FE is charged with granting the requested authorization without modification or delay.<sup>8</sup>

(2) In light of DOE’s statutory obligation to grant this Application without modification or delay, there is no need for DOE/FE to review other arguments asserted by Magnolia in support of the Application. The instant grant of authority should not be read to indicate DOE’s views on those arguments.

(3) The countries with which the United States has an FTA requiring national treatment for trade in natural gas currently are: Australia, Bahrain, Canada, Chile, Colombia, Dominican

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<sup>8</sup> DOE further finds that the requirement for public notice of applications and other hearing-type procedures in 10 C.F.R. Part 590, are applicable only to applications seeking to export natural gas, including LNG, to countries with which the United States does not have a FTA requiring national treatment for trade in natural gas.

Republic, El Salvador, Guatemala, Honduras, Jordan, Mexico, Morocco, Nicaragua, Oman, Panama, Peru, Republic of Korea, and Singapore.

(4) As described above, Magnolia requests authorization to export LNG on its own behalf and as agent for other entities who hold title to the LNG at the time of export. DOE/FE previously addressed the issue of Agency Rights in DOE/FE Order No. 2913,<sup>9</sup> which granted Freeport LNG Expansion, L.P. and FLNG Liquefaction, LLC (collectively, FLEX) authority to export LNG to FTA countries. In that order, DOE/FE approved a proposal by FLEX to register each LNG title holder for whom FLEX sought to export LNG as agent. DOE/FE found that this proposal was an acceptable alternative to the non-binding policy adopted by DOE/FE in *The Dow Chemical Company*,<sup>10</sup> which established that the title for all LNG authorized for export must be held by the authorization holder at the point of export. We find that the same policy considerations that supported DOE/FE's acceptance of the alternative registration proposal in DOE/FE Order No. 2913 apply here as well.

DOE/FE reiterated its policy on Agency Rights procedures in *Gulf Coast LNG Export, LLC*.<sup>11</sup> In *Gulf Coast*, DOE/FE confirmed that, in LNG export orders in which Agency Rights have been granted, DOE/FE shall require registration materials filed for, or by, an LNG titleholder (Registrant) to include the same company identification information and long-term contract information of the Registrant as if the Registrant had filed an application to export LNG on its own behalf.<sup>12</sup>

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<sup>9</sup> *Freeport LNG Expansion, L.P. and FLNG Liquefaction, LLC*, DOE/FE Order No. 2913, Order Granting Long-Term Authorization to Export Liquefied Natural Gas from Freeport LNG Terminal to Free Trade Nations (Feb. 10, 2011).

<sup>10</sup> *The Dow Chemical Company*, DOE/FE Order No. 2859, Order Granting Blanket Authorization to Export Liquefied Natural Gas (Oct. 5, 2010), at 7-8, discussed in *Freeport LNG*, DOE/FE Order No. 2913, at 7-8.

<sup>11</sup> *Gulf Coast LNG Export, LLC*, Order Granting Long-Term Multi-Contract Authorization to Export Liquefied Natural Gas By Vessel from the Proposed Brownsville Terminal to Free Trade Agreement Nations, DOE/FE Order No. 3163 (Oct. 16, 2012).

<sup>12</sup> *See id.* at 7-8.

To ensure that the public interest is served, the authorization granted herein shall be conditioned to require that where Magnolia proposes to export LNG as agent for other entities who hold title to the LNG (Registrants), Magnolia must register with DOE/FE those entities on whose behalf it will export LNG in accordance with the procedures and requirements described herein.

(5) Section 590.202(b) of DOE's regulations requires applicants to supply transaction specific factual information "to the extent practicable."<sup>13</sup> Additionally, DOE regulations at 10 C.F.R. § 590.202(e) allow confidential treatment of the information supplied in support of or in opposition to an application if the submitting party requests such treatment, shows why the information should be exempted from public disclosure, and DOE determines it will be afforded confidential treatment in accordance with 10 C.F.R. § 1004.11.

(6) DOE/FE will require that Magnolia file or cause to be filed with DOE/FE any relevant long-term commercial agreements (contracts) pursuant to which Magnolia exports LNG as agent for a Registrant once they have been executed. DOE/FE finds that the submission of all such agreements or contracts within 30 days of their execution using the procedures described below will be consistent with the "to the extent practicable" requirement of section 590.202(b). By way of example and without limitation, a "relevant long-term commercial agreement" would include an agreement with a minimum term of two years, such as a long-term sales contract involving LNG stored or liquefied at the Liquefaction Project.

(7) DOE/FE also will require Magnolia to file any long-term contracts Magnolia enters into providing for the long-term export of LNG on its own behalf from the Liquefaction Project. DOE/FE finds that the submission of these contracts within 30 days of their execution using the

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<sup>13</sup> 10 C.F.R. § 590.202(b).



procedures described below will be consistent with the “to the extent practicable” requirement of section 590.202(b).

(8) In addition, DOE/FE finds that section 590.202(c) of DOE/FE’s regulations<sup>14</sup> requires that Magnolia file, or cause to be filed, all long-term contracts associated with the long-term supply of natural gas to the Liquefaction Project within 30 days of their execution that either Magnolia or the Registrant enters into.

(9) DOE/FE recognizes that some information in Magnolia’s or a Registrant’s long-term commercial agreements associated with the export of LNG, and/or long-term contracts associated with the long-term supply of natural gas to the proposed Magnolia LNG Terminal may be commercially sensitive. DOE/FE therefore will provide Magnolia the option to file or cause to be filed either unredacted contracts, or in the alternative: (A) Magnolia may file, or cause to be filed, long-term contracts under seal, but it also will file either: i) a copy of each long-term contract with commercially sensitive information redacted, or ii) a summary of all major provisions of the contract(s) including, but not limited to, the parties to each contract, contract term, quantity, any take or pay or equivalent provisions/conditions, destinations, re-sale provisions, and other relevant provisions; and (B) the filing must demonstrate why the redacted information should be exempted from public disclosure.

To ensure that DOE/FE destination and reporting requirements included in the Order are conveyed to subsequent title holders, DOE/FE will include as a condition of this authorization that future contracts for the sale or transfer of LNG exported pursuant to the Order shall include an acknowledgement of these requirements.

### **ORDER**

Pursuant to section 3 of the NGA, it is ordered that:

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<sup>14</sup> *Id.* § 590.202(c).

A. Magnolia 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 197.1 Bcf/yr of natural gas for a 25-year term, beginning on the earlier of the date of first export or 10 years from the date the authorization is issued (March 5, 2024). Magnolia 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).

B. This LNG may be exported to Australia, Bahrain, Canada, Chile, Colombia, Dominican Republic, El Salvador, Guatemala, Honduras, Jordan, Mexico, Morocco, Nicaragua, Oman, Panama, Peru, Republic of Korea, and Singapore, and to any nation with which the United States subsequently enters into a FTA requiring national treatment for trade in natural gas, provided that the destination nation has the capacity to import LNG via ocean going vessels. FTA countries are currently identified by DOE/FE at:  
<http://www.fossil.energy.gov/programs/gasregulation/index.html>.

C. Magnolia shall ensure that all transactions authorized by this Order are permitted and lawful under U.S. laws and policies, including the rules, regulations, orders, policies, and other determinations of the Office of Foreign Assets Control of the United States Department of the Treasury. Failure to comply with this requirement could result in rescission of this authorization and/or other civil or criminal remedies.

D. (i) Magnolia shall file, or cause others to file, with the Office of Oil and Gas Global Security and Supply a non-redacted copy of all executed long-term contracts associated with the long-term export of LNG on its own behalf or as agent for other entities from the Magnolia LNG Terminal. The non-redacted copies may be filed under seal and must be filed within 30 days of

their execution. Additionally, if Magnolia has filed the contracts described in the preceding sentence under seal or subject to a claim of confidentiality or privilege, within 30 days of their execution, Magnolia shall also file, or cause others to file, for public posting either: i) a redacted version of the contracts described in the preceding sentence, or ii) major provisions of the contracts. In these filings, Magnolia shall state why the redacted or non-disclosed information should be exempted from public disclosure.

(ii) Magnolia shall file, or cause others to file, with the Office of Oil and Gas Global Security and Supply a non-redacted copy of all executed long-term contracts associated with the long-term supply of natural gas to the Magnolia LNG Terminal. The non-redacted copies may be filed under seal and must be filed within 30 days of their execution. Additionally, if Magnolia has filed the contracts described in the preceding sentence under seal or subject to a claim of confidentiality or privilege, within 30 days of their execution, Magnolia shall also file, or cause others to file, for public posting either: i) a redacted version of the contracts described in the preceding sentence, or ii) major provisions of the contracts. In these filings, Magnolia shall state why the redacted or non-disclosed information should be exempted from public disclosure.

E. Magnolia shall include, and require others for whom Magnolia acts as agent to include, the following provision in any agreement or other contract for the sale or transfer of LNG exported pursuant to this Order:

“Customer or purchaser acknowledges and agrees that it will resell or transfer LNG purchased hereunder for delivery only to countries identified in Ordering Paragraph B of DOE/FE Order No. 3406, issued March 5, 2014, in FE Docket No. 13-131-LNG, and/or to purchasers that have agreed in writing to limit their direct or indirect resale or transfer of such LNG to such countries. Customer or purchaser further commits to cause a report to be provided to Magnolia LNG, LLC that identifies the country of destination, upon delivery, into which the exported LNG was actually delivered, and to include in any resale contract for such LNG the necessary conditions to ensure that Magnolia LNG, LLC is made aware of all such actual destination countries.”

F. Magnolia is permitted to use its authorization in order to export LNG as agent for other entities, after registering the other parties with DOE/FE. Registration materials shall include an acknowledgement and agreement by the Registrant to supply Magnolia with all information necessary to permit Magnolia to register that person or entity with DOE/FE, including: (1) the Registrant's agreement to comply with this Order and all applicable requirements of DOE's regulations at 10 C.F.R. Part 590, including but not limited to destination restrictions; (2) the exact legal name of the Registrant, state/location of incorporation/registration, primary place of doing business, and the Registrant's ownership structure, including the ultimate parent entity if the Registrant is a subsidiary or affiliate of another entity; (3) the name, title, mailing address, e-mail address, and telephone number of a corporate officer or employee of the Registrant to whom inquiries may be directed; (4) within 30 days of execution, a copy of any long-term contracts not previously filed with DOE/FE, described in Ordering Paragraph D of this Order.

G. Each registration submitted pursuant to this Order shall have current information on file with DOE/FE. Any changes in company name, contact information, change in term of the long-term contract, termination of the long-term contract, or other relevant modification, shall be filed with DOE/FE within 30 days of such change(s).

H. As a condition of this authorization, Magnolia shall ensure that all persons required by this Order to register with DOE/FE have done so. Any failure by Magnolia to ensure that all such persons or entities are registered with DOE/FE shall be grounds for rescinding in whole or in part the authorization.

I. Within two weeks after the first export of domestically produced LNG occurs from the Magnolia LNG Terminal, Magnolia shall provide written notification of the date that the first

export of LNG authorized in Ordering Paragraph A above occurred.

J. Magnolia shall file with the Office of Oil and Gas Global Security and Supply, on a semi-annual basis, written reports describing the progress of the proposed Magnolia LNG Terminal. The reports shall be filed on or by April 1 and October 1 of each year, and shall include information on the progress of the Magnolia LNG Terminal, the date the facility is expected to be operational, and the status of the long-term contracts associated with the long-term export of LNG and any long-term supply contracts.

K. Prior to any change in control of the authorization holder, Magnolia must obtain the approval of the Assistant Secretary for Fossil Energy. For purposes of this Ordering Paragraph, a “change of control” shall include any change, directly or indirectly, of the power to direct the management or policies of Magnolia, whether such power is exercised through one or more intermediary companies or pursuant to an agreement, written or oral, and whether such power is established through ownership or voting of securities, or common directors, officers, or stockholders, or voting trusts, holding trusts, or debt holdings, or contract, or any other direct or indirect means.

L. Monthly Reports: With respect to the LNG exports authorized by this Order, Magnolia shall file with the Office of Oil and Gas Global Security and Supply, within 30 days following the last day of each calendar month, a report indicating whether exports of LNG have been made. The first monthly report required by this Order is due not later than the 30<sup>th</sup> day of the month following the month of first export. In subsequent months, if exports have not occurred, a report of “no activity” for that month must be filed. If exports of LNG have occurred, the report must give the following details of each LNG cargo: (1) the name(s) of the authorized exporter registered with DOE/FE; (2) the name of the U.S. export terminal; (3) the

name of the LNG tanker; (4) the date of departure from the U.S. export terminal; (5) the country of destination; (6) the name of the supplier/seller; (7) the volume in Mcf; (8) the price at point of export per million British thermal units (MMBtu); (9) the duration of the supply agreement (indicate spot sales); and (10) the name(s) of the purchaser(s).

(Approved by the Office of Management and Budget under OMB Control No. 1901-0294)

M. All monthly report filings shall be made to U.S. Department of Energy (FE-34), Office of Fossil Energy, Office of Oil and Gas Global Security and Supply, P.O. Box 44375, Washington, D.C. 20026-4375, Attention: Natural Gas Reports. Alternatively, reports may be e-mailed to [ngreports@hq.doe.gov](mailto:ngreports@hq.doe.gov), or may be faxed to Natural Gas Reports at (202) 586-6050.

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