

UNITED STATES OF AMERICA

DEPARTMENT OF ENERGY

OFFICE OF FOSSIL ENERGY

MAGNOLIA LNG, LLC

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FE DOCKET NO. 13-132-LNG

OPINION AND ORDER GRANTING
MOTION FOR LEAVE TO ANSWER REQUEST FOR REHEARING
AND DENYING REQUEST FOR REHEARING

DOE/FE ORDER NO. 3909-A

APRIL 2, 2018

I. INTRODUCTION

On November 30, 2016, the Department of Energy's (DOE or the Department) Office of Fossil Energy (DOE/FE) issued DOE/FE Order No. 3909¹ (Order or Order No. 3909) to Magnolia LNG, LLC (Magnolia LNG)² under section 3(a) of the Natural Gas Act (NGA), 15 U.S.C. § 717b(a).³ In that 173-page Order, DOE/FE granted Magnolia LNG's application filed on October 15, 2013 (Application),⁴ in which Magnolia LNG requested long-term, multi-contract authorization to export domestically produced liquefied natural gas (LNG) by vessel to nations with which the United States has not entered into a free trade agreement (FTA) requiring national treatment for trade in natural gas, and with which trade is not prohibited by U.S. law or policy (non-FTA countries).⁵

Order No. 3909 authorizes Magnolia LNG to export LNG to non-FTA countries in a volume equivalent to 394.2 billion cubic feet per year (Bcf/yr) of natural gas (1.08 Bcf per day).⁶ Magnolia LNG's exports will originate from its Liquefaction Project at the proposed Magnolia LNG Terminal, which Magnolia intends to construct, own, and operate. The Magnolia LNG Terminal will be located near Lake Charles, Louisiana, in Calcasieu Parish.⁷ Magnolia LNG

¹ *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) [hereinafter *Magnolia LNG Order*].

² Magnolia LNG is a Delaware limited liability company with its principal place of business in Houston, Texas. Magnolia LNG is a wholly owned indirect subsidiary of Magnolia Holding. Magnolia's ultimate parent company, Liquefied Natural Gas Limited, is a publicly-listed Australian company.

³ 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 Redelegation Order No. 00-006.02 issued on November 17, 2014.

⁴ Magnolia LNG, LLC, Application for Long-Term, Multi-Contract Authorization to Export Liquefied Natural Gas to Non-Free Trade Agreement Nations, FE Docket No. 13-132-LNG (Oct. 15, 2013).

⁵ 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 (FTA countries). FTAs with Israel and Costa Rica do not require national treatment for trade in natural gas.

⁶ See *Magnolia LNG Order* at 1-2, 10, 167.

⁷ See *id.* at 1-2, 167.

intends to construct and operate the Magnolia LNG Liquefaction Project and Terminal for the liquefaction and export of domestically-produced natural gas.⁸ Under the terms of the Order, Magnolia LNG is authorized to export LNG from the Magnolia LNG Liquefaction Project for a term of 20 years.⁹

DOE/FE participated as a cooperating agency in FERC's review of the Magnolia LNG Liquefaction Project under the National Environmental Policy Act (NEPA), 42 U.S.C. § 4321 *et seq.*¹⁰ On November 13, 2015, FERC issued a final environmental impact statement (EIS) for the Magnolia LNG Liquefaction Project.¹¹ The EIS evaluated the potential environmental impacts of the proposed Magnolia LNG Liquefaction Project, and recommended that FERC subject any approval of the Project to 114 environmental conditions.¹²

On April 15, 2016, FERC issued an Order Granting Authorization Under Section 3 of the Natural Gas Act and Issuing Certificates.¹³ The FERC Order authorized Magnolia LNG (in relevant part) to site, construct, and operate its proposed Project subject to 115 conditions (or mitigation measures) contained in the Appendix of the FERC Order.¹⁴ The 115 conditions include the 114 environmental conditions recommended in the EIS, and an additional condition imposed by FERC.¹⁵

⁸ *See id.* at 13-14.

⁹ Magnolia LNG is authorized to export the LNG on its own behalf and as an agent for other entities that hold title to the LNG, after registering each such entity with DOE/FE. Order No. 3909 contains numerous other terms and conditions. *See* Magnolia LNG Order at 161-73.

¹⁰ *See id.* at 7, 121.

¹¹ Federal Energy Regulatory Comm'n, Magnolia LNG and Lake Charles Expansion Projects *Final Env'tl. Impact Statement*, Docket Nos. CP14-347-000, CP14-511-000 (Nov. 13, 2015) [hereinafter EIS]; *see also* Magnolia LNG Order at 7.

¹² *See* Magnolia LNG Order at 8.

¹³ *See Magnolia LNG, LLC, et al.*, Order Granting Authorization Under Section 3 of the Natural Gas Act and Issuing Certificates, 155 FERC ¶ 61,033 (April 15, 2016) [hereinafter FERC Order].

¹⁴ *See id.*

¹⁵ *See* Magnolia LNG Order at 8.

After an independent review, DOE/FE adopted FERC's EIS for the proposed Magnolia LNG Liquefaction Project (DOE/EIS-0498).¹⁶ Concurrently with its issuance of Order No. 3909, DOE/FE issued a Record of Decision for the proposed Project.¹⁷ In the Order, DOE/FE conditioned Magnolia LNG's export approval upon Magnolia LNG's compliance with the 115 environmental conditions adopted in the FERC Order.¹⁸ Additional procedural history and information about DOE/FE's administrative record are discussed in Order No. 3909.

On January 3, 2017, Sierra Club—an intervenor-protestor in this proceeding¹⁹—timely filed a Request for Rehearing of Order No. 3909.²⁰ On January 17, 2017, Magnolia LNG filed a Motion for Leave to Answer and Answer to Sierra Club's Request for Rehearing.²¹ On January 27, 2017, DOE/FE issued an order granting both Sierra Club's Rehearing Request and Magnolia LNG's Motion for Leave to Answer for the limited purpose of further consideration.²²

For the reasons set forth herein, DOE/FE grants Magnolia LNG's Motion for Leave to Answer,²³ denies Sierra Club's Request for Rehearing, and affirms the findings and conclusions in DOE/FE Order No. 3909.

¹⁶ See U.S. Env'tl. Prot. Agency, Environmental Impact Statements; Notice of Availability, 81 Fed. Reg. 67,348 (Sept. 30, 2016) (providing notice that DOE/FE adopted FERC's final EIS for the Magnolia LNG Export Project).

¹⁷ U.S. Dep't of Energy, Magnolia LNG, LLC, Record of Decision and Floodplain Statement of Findings for the Magnolia LNG, LLC Application to Export Liquefied Natural Gas to Non-Free Trade Agreement Countries, FE Docket No. 13-132-LNG (Nov. 30, 2016) [hereinafter Record of Decision].

¹⁸ See Magnolia LNG Order at 169 (Ordering Para. H).

¹⁹ Sierra Club, Motion to Intervene, Protest, and Comments, FE Docket No. 13-132-LNG (May 23, 2014).

²⁰ Sierra Club, Request for Rehearing, FE Docket No. 13-132-LNG (Jan. 3, 2017) [hereinafter Sierra Club Rehearing Request].

²¹ Magnolia LNG, LLC, Answer in Opposition to Sierra Club's Motion for Stay and Request for Rehearing, FE Docket No. 13-132-LNG (Jan. 17, 2017) [hereinafter Magnolia LNG Answer].

²² *Magnolia LNG, LLC*, Order Granting Request for Rehearing and Motion for Leave to Answer for the Purpose of Further Consideration, FE Docket No. 13-132-LNG (Jan. 27, 2017).

²³ In this Order, DOE/FE grants Magnolia LNG's Motion for Leave to Answer because the Answer is relevant to our consideration of the issues raised in Sierra Club's Rehearing Request. See *infra* at 8.

II. DISCUSSION

A. Sierra Club's Arguments

In protesting Magnolia LNG's Application, Sierra Club asserted that the Magnolia LNG Liquefaction Project is not in the public interest and is not supported by adequate economic and environmental analysis, as is required to satisfy the NGA and NEPA.²⁴ On review, however, DOE/FE found in Order No. 3909 that there was not "an adequate basis to conclude that Magnolia LNG's proposed exports of LNG ... will be inconsistent with the public interest."²⁵

More specifically, Sierra Club argued—both to FERC and to DOE/FE—that, under NEPA, the agencies must consider the potential for increased domestic natural gas production and associated increased environmental impacts resulting from the proposed Magnolia LNG Liquefaction Project.²⁶ In Order No. 3909, DOE/FE rejected this argument, concluding that "FERC's environmental review covered all reasonably foreseeable environmental impacts of the proposed Liquefaction Project, and that NEPA does not require the review to include induced upstream natural gas production."²⁷ DOE/FE provided a detailed rebuttal to this and other environmental arguments raised by Sierra Club,²⁸ citing (among other considerations) the findings presented in DOE/FE's *Addendum to Environmental Review Documents Concerning Exports of Natural Gas From the United States*.²⁹

In its Request for Rehearing of the Order, Sierra Club reiterates its position that DOE/FE violated NEPA by approving the Magnolia LNG Liquefaction Project without an EIS that adequately considered the direct, indirect, and cumulative effects of Magnolia LNG's proposed

²⁴ See Magnolia LNG Order at 26-38 (summarizing Sierra Club's arguments).

²⁵ *Id.* at 157.

²⁶ See *id.* at 26-38.

²⁷ *Id.* at 143 (internal citation omitted).

²⁸ See *id.* at 141-56.

²⁹ U.S. Dep't of Energy, Addendum to Environmental Review Documents Concerning Exports of Natural Gas From the United States, 79 Fed. Reg. 48, 132 (Aug. 15, 2014); see also, e.g., Magnolia LNG Order at 5-6, 85-94, 141-60.

exports.³⁰ Sierra Club asserts that FERC’s EIS for the Magnolia LNG Liquefaction Project was deficient, and that DOE/FE failed to cure the deficiencies in the EIS or to supplement the EIS to address the effects of DOE’s export approval.³¹ In particular, Sierra Club maintains that DOE/FE violated NEPA by authorizing Magnolia LNG’s exports without taking a “hard look” at the effects of induced natural gas production.³² Additionally, Sierra Club argues that, in issuing Order No. 3909, DOE/FE violated NGA section 3(a) by failing to adequately weigh economic and environmental impacts in evaluating the public interest.³³

B. D.C. Circuit Precedent

Before seeking rehearing in this case, Sierra Club petitioned the D.C. Circuit for review of five long-term LNG export authorizations issued by DOE/FE under NGA section 3(a)—the same type of authorization as Order No. 3909. In those individual cases, Sierra Club challenged DOE/FE’s approval of U.S. LNG exports from projects proposed or operated by the following authorization holders: Freeport LNG Expansion, L.P., *et al.*; Dominion Cove Point LNG, LP; Sabine Pass Liquefaction, LLC; and Cheniere Marketing, LLC, *et al.*

The D.C. Circuit subsequently denied four of the five petitions for review: one in a published decision issued on August 15, 2017 (*Freeport*),³⁴ and three in a consolidated, unpublished opinion issued on November 1, 2017.³⁵ In the unpublished opinion, the Court stated that its “decision in *Freeport* largely governs the resolution of the instant cases,” leaving “three narrow issues” raised by Sierra Club that it likewise rejected in DOE’s favor.³⁶ Sierra Club did

³⁰ Sierra Club Rehearing Request at 2-18.

³¹ *See id.* at 3.

³² *Id.* at 4.

³³ *See id.* at 18-21.

³⁴ *Sierra Club vs. U.S. Dep’t of Energy*, 867 F.3d 189 (Aug. 15, 2017) (denying petition of review of the LNG export authorization issued to Freeport LNG Expansion, L.P., *et al.*).

³⁵ *Sierra Club v. U.S. Dep’t of Energy*, Nos. 16-1186, 16-1252, 16-1253, 703 Fed. Appx. 1 (D.C. Cir. Nov. 1, 2017) (denying petitions of review of the LNG export authorization issued to Dominion Cove Point LNG, LP; Sabine Pass Liquefaction, LLC; and Cheniere Marketing, LLC, *et al.*, respectively).

³⁶ *Id.* at 2.

not seek further judicial review of either decision. In January 2018, Sierra Club voluntarily withdrew its fifth and remaining petition for review.³⁷

In *Freeport*, the D.C. Circuit concluded that DOE/FE complied with both NEPA and the NGA in issuing the LNG export authorization in that case. First, in rejecting Sierra Club’s principal NEPA argument, the Court found that DOE “offered a reasonable explanation as to why it believed the indirect effects pertaining to increased [natural] gas production were not reasonably foreseeable.”³⁸ The Court thus held that, “[u]nder our limited and deferential review, we cannot say that the Department failed to fulfill its obligation under NEPA by declining to make specific projections about environmental impacts stemming from specific levels of export-induced [natural] gas production.”³⁹

Second, in reviewing Sierra Club’s claims under the NGA, the Court found that Sierra Club “repeats the same argument it made to support its NEPA claim—namely, that the Department arbitrarily failed to evaluate foreseeable indirect effects of exports.”⁴⁰ Having “already rejected this argument” under NEPA, the Court determined that “Sierra Club offers no basis for reevaluating the scope of DOE’s evaluation for purposes of the Natural Gas Act.”⁴¹ In sum, the Court held that “Sierra Club has given us no reason to question the Department’s judgment that the [*Freeport*] application is not inconsistent with the public interest.”⁴²

In its Request for Rehearing of Order No. 3909, Sierra Club presents substantially the same arguments that it raised in the *Freeport* case and in its other petitions for review described above. Accordingly, in light of the D.C. Circuit’s decision in *Freeport*, as well as the Court’s

³⁷ See *Sierra Club v. U.S. Dep’t of Energy*, No. 16-1426, Per Curiam Order (Jan. 30, 2018) (granting Sierra Club’s unopposed motion for voluntarily dismissal).

³⁸ *Sierra Club*, 867 F.3d at 198.

³⁹ *Id.* at 201.

⁴⁰ *Id.* at 203.

⁴¹ *Id.*

⁴² *Id.*

consolidated, unpublished opinion issued on November 1, 2017, we have determined that the Court's conclusions and reasoning control Sierra Club's arguments in this proceeding.

III. CONCLUSION

We find that it has not been shown that a grant of the requested authorization is inconsistent with the public interest. We further find the D.C. Circuit's decisions in *Freeport* and the related cases are controlling precedent in this proceeding. We therefore dismiss Sierra Club's arguments, and affirm our previous finding that Magnolia LNG's Application should be granted subject to the terms and conditions set forth in DOE/FE Order No. 3909.

IV. ORDER

Pursuant to sections 3 and 19 of the Natural Gas Act, and for the reasons set forth above, in DOE/FE Order No. 3909, the Record of Decision, and *Sierra Club v. U.S. Dep't of Energy*, it is ordered that:

- A. Magnolia LNG, LLC's Motion for Leave to Answer Sierra Club's Request for Rehearing is granted.
- B. Sierra Club's Request for Rehearing is denied.

Issued in Washington, D.C., on April 2, 2018.

Robert J. Smith
Acting Deputy Assistant Secretary
Office of Oil and Natural Gas
Office of Fossil Energy