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Louisiana Legislation Largely Codifies *Marcel* Exception to Oilfield Anti-Indemnity Act

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During its 2026 Regular Session, the Louisiana Legislature amended the Louisiana Oilfield Anti-Indemnity Act.¹ The amendment largely codifies the so-called *Marcel* exception regarding additional-insured coverage, but also establishes certain requirements that must be satisfied before the exception will apply.

Background: The LOAIA and The *Marcel* Exception

Louisiana is one of four states that has an oilfield anti-indemnity act, with each state's act being different from the acts in the other three states.² The Louisiana Oilfield Anti-Indemnity Act (LOAIA) is found at Louisiana Revised Statute 9:2780. The LOAIA applies to contractual indemnities found in an agreement that “pertains to a well or wells for oil, gas, or water, or drilling for minerals.”³ The LOAIA renders such an indemnity is “void and unenforceable to the extent that it purports to . . . provide for defense or indemnity . . . against . . . liability . . . resulting from death or bodily injury . . . caused by . . . the sole or concurrent negligence or fault . . . of the indemnitee, or an agent, employee, or an independent contractor who is directly responsible to the indemnitee.”⁴

In addition, if an agreement that “pertains to a well or wells for oil, gas, or water, or drilling for minerals,” contains a provision that “requires waivers of subrogation, additional named insured endorsements, or any other form of insurance protection,” the LOAIA renders the provision “null and void and of no force and effect,” if it “would frustrate or circumvent the prohibitions of this Section.”⁵ A major case that considers whether a contractual requirement that a party acquire additional insured protection for a counterparty “would frustrate or circumvent” the LOAIA is *Marcel v. Placid Oil Co.*, 11 F.3d 563 (5th Cir. 1994).

In *Marcel*, the plaintiff was Jeffrey Marcel. His employer, SEE, Inc. (SEE), was providing maintenance services on an offshore oil and gas platform owned by Placid Oil Co. (Placid) on the Outer Continental Shelf, off the Louisiana coast. The agreement between SEE and Placid required SEE to obtain a liability insurance policy that named Placid as an additional insured. The agreement provided that the insurance broker should contact Placid directly and that Placid would pay its share of the insurance premium. After Marcel was injured in a slip-and-fall on the platform, he sued Placid, alleging that the company was liable under negligence and strict

¹ See La. Acts 2026, No. 328. The term “*Marcel* exception” comes from the United States Fifth Circuit case, *Marcel v. Placid Oil Co.*, 11 F.3d 563 (5th Cir. 1994).

² The other states with oilfield anti-indemnity acts are Texas, New Mexico, and Wyoming. See Tex. Civ. Practice & Remedies Code §§ 127.001 thru 127.007; N.M. Stat. § 56-7-2; Wyo. Stat. § 30-1-131.

³ La. Rev. Stat. 9:2780(C).

⁴ La. Rev. Stat. 9:2780(B).

⁵ La. Rev. Stat. 9:2780(G).

liability theories. Placid then discovered that SEE had not obtained a liability policy that named Placid as an additional insured.

Placid brought a third-party claim against SEE, asserting that SEE had breached the parties' agreement by failing to acquire a policy that named Placid as an additional insured. SEE moved to dismiss the third-party claim on summary judgment, arguing that the contractual provision requiring SEE to obtain a policy naming Placid as an additional insured was void under LOAIA.⁶ The United States District Court for the Eastern District of Louisiana granted SEE's motion for summary judgment. Placid appealed.

The United States Fifth Circuit noted that, in a prior case, *Patterson v. Conoco, Inc.*, 670 F. Supp. 182 (W.D. La. 1987), a court had considered an agreement that required a maintenance contractor to acquire an insurance policy that protected a rig owner, and required the rig owner to reimburse the contractor for insurance premiums. The district court concluded in *Patterson* that, because the platform owner was obligated to pay its share of the insurance premium, the contractual obligation for the contractor to obtain the additional insured protection for the rig owner was not void under the LOAIA.

In *Marcel*, the Fifth Circuit was persuaded by the reasoning of *Patterson*. The Fifth Circuit stated, "The LOIA is aimed at preventing the shifting of the economic burden of insurance coverage or liability onto an independent contractor. If the principal pays for its own liability coverage, however, no shifting occurs." The Fifth Circuit reversed the summary judgment in favor of SEE, but did not render judgment for Placid on its breach of contract claim. The Fifth Circuit noted that Placid had paid one-half the premium, but it was not clear on the record whether that amount would cover the full cost of providing additional insured coverage for Placid.

Although Placid's payment is to be one-half the premium paid by SEE, our analysis does not end without knowing how much of the insurance cost is attributable to insuring Placid. The burden to show this was on SEE, the summary judgment movant that was to procure the insurance. Because it is not clear from the record before us whether SEE paid for any cost of insuring Placid, we cannot determine that this contract does not fall within the *Patterson* exception.

We reverse the district court's summary judgment for SEE and remand Placid's third-party claims for reconsideration in light of *Patterson*. If Placid was responsible for the full cost of obtaining its insurance, the agreement is similar to that in *Patterson* and is not void under the LOIA; if SEE paid any material part of the cost of

⁶ Under the Outer Continental Shelf Lands Act, because Louisiana was the "adjacent state," Louisiana law was applicable to the dispute as surrogate federal law. See 43 U.S.C. § 1333(a)(2)(A).

Placid's insurance, however, the district court should reinstate its summary judgment in favor of SEE.⁷

Although *Marcel* referred to this rule as the *Patterson* exception, the rule generally became known as the "*Marcel* exception."⁸

Act 328: Codifying the *Marcel* Exception

The *Marcel* exception has been applied in numerous cases, but the Louisiana Supreme Court has never ruled on the validity of the exception. However, Act No. 328 of the 2026 Regular Session of the Louisiana Legislature codifies the exception, while also adding some new requirements that must be met in order to qualify for the exception. Act No. 328 adds a new paragraph H to Louisiana Revised Statute 9:2780 (the statute already contained a paragraph H, which now has become paragraph I; the statute previously contained a paragraph I that has become paragraph J). The new paragraph H provides that a party may obtain additional insured coverage for itself or members of a "group" if it:

- (a) Makes such a request for an additional insured premium quote by separate written communication to the named insured or the named insured's insurance agent or broker, or both.
- (b) Receives a premium quote from the named insured's insurer or its authorized representative.
- (c) Makes direct payment to the named insured's insurer or its authorized representative for either additional insured coverage for itself only or for itself and members of its group as defined by its agreement with the named insured.⁹

Thus, it may not be sufficient for the party seeking additional insured status to rely on a counterparty that is the named insured to communicate with the insurer. Instead, the party seeking additional insured coverage may need to communicate directly with the insurer and obtain a quote for additional insured coverage. Further, it does not seem sufficient for the party seeking additional insured coverage to reimburse the named insured for the extra premium required to provide additional insured coverage. Instead, the additional insured must pay the extra premium directly to the insurer or its authorized representative.

Further, if a party seeks additional insured coverage for a group, such as for the party itself and its affiliates, employees, other contractors (that is, other than the named insured), subcontractors, and so forth, "Additional insured coverage for the group shall only be valid and enforceable pursuant to this Subsection when the

⁷ 11 F.3d at 570. *Marcel* referred to Louisiana Revised Statute 9:2780 as the "Louisiana Oilfield Indemnity Act" and as the "LOIA," rather than as the Louisiana Oilfield Anti-Indemnity Act" and the "LOAIA."

⁸ See, e.g., *Willis v. Barry Graham Oil Service, L.L.C.*, 122 F.4th 149, 156-7 (5th Cir. 2024); *Jefferson v. International Marine, LLC*, 224 So. 3d 50, 54 (La. App. 1st Cir. 2017).

⁹ La. Rev. Stat. 9:2780(H)(1).

premium is expressly quoted for group coverage, and the payment by the additional insured is for that corresponding group premium amount.”¹⁰

The new provision also addresses policy renewals, generally requiring notice to the additional insured in advance of the next annual premium being due.¹¹

Finally, the new statutory provision addresses deductibles. It provides that the additional insureds, rather than the named insured, “are liable for and responsible for any applicable deductibles or retentions as set forth in the named insured's policy up to a maximum of one hundred thousand dollars, with the named insured responsible to fund the amount of the applicable deductibles or retentions, if any, in excess of one hundred thousand dollars.”¹² The requirement that the additional insured fund the first \$100,000 of any deductible or retention is mandatory. The new provision states: “Any agreement where the named insured is made to fund all or any part of the deductibles or retentions up to the first one hundred thousand dollars is null and unenforceable and the provisions of this Subsection shall not apply.”¹³ Perhaps, though, the parties could validly agree that the additional insured would pay for a deductible in excess of \$100,000. At least such an agreement would not be inconsistent with the policy behind the LOAIA.

¹⁰ La. Rev. Stat. 9:2780(H)(2)(a).

¹¹ It states in Louisiana Revised Statute 9:2780(H)(2)(b) and (c):

(b) Once additional insured coverage is actually purchased, the named insured, its insurer, or authorized representative shall notify the additional insured in writing at least thirty days before the next annual premium is due or within seven days of binding the renewal coverage for the named insured, whichever time period is less.

(c) For any policy year where an additional insured either does not make the request pursuant to Subparagraph (1)(a) of this Subsection or does not make payment in the previous policy year pursuant to Subparagraph (1)(c) of this Subsection, the named insured, its insurer, or authorized representative are not required to notify the additional insured in writing at least thirty days before future renewals and, in such instances, the additional insured shall make a new written request for additional insured coverage pursuant to Subparagraph (1)(a) of this Subsection.

¹² La. Rev. Stat. 9:2780(H)(3).

¹³ La. Rev. Stat. 9:2780(H)(4).

OPINION: Louisiana Supreme Court Corrects Erroneous Judicial Usurping of Authority Over Local Land Use Decisions – Upholding the Law While Creating Needed Certainty for Energy and Industrial Development

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Earlier this year, in *Beverly Alexander et al. v. St. James Parish*,² the Louisiana Supreme Court issued an important decision that provides much-needed certainty to companies with energy and industrial facilities and projects in the state.

The dispute arose when the owner-operator of a major plant in St. James Parish, Louisiana, Koch-Methanol St. James, L.L.C. (KM), sought to expand. The expansion would modestly increase the footprint of the plant and require the laying of a pipeline in nearby wetlands, to connect to another gathering pipeline already in those wetlands.

KM applied for and was granted the requisite environmental permits and permissions by the applicable state and federal authorities. It then applied to the Land Use Commission of St. James Parish for a permit authorizing it to undertake the expansion under the Parish's Land Use Plan, essentially its zoning and land use rules.

The expansion of the plant's footprint was modest and entirely within land already designated for industrial use—indeed, already contemplated for future use by the plant.

The pipeline, however, would be laid in an area designated as wetlands. The Parish's Land Use Plan provided that the “allowable use” in areas designated wetlands was “unique situations requiring a location in water”, and otherwise, except for such uses, “wetland areas should remain unoccupied.”

The application was approved by the Parish's Land Use Commission, which found that, as the proposed pipeline was connecting to a pipeline already located in the wetlands, it was a “unique situation requiring a location in water” and thus should be approved, as an allowable use in wetlands, under the Parish's Land Use Plan.

Only one resident appeared at the meeting of the Land Use Commission on this application, and he expressed support for the project. Regardless, local residents (and self-described environmental activists affiliated with local environmental activist groups) appealed the Commission's approval to the Parish Council and presented an extensive and spirited opposition at the Parish Council

¹ The author participated in this matter as lead counsel for Koch Methanol St. James, L.L.C. in its application and argument before the Louisiana Supreme Court.

² No. 2025-C-00868 (La.), on application from Court of Appeal Fifth Circuit, Docket No. 24-CV-557.

meeting. After receiving several hundred pages of filings in advance of the meeting and hearing several hours of discussion at the meeting, the Parish Council unanimously passed a resolution rejecting the appeal and letting the Commission's approval stand.

Those same local residents and groups—with support from the Tulane Environmental Law Clinic and a New York-based progressive legal non-profit—filed a petition with the local district court seeking judicial review of the Parish's decision to approve the project. The district court rejected the challenge and upheld the Parish's decision. It did this based, in part, on the deferential standard of review applicable to local land use and zoning decisions.

The plaintiffs appealed that decision to the Louisiana Fifth Circuit Court of Appeals. The appeals panel reversed the trial court's ruling and vacated the Parish's approval of the project, finding the Parish had misinterpreted and misapplied the procedures and standards set forth in its Land Use Plan. Specifically, it found the Land Use Plan's listing of an "allowable use" for lands designated Wetlands—"unique situations requiring a location in the water"—did not actually authorize any allowable uses in Wetlands. Instead, the panel held that "*any* proposed use of the Wetlands is generally a non-allowable use", and thus the project was "prohibited" under the Parish's Land Use Plan. But their decision was itself faulty and based on evident legal error.

The Land Use Plan prescribes different procedures for applications for allowable uses than for prohibited uses. The former are heard by the Parish's Land Use Commission, whose decision is appealable to the Parish Council. Approval is based essentially on a balancing test that asks whether "the public benefits of" a proposed project (including future economic benefits in attracting other projects) "are commensurate with" its "physical and environmental impacts."³ The latter require approval by the Parish Council, not the Land Use Commission—the Commission still "considers" applications for prohibited uses, but only recommends to the Council whether to approve them (or not). The standard for approval is also higher, based not on a balancing test but explicit requirements that the Parish Council "shall not approve a use . . . unless it makes affirmative findings that there is a compelling public benefit . . . and adverse impacts . . . are inconsequential."⁴

The appeals panel found the Parish applied the incorrect procedures (those applicable to an allowable use, rather than a prohibited use) to this application. The panel found the Parish's decision was therefore invalid and vacated the approval of the project on that basis—effectively declaring the expansion illegal and unauthorized retroactively, years after it was unanimously approved by the local authorities vested with authority to make that decision. Thus, under the panel's ruling, KM would have had to re-commence the application process, and unless its project was approved (again) under the procedures prescribed by the appeals panel, it would have had to undo all its work on the

³ Parish Code of Ordinances, Ch. 82, Art. II § 82-25(f), (h).

⁴ Ord. Ch. 82, Art. II § 82-25(e).

project—including re-entering the wetlands to remove the pipeline it had buried years ago (and over which the wetlands had regrown and settled).

The appeals panel did not find the Parish's approval was arbitrary or capricious, or that the Parish had acted, or even interpreted the Land Use Plan, unreasonably in approving the project. Instead, the panel explicitly applied a *de novo* standard of review to the interpretation and application of the Parish's Land Use Plan. It gave the Parish's interpretation of its own ordinance no deference, and found the Parish's approval was subject to vacatur because it would have applied different procedures to this application. It did this without making any finding, or even considering, whether the Parish's interpretation and application of the Plan could themselves be considered reasonable (i.e., as alternative reasonable interpretation or applications under the Plan), or why the Parish's error required (or justified) vacatur of its ultimate decision to approve the project.

The appeals panel purported to review the Parish's decision under the standard applicable to trial adjudications, reviewing questions of law and procedure *de novo* and only deferring to the lower tribunal's findings of fact. However, that standard of review is not applicable here, and principles appeals courts normally apply when reviewing alleged procedural errors by a tribunal vested with discretion to conduct a proceeding—including harmless error and abuse of discretion—are absent from the reasoning of the appeals panel.

The panel's decision was significant on its own, in the potential power and new tool it gave opponents of development, as discussed below. It was even more significant because it was unexpected, departing from long-established rules to work a fundamental change in this area of law while disclaiming it was doing so.

The Louisiana Constitution of 1974 memorialized the long-standing authority of local governments to regulate land use and zoning.⁵ This authority is inherent in local governments' police powers, and their exercise of this authority is a legislative function. In this regard, zoning and land use commissions are exercising authority vested in the municipal or parish council, and those council's acts in this area are legislative acts undertaken by that local legislative body, for example by passing an ordinance or resolution approving or rejecting an application or granting or denying a variance.

The state legislature has recognized and codified these principles in a comprehensive statutory scheme, Chapter 33 of the Louisiana revised statutes. This scheme recognizes that local governments have authority over land use and zoning decisions, that such decisions are exercises of the local legislative function, and that local decisions about land use and zoning are thus dedicated to the authority of local officials, whether directly or to boards and commissions acting on their behalf or exercising power delegated by them. This scheme also codifies the

⁵ "[A] local governmental subdivision may adopt regulations for *land use, zoning*, and historic preservation, which authority is declared to be a public purpose[.]" La. Const. Art. 6, § 17 (emphasis added).

deferential standard of review owed to local officials' zoning and land use decisions. As these decisions are dedicated to local officials, those officials are given discretion over them, and these decisions are deemed to be within their discretion. Accordingly, the statutory scheme provides for judicial review of their decisions only on the enumerated grounds of:

- abuse of discretion,
- unreasonable exercise of police powers,
- excessive use of the power herein granted, or
- the denial of the right of due process.

Essentially, a court may overturn a decision by these local officials only if, in making that decision, they exceed or abuse the authority granted to them to regulate in this area, abuse their discretion, or violate an individual's right to due process under the federal Constitution. Otherwise, the challenge to the decision must fail.

This principle has long been followed and applied by the courts of this State, including an uninterrupted string of precedents from the Louisiana Supreme Court. These establish that a "presumption of validity attaches to all zoning decisions."⁶ "[J]udicial review of zoning decisions acts merely as a check on this legislative power granted to parish officials to ensure that there is no abuse of the power. Courts will not and cannot substitute their judgment for that of the legislative authority."⁷ Courts "will not and cannot" second-guess the wisdom of such decisions so long as they are rational and lawful.⁸

"Those with zoning authority are elected officials, and as such, they represent the interests of those who elected them. The interests of the public are at the heart of the welfare of a community."⁹ "[I]f a majority of the citizens are dissatisfied with the decisions of the zoning authority, 'their recourse is to the ballot – not the courts.'"¹⁰

To show that a local official's action was "arbitrary, capricious, and unreasonable" the party challenging a zoning or land use decision must show "there was no room for a reasonable difference of opinion, and that there was no substantial evidence upon which the legislative action could have been justified."¹¹ "The terms 'arbitrary and capricious action' . . . must mean willful and unreasoning action, absent consideration and in disregard of the facts and circumstances of the case."¹²

⁶ 3000-3032 St. Claude Ave., LLC v. City of New Orleans, 368 So.3d 1160 (2023).

⁷ Palermo Land Co., Inc. v. Planning Com'n of Calcasieu Parish, 561 So.2d 482 (1990).

⁸ Four States Realty Co. v. Baton Rouge, 309 So.2d 659, 672 (La. 1974).

⁹ Palermo, 561 So.2d at 494-95.

¹⁰ Id. 561 So.2d at 495 (quoting *State ex rel. Civello*, 97 So. 440, 444 (1923)).

¹¹ Id. 309 So.2d at 665-66. –66 (La. 1974)).

¹² King v. Caddo Par. Comm'n, 97-1873 (La. 10/20/98); 719 So.2d 410, 418.

“[W]hen there is room for two opinions, action is not arbitrary or capricious.”¹³ “Whenever the propriety of a zoning decision is debatable, it will be upheld.”¹⁴ Where “it . . . appears reasonable minds could differ”, the challenge must fail.¹⁵

The appeals panel here failed to defer to the land use decision of the local officials of St. James Parish vested with authority to make that decision. It substituted its judgment for that of those officials, opining how it would classify this project under the Parish’s Land Use Plan and the procedures it would apply to the consideration of this application, and ultimately to others. As importantly, it found it was justified in vacating the Parish’s decision to approve this project based on its review of the Land Use Plan and the procedures the Parish (failed to) follow, ignoring the test that actually applied—whether the Parish’s exercise of its legislative function which resulted from this process, its ultimate approval of the project, constituted an abuse of discretion or a denial of the right of due process. It thus also ignored the conclusion which necessarily followed from the application of that proper test, i.e. that so long as the process that ultimately was followed resulted in a decision that could be characterized as reasonable and did not deny any party their right to due process, that decision had to be upheld irrespective of any procedural shortcoming or defect.

These rules and this deferential standard of review had long meant that citizens and businesses could rely on local land use and zoning decisions. Challenges to them were sparse and essentially only succeeded when a reasonable party would expect them to (or at least would understand that a decision was vulnerable), because it was the result of incurable impropriety (such as when approval is procured by corruption) or resulted in an unacceptable outcome (such as the violation of a party’s constitutional right to due process). Absent such issues, parties could rely on the finality of a local zoning decision and make decisions based on them, including large investments and actions which would be difficult or impracticable to unwind after the fact, such as the construction of industrial plants and energy projects.

The Parish and KM applied for a writ of certiorari to the Louisiana Supreme Court, asking it to reverse the erroneous decision of the appeals panel. Despite the flagrancy of the error of the appeals panel, the parties recognized the difficulty of convincing the Louisiana Supreme Court to intervene. The issue of which standard of review to apply to which type of judicial review is not one many practitioners are passionate about or enter the law to fight for. Further, any applicant can claim a parade of horrors will result if the decision they challenge stands because their application is not granted. Hence, even where such warnings will prove prophetic, the Court often fails to grant writs to prevent it, instead intervening

¹³ *Id.* *King v. Caddo Par. Comm’n*, 97-1873 (La. 10/20/98); 719 So.2d 410, 418.

¹⁴ *Palermo*, 561 So.2d at 493.

¹⁵ *Id.*

in a subsequent case, on the second or third application raising an issue, after the damage is apparent.

In addition to their own memoranda in support, the parties' application was bolstered considerably by multiple amici. Amicus briefs in support of the application were filed by industry groups, including the Louisiana Chemical Association, LMOGA, and LABI, local government groups, namely the Louisiana Police Jury and Municipal Associations, and the Louisiana Attorney General.

The Attorney General's brief in particular caused a stir, and is worth taking note of here. It was the only amicus brief whose motion for leave to file drew opposition from the plaintiffs, because of its framing of the appeals panel's decision and characterization of the plaintiffs. It summarized the issue with the decision as follows: "The Fifth Circuit's Decision Favors Out-Of-State Activists' Policy Choices Over Those of the State."

Its characterization of the plaintiffs was similarly uncharitable. The Attorney General's brief claimed that, "[w]hile Plaintiffs claim to be grassroots, the money tells a different story", then described in detail—naming names and listing amounts—the funding that each plaintiff group received in recent years from a host of prominent, out-of-state environmental and progressive activist groups. The Attorney General was unequivocal that, in its view, the interests of those groups does not align with the interests of Louisiana and its citizens, and the local plaintiffs essentially provide cover for these groups' attacks on Louisiana and its future; its amicus brief specifically alleged that the plaintiffs' "underwriting comes from a national coalition of individuals, foundations, and NGOs—all intent on stopping industrial development everywhere in the United States. Out-of-state donors fund this powerful anti-industry lobby to invade Louisiana with ends that are totally at odds with the policies, priorities, and preferences of Louisiana and its citizens." The plaintiffs took exception to these arguments in their opposition.

The Louisiana Supreme Court granted the writ application (without mention of any amicus brief). The Court heard arguments at a special sitting solely for this case, then on March 6, 2026, issued [a 6-1 decision](#) that "vacate[d] the ruling of the court of appeal." The Court found the court of appeal "exceeded its role and erred by applying a de novo standard of review and failing to accord the decision of the Parish appropriate discretion. The court of appeal failed to consider whether the interpretation of the land use plan by Parish officials and the resulting decision were arbitrary and capricious, absent which the Parish's decision must be upheld as a legitimate exercise of its constitutionally vested power to make land use decisions."

The Court's decision corrected the erroneous decision of the Louisiana Fifth Circuit and re-affirmed long-standing rules limiting judicial review of local zoning and land use decisions. This decision was an important victory against what was, in this author's view, an essentially illegitimate effort to warp Louisiana's law of land use and zoning to create another means to hinder industrial development and energy projects in the state—to increase the uncertainty of completing them (timely or at all) and increase their costs and development timeline, without any legitimate

basis, despite a project receiving all applicable permits and approvals and having unanimous or near unanimous local and political support. In that regard, it is fortunate that the Louisiana Supreme Court brought an end to this particular effort while it was still in its infancy, before it could spread or be adopted by more circuits or states or, like NEPA and similar statutes that have become standard weapons in a litigation arsenal, it could become something unrecognizable, and never intended or contemplated when enacted, a tool against industrial development and (fossil fuel based) energy projects in the state, created by judicial fiat and the endorsement of misguided and aggressive opposition litigation, but without any legislative approval or action and contrary to the clear legal standards established for judicial review of decisions affecting such projects.

Louisiana Enacts Legislation to Block Climate Lawsuits

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During 2026, the State of Louisiana enacted into law the “Louisiana Energy Protection Act,” which is now codified at Louisiana Revised Statutes 30:1601 through 30:1606.¹

The legislation declares that it “is the public policy of the state of Louisiana to promote and support the production and consumption of energy to meet the energy needs of this state, the nation, and the world,” and to “to protect energy users, producers, and related industries from claims that greenhouse gas emissions caused or contributed to climate change that directly or indirectly resulted in damages to others including but not limited to personal injury, death, property damages, or economic loss.”² To implement this policy, Louisiana Revised Statute 30:1604(A) provides in part:

No covered civil liability action for climate change damages from greenhouse gas emissions, as defined in R.S. 30:1603, shall be brought, filed, or maintained by any person against any person in any court or proceeding in this state, including any claim, cause of action, or judicial or administrative proceeding.

Section 1604(A) goes on to state that this restriction on asserting claims does not apply to claims, actions, or proceeding seeking to enforce Louisiana or federal statutes limiting greenhouse gas emissions or to conditions in permits that would restrict greenhouse gas emissions or actions for violation of Occupational Safety and Health Act. In addition, the Act does not apply to claims for violation of the State and Local Coast Resources Management Act of 1978, found at Louisiana Revised Statute 49:214.21 *et seq.*

The Act applies to actions filed on or after the effective date of the statute, see La. Rev. Stat. 30:1604(B), with the effective date of the Act being the date the legislation was signed by the Governor.³ The Legislation was signed by the Governor on June 8, 2026.

¹ See La. Acts 2026, No. 843 (House Bill No. 804 by Representative Brett Geymann).

² See La. Rev. Stat. 30:1602.

³ See La. Acts 2026, No. 843 § 4.

Ohio Court Finds DMA Decision Does Not Bar Later MTA Challenge

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In *Myers v. Vandermark*, Ohio's Seventh District Court of Appeals addressed whether an unsuccessful attempt to reunite surface and mineral interests under the Dormant Mineral Act barred a second, subsequent attempt under Ohio's Marketable Title Act.¹ Spoiler alert: It does not (at least in the Seventh District).

The facts of the case are straightforward: In 1921, the McLaughlin Heirs' predecessor conveyed the surface rights to 109 acres of land, reserving the oil and gas underneath. Ninety years later, the Appellants filed a declaratory judgment and quiet title action claiming that the mineral interest under a portion of that land had been abandoned under Ohio's DMA. The trial court initially agreed, granting summary judgment to Appellants, but the Seventh District reversed directing the trial court to enter judgment in favor of the McLaughlin Heirs, which the trial court did.

Five years later, Appellants again filed suit, this time seeking a declaratory judgment that the reserved mineral rights had been extinguished under Ohio's MTA. The trial court disagreed, determining that the Appellants' original DMA action barred their subsequent attempt to obtain ownership of the same mineral interest through application of the MTA.

On appeal, the Seventh District reversed. The issue was whether *res judicata* acted to bar Appellants from raising their MTA claim after a final resolution of their earlier DMA complaint. The court recognized that "[r]es judicata applies to issues actually presented in the original action and to issues that could have been presented for adjudication." "The four elements of res judicata or claim preclusion are (1) a prior valid judgment on the merits; (2) a second action involving the same parties; (3) the second action raises claims that were or could have been litigated in the first action; and (4) both actions arise out of the same transaction or occurrence." Because there was no dispute regarding the first and second elements, the court focused its analysis on the third and fourth.

Analyzing them together, the court adhered to the Appellants' argument that, unlike other judgments, a declaratory judgment determines only what is actually decided by the court and does not preclude other claims that might have been advanced—a declaratory judgment exception to the normal working of *res judicata* principles. Here, per that argument, because the McLaughlin Heirs held apparent title to the minerals, the rejection of Appellants' DMA claim did not actually quiet title in them as there was no need to do so. Thus, "it is unremarkable that the trial court's entry omitted any reference to quiet title, as any action in that regard was unnecessary."

¹ 2026-Ohio-2562 (Jun. 30, 2026).

As a result, the court described the determinative issue as “whether a claim to declare mineral interests extinguished (MTA) should have been raised with a claim to declare mineral interests have been abandoned (DMA).” And it held that it need not have been, reasoning that the statutes “operate very differently in effecting title.” “[A]n interest that appears to have been abandoned and forever lost may actually be revived and preserved under the provisions of the DMA. Not so, the MTA. Under the MTA, an interest holder may have their interest automatically extinguished. The MTA declares that once extinguished, the interest may never be revived.” Thus, “the two claims are not the same.”

Accordingly, the court found that “[t]he claims raised in Appellants’ second complaint cannot be said to have arisen from the same transaction or ‘occurred’ as the claims raised in their first complaint. Further, to now prohibit Appellants from raising their MTA claims would run afoul of the strictures of that statute. It would serve to permit Appellees to revive their interests in the property even though, if Appellants are correct, that interest has been forever extinguished.” Therefore, the court held, a party is not barred by principles of *res judicata* from raising an MTA claim that a property interest has been extinguished by a prior DMA claim involving that same interest.

The decision is a significant one for oil and gas producers and mineral owners alike, as it can create ongoing uncertainty regarding mineral ownership by adversely impacting the ability of litigants to depend on the finality of judicial decisions. The Seventh District’s decision has been appealed to the Supreme Court of Ohio.²

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² See Ohio Sup. Ct. App. No. 2026-1083.

³ Vorys represents amicus curiae The Ohio Oil and Gas Association in support of that appeal.

Pennsylvania Raises the Regulatory Bar for Data Center Development

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Pennsylvania continues to welcome data center investment, but the Commonwealth is imposing greater discipline on how projects secure electric service and address impacts on ratepayers and host communities. These new regulations are mandating that developers coordinate utility, regulatory, environmental, and municipal approvals much earlier in the development cycle.

The surge in data center electricity demand also carries significant implications for the Appalachian natural gas sector. With over [8 GW](#) of behind-the-meter gas-fired generation at various stages of development in Pennsylvania alone, the regulatory framework governing these projects will directly shape the pace of upstream Marcellus and Utica development and midstream pipeline investment. Natural gas producers and midstream operators should therefore monitor these regulatory developments closely as indicators of near-term demand growth.

Large-Load Tariffs Will Shape Project Economics

In May 2026, the Pennsylvania Public Utility Commission (PUC) issued a Final Order establishing a model large-load tariff. The model generally applies to individual loads of at least 50 MW or aggregated loads of at least 100 MW, although utilities may propose applying similar requirements to smaller projects with significant system impacts.

The model addresses interconnection studies, infrastructure-cost responsibility, financial security, minimum contract terms, load-ramp schedules, minimum billing demand, early-termination obligations, and customer self-construction of certain facilities. The model tariff does not require specific statewide rates or service terms. Instead, it provides a framework for utility-specific tariff filings that must be reviewed and approved by the PUC. Each electric distribution company must still implement appropriate requirements through a Commission-approved tariff.

PPL Electric has already adopted a separate large-load framework through its recent base-rate proceeding, including long-term service commitments, minimum demand guarantees, and financial protections. Developers must therefore

¹ Our Pennsylvania [energy and utility regulatory team](#) assists data center stakeholders in navigating these requirements and moving projects from site selection through commercial operation.

evaluate the serving utility's tariff before relying on preliminary cost estimates or energization schedules.

Projected Loads Will Face Greater Scrutiny

[Act 45 of 2025](#) established a statutory framework for PUC oversight of the load forecasts that Pennsylvania electric distribution companies submit to PJM Interconnection. [Act 21 of 2026](#) amends that framework by expressly authorizing the PUC's enforcement bureau and statutory advocates to review utility agreements and customer commitments affecting forecast assumptions, subject to confidentiality protections.

This expanded review authority elevates the importance of documentation supporting a proposed large load. Letters of authorization, service agreements, deposits, ramp schedules, site-control arrangements, and other commercial commitments may influence whether a utility considers a project sufficiently viable for inclusion in its load forecast. Developers should therefore coordinate project milestones and avoid inconsistent timelines, unsupported demand projections, or duplicative service requests that could undermine the project's treatment in utility and PJM planning.

Reporting and State-Support Requirements

Beginning July 1, 2027, Act 21 of 2026 requires Pennsylvania data centers with a peak electric demand of at least 10 MW to report energy and water consumption, projected demand, generation sources, efficiency measures, and environmental protections to the Department of Environmental Protection. Failure to report may result in penalties of \$10,000 per day.

Separately, the Governor's [Responsible Infrastructure Development Standards](#) establish conditions for data centers seeking certain Commonwealth benefits. Participating developers must address energy affordability, incremental generation, project-caused utility costs, community engagement, workforce commitments, and environmental performance.

The Pennsylvania Department of Community and Economic Development's nonbinding [Data Center Planning Toolkit](#) will also influence municipal review of zoning, water, infrastructure, fiscal impacts, emergency services, and community benefits.

What Developers Should Do Now

Because a data center's development schedule and economic viability will depend in large part on decisions made by the serving utility, the PUC, PJM, and state and local permitting authorities, developers should evaluate potential system

upgrades, cost responsibility, and regulatory conditions before committing to an energization date or finalizing the project's financing structure.

Fraud Claims Asserted in Royalty Action Were Not Barred by West Virginia’s “Gist of the Action” Doctrine

Keith B. Hall
LSU Law Center

In *Leonetti v. SWN Production Co.*, 2026 WL 1759205 (N.D. W. Va.), the plaintiff filed an action in West Virginia, alleging an underpayment of royalties. The plaintiff also seemed, however, to assert additional claims. According to the federal district court:

Essentially, therefore, the Amended Complaint alleges that defendants have wrongfully deducted post-production costs from plaintiff’s earnings and wrongfully calculated his royalty share by utilizing third-party sales that are not true arms-length transactions; accordingly, the proportionate share of proceeds received by plaintiff are not reflective of the actual market price of the oil and gas products. [*Id.*]. While the Amended Complaint does not specifically delineate the causes of action it asserts, plaintiff appears to assert claims for (1) breach of contract; (2) fraud/fraudulent concealment; (3) conversion; (4) declaratory judgment; and (5) punitive damages.

The defendants sought dismissal of the plaintiff’s claims for fraud, conversion, declaratory judgment, and punitive damages. They argued that the plaintiff’s fraud and conversion claims were barred by West Virginia’s “gist of the action” doctrine, that the declaratory judgment claim was an “improper tack-on claim” that was duplicative of the plaintiff’s breach of contract claim, and that punitive damages are not recoverable for a breach of contract.

After providing background information regarding the facts and procedural history, the court began its analysis with a discussion of the defendants’ argument that the plaintiff’s tort claims for fraud and conversion were barred by West Virginia’s gist of the action doctrine. This doctrine bars recovery in tort when the parties are in a contractual relationship, and (1) liability arises solely from the parties’ contractual relationship, (2) the duties allegedly breached by the defendant are grounded in the parties’ contract, (3) any liability arises from the contract, and (4) the plaintiff’s tort claim essentially duplicates the plaintiff’s breach of contract claim or success of the tort claim depends on success of the contract claim.¹

The defendants pointed to multiple cases, including *Corder v. Antero Resources Corp.*, 322 F. Supp. 3d 710 (N.D. W. Va. 2018), in which the court held that the gist of the action doctrine barred a fraud claim that a claimant asserted in a royalty action. The defendants also pointed to various cases, such as *Rodgers v. Southwestern Energy Company*, 2016 WL 3248437 (N.D. W. Va. 2016), in which the

¹ *Id.* at * 3 (citing *Gaddy Engineering Co. v. Bowles Rice McDavid Graff & Love, LLP*, 746 S.E.2d 568, 577 (W. Va. 2013)).

court held that the gist of the action doctrine barred a conversion claim that a claimant asserted in a royalty action. But the plaintiff in this case noted that there also had been prior cases in which the court held that the gist of the action doctrine did not bar a fraud or conversion claim that was asserted in a royalty action.

The court concluded that, in this case, the plaintiff alleges breach of a “broader social duty” than simply avoiding a breach of contract. Here, reasoned the court, the plaintiff alleged a breach of a duty of honesty that went beyond any contractual duty. The court stated that the gist of the action doctrine has a place in oil and gas royalty cases, but that “overly-strict application of the gist of the action doctrine” would be improper.

Where, as here, the plaintiff alleges that the defendants fraudulently concealed the deduction of post-production costs by submitting ostensibly accurate royalty statements and baked deductions into the royalty calculation via third-party affiliate sales, this Court finds that dismissing plaintiff's claims simply because the parties' relationship originated in contract would be inappropriate.

Accordingly, the court denied the defendants' motion to dismiss the plaintiff's fraud and conversion claims.

The court granted, however, the defendants' motion to dismiss the plaintiff's declaratory judgment action. The court did so because it agreed with the defendants that the plaintiff's declaratory judgment claim was duplicative of the plaintiff's breach of contract claim.

Finally, the court denied the defendants' motion to dismiss the claim for punitive damages. The defendants' argument for dismissal of this claim was based on the well-established rule that punitive damages are not available for breach of contract and the defendants' contention that the plaintiff's tort claims should be dismissed. But the court rejected the defendants' argument that the plaintiff's tort claims for fraud and conversion should be dismissed. Because those claims were not dismissed, the court declined to dismiss the claim for punitive damages.

West Virginia City's Application of Zoning Laws to Oil and Gas Drilling is Not Preempted

Keith B. Hall
LSU Law Center

The City of Weirton, West Virginia adopted a zoning ordinance that prohibits oil and gas drilling within the City, except in areas zoned as “industrial,” unless the person who wishes to drill obtains a conditional use permit from the City’s Board of Zoning Appeals (BZA).¹

SWN holds an oil and gas lease covering a 301-acre tract that is within the City of Weirton. The tract is not in an area zoned as “industrial,” so SWN applied to the BZA for a conditional use permit. The BZA held two hearings on the application, then denied the application in a written decision issued in early October 2021.

Later that month, SWN filed an application with West Virginia’s Department of Environmental Protection (DEP) for a permit to drill a horizontal well from a surface location on the 301-acre tract. In late October 2021, while the application for a drilling permit was pending, SWN filed two actions in the Circuit for Brooke County, West Virginia. In one of the actions, SWN sought a declaratory judgment that the City of Weirton’s zoning ordinance was preempted by state oil and gas statutes. The other action was a petition for a writ of certiorari, seeking a reversal of the BZA’s denial of SWN’s request for a conditional use permit. Under West Virginia law, a decision of a board of zoning appeals is subject to review by filing a petition for a writ of certiorari in the local circuit court.² The circuit court consolidated the two actions and stayed any ruling on the writ application until after it made a decision on the declaratory judgment action.

Before the circuit court made any decision on the merits, the DEP granted SWN’s application for a permit to drill and SWN amended its petition to note that the DEP had granted the permit. In the circuit court, SWN then argued that West Virginia’s Oil and Gas Act³ and the state’s Natural Gas Horizontal Well Control Act⁴ give the DEP the exclusive authority to regulate the location of drilling, and that this grant of exclusive authority prohibits municipalities from regulating the location of drilling. The City disputed SWN’s argument. The City noted that a separate West Virginia statutory scheme, the Land Use Planning Act,⁵ gives municipalities the authority to enact ordinances to regulate land use, and that nothing in the Oil and

¹ *City of Weirton v. SWN Production Co.*, 931 S.E.2d 825 (W. Va. 2026). (The zoning ordinance is also discussed in the decision from the intermediate court of appeals. See *SWN Production Co., LLC v. City of Weirton*, 895 S.E.2d 227 (W. Va. App. 2023)).

² See W. Va. Code § 8A-9-1.

³ W. Va. Code §§ 22-6-1 through 22-6-41.

⁴ W. Va. Code §§ 22-6A-1 through 22-6A-24.

⁵ W. Va. Code §§ 8A-1-1 through 8A-13-4.

Gas Act or the Natural Gas Horizontal Control Act expressly prohibits municipalities from applying zoning ordinances to oil and gas drilling.

In August 2022, the circuit court rejected SWN's request for a declaratory judgment, concluding that neither the Oil and Gas Act nor the Horizontal Well Control Act preempt the application of local zoning ordinances to oil and gas drilling. About a year later, in August 2023, the circuit court denied SWN's writ application, stating that the record contained evidence supporting the BZA's decision denying SWN's request for a conditional use permit. SWN timely filed separate appeals of the circuit court's two rulings.

In late 2023, West Virginia's intermediate court of appeals reversed the circuit court's decision dismissing SWN's action for a declaratory judgment. The appellate court concluded that the provision in the City's zoning ordinance that regulates oil and gas drilling is in direct conflict with West Virginia's oil and gas statutes. Therefore, the provision was preempted. In support of its decision, the court noted that the Horizontal Well Control Act contains language stating that the DEP has "sole and exclusive authority to regulate the . . . location . . . of oil and gas wells and production operations within the state."⁶ In a separate decision, the intermediate court of appeals dismissed SWN's other appeal, concluding that the court lacked jurisdiction to consider an appeal of a circuit court decision denying a writ of certiorari.

The City appealed to West Virginia's Supreme Court of Appeals, the intermediate appellate court's decision that the zoning ordinance is preempted, and SWN appealed the intermediate appellate court's decision that it lacked jurisdiction to consider the circuit court's denial of SWN's writ application.

The Supreme Court of Appeals acknowledged that the Horizontal Well Control Act states that the DEP has "exclusive authority" over the location of oil and gas wells, but the Court concluded that this does not require "wholesale" preemption of the City's application of its zoning ordinance to oil and gas drilling. The Court suggested that a municipality could not completely prohibit oil and gas drilling, but the City's zoning ordinance did not do this. Further, the Court held that the Horizontal Well Control Act does not preempt the City's prohibition of oil and gas drilling, except in areas zoned as industrial or, in other areas, after the acquisition of a conditional use permit. Finally, the Horizontal Well Control Act did not prohibit the BZA from denying SWN's application for a conditional use permit. Accordingly, the Supreme Court of Appeals reversed the intermediate appellate court's ruling that the zoning ordinance was preempted.

The Court then upheld the intermediate appellate court's decision that it lacked jurisdiction to consider the circuit court's decision denying the writ application by which SWN sought reversal of the BZA's denial of a conditional use permit. The Supreme Court of Appeals explained that the Land Use Planning Act does not authorize the appeal of a decision by a board of zoning appeals to the

⁶ See 895 S.E.2d at 233, 236 (quoting W. Va. Code § 22-6A-6(b)).

intermediate appellate court. The Court also noted that a writ of certiorari is an extraordinary remedy and that the statute governing the intermediate appellate court's jurisdiction had been amended to clarify that the court's jurisdiction does not extend to judgments involving extraordinary remedies.

Ninth Circuit Affirms Dismissal of Challenge to Executive Orders Relating to Energy Policy

Keith B. Hall
LSU Law Center

In *Lighthiser v. Trump*, 2026 WL 1555982 (9th Cir.), a group of “children and young adults” filed suit in Montana, challenging three Executive Orders issued by President Trump relating to energy policy.

The Ninth Circuit stated that these three Executive Orders “set several broad directives for federal energy policy and direct agencies to implement those directives ‘in a manner consistent with applicable law.’” The plaintiffs sued President Trump and numerous federal departments, alleging that “Defendants have implemented, or will soon implement, the challenged EOs in a manner injurious to” the plaintiffs.¹ They sought a declaratory judgment and an injunction barring the defendants “from implementing or enforcing” the Executive Orders, and requiring the defendants to “rescind all agency-wide directives applying, implementing, and effectuating” the Executive Orders.²

The plaintiffs claimed to assert six causes of action. In the first two, the plaintiffs argued that the challenged Executive Orders violate their “right to life” and their “right to liberty.” In the third, fourth, and fifth causes of action, the plaintiffs asserted that the Environmental Protection Agency’s implementation of the Executive Orders was *ultra vires*, that “termination” of the National Climate Assessment was *ultra vires*, and that an alleged “wholesale suppression of science” was *ultra vires*. Finally, in their sixth claim, the plaintiffs argued that the challenged Executive Orders are unconstitutional under a “state-created danger doctrine.”³ The district court dismissed the case for lack of standing.

The Ninth Circuit affirmed.⁴ The appellate court stated, “Plaintiffs have not plausibly alleged that their asserted injuries are ‘caused by the challenged’ Executive Orders.”⁵ The court explained that the plaintiffs could only “speculate” about what actions federal agencies would take to implement the Executive Orders. Further, agencies consider numerous factors when determining what actions to take, predicting “[w]hether agencies will rely on the Executive Orders when taking future action ‘is mere conjecture.’”

Further, the court concluded that the injunctive relief requested by the plaintiffs was not substantially likely to redress the plaintiffs’ alleged injuries. The court explained that the plaintiffs did “not plausibly allege[] that enjoining federal

¹ See *Lighthiser v. Trump*, 2025 WL 2930569 (D. Mont.).

² *Id.* at *3.

³ 2025 WL 2930569 at *3.

⁴ 2026 WL 1555982 at *3.

⁵ *Id.* at *1.

agencies from implementing the Executive Orders” would prevent the agencies from taking similar actions based on authority other than the Executive Orders.

Moreover, it was not within the authority of the judiciary to grant the requested injunction. The requested “injunction would effectively place one federal district court in charge of executive energy policy” and require “extensive judicial supervision of executive branch actions related to energy policy.” That would be “an extraordinary and unprecedented role” for a court, and would involve the court in “an untold number’ of executive branch” actions, without the benefit of “judicially manageable standards.” Further, by “challenging hundreds of current and anticipated agency actions in one lawsuit,” the plaintiffs sought to circumvent the procedures set forth in the Administrative Procedure Act for challenging agency actions. And, without the requested injunctive relief, the declaratory relief requested by the plaintiffs was “not substantially likely to mitigate” the plaintiffs’ alleged injuries. Accordingly, the Ninth Circuit affirmed the district court’s judgment dismissing the action.

Finally, the Ninth Circuit held that the district court did not abuse its discretion in refusing to allow the plaintiffs leave to amend their complaint. The Ninth Circuit noted that the plaintiffs had not identified any specific shortcomings in their complaint that could be remedied by amendment. The appellate court cited a Fourth Circuit decision that affirmed a district court’s denial of leave to amend a complaint that contained “deep, fundamental flaws at odds with principles of Article III standing.”

PHMSA's Latest MAOP Rulemaking Can Reduce Redundancy and Resolve Regulatory Uncertainty

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On April 24, 2026, the Pipeline and Hazardous Materials Safety Administration (PHMSA) published a proposed rule, *Removing Unnecessary Provision for Material Properties Verification During Maximum Allowable Operating Pressure Reconfirmation*, addressing two material testing requirements.¹ The comment period closed June 23, 2026, and the NPRM is now awaiting further agency action.

PHMSA has identified a legitimate problem with 49 C.F.R. § 192.624: the rule can require material testing even when the testing may provide little additional information or corresponding safety benefit. In the NPRM, PHMSA proposes to address that issue by eliminating two testing requirements. However, removing those requirements may leave an unintentional safety gap.

[Section 192.624](#) requires certain onshore steel gas transmission pipelines to reconfirm maximum allowable operating pressure (MAOP) using one of six methods.² Method 1 allows an operator to reconfirm MAOP by performing a pressure test in accordance with Subpart J and establishing MAOP based on the test pressure.³

Method 1 also addresses material-property verification. If the operator does not have traceable, verifiable, and complete records for the required material properties, it must obtain the missing information under section 192.607.⁴ Section 192.607 establishes the procedures for verifying pipeline material properties and attributes when the required records are unavailable.⁵

PHMSA would retain the requirement to obtain missing material-property information under section 192.607, but delete the other two testing requirements in section 192.624(c)(1)(iii). The first requires the operator to test pipe removed from the test manifold when conducting the pressure test. The second applies when pipe fails during the pressure test and requires the operator to test any pipe removed as a result of that failure under section 192.607.⁶

PHMSA's rationale for eliminating the pressure-test-failure requirement relies on [section 192.617](#). According to PHMSA, that provision already requires

¹ [91 Fed. Reg. 22,101 \(Apr. 24, 2026\)](#) (NPRM).

² 49 C.F.R. § 192.624(c).

³ *Id.* § 192.624(c)(1).

⁴ *Id.* § 192.624(c)(1)(iii).

⁵ *Id.* § 192.607.

⁶ *Id.* § 192.624(c)(1)(iii).

operators to investigate and analyze pipe failures, making the section 192.624 requirement redundant.

These testing requirements were adopted as part of the 2019 Gas Mega Rule, which sought, in part, to address gaps in operators' records concerning pipeline physical and material characteristics. PHMSA's material-verification framework was intended to develop reliable information when the necessary records were unavailable. But where that information is already available, or additional testing is not needed to evaluate a failure, the testing may impose additional costs without a corresponding safety benefit.

The [comments](#) illustrate how the testing requirement can operate in practice. If direct examination establishes excavation damage as the cause of a pressure-test failure, for example, additional material-property testing may contribute little to understanding the failure.

The problem is that section 192.617 requires operators to investigate "failures and incidents," while the regulations define "incident" but do not define "failure." PHMSA has addressed the meaning of "failure" [in guidance](#). It applies the American Society of Mechanical Engineers (ASME) definition, which refers to a "part in service" that becomes inoperable, cannot perform its intended function, or becomes unreliable or unsafe for continued use. That definition raises an important question for the proposed rule. Does section 192.617 necessarily apply when pipe fails during a pressure test after the pipeline has been taken out of service? That uncertainty is also reflected in the rulemaking [record](#). Subpart J expressly recognizes pressure-test leaks and failures but does not connect them to section 192.617.

Rather than amend section 192.624 to specify when the testing is required, PHMSA proposes to delete the two testing requirements. But that premise depends on PHMSA's conclusion that section 192.617 already covers pressure test failures. If section 192.617 is itself unclear about whether it applies to a failure that occurs while a pipeline is out of service for pressure testing, the proposed change may simply replace one regulatory uncertainty with another. It could also create a gap. An operator could reasonably conclude that a pressure test failure does not trigger section 192.617, even though PHMSA assumes that provision will apply.

Eliminating redundant requirements, particularly where they impose costs without a corresponding safety benefit, is a worthwhile regulatory goal. But redundancy depends on the regulation left behind actually covering the same ground. PHMSA has an opportunity in the final rule to eliminate unnecessary testing while clarifying whether pressure-test failures are subject to section 192.617. Doing so would reduce unnecessary regulatory burden without inadvertently eliminating testing that PHMSA intends to preserve as part of its pipeline-safety framework.

Good regulatory reform should simplify compliance without creating new uncertainty. Here, PHMSA can achieve both.

PHMSA Proposes Modernization of Repair Criteria for Gas and Hazardous Liquid Pipelines, Promising Increased Consumer Safety and Cost-Savings to Industry

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On July 8, 2026, the Pipeline and Hazardous Materials Safety Administration (PHMSA) published a notice of proposed rulemaking that would substantially modernize anomaly response criteria for gas transmission and hazardous liquid pipelines. The proposed rule would replace prescriptive but rigid repair timelines that have been in place since the early 2000s with engineering-based, risk-informed response criteria that leverage the dramatic advances in inline inspection (ILI) technology over the past two decades.

PHMSA has high hopes for its proposed rule. According to Administrator Paul Roberti, the agency is “modernizing [its] safety regulations to match this new landscape” and that “[p]rioritizing repairs to target actual threats — rather than sticking to prescriptive, one-size-fits-all timelines — will improve safety and unleash American energy.” If finalized, PHMSA expects the rule to save the pipeline industry approximately \$390 million annually while simultaneously improving pipeline safety. Comments on the proposed rule are due Sept. 8, 2026.

Background

Congress calls on the U.S. Department of Transportation (DOT) to set minimum safety standards for the transportation of gas and hazardous liquids by pipeline. Acting through PHMSA, DOT promulgated integrity management (IM) program regulations for hazardous liquid pipelines in 2000 and for gas transmission pipelines in 2003, pursuant to congressional mandates in the Pipeline Safety Improvement Act of 2002 and related legislation. These IM programs require pipeline operators to assess the condition of their pipelines and respond to anomalies discovered through those assessments.

When the original IM regulations were adopted, the response criteria relied on generic depth-based measurements that do not account for the specific characteristics of a given anomaly or the operating parameters of the pipeline. In the decades since, ILI technology advanced dramatically. Modern ILI tools can detect and characterize a wider range of anomalies—including cracks, dents and various forms of corrosion—with far greater precision than was possible when the original response criteria were established. Generic measurements are thus rigid in the wake of two decades of technological advancements.

In 2022, PHMSA took a first step toward modernization by amending the gas transmission pipeline response criteria to incorporate engineering-based concepts through the Safety of Gas Transmission Pipelines Rule. But in 2024, the U.S. Court of Appeals for the D.C. Circuit vacated portions of that rule in *Interstate*

Natural Gas Association of America v. PHMSA (INGAA), finding that PHMSA had not adequately justified its selection of a 1.25 failure pressure ratio (FPR) threshold for crack-like anomalies as an immediate response criterion. In May 2025, PHMSA issued an advance notice of proposed rulemaking soliciting public input on modernizing repair criteria for gas and hazardous liquid pipelines. Commenters overwhelmingly favored modernizing the response criteria to reflect current engineering knowledge and ILI capabilities.

Proposed Unified Three-Tiered Response Schedule

The proposed rule would establish a simplified, three-tiered response schedule for anomalies discovered through integrity assessments. Currently, hazardous liquid operators face a complex set of response deadlines—immediate, 60-day, 180-day and other conditions—while gas transmission operators work under immediate, scheduled, monitored and other categories. PHMSA’s modernized rule would replace these regimes with a unified framework consisting of three tiers: (1) immediate response conditions, (2) near-term response conditions, and (3) other conditions.

Under the proposed framework, “immediate” conditions require remediation immediately upon discovery. “Near-term” conditions must be addressed within one year in high-consequence areas and within two years for gas transmission pipelines, or within one year for hazardous liquid pipelines regardless of location. “Other” conditions must be addressed prior to the next scheduled reassessment or monitored using appropriate methods. This consolidation is intended to reduce complexity, align the two regulatory programs and focus operator resources on the anomalies that pose the greatest risk to pipeline integrity.

Key Proposed Changes for Gas Transmission Pipelines

For gas transmission pipelines, the proposed rule would amend 49 C.F.R. § 192.714 to refine several immediate response criteria. Most significantly, in what appears to be a response to the D.C. Circuit’s *INGAA* decision, PHMSA proposes to add an immediate response criterion for cracks and crack-like anomalies with an FPR of 1.1 or below. By selecting a threshold of 1.1 FPR—supported by additional technical analysis—PHMSA aims to satisfy the court’s requirement for a reasoned explanation while still capturing the highest-risk crack conditions.

The proposed rule would also raise the immediate response threshold for crack depth from 50% of the pipe wall thickness to 70%, reflecting engineering analysis showing that shallower cracks in many pipeline configurations do not pose an imminent threat. Additionally, PHMSA proposes to revise the immediate response criterion for preferential seam corrosion from 1.25 FPR to 1.1 FPR, and to refine the interacting dent criterion to include dents interacting with gouging but to exclude non-mechanical metal loss of up to 10% of wall thickness.

Proposed Response Criteria for Hazardous Liquid Pipelines

The existing hazardous liquid response criteria have remained largely unchanged since the early 2000s and rely heavily on generic depth-based thresholds that do not reflect modern engineering capabilities. PHMSA's proposed new criteria do.

Under the proposed criteria, metal loss anomalies with an FPR of 1.1 or below would require immediate response, while those with an FPR of 1.39 or below would trigger near-term response. For cracks, an FPR of 1.1 or below—or depth exceeding 70% of wall thickness—would require immediate response; an FPR of 1.39 or below—or depth exceeding 50%—would trigger a near-term response. For dents, any dent with interacting mechanical damage would require immediate response regardless of orientation, and the existing 180-day response conditions would become near-term conditions. The rule would eliminate the existing 60-day and 180-day timelines, consolidating near-term response to a single one-year deadline.

Estimated Cost Savings

PHMSA estimates that the proposed rule, if finalized, would generate approximately \$390 million in annual cost savings for the pipeline industry. For gas transmission pipelines, the estimated savings range from \$214.6 to \$241.7 million annually. For hazardous liquid and carbon dioxide pipelines, savings are estimated at \$148.5 million annually. These savings derive primarily from the ability to prioritize repairs based on actual risk—allowing operators to defer or reclassify anomalies that prescriptive criteria would currently require them to address on expedited timelines. PHMSA has designated the proposed rule as both an economically significant regulatory action under Executive Order 12866 and a deregulatory action.

FERC Proposes Revisions to the Blanket Certificate Program

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On May 21, 2026, the Federal Energy Regulatory Commission (Commission) voted unanimously to propose the most extensive revisions to its blanket certificate program since 2006.¹ The Notice of Proposed Rulemaking in Docket No. RM25-12-001 would raise the cost limits that govern what interstate natural gas pipelines may build without a case specific authorization order under Section 7 of the Natural Gas Act (NGA), allow incremental rates for prior notice projects, replace the index used for annual inflation adjustments, and remove the cost limit for two categories of facilities. The Commission published the NOPR in the *Federal Register* on May 27, 2026, and the comment period closed on July 27, 2026.²

Nothing in the NOPR is yet effective. Until a final rule issues, the cost limits remain \$14.5 million for automatic authorization projects and \$41.1 million for prior notice projects, subject to a temporary waiver that permits prior notice projects up to \$61.65 million for facilities placed in service by May 31, 2027.³

Background

Section 7 of the NGA requires Commission approval before a natural gas company may construct jurisdictional facilities, render jurisdictional service, or abandon either.⁴ The Commission implemented that obligation in part through the blanket certificate program it established in 1982 under Part 157, Subpart F of its regulations.⁵ A pipeline holding an NGA Section 7(c) certificate may obtain a one-time blanket certificate that authorizes certain activities automatically and others after prior notice.⁶ The framework reserved case-specific review for activities that could have a major impact on ratepayers or that raised considerations warranting close scrutiny. It left the remainder—work the Commission described as so well understood as an established industry practice that little scrutiny is required—to the streamlined procedures.⁷

¹ Revisions to the Blanket Certificate Program, Notice of Proposed Rulemaking, 195 FERC ¶ 61,128 (May 21, 2026) (to be codified at 18 C.F.R. Pts. 157, 380) [hereinafter NOPR].

² 91 Fed. Reg. 31,371 (May 27, 2026).

³ *Id.* at P 4. See also *Interstate Nat. Gas Ass'n of Am.*, 191 FERC ¶ 61,206 (2025).

⁴ 15 U.S.C. § 717f; NOPR at P 2.

⁵ *Id.* at P 2. See also 18 C.F.R Part 157, Subpart F.

⁶ NOPR at P 2.

⁷ *Id.*

The program last underwent major revision in 2006, when the Commission raised the cost limits, made mainline facilities eligible under prior notice procedures, and expanded the environmental conditions and notice provisions.⁸

The current proceeding began the following decade. On June 18, 2025, the Commission granted in part a petition by the Interstate Natural Gas Association of America (INGAA) and temporarily waived the prior notice cost limit, raising it from \$41.1 million to \$61.65 million.⁹ The Commission cited near term nationwide demand for expanded natural gas transportation capacity and the reliability concerns of maintaining the existing system.¹⁰ The Commission issued a Notice of Inquiry the same day and received 17 comments addressing cost limits, project scope, reporting requirements, and rate treatment.¹¹

The Proposed Rule

Cost limits

Blanket activities are currently capped at \$14.5 million for each automatic authorization project and, absent the waiver, \$41.1 million for each prior notice project.¹² Storage reservoir testing and development is capped at \$7.9 million per calendar year.¹³ The NOPR would raise these limits to \$30 million, \$86 million, and \$17 million, respectively.¹⁴

The Commission relied on an INGAA study of Exhibit K data from NGA Section 7 applications filed in 2006 and 2024.¹⁵ INGAA found a median increase of 256.98 percent in the cost per inch mile of pipeline and 172.76 percent in the cost per horsepower of compression, for an average median increase of 214.87 percent.¹⁶ Over the same period, the blanket cost limits rose roughly 50 to 51 percent under the GDP deflator.¹⁷ The Commission found the methodology reasonable, reported that Commission staff had identified no analytical flaws and had verified the conclusion, and proposed limits that approximate INGAA's figures. It declined to raise the limits further to capture projected cost trends, calling that adjustment speculative.¹⁸ The Commission also asked INGAA to file detailed

⁸ *Id.* at P 3.

⁹ *Id.* at P 4. See also *Interstate Nat. Gas Ass'n of Am.*, 191 FERC ¶ 61,206 (2025).

¹⁰ *Id.*

¹¹ *Id.* at P 5. See also *Blanket Certificate Cost Limitations*, 90 Fed. Reg. 26776 (June 24, 2025), 191 FERC ¶ 61,207 (2025).

¹² *Id.* at P 6.

¹³ *Id.*

¹⁴ *Id.* at P 16.

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ *Id.* at P 17.

workpapers and sought comment on whether the analysis should draw on more than the two years it used.¹⁹

For future annual adjustments, the NOPR would replace the GDP implicit price deflator with the Handy-Whitman Index, which tracks gas utility construction costs. The Commission declined to use that index in 1982, describing it as a private collection of data not easily susceptible to governmental verification. It now says that concern no longer outweighs the index's advantages.²⁰

Rate treatment

Capacity built under a blanket certificate is priced at the certificate holder's existing Part 284 rates, and the project costs carry a presumption of rolled-in treatment in a later NGA Section 4 proceeding. A project that satisfies every blanket requirement must still proceed under NGA Section 7 if the sponsor wants incremental rates.²¹

The NOPR would allow incremental rates for prior notice projects. The applicant would file a rate calculation with supporting statements and exhibits. Absent protest, the Commission would treat the rates as approved within the prior notice proceeding, and the applicant would then make an NGA Section 4 filing to implement the tariff record before the project goes into service.²² The Commission cautioned that applications must be complete when filed and that deficient filings may be rejected or protested by Commission staff.²³

The Commission would keep the automatic predetermination of rolled-in rate treatment for projects charging system rates but would require sponsors of prior notice mainline expansions to show that the project benefits existing customers.²⁴ If the showing falls short, Commission staff or any party may protest, and an unresolved protest converts the filing into an NGA Section 7 proceeding.²⁵ The NOPR would further require applicants to disclose the purpose and beneficiaries of blanket projects for use in later NGA Section 4 or Section 5 rate proceedings.²⁶

¹⁹ *Id.* at P 19.

²⁰ *Id.* at PP 20, 26.

²¹ *Id.* at PP 28, 36.

²² *Id.* at P 36.

²³ *Id.* at PP 36, 72.

²⁴ *Id.* at P 37.

²⁵ *Id.*

²⁶ *Id.* at P 38.

Scope

The NOPR would also:

- remove the cost limit on receipt points and allow their construction under automatic authorization, because a receipt point involves the same tap, meter, and appurtenant facilities as a delivery point;²⁷
- remove the cost limit for expansions of existing compressor stations within the fence line of the station, conditioned on filing the information required by Section 380.12(k) of the Commission's regulations and complying with the program's noise condition;²⁸
- measure abandonment eligibility by the actual cost of abandonment rather than the hypothetical cost of replacing the facility today;²⁹
- allow abandonment of storage wells under automatic authorization where the work does not alter the physical parameters of the storage field;³⁰
- extend the in service deadline from one year to two;³¹ and
- eliminate Section 157.212 of the Commission's regulations, so that facilities transporting a mix of synthetic and natural gas or exclusively revaporized LNG would proceed under the other provisions of the blanket regulations, subject to the applicable cost limits.³²

Two provisions run the other way. The Commission would require notice to all affected landowners by certified or first class mail, replacing a good faith effort standard it described as subjective.³³ And it would amend Section 380.4(a)(21) of the Commissions' regulations to remove Section 157.210 of the Commission's regulations from the categorical exclusion, so that neither mainline facilities nor compressor station expansions would be categorically excluded from National Environmental Policy Act (NEPA) documentation.³⁴

²⁷ *Id.* at P 53.

²⁸ *Id.* at P 71.

²⁹ *Id.* at P 56.

³⁰ *Id.* at P 60.

³¹ *Id.* at P 49.

³² *Id.* at P 94.

³³ *Id.* at P 84.

³⁴ *Id.* at P 98.

Proposals not adopted

The Commission declined to:

- authorize mainline projects automatically and instead sought comment;³⁵
- relax the National Historic Preservation Act condition from “no effect” to “no adverse effect,” reasoning that alternative procedures would likely require a nationwide programmatic agreement;³⁶
- narrow the class of persons who may protest a prior notice application, though it sought comment on alternatives, including an intervention-style standard;³⁷ and
- cap blanket spending cumulatively over a rolling-three-year period, noting that segmentation is already prohibited.³⁸

The NOPR adds a severability provision stating that the revisions are not intertwined and operate independently of one another.³⁹

The Comment Record

Attorneys General from 14 states and the District of Columbia filed jointly in opposition.⁴⁰ They argue that the revisions exceed the purpose of a program built for routine, low-impact projects, and that authorizing larger pipeline and compressor station projects automatically would conflict with the NGA and NEPA. They ask the Commission to preserve existing public participation rights, limit the cumulative use of blanket certificates, and expand public notification.

At the Notice of Inquiry stage, the American Public Gas Association, the American Gas Association, the Natural Gas Supply Association, and the Process Gas Consumers Group also raised related concerns about rate impact, cost allocation, and transparency, several of them while supporting streamlining in principle.

³⁵ *Id.* at P 67.

³⁶ *Id.* at PP 75, 76.

³⁷ *Id.* at PP 44, 45.

³⁸ *Id.* at P 18.

³⁹ *Id.* at P 100.

⁴⁰ Motion to Intervene and Comments of the State of Washington *et al.* re the Revisions to the Blanket Certificate Program under RM25-12, Docket No. RM25-12-001, Accession No. 20260727-5257 (filed July 27, 2026). The signatories are the Attorneys General of Arizona, California, Colorado, Connecticut, Illinois, Maine, Maryland, Massachusetts, Michigan, Minnesota, New York, Oregon, Vermont, and Washington, and the Attorney General for the District of Columbia.

Practical Effect

Three points warrant attention as the proceeding moves toward a final rule.

- *The incremental rate proposal is the most structural of the changes.* Today a sponsor that wants incremental rates must file under NGA Section 7 even when the project meets every blanket requirement. The NOPR would remove that reason for an NGA Section 7 filing, subject to the Commission's warning that the application must be complete when filed and that Commission staff review occurs within the 60-day notice period.
- *The compressor station provision removes a ceiling rather than raising one.* Expansions within the fence line of an existing station would qualify for prior notice treatment regardless of cost, a different kind of change from the threshold increases, and one that reaches work pipelines undertake routinely.
- *The disclosure requirements would create a record where none exists.* Applicants would identify the purpose and beneficiaries of blanket projects, and sponsors of prior notice mainline expansions seeking rolled-in treatment would show benefit to existing customers. Shippers evaluating cost allocation in a later rate case would have both.

No final rule has been issued, and the proposals in the NOPR may change before one does. Parties with an interest in the outcome should follow the docket rather than plan against the proposed figures.

Chile – Strategic Management of State-Owned Land: Evolution of the Policy Governing the Allocation of State-Owned Property for Energy Projects

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Submitted on behalf of the IEL International Practice Committee

On June 30, 2026, the Chilean Ministry of National Assets issued Ministerial Order No. 2, which redefines the criteria governing the administration and allocation of State-owned property. It represents a step forward in the way the Chilean State manages its real estate assets. This Order introduces more objective allocation criteria, narrows the scope of administrative discretion, and strengthens the planning and coordination of competing land uses.

Over the past decade, Chile has established itself as a regional leader in the energy transition, fostering the expansion of renewable energy generation, battery energy storage systems (BESS), and an increasingly robust transmission network. This transformation has significantly increased demand for State-owned land and has underscored its strategic importance as a finite resource upon which multiple projects and public interests converge. Against this backdrop, the role of the State's land assets has likewise evolved and the issuance of this new Order reflects the evolution of Chile's energy sector. Whereas the primary challenge during the early stages of the energy transition was to facilitate access to land in order to promote the development of renewable energy projects, the current priority is to manage the State-owned land strategically by balancing competing uses, optimizing its allocation, and providing developers with major legal certainty through more transparent and predictable rules.

This shift in approach is consistent with the objectives of Chile's National Energy Policy, which identifies the energy sector as a key driver of economic development and sets out a roadmap towards a secure, competitive, and sustainable energy system. Achieving these objectives requires not only regulatory reform, technological innovation, or economic incentives, but also, institutional mechanisms capable of facilitating, organizing, and coordinating access to the land on which these projects are developed, particularly given that a significant number of energy and infrastructure projects are located on, or require access to, State-owned property. Accordingly, the energy transition depends not only on regulatory and technological progress, but also on institutions capable of managing land use efficiently and reconciling the various interests that converge upon it. In this context, the administration of State-owned land is no longer merely an enabling instrument; it has become a strategic component of Chile's energy policy.

Ministerial Order No. 1/2017: State-Owned Land as a Tool for Promoting Renewable Energy

Ministerial Order No. 1/2017 was adopted in response to a period in which accelerating the development of non-conventional renewable energy projects was a national priority. Its primary objective was to facilitate access to State-owned land for a sector that required enabling conditions to support its expansion by establishing criteria governing onerous concessions, exploration permits, and public tenders, with a clear emphasis on promoting investment. Accordingly, the allocation framework was designed primarily to encourage investment and facilitate the development of renewable energy projects, rather than to optimize the use of State-owned land.

Nearly ten years after the issuance of Ministerial Order No. 1/2017, Chile's energy sector has evolved considerably. Installed renewable energy capacity has grown significantly; battery energy storage systems (BESS) have become an essential component of power system flexibility; and the expansion of the transmission network, together with other strategic infrastructure, has placed increasing pressure on the use of State-owned land. As Chile's energy sector has matured, the role of the State has evolved accordingly. Therefore, the challenge is no longer limited to promoting new projects; it now also involves prioritizing, coordinating, and optimizing the use of State-owned land. Consequently, the focus has shifted from simply facilitating access to public land to managing a finite resource that is subject to an increasingly diverse range of competing uses and public interests.

While Ministerial Order No. 1/2017 established the framework governing the granting of onerous concessions over State-owned land for the development of non-conventional renewable energy projects, it also preserved a broad degree of administrative discretion by recognizing that its guidelines did not constrain the competent authority's decision-making in individual cases. Ministerial Order No. 2/2026 addresses this need by introducing more objective, transparent, and predictable criteria to guide administrative decision-making and promote a more efficient and strategic management of State-owned land.

Ministerial Order No. 2/2026: Redefining the Criteria for the Allocation of State-Owned Property

Although Ministerial Order No. 2/2026 does not amend the legal framework governing the acquisition, administration, and disposal of State-owned property, it systematizes the rules applicable to its allocation and management. Its principal innovation lies in establishing more objective procedures and criteria to guide administrative decision-making, thereby reducing the scope of administrative discretion and promoting greater consistency and transparency. While administrative discretion has not been eliminated, it must now be exercised within a predefined framework from which the competent authority may depart only in exceptional circumstances and with proper justification. For developers, this

translates into more predictable procedures, while also imposing more rigorous requirements throughout the preparation, implementation, and monitoring of their projects.

The transition from Ministerial Order No. 1/2017 to Ministerial Order No. 2/2026 reflects a broader policy shift—from an approach primarily aimed at facilitating the development of non-conventional renewable energy projects on State-owned land to one focused on the strategic management of the State's land assets.

Key Developments

1. New classification of State-owned property

The Order classifies State-owned property according to its availability (available and unavailable property) and disposability (disposable and non-disposable property), distinguishing between assets that may be managed or transferred and those that, due to their designated purpose, public function, strategic value, or special protection status, are excluded from such transactions.

2. Public tender established as the preferred allocation mechanism

As a general rule, the sale of State-owned property and the granting of onerous concessions will be conducted through public tender. Direct sales and the direct award of concessions will be limited to the exceptional circumstances expressly set out in the Order and must be duly justified.

3. Restrictions on gratuitous transfers

Gratuitous transfers of State-owned property will become exceptional and must be supported by appropriate justification. The Order also introduces additional documentation requirements for applicants—particularly non-profit organizations and individuals—placing greater emphasis on demonstrating the public interest served by the project, its technical and economic feasibility, and the applicant's financial capacity to implement it.

4. Restrictions on leases and occupancy permits

Leases are expressly characterized as temporary instruments and should not be used for the development of permanent projects. Likewise, occupancy permits are limited to exceptional circumstances, may be granted only for short periods (up to six months, renewable once for an additional six-month term), and do not confer any preferential right to subsequently obtain a concession or any other administrative title.

5. State allocations remain reserved for public entities

State allocations (*destinaciones*) remain available exclusively to government bodies. The Order emphasizes that the allocated property must be used effectively and solely for the institutional purposes of the public entity requesting the allocation.

6. Investment mechanism: Onerous Concessions (*Concesiones de Uso Oneroso – CUOs*)

CUOs will become the primary mechanism for granting rights over State-owned property intended for projects in sectors considered strategic to the country's development, including mining, renewable energy, green hydrogen, lithium, energy storage systems, telecommunications, data centers, and other infrastructure projects.

As a general rule, CUOs will be granted through public tender, with direct awards limited to the exceptional circumstances expressly provided for in the Order. They may be granted for terms of up to 30 years, extendable to 50 years in duly justified cases. By contrast, gratuitous concessions will remain exceptional and may be granted for up to eight years, or up to fifteen years where a longer project life can be demonstrated, subject to the competent authority's approval in qualified cases.

7. New procedure for the establishment of easements

For the first time, the Order establishes a specific procedure for the creation of easements over State-owned property. Among other matters, it introduces requirements for financial guarantees, sets out criteria for determining compensation, and expressly recognizes the possibility for multiple easements and other administrative rights to coexist over the same property.

This framework is particularly significant for energy and infrastructure projects, whose viability often depends on the timely acquisition of easement rights for the construction and operation of transmission lines, pipelines, access roads, and other linear infrastructure. In doing so, the Order provides greater legal certainty regarding both the processing of easement applications and the compatibility of overlapping rights.

8. Enhanced oversight and monitoring of the use of State-owned property

The Order strengthens the Ministry's oversight functions by establishing a permanent monitoring system for State-owned property based on its legal status (including managed property, unmanaged property, disposed property, public-use property, and property undergoing acquisition). It also requires the implementation of an Annual Inspection Plan and reinforces oversight of compliance with concessionaires' obligations, the condition of State-owned property, and the protection of public-use property.

Overall, Ministerial Order No. 2/2026 reflects a more mature approach to the management of State-owned land assets. Whereas Ministerial Order No. 1/2017 was designed to facilitate and promote the development of renewable energy projects, the new framework seeks to regulate an environment in which State-owned land has become an increasingly strategic and highly contested resource. For energy and infrastructure developers, this results in a regulatory framework that is both more demanding and more predictable, where early planning for land access, compatibility with competing land uses, and compliance with ongoing obligations throughout the life of a project will become critical factors.

Nevertheless, there remains room for further improvement. At a time when the development of energy and infrastructure projects depends on timely and predictable authorization processes, continued efforts to streamline the procedures for granting the various rights and authorizations over State-owned property would be welcome. This includes reducing processing times, further standardizing decision-making criteria, and narrowing the scope of administrative discretion even further.



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