

**BEFORE THE PUBLIC UTILITY COMMISSION  
OF OREGON**

UM 2383

In the Matter of

PACIFICORP dba PACIFIC POWER,

Expedited Application for Partial Waiver  
of OAR Chapter 860-089, Request to  
Engage Independent Evaluator, and  
Approval of 2025 Draft RFP.

ORDER

**DISPOSITION: ADMINISTRATIVE HEARINGS DIVISION'S RECOMMENDATION  
ADOPTED**

This order memorializes our decision, made and effective at our December 18, 2025 Regular Public Meeting, to adopt the Administrative Hearings Division's recommendation in this matter. The Report with the recommendation is attached as Appendix A.

Made, entered, and effective Dec 18 2025.



**Letha Tawney**  
Chair



**Les Perkins**  
Commissioner



**Karin Power**  
Commissioner



ITEM NO. RA1

**PUBLIC UTILITY COMMISSION OF OREGON  
ADMINISTRATIVE HEARINGS DIVISION REPORT  
PUBLIC MEETING DATE: DECEMBER 18, 2025**

**REGULAR**   X   **CONSENT**        **RULEMAKING**        **EFFECTIVE DATE**   N/A  

**DATE:** December 10, 2025

**TO:** Public Utility Commission of Oregon

**FROM:** John Mellgren, Administrative Law Judge

**THROUGH:** Alison Lackey, Chief Administrative Law Judge **SIGNED**

**SUBJECT:** ADMINISTRATIVE HEARINGS DIVISION:  
(Docket No. UM 2383)  
PacifiCorp, dba Pacific Power Application for Partial Waiver of OAR  
Chapter 860-089, Request to Engage Independent Evaluator, and  
Approval of 2025 Draft RFP.

**RECOMMENDATION:**

The Commission should deny NewSun Energy LLC's application for rehearing or reconsideration of Order No. 25-343.

**DISCUSSION:**

Issues

Should the Commission take up NewSun's application for rehearing or reconsideration for consideration?

Should the Commission grant reconsideration of Order No. 25-343 or is there good cause to revisit the order?

Applicable Rule or Law

This application for rehearing or reconsideration was brought under ORS 756.561, ORS 756.568, and OAR 860-001-0720. ORS 756.561 states in relevant part:

(1) After an order has been made by the Public Utility Commission in any proceeding, any party thereto may apply for rehearing or reconsideration thereof within 60 days from the date of service of such order. The

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commission may grant such a rehearing or reconsideration if sufficient reason therefor is made to appear.

ORS 756.568 states in relevant part: "The Public Utility Commission may at any time, upon notice to the public utility or telecommunications utility and after opportunity to be heard as provided in ORS 756.500 to 756.610, rescind, suspend or amend any order made by the commission."

OAR 860-001-0720 implements ORS 756.561, and provides that

(3) The Commission may grant an application for rehearing or reconsideration if the applicant shows that there is:

- (a) New evidence that is essential to the decision and that was unavailable and not reasonably discoverable before issuance of the order;
- (b) A change in the law or policy since the date the order was issued relating to an issue essential to the decision;
- (c) An error of law or fact in the order that is essential to the decision; or
- (d) Good cause for further examination of an issue essential to the decision.

This proceeding also involves ORS 496A.075(4)(c), which states that the Commission shall adopt rules:

Providing for the evaluation of competitive bidding processes that allow for diverse ownership of renewable energy sources that generate qualifying electricity.

In addition, the Commission's rules state at OAR 860-089-0250(5) that:

The Commission may approve the RFP with any conditions it deems necessary, upon a finding that the electric company has complied with the provisions of these rules and that the draft RFP will result in a fair and competitive bidding process.

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### Background

NewSun filed an application for rehearing or reconsideration of the Commission's Order No. 25-343 approving PacifiCorp's 2025 request for proposal (RFP).<sup>1</sup> NewSun alleges that the order in question commits an error of law "in that it is inconsistent with agency rules and the inconsistency is not explained by the Order."<sup>2</sup> Specifically, NewSun argues that in approving the design of an RFP, the Commission "must do so 'upon a finding that the electric company has complied with the provisions of these rules and that the draft RFP will result in a fair and competitive bidding process.'"<sup>3</sup>

NewSun asserts that Order No. 25-343 does not include the requisite finding and that therefore "the Commission has violated its own rules and ORS 469A.075(4)(c)."<sup>4</sup> NewSun explains that the Staff report adopted by Order No. 25-343 "states that 'Staff believes PacifiCorp's Draft of the 2025 Oregon-situs Draft Request for Proposals (RFP) and scoring criteria as reflected in the body of the RFP should be approved as fair and competitive, subject to the conditions recommended by Staff.'"<sup>5</sup>

NewSun argues that Staff's "statement is not a finding by the Commission that the RFP 'will result in a fair and competitive process' as required by the rule, but simply Staff's opinion that the RFP should be approved 'as' fair and competitive."<sup>6</sup> NewSun also argues that even if Staff's statement was sufficient, it was "not incorporated within the Order itself."<sup>7</sup> Finally, NewSun asserts "neither the Staff Report nor the Order fully addresses or weighs the comments in the record indicating that the draft RFP would *not* result in a fair and competitive process."<sup>8</sup> NewSun reiterated the concerns it expressed in its written comments that it believes were "ignore[d,]" noting its "primary concern was that 'PacifiCorp's insistence on using its *pro forma* [power purchase agreement ('PPA')]

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<sup>1</sup> The Commission recently resolved a similar application for reconsideration from NewSun in a docket involving Portland General Electric Company. *In the Matter of Portland General Electric Company, 2025 All-Source Request for Proposals*, Docket No. UM 2371, Order No. 25-455 (November 14, 2025).

<sup>2</sup> New Sun Application for Rehearing or Reconsideration at 2 (October 28, 2025).

<sup>3</sup> *Id.* at 3 (citing OAR 860-089-0250(5)).

<sup>4</sup> *Id.*

<sup>5</sup> *Id.* at 5 (citing Order No. 25-343, Appendix A at 18).

<sup>6</sup> *Id.*

<sup>7</sup> *Id.*

<sup>8</sup> *Id.* (emphasis original).

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and on bidders providing a price based on that PPA with no edits or concessions will suppress competition.”<sup>9</sup>

NewSun concludes that good cause exists to rehear and/or reconsider Order No. 25-343 because it:

Fails to either: (1) direct that modifications be made to bring the RFP in line with the regulatory requirement that it be approved if it will be fair and competitive; (2) explain why, despite comments to the contrary, that the RFP will still result in a fair and competitive RFP; or (3) explain why the Commission is acting inconsistent with its own rule to find that the RFP will result in a fair and competitive process.”<sup>10</sup>

PacifiCorp and Staff filed responses to NewSun’s application. PacifiCorp urges the Commission to deny NewSun’s application, noting it “is not aware of any requirement that the Commission must enumerate every adopted recommendation or finding it adopts within its orders” and that NewSun has not cited any “direct legal authority to the contrary.”<sup>11</sup> PacifiCorp defends the RFP approval process, noting its belief that “terms should be subject to negotiation and appropriate evaluation, rather than being mandated by the Commission during the RFP approval process.”<sup>12</sup>

Staff responds that New Sun “seeks to introduce new requirements into RFP approvals” and that the “express finding requested by NewSun is neither required by the plain language of the administrative rule nor consistent with Commission practice.”<sup>13</sup> Staff argues that Order No. 25-343 reflects “eight substantive changes from the draft RFP” to and additional Staff recommendations that “[c]ollectively \* \* \* ensure a fair and competitive bidding process.”<sup>14</sup> Next, Staff asserts that reconsideration is unnecessary because OAR 860-001-0720 and ORS 756.569 does not require reconsideration and gives the Commission discretion to not amend its orders.

Staff also argues that express findings in a Commission order are not required to comply with OAR 860-089-0250, noting that NewSun’s argument is inconsistent “with Commission interpretation of this rule as well as Commission practice in approving RFPs.”<sup>15</sup> Staff next argues that NewSun appears to apply the judicial review requirement for an order to be supported by substantial evidence, but that standard

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<sup>9</sup> *Id.* at 6 (citing NewSun Response Comments to Staff Report at 1).

<sup>10</sup> *Id.* at 7.

<sup>11</sup> PacifiCorp Response at 2 (November 10, 2025).

<sup>12</sup> *Id.* at 3.

<sup>13</sup> Staff Response at 3 (November 25, 2025).

<sup>14</sup> *Id.*

<sup>15</sup> *Id.* at 4.

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does not apply here where no final agency action has been taken, and notes that NewSun's interpretation of ORS 183.484(5) exceeds the statutory requirement for judicial review of final orders.<sup>16</sup>

### Analysis

Whether to consider this application is within the Commission's discretion. First, both the rule and statute specify that the Commission "may" grant rehearing or reconsideration; it is a discretionary action. Second,, this is an other than contested case where there has not been a hearing held or evidentiary record developed, so "rehearing" is not appropriate. If the Commission chooses not to take up NewSun's application, the application would be denied by operation of rule after 60 days from its filing.<sup>17</sup> The Commission may consider modification or amendment of an order, if it chooses, upon good cause and opportunity to be heard under ORS 756.568,

If the Commission does elect to take up NewSun's motion, I recommend that it be denied. The order that NewSun seeks rehearing or reconsideration of is not a final order and is not subject to appeal, so the substantial evidence standard that NewSun focuses on is not applicable. As such, NewSun does not demonstrate an error of fact or law that warrants reconsideration under our rules. As to NewSun's argument that Order No. 25-343 does not include a required finding that the RFP will result in a fair and competitive bidding process, the Commission is not required to recite the precise language of the rules in approving an RFP.

Further, the Staff recommendation stated that:

Based on the above analysis, Staff believes PacifiCorp's Draft of the 2025 Oregon-situs Draft Request for Proposals (RFP) and scoring criteria as reflected in the body of the RFP should be approved as fair and competitive, subject to the conditions recommended by Staff.<sup>18</sup>

To the extent the Staff report needed to contain an explicit finding, this is sufficient. The adoption of conditions coupled with approval of the RFP meet the Commission's obligations under the rules.

Accordingly, there is no error of law or fact or good cause to warrant reconsideration.

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<sup>16</sup> *Id.* at 5-6.

<sup>17</sup> OAR 860-001-0720(6).

<sup>18</sup> Order No. 25-343 Appendix A at 18.

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**PROPOSED COMMISSION MOTION:**

Deny NewSun Energy LLC's application for rehearing or reconsideration of Order No. 25-343.