ORDER NO. 26-304

ENTERED Aug 18 2026

BEFORE THE PUBLIC UTILITY COMMISSION

OF OREGON

UM 2408

In the Matter of PACIFICORP, dba PACIFIC POWER, Application for Approval of the Water Use and Conveyance Agreement and Request for Waiver of Competitive Bidding Rule.	ORDER

DISPOSITION: ADMINISTRATIVE HEARINGS DIVISION'S RECOMMENDATION ADOPTED

This order memorializes our decision, made and effective at our August 18, 2026 Regular Public Meeting, to adopt the Administrative Hearings Division's recommendation in this matter. The Public Meeting Report with the recommendation is attached as Appendix A.

Made, entered, and effective Aug 18 2026.

Letha Tawney
Chair

Les Perkins
Commissioner

Karin Power
Commissioner

A party may appeal this order by filing a petition for review with the Circuit Court for Marion County in compliance with ORS 183.484.

ITEM NO. RA2

PUBLIC UTILITY COMMISSION OF OREGON
ADMINISTRATIVE HEARINGS DIVISION REPORT
PUBLIC MEETING DATE: AUGUST 18, 2026

REGULAR __X__ **CONSENT** ___ **RULEMAKING** ___ **EFFECTIVE DATE** __N/A__

DATE: August 11, 2026

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 2408)
In the Matter of PACIFICORP, dba PACIFIC POWER, Application for Approval of the Water Use and Conveyance Agreement and Request for Waiver of Competitive Bidding Rules.

RECOMMENDATION:

The Commission should deny NewSun Energy LLC's application for rehearing or reconsideration of Order No. 26-146.

DISCUSSION:

Issues

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

Should the Commission grant reconsideration of Order No. 26-146 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 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.

<u>Background</u>

NewSun filed an application for reconsideration of the Commission’s Order No. 26-146 waiving competitive bidding rules in OAR 860-089-0100 through OAR 860-089-0500 for a power purchase agreement (PPA) executed by PacifiCorp and US SFR, LLC and approving the Water Use Agreement between PacifiCorp and US SFR. Specifically, NewSun alleges that the order in question warrants reconsideration because good cause exists for further examination of three items that are essential to the Commission’s decision. First, NewSun asserts that the Order adopts Staff’s conclusion that there are “modest benefits and minimal risks from the PPA” despite NewSun’s arguments regarding “a history of cost and schedule overruns”.[1] NewSun explains that additional investigation is needed to ascertain “whether there is absolutely no way for

[1] NewSun Application for Reconsideration at 4 (June 29, 2026).

the PPA terms to be changed such that PacifiCorp would be exposed to risks" and "whether there is any possibility for PacifiCorp to own this project in the future."[2]

Second, NewSun argues that "there exists good cause to reexamine the appropriateness of the waiver request's procedure."[3] NewSun points to Staff's statements that PacifiCorp could have been more transparent in the process and that bringing the resource decision to the Commission only after it has been made was "not in the spirit of the competitive bidding rules" and made investigation and stakeholder involvement difficult.[4] NewSun notes it raised issues with PacifiCorp's request being "inconsistent with the purpose of the Division 89 rules and would encourage future resource procurements to be negotiated outside the competitive process[.]"[5] NewSun explains that Staff and the Commission's order rely on confidential information and that the Commission's order should explain the decision based on the public record.

Third, NewSun asserts that "there exists good cause to further examine the harms of using a new technology."[6] NewSun argues that the Commission's order "does not presently include any of the potential risks of using this new technology, most notably displacement of other procurement."[7] NewSun explains that if there are project delays or failure, there are financial implications to needing "to procure additional generation and storage on a short notice to meet HB 2021 goals or reliability needs[.]"[8]

Finally, NewSun argues that the Commission's order is not supported by substantial evidence and therefore fails to meet ORS 183.484(5)(c)'s requirement that decisions be supported by substantial evidence.

PacifiCorp and Staff filed responses to NewSun's application. Staff argues that there is not good cause to reconsider Order 26-146 and recommends that the Commission take no action or deny the application.[9] Staff notes that this docket is not a contested case proceeding, and therefore "NewSun's request for additional discovery, evidentiary development, and rehearing are misplaced."[10] Staff explains that disagreeing with the Commission's decision does not constitute grounds for reconsideration, and that NewSun's asserted grounds for reconsideration "were considered by Staff throughout its review of [PacifiCorp's] application and discussed in the Staff Report" underlying

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[2] *Id.* at 4-5.
[3] *Id.* at 5.
[4] *Id.*
[5] *Id.* at 6.
[6] *Id.* at 7.
[7] *Id.*
[8] *Id.* at 8.
[9] Staff Response at 1 (July 13, 2026).
[10] *Id.* at 2.

Order 26-146.[11] Staff argues that NewSun identifies no new information that would justify revisiting the Commission's decision in Order 26-146 and that many of NewSun's arguments relate to hypothetical future scenarios not before the Commission in these proceedings. Further, Staff explains that NewSun does not identify how additional process would potentially change the Commission's decision in Order 26-146. Finally, Staff argues that the substantial evidence standard is inapplicable here.

PacifiCorp argues that the Commission already considered and rejected "the three substantive concerns [NewSun] now repeats, *i.e.*, quantification of benefits, the propriety of the waiver process, and the risks of new technology."[12] PacifiCorp explains that the Staff Report addresses NewSun's arguments and that some of NewSun's arguments are "speculation, resting on nothing in the current record and falling short of good cause for review of the current decision."[13] PacifiCorp asserts that Staff's transparency comments are not justification to reconsider Order 26-146 and that NewSun's procurement displacement theory was not raised earlier and is not essential to Order 26-146. Further, PacifiCorp explains that NewSun can raise these same issues in future proceedings, including those related to PacifiCorp's Integrated Resource Plan (IRP). Finally, PacifiCorp argues that Order 26-146 is supported by substantial evidence and that NewSun's legal conclusion in its application for reconsideration lacks any explanation or showing of new evidence that would support its assertion.

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.[14] 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. Order 26-146 adopted Staff's recommendation included in the Staff Report attached to the Order. The Commission considered the Staff Report, which explicitly considered the arguments NewSun raises in its application for reconsideration.

[11] *Id*. at 3.
[12] PacifiCorp Response at 2.
[13] *Id*. at 3.
[14] OAR 860-001-0720(6).

NewSun's application rests on its assertion that good cause exists for the Commission to reconsider an issue essential to the decision under OAR 860-001-0720(3)(d). NewSun's asserted grounds for reconsideration were raised in written comments,[15] oral comments made at the April 27, 2026 public meeting where the decision commemorated in Order 26-146 was made, including those made by NewSun, or otherwise considered by the April 20, 2026 Staff Report. The asserted grounds for reconsideration have therefore already been considered by the Commission.

Although not necessary, the Commission discussed several of the issues NewSun now raises as grounds for reconsideration at the April 27, 2026 public meeting, including procedural issues, the amount and necessity of redacted material in the Staff Report, and the benefits and risks of the PPA and underlying technology. As such, the Commission has already adequately considered the project's benefits, the procedure surrounding the waiver request, and the technology involved in the project. Newly raised hypothetical situations in the application for reconsideration do not constitute good cause to reconsider Order 26-146. There will be additional opportunities to review the project in future processes and NewSun will have the opportunity to raise those concerns in those future processes.

Finally, NewSun's "substantial evidence" argument represents an unsupported legal conclusion inapplicable to an application for reconsideration and the underlying order. Even if the judicial review standard were applicable, the Commission's consideration of the Staff Report, written comments, and oral comments made at the April 27, 2026 public meeting, along with the Commission's extensive questions and discussion at that public meeting provide sufficient support for Order 26-146.

Although NewSun does not argue any other potential grounds for reconsideration under OAR 860-001-0720, none exist. No new evidence, change in law or policy, or error of law or fact that is essential to the decision was identified by NewSun.

Accordingly, reconsideration is not warranted.

PROPOSED COMMISSION MOTION:

Deny NewSun Energy LLC's application for reconsideration of Order No. 26-146.

[15] NewSun Initial Comments (Feb. 26, 2026); NewSun Comments for Public Meeting (April 27, 2026).