



Oregon

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To: Oregon Energy Facility Siting Council

From: Christopher M. Clark, Senior Siting Analyst

Date: April 10, 2026

Subject: Agenda Item H (Action Item) Biglow Canyon Wind Farm Request for Amendment 4 - Petition for Rehearing on Council's Final Order for the April 17, 2026 EFSC Meeting

Attachment: Kathy and Kevin McCullough's April 4, 2026, Petition for Rehearing

BACKGROUND

On March 27, 2026, the Council issued its Final Order on Request for Amendment 4 of the Site Certificate for the Biglow Canyon Wind Farm (Final Order). On April 2, 2026, the Order was served to all parties and all persons who commented during the Public Hearing on the Proposed Order.

On April 4, 2026, Kathy McCullough submitted the attached Petition for Rehearing on the Final Order (the Petition). Rehearing and reconsideration are forms of administrative review by an agency that are available prior to full judicial review in some types of proceedings.

Under ORS 183.480(1), "[a] petition for rehearing or reconsideration need not be filed as a condition of judicial review *unless specifically otherwise provided by statute or agency rule.*" (Emphasis added).

ORS 469.403(1) addresses the opportunity to request rehearing of a Council decision on an application for site certificate or request for amendment of a site certificate if a contested case was held. In relevant part, the statute provides, "*...any party or limited party to a contested case proceeding may apply for rehearing within 30 days from the date the approval or rejection is served (emphasis added).*"¹ ORS 469.405 addresses the opportunity to request judicial review

¹ Council revised the amendment rules to not allow for contested cases after the legislature's most recent revisions to ORS 469.403. The full text of ORS 469.403(1) is as follows: The Energy Facility Siting Council shall include in all of the council's final orders approving or rejecting an application for a site certificate or amended site certificate any decisions related to or arising from a contested case on the application. Any party or limited party to a contested case proceeding may apply for rehearing within 30 days from the date the approval or rejection is served. The date of service shall be the date on which the council delivered or mailed its approval or rejection in accordance with ORS 183.470. The application for rehearing shall set forth specifically the ground upon which the application is based. No objection to the council's approval or rejection of an application for a site certificate or a site certificate amendment shall be considered on rehearing without good cause shown unless the basis for the objection is urged with reasonable specificity before the council in the site certificate or amended site certificate process. Upon such

of a Council decision on a site certificate amendment where a contested case was not held. It states, in relevant part:

Notwithstanding ORS 183.482 and 183.484, judicial review of the council's approval or rejection of a request for an amendment to a site certificate or decision related to or arising from a contested case on an amendment, regardless of whether a contested case was held prior to the council's decision, is conferred solely on the Supreme Court. If a contested case is not held, only the certificate holder or persons who submitted comments on the request for an amendment in compliance with council rules may seek judicial review. A certificate holder or person who seeks judicial review is limited to the issues the certificate holder or the person raised in their comments.

Therefore, ORS 469.403 is clear that the ability to request a rehearing is only available following a contested case and ORS 469.405, which addresses proceedings where a contested case was not held, does not state petitions for reconsideration may or must be filed prior to seeking judicial review.

Because rehearing is only available to parties or limited parties in a contested case, and because there was no contested case hearing held in this proceeding, or available in the review of any request for amendment under the current provisions of OAR chapter 345, division 027, the Department does not believe rehearing is available in this proceeding.²

However, one of the Council's rules does allow petitions for reconsideration or rehearing of an Order in Other than a Contested Case. Under OAR 345-001-0080:

"(1) A person entitled to judicial review under ORS 183.484 of a final order in other than a contested case may file a petition for reconsideration or rehearing with the Council within 60 days after the date of the order. A person seeking reconsideration or rehearing shall deliver or mail a copy of the petition to all other persons and agencies required by statute or rule to be notified."

...

(4) The Council may grant or deny a petition by summary order, and, if the Council does not take action, the petition is deemed denied as provided by ORS 183.484(2)."
(Emphasis added).

ORS 183.484 is the section of the Administrative Procedures Act that addresses judicial review of orders other than contested cases . Because the right to seek judicial review of the Council's decision on a request for amendment is expressly established under ORS 469.403 and 469.405

application, the council shall have the power to grant or deny rehearing or to abrogate or modify its order without further hearing. Unless the council acts upon the application for rehearing within 30 days after the application is filed, the application shall be considered denied. The filing of an application for rehearing shall not, unless specifically ordered by the council, operate as a stay of the site certificate or amended site certificate for the facility.

² The Petition itself asserts that it is submitted "pursuant to OAR 345-015-0085," the Department notes that this rule was repealed in 2024, and its provisions, now located in OAR 345-015-0445 and 345-015-0475, also applied to proceedings in a contested case.

rather than ORS 183.484, the Department does not believe OAR 345-001-0080 applies to the issuance of an amended site certificate. Nevertheless, the rule does leave ambiguity on whether or not rehearing/reconsideration is available in this context.

RECOMMENDATION

There is no requirement in statute or rule that Council evaluate a petition for reconsideration or rehearing;³ however, due to the ambiguity cited above, the Department recommends the Council deny the petition for two reasons:

1. Under ORS 469.403 petitions for reconsideration or rehearing are only available to parties or limited parties in a contested case. Notwithstanding OAR 345-001-0080, the provisions of ORS 469.405 and OAR chapter 345, division 27, as amended in 2025, do not allow for petitions for reconsideration or rehearing on a Request for Amendment because no contested case proceeding is available.
2. Even if OAR 345-001-0080 were applicable, the petition does not raise an issue that merits reconsideration or rehearing of the Final Order. The petition does not present evidence or argument that was not previously considered by the Council as part of the public hearing record, or demonstrate good cause as to why new evidence or argument should be admitted. Therefore, the Petition provides no basis for reconsidering the Final Order.

If Council agrees with the recommendations above, the Department recommends the Council enter an order denying the petition for rehearing.

³ Under both ORS 183.184 and 469.403, a petition for rehearing or reconsideration is deemed denied if an agency does not act on it within specified timelines.