Oregon
Tina Kotek, Governor

OREGON DEPARTMENT OF ENERGY

550 Capitol St. NE
Salem, OR 97301
Phone: 503-378-4040
Toll Free: 1-800-221-8035
FAX: 503-373-7806
www.oregon.gov/energy

To: Oregon Energy Facility Siting Council

From: Sarah Esterson, Senior Policy Advisor

Date: November 6, 2026

Subject: Item B (Action Item): Yellow Rosebush Energy Center - Petition for Rehearing on Council's Final Order for the November 19-20, 2026 EFSC Meeting

Attachment: Attachment 1: Mr. Alvin Alexanderson's November 2, 2026 Petition for Rehearing

RECOMMENDATION

The Oregon Department of Energy (Department) recommends that the Energy Facility Siting Council (Council) issue a written order denying the request for rehearing on select sub-issues (of the primary issue) raised in the contested case proceeding in the matter of the Application for Site Certificate (ASC) for Yellow Rosebush Energy Center.

REQUESTS FOR REHEARING

OAR 137-003-0675 and OAR 469.403(1) address the opportunity to request rehearing of a Council decision on an application for site certificate, providing that, "…*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 Council approved the Final Order on the ASC for Yellow Rosebush Energy Center (Final Order) on September 18, 2026, and served the Final Order to all parties in the contested case proceeding on October 1, 2026. The contested case proceeding included three parties: Mr. Alvin Alexanderson, the Department and Yellow Rosebush Energy Center, LLC (applicant). Mr. Alexanderson timely submitted the attached Petition for Rehearing on the Final Order (the Petition) on November 2, 2026.

Table 1 below presents the select issues identified in the Petition, along with a summary of the basis provided, and the Council's evaluation as discussed during the August and September 2026 EFSC meetings.

Table 1: Summary of Issues Presented in Petition and Council's Prior Evaluation

Petition		Council's Prior Evaluation
Select Issues	**Summary of Explanation**	
Intervenor was deprived of procedural rights.	Motion for summary determination was impermissible because of factual disputes on the following issues: 1. Avoidance opportunities for overall site and of Priority Wildlife Connectivity Areas. 2. Whether the habitat mitigation area meets the definition of in-proximity and in-kind. 3. Adequate accounting for indirect (from fencing) and cumulative impacts	Council agreed with, and certified, the appointed Hearing Officer's dismissal of the contested case issue in the Contested Case Order (CCO) because the issue, and numerous sub-issues, are issues of legal interpretation, not genuine issues of material fact relevant to the resolution.
The Council delegated issues out of the contested case.	Factual dispute of no-net-loss was improperly delegated to administrative staff, post site certificate.	Council substantively reviewed a draft Habitat Mitigation Plan (HMP) through the ASC process, and in the Final Order found the applicant has demonstrated there will be no net loss of Category 2 habitat quantity because, while the proposed facility is expected to permanently impact approximately 4,670 acres and temporally impact approximately 168 acres of BGWR Category 2 habitat, under the applicant's Habitat Mitigation Plan, assuming the final facility design impacts that amount of acreage (and subject to Fish and Wildlife Conditions 7, 8 and 9) the applicant will protect 6,675 acres of in-kind BGWR Category 2 habitat via a conservation easement or similar legal instrument. This is based on mitigation ratios approved by ODFW, set forth in the Final Order (Table 17) and in the draft HMP (Table 3). Ultimately, the amount of land the applicant will be bound to include in a Habitat Mitigation Area will be based on those

Table 1: Summary of Issues Presented in Petition and Council's Prior Evaluation

Petition		Council's Prior Evaluation
Select Issues	**Summary of Explanation**	
		approved ratios. The Council further found the proposed facility will not result in a net loss of BGWR Category 2 habitat because the proposed HMP will provide a net benefit for habitat quality through enhancement and uplift actions described in the HMP. Council delegated future review and approval of a final HMP to Department staff, consistent with ORS 469.402. The no-net-loss obligation applies to habitat quantity and quality; that does not change, nor will the required mitigation ratios change, simply because Council delegated approval of the final HMP to staff. The scope of the finalization of the HMP is clearly established and limited, and has been delegated to staff to allow proper finalization of details only available at the time of project development.
Avoidable damage is ineligible for compensatory mitigation.	Applicant failed to show why impacts are unavoidable, for which Council has the authority to require.	This was evaluated by the Hearing Officer, and certified by Council, in the CCO Section 3.2.1, which affirms that the legal standard applicable to the evaluation of avoidance opportunities is based on the opportunities within the site boundary proposed by the applicant in the ASC, and does not require applicants to demonstrate, through review of alternative sites, that there are other sites with lesser impacts available.
The Council refused to consider the cumulative effects on wildlife.	Council failed to evaluate cumulative effects of the project, along with adjacent Bakeoven/Sunset projects, which was properly raised on the record of the Draft Proposed Order (DPO).	This was evaluated by the Hearing Officer, and certified by Council, in the CCO Section 3.2.5, where it was determined that the issue had not been properly raised on the record of the DPO, but that even if it were, it is

Table 1: Summary of Issues Presented in Petition and Council's Prior Evaluation

Petition		Council's Prior Evaluation
Select Issues	**Summary of Explanation**	
		not an issue relevant to the contested case issue as cumulative habitat impacts from development of multiple projects is not a legal requirement under the Fish and Wildlife Habitat standard. The Council found that the issue was outside of the scope of the proceeding and the standard.
Passive preservation of other habitat fails the textual mandate to "recreate" or "replace" lost habitat.	Council's acceptance of the Tygh Ridge site and project area canyons as compensatory mitigation offset treats passive preservation as the legal equivalent of habitat creation.	This was evaluated by the Hearing Officer, and certified by Council, in the CCO Section 3.2.1 and in the Final Order Section IV.H. Consistency with the mitigation goal is achieved by acquiring the legal right to create, maintain and protect a suitable HMA from future development. It does not require the addition the identification of lands not currently designated Category 2 big game winter range to be found and newly designated to then be suitable for meeting the mitigation goal.

COUNCIL OPTIONS

The Council has 60-days from the date of receipt of the request for rehearing to take formal action.

1. Issue an order denying the request for rehearing and reconsideration (Recommended by the Department)
2. Issue an order to reconsider the September 18, 2026 decision on the Final Order. This could result in the same or a different decision. This would occur at a future meeting. Please note that a rehearing does not re-open the record to any new information or evidence.
3. Take no formal action within 60-days of the receipt of the request, or January 1, 2027, the request for rehearing is deemed denied.