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December 2, 2025

Chair Letha Tawney
Commissioner Les Perkins
Commissioner Karin Power
Oregon Public Utility Commission
Attn: AHD – Docket Number DR 59
P.O. Box 1088
Salem, OR 97308-1088

Via Email and First-Class Mail

Re: Public Utility Commission of Oregon Docket Number DR 59, *In the Matter of Hawthorne Renewable Energy*

Dear Commissioners:

We submit these comments to the Oregon Public Utility Commission (the "Commission" or "OPUC") on behalf of our client, KSI III Devco, LLC, and in support of Hawthorne Renewable Energy's Petition for Declaratory Ruling, or, in the Alternative, Request for Waiver ("Petition") in the above-captioned docket. KSI III Devco, LLC is the parent owner of Rodeo Solar, LLC and the potential purchaser of Crawford Solar, LLC, the two projects at issue in the Petition. We understand that the Petition will be withdrawn, but that Staff will bring the same fundamental legal and factual issue for Commission resolution at a Public Meeting in December 2025.

OAR 860-088-0070 (the "Siting Rule") governs the siting of a project within the Oregon Community Solar Program (the "Program"). Subsection (2) of the Siting Rule prohibits projects that "exhibit characteristics of a single development" from being located within five miles of one another. Crawford Solar and Rodeo Solar were developed by unrelated entities. From their earliest stages years ago until today, the two projects can in no way be deemed to be a single development because different companies developed them. Each project has met the Program's siting requirements and been properly pre-certified. As a result, they each have full rights to be built and to participate in the Program, even though they are within 5 miles of each other.

The Siting Rule should not now be re-opened and re-applied, and these projects' right to participate in the Program should not change, simply because the projects may come under common ownership long after they were sited and approved. Neither the Program Rules nor the Program Implementation Manual ("PIM") provide for an additional application of the siting



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test following pre-certification. To the contrary, the Program Rules and the PIM treat siting as a one-time test. See OAR 860-088-0040(3) (providing that pre-certification is the stage for assessing compliance with applicable requirements); PIM sections 3.2 ("Siting"), 4.5 (Application Review and Pre-certification Process) & 4.7 (Project Amendments). Once met, the PIM expressly provides that project siting may not be changed or amended. Given the inability to change a project's site, there should be no re-application of the Siting Rule.

It would also be against the interests of the Program to re-open the project siting test. Years of development, permitting, interconnection and planning go into a pre-certification determination. Once a project has the "green light" of pre-certification, it may go into its construction phase, where significant capital will be expended to build each project, often by a new owner entity. However, the market for purchasing and constructing projects will be significantly impaired if a change of ownership introduces the risk of Program disqualification. Financing parties, including new owners, need certainty in order to invest in pre-certified projects, to build them and then to operate them in the Program.

A change of project ownership, which commonly occurs when a project has its development rights and needs capital to be built, is a distinct issue from siting and is treated differently by the Program Rules and the PIM. It is a "minor revision" that does not require an amendment to pre-certification. PIM section 4.7.2. This further supports the view that change of ownership should not trigger a re-application of the Siting Rule.

For these reasons, we believe that the pre-certification ruling should stand. The Siting Rule has been satisfied. After pre-certification, a subsequent buyer should now be able to purchase, build, own and operate both Rodeo Solar and Crawford Solar even though they are within 5 miles of each other.

1. By its Terms, The Siting Rule and its 5-mile Co-location Should Not Apply to a Subsequent Purchaser at a Subsequent Time.

No provision in the Siting Rule indicates that it should spring back to life after pre-certification to be applied a second or third time, long after a project has been validly sited and pre-certified. Nor does any provision of the Siting Rule indicate that subsequent purchasers who did not participate in a project's siting should apply the 5-mile limit to other projects they own that were independently developed, independently sited and independently pre-certified for participation in the Program. Such a reading would create several problems.

First, it would economically harm pre-certified projects, like Crawford Solar, that have already been determined to be properly sited. Pre-certification is the culmination of years of development work and significant expenditures of time and resources. Developers undertake that risk expecting to rely on pre-certification for creating their rights in the Program and establishing the commercial value of their projects. A second siting test after pre-certification would limit the number of eligible buyers.



Second, applying the Siting Rule to a new purchaser would be to apply it to facts that arose years after the projects were fully sited. The Crawford and Rodeo projects were sited over four years ago. During those four years and pre-certification, there were no issues whatsoever with the siting. If a purchase were to take place now, it would be years after all questions about siting were not only privately resolved, but also approved by the Program. Nothing in the Siting Rule suggests it should apply in this manner, years after the original siting was completed and certified, to a new and different set of facts.

Third, reopening the Siting Rule would destabilize the Program's entire value chain. Countless parties, including landowners, municipalities, utilities, and State agencies, relied on the existing rules that permitted Crawford's location within five miles of Rodeo. Based on this established regulatory certainty, these participants dedicated substantial time, capital, and effort. Landowners (local families) negotiated contracts and committed their property; towns and counties conducted hearings and issued permits; utilities secured interconnection capacity and negotiated agreements; and engineers and contractors completed detailed design plans and drawings. Telling these participants now that a new application of the Siting Rule limits Crawford's commercial viability by precluding buyers who own (or may in the future own) projects within the five-mile radius would render their reliance, investments, and expenditures wasted.

Pre-certification constituted an official determination that both Crawford and Rodeo had satisfied every requisite project element to participate in the Program. Because neither project's siting has changed, that pre-certification determination should stand and be deemed binding. The original siting determination should not be re-opened and re-applied to new owners who plan to acquire, finance, build and operate both projects under the Program. All parties involved must be able to rely on pre-certification as final, adjudicated, and not subject to being revisited.

2. The PIM Provides the Siting Decision Made at Pre-Certification is Final.

Section 4.7.1 of the PIM is clear on the standard of review applied to siting. Re-opening siting after pre-certification is expressly barred:

*"The following project revisions are not allowed and will not be considered for an amendment . . .
. . . A change to the Project site, except for removal of a site from an aggregated project." (emphasis added).*

This provision expressly provides that siting is final upon pre-certification. Given that project siting is final under the PIM – which was adopted via Commission order and carries the force of law, see Order No. 25-072 – and cannot be changed or amended after pre-certification, it follows that the Siting Rule itself can no longer be applied after that time. Re-opening the siting determination would be contrary to the terms of the PIM.



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3. Changes of Project Ownership are "Minor" under the PIM so Should Not Trigger a New Siting Rule Test.

Section 4.7.2 of the PIM is entitled "Minor Revisions." It addresses changes that may be made to pre-certified projects:

Certain minor revisions will not trigger an amendment process. The Program Administrator will review the changes and notify the Project Manager if a revision is not permissible or requires a correction. These include:

. . . Changes in Project ownership that do not involve the transfer of the Project to a different Project Manager.

Section 4.7.1's description of "Major Revisions" does classify a change of Project Manager as a "Major Revision," but it does not specify ownership changes as a major revision. In other words, project management requirements are more important than what company owns a given project.

While new owners can be important for financing and building projects, new ownership is correctly characterized as a "Minor Revision" after pre-certification because new owners do not have a right to alter a project's elements. They cannot change siting. They cannot change permitting or interconnection or other major project elements. Given that new owners may not make project siting changes, they should not be subject to the Siting Rule.

4. Conclusion

Pre-certification constitutes a binding administrative approval that expressly includes an affirmation of project siting. Both the Rodeo and Crawford projects correctly received this approval, having spent years and invested substantial capital and expertise to satisfy the Program's requirements.

Receiving the "green light" of pre-certification allows these projects to proceed directly to financing, construction, and operation under the Program. Reopening the Siting Rule now and applying its five-mile limit to a subsequent purchaser would fundamentally reverse a final pre-certification finding. Such action would needlessly and retroactively narrow a project's re-sale prospects long after its siting was finalized and long after it fully met the intent of the Program Rules.

For the foregoing reasons, KSI III Devco, LLC supports the Petition. KSI III Devco, LLC also requests that the Commission's decision consider the long expected useful life of the projects, which is likely to range up to 40 years. Parties involved in financing require clarity for the full useful life of each project.



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KSI III Devco, LLC agrees with the Petition that a single parent owner should be allowed to purchase, construct, own, and operate both Crawford Solar and Rodeo Solar. We appreciate the Commission's consideration, and KSI III Devco, LLC looks forward to continuing its participation in the Program.

Sincerely,

Marjorie Elken
Counsel to KSI III Devco, LLC

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