BEFORE THE STATE OF WASHINGTON
ENERGY FACILITY SITE EVALUATION COUNCIL

In the Matter of
Application No. 2009-01

WHISTLING RIDGE ENERGY, L.L.C.

WHISTLING RIDGE ENERGY PROJECT

ASSOCIATION OF WASHINGTON BUSINESS' STATEMENT OF LEGAL ISSUES

In accordance with the Energy Facility Site Evaluation Council’s (“Council”) Prehearing Order No. 1, Council Order No. 842, dated August 4, 2009, the Council ordered that, to the extent a party’s petition for intervention identifies a legal issue, the party should clearly state the issue, state its position on the issue, and define its legal argument clearly and concisely.

Therefore, as noted in its Petition to Intervene, Intervenor Association of Washington Business (AWB) respectfully submits the following summary of legal issues. With respect to the Council’s request that parties with similar interests work in a collaborative manner, AWB has consulted with the Skamania County Economic Development Council and the Klickitat County Economic Development Council in preparation of this statement.

STATEMENT OF LEGAL ISSUES - 1
Summary of Legal Issues

1. **Issue**: Whether, and to what extent, the Columbia River Gorge National Scenic Area Act applies to activities, including the authority to regulate the same, that are located outside of the boundaries of the Columbia River Gorge National Scenic Area itself.

2. **Position**: The Columbia River Gorge National Scenic Area Act, including the saving clause therein, expressly limits the scope of the authority of the statute to the confines of the National Scenic Area itself, and does not extend beyond the boundaries thereof. As such, the Columbia River Gorge National Scenic Act does not provide an independent substantive or procedural basis to regulate, deny, or condition activities outside of the National Scenic Area boundaries. A contrary interpretation would have considerable adverse financial, legal and social consequences to owners of thousands of square miles of land outside the boundary of the National Scenic Area Act.

3. **Legal Argument**: 16 U.S.C. §544(o)(a)(10) states:

   “Nothing in sections 544 to 544p of this title shall …

   (10) establish protective perimeters or buffer zones around the scenic area or each special management area. The fact that activities or uses inconsistent with the management directives for the scenic area or special management areas can be seen or heard from these areas shall not, of itself, preclude such activities or uses up to the boundaries of the scenic area or special management areas.”

The authority of the NSA does not extend beyond its boundaries.

Moreover, AWB is concerned about the weight and consideration to be given by the Council, both through environmental review under the Washington State Environmental Policy Act (Ch. 43.21C RCW) and during the substantive review of the project pursuant to the Energy Facility Site Locations Act (Ch. 80.50 RCW and regulations promulgated thereunder), to the
factual issue of the economic impacts of the project and to the wide range of business and private
landowner interests represented by AWB.

AWB respectfully reserves the right to identify additional legal issues and arguments in
response to arguments made by other parties to and during these proceedings.

DATED this 20th day of August, 2009.

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/s/
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Counsel
Association of Washington Business