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**BEFORE THE STATE OF WASHINGTON
ENERGY FACILITY SITE EVALUATION COUNCIL**

In the Matter of
Application No. 2009-01

Application No. 2009-01

WHISTLING RIDGE ENERGY, L.L.C.

ASSOCIATION OF WASHINGTON
BUSINESS' STATEMENT OF LEGAL
ISSUES

WHISTLING RIDGE ENERGY PROJECT

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

ASSOCIATION OF
WASHINGTON BUSINESS
1414 Cherry St. SE
Olympia, WA 98501
(360) 943-1600

1 **Summary of Legal Issues**

2 1. Issue: Whether, and to what extent, the Columbia River Gorge National Scenic Area
3 Act applies to activities, including the authority to regulate the same, that are located outside of
4 the boundaries of the Columbia River Gorge National Scenic Area itself.
5

6 2. Position: The Columbia River Gorge National Scenic Area Act, including the saving
7 clause therein, expressly limits the scope of the authority of the statute to the confines of the
8 National Scenic Area itself, and does not extend beyond the boundaries thereof. As such, the
9 Columbia River Gorge National Scenic Act does not provide an independent substantive or
10 procedural basis to regulate, deny, or condition activities outside of the National Scenic Area
11 boundaries. A contrary interpretation would have considerable adverse financial, legal and social
12 consequences to owners of thousands of square miles of land outside the boundary of the
13 National Scenic Area Act.
14

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

16 “Nothing in sections 544 to 544p of this title shall ...
17

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

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

24 Moreover, AWB is concerned about the weight and consideration to be given by the
25 Council, both through environmental review under the Washington State Environmental Policy
26 Act (Ch. 43.21C RCW) and during the substantive review of the project pursuant to the Energy
27 Facility Site Locations Act (Ch. 80.50 RCW and regulations promulgated thereunder), to the
28

