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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

Application No. 2009-01

Klickitat County Public Economic
Development Authority Statement of
Legal Issues

COMES NOW Klickitat County Public Economic Development Authority (KCEPDA), and pursuant to Prehearing Order No. 1 (Council Order No. 84238), submits the following statement:

In accordance with the instruction of the EFSEC Council, the KCEPDA has coordinated with other intervenors (Skamania County Economic Development Council and Association of Washington Business) to ascertain similar or like legal issues. To the extent that the KCEPDA has factual issues going to the credibility of the parties and the weight to be accorded certain evidence, those issues are not further addressed herein and the KCEPDA will abide further order of the Council on these points at the appropriate juncture in this proceeding.

KCEPDA identifies the following legal issue and its position thereon.

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Legal Issue: Does the Columbia River Gorge National Scenic Area Act (NSA Act) apply to activities (including the authority or basis to regulate the same) outside the boundaries of the Columbia River Gorge National Scenic Area (NSA) itself but which can be seen or heard from within the NSA?.

KCPEDA Position: The NSA Act, including the saving clause therein, expressly limits the scope of the authority of the legislation to the confines of the National Scenic Area itself. Its savings clause expressly provides that the Act, in and of itself, does not extend beyond the boundaries thereof. As such, the NSA Act does not provide an independent substantive or procedural basis to regulate, deny, or condition activities outside of the NSA boundaries that can be seen or heard from within the NSA boundaries. A contrary interpretation would have considerable adverse financial, legal and social consequences to lands and public and private economic interests within Klickitat County, as portions of land within the county upon which wind energy development activities, such as that proposed by Whistling Ridge Energy, are a permitted land use, can be seen from inside the NSA boundary.

KCPEDA’s interpretation of the scope, breadth and authority of the NSA appears to be different than the interpretation advanced by intervenors SOSA, FOCG and perhaps other intervenors.

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

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.

1 The KCPEDA believes that the NSA Act is clear in answering the legal issue
2 stated above in the negative: the authority of the NSA does not extend beyond its
3 boundaries.

4 In addition to this legal issue, the KCPEDA concerned with the weight and
5 consideration to be given by the Council, both through environmental review under the
6 Washington State Environmental Policy Act (Ch. 43.21C RCW) and during the
7 substantive review of the project pursuant to the Energy Facility Site Locations Act (Ch.
8 80.50 RCW and regulations promulgated thereunder), to the factual evidence
9 developed in this matter. As noted above, KCPEDA will await further Council order re
10 refinement of issues and briefing related thereto.

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12 DATED this ____ day of _____, 2009.

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KLICKITAT COUNTY PUBLIC
ECONOMIC DEVELOPMENT
AUTHORITY

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Mike Canon, Executive Director

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