

KRISTINE A. SASSER
DEPUTY ATTORNEY GENERAL
IDAHO PUBLIC UTILITIES COMMISSION
PO BOX 83720
BOISE, IDAHO 83720-0074
(208) 334-0357
BAR NO. 6618

RECEIVED
2011 MAR 17 PM 3:22
IDAHO PUBLIC UTILITIES COMMISSION

Street Address for Express Mail:
472 W. WASHINGTON
BOISE, IDAHO 83702-5918

Attorney for the Commission Staff

BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION

IN THE MATTER OF THE APPLICATION OF)
IDAHO POWER COMPANY FOR A) CASE NO. IPC-E-10-56
DETERMINATION REGARDING A FIRM)
ENERGY SALES AGREEMENT BETWEEN)
IDAHO POWER AND MURPHY FLAT MESA,)
LLC)

IN THE MATTER OF THE APPLICATION OF)
IDAHO POWER COMPANY FOR A) CASE NO. IPC-E-10-57
DETERMINATION REGARDING A FIRM)
ENERGY SALES AGREEMENT BETWEEN)
IDAHO POWER AND MURPHY FLAT)
ENERGY, LLC)

IN THE MATTER OF THE APPLICATION OF)
IDAHO POWER COMPANY FOR A) CASE NO. IPC-E-10-58
DETERMINATION REGARDING A FIRM)
ENERGY SALES AGREEMENT BETWEEN) COMMENTS OF THE
IDAHO POWER AND MURPHY FLAT WIND,) COMMISSION STAFF
LLC)

COMES NOW the Staff of the Idaho Public Utilities Commission, by and through its Attorney of record, Kristine A. Sasser, Deputy Attorney General, and in response to the Notice of Applications and Notice of Modified Procedure issued in Order No. 32189 on February 24, 2011, in Case Nos. IPC-E-10-56, IPC-E-10-57, and IPC-E-10-58, submits the following comments.

BACKGROUND

On December 16, 2010, Idaho Power Company filed Applications requesting acceptance or rejection of three 20-year Firm Energy Sales Agreements (Agreements) between Idaho Power and Murphy Flat Mesa, LLC; Murphy Flat Energy, LLC; and Murphy Flat Wind, LLC. All three projects (Facilities) are located near Murphy, Idaho. The projects will be "Qualifying Facilities" (QFs) under the applicable provisions of the Public Utility Regulatory Policies Act of 1978 (PURPA).

The Agreements

On December 15, 2010, Idaho Power and each of the three wind projects entered into their respective Agreements. Brian Jackson, Manager of American Wind Group, LLC signed each Agreement as the authorized manager of each QF Facility. Applications at 2. Under the terms of the Agreements, the wind projects each agree to sell electric energy to Idaho Power for a 20-year term using the current non-levelized published avoided cost rates as currently established by the Commission in Order No. 31025 for energy deliveries of less than 10 aMW. Applications at 4. The nameplate rating of each Facility is 25 MW. Under normal and/or average conditions, each Facility will not exceed 10 aMW on a monthly basis. Idaho Power warrants that the Agreements comport with the terms and conditions of the various Commission Orders applicable to PURPA agreements for wind resources. Order Nos. 30415, 30488, 30738 and 31025.

Each Facility has selected December 31, 2011, as its Scheduled First Energy Date and December 31, 2012, as its Scheduled Operation Date. Applications at 5. Idaho Power asserts that various requirements have been placed upon the Facilities in order for Idaho Power to accept the Facilities' energy deliveries. Idaho Power states that it will monitor the Facilities' compliance with initial and ongoing requirements through the term of the Agreements. Idaho Power asserts that it has advised each Facility of the Facility's responsibility to work with Idaho Power's delivery business unit to ensure that sufficient time and resources will be available for delivery to construct the interconnection facilities, and transmission upgrades if required, in time to allow each Facility to achieve its December 31, 2012, Scheduled Operation Date.

Idaho Power asserts that each Facility has been advised that delays in the interconnection or transmission process do not constitute excusable delays and if a Facility fails to achieve its Scheduled Operation Date delay damages will be assessed. *Id.* at 7. The Applications further maintain that each Facility has acknowledged and accepted the risk inherent in proceeding with its

Agreement without knowledge of the requirements of interconnection and possible transmission upgrades. *Id.* The parties have each agreed to liquidated damage and security provisions of \$45 per kW of nameplate capacity. Agreement, ¶¶ 5.3.2, 5.8.1.

Idaho Power states that each Facility has also been made aware of and accepted the provisions in each Agreement and Idaho Power's approved Schedule 72 regarding non-compensated curtailment or disconnection of its Facility should certain operating conditions develop on Idaho Power's system. The Applications note that the parties' intent and understanding is that "non-compensated curtailment would be exercised when the generation being provided by the Facility in certain operating conditions exceeds or approaches the minimum load levels of [Idaho Power's] system such that it may have a detrimental effect upon [Idaho Power's] ability to manage its thermal, hydro, and other resources in order to meet its obligation to reliably serve loads on its system." Applications at 7-8.

By their own terms, the Agreements will not become effective until the Commission has approved all of the terms and conditions and declares that all payments made by Idaho Power to the Facilities for purchases of energy will be allowed as prudently incurred expenses for ratemaking purposes. Agreement ¶ 21.1.

Idaho Power's Applications specifically note the Joint Petition it filed with the Commission on November 5, 2010, requesting an immediate reduction in the published avoided cost rate eligibility cap from 10 aMW to 100 kW. Applications at 2. Idaho Power states that it is aware of and in compliance with its ongoing obligation under federal law, FERC regulations, and Commission Orders to enter into power purchase agreements with PURPA QFs. *Id.* at 3. However, Idaho Power asserts in each of its Applications that the Commission has specifically directed the utility "to assist the Commission in its gatekeeper role of assuring that utility customers are not being asked to pay more than the Company's avoided cost for [its] QF contracts." *Id.* at 3-4. Idaho Power further states that "the continuing and unchecked requirement for the Company to acquire additional intermittent and other QF generation regardless of its need for additional energy or capacity on its system not only circumvents the Integrated Resource Planning process and creates system reliability and operational issues, but it also increases the price its customers must pay for their energy needs." *Id.* at 4.

STAFF ANALYSIS

All three of the Agreements submitted for approval are identical except for the names of the facilities and the LLCs under which each is being developed. All three of the projects are also proposed to be built in the same general vicinity as shown on the map included as Attachment A.

The three facilities collectively are expected to generate 169,988 MWhs annually. Under the non-levelized rates in the Agreements, the annual energy payments by Idaho Power for the expected generation will be approximately \$10.3 million in 2013 increasing to approximately \$20.2 million in 2032, or a cumulative total of \$299.0 million over the 20-year term of the Agreements. The collective net present value of the energy payments over the life of the Agreements will be approximately \$114.6 million.

With the exception of rates, all of the other terms and conditions included in the Agreements are consistent with recent Commission Orders. There are no disputes between the parties over any terms and conditions.

Temporary Lowering of the Eligibility Cap for Published Rates

On November 5, 2010, Idaho Power Company, Avista Corporation, and PacifiCorp dba Rocky Mountain Power (Utilities) filed a Joint Petition requesting that the Commission initiate an investigation to address various avoided cost issues related to PURPA. While the investigation is underway, the Petitioners also requested that the Commission "lower the published avoided cost rate eligibility cap from 10 aMW to 100 kW (to) be effective immediately. . ." Petition at 7. On December 3, 2010, the Commission issued Order No. 32131, Notice of Joint Petition, Notice of Intervention Deadline, and Notice of Oral Argument. In the Order, the Commission declined to immediately reduce the published avoided cost rate eligibility cap, but did establish a schedule for processing the Utilities' request to reduce the eligibility cap via Modified Procedure and to schedule an oral argument. In particular, the Commission stated its desire to receive comments regarding the following:

- (1) the advisability of reducing the published avoided cost eligibility cap;
- (2) if the eligibility cap is reduced, the appropriateness of exempting non-wind QF projects from the reduced eligibility cap; and
- (3) the consequences of dividing larger wind projects into 10 aMW projects to utilize the published rate.

In its Order, the Commission went on to state "**Finally, it is our intent that our decision regarding the 'Joint Motion' to reduce the published avoided cost eligibility cap shall become effective on December 14, 2010.**" Reference Order No. 32131 at 5-6, emphasis added. By stating its intent, parties were given clear, unambiguous, advance notice that the eligibility cap may be reduced.

Written comments were submitted by the parties on December 22, 2010, written reply comments were submitted on January 19, 2011, and Oral Argument was heard on January 27, 2011. On February 7, 2011, the Commission issued Order No. 32176, which temporarily reduced the eligibility cap for published avoided cost rates from 10 aMW to 100 kW for wind and solar QFs only. In accordance with its stated intent in Order No. 32131, Order No. 32176 confirmed that the reduction in the eligibility cap would be effective December 14, 2010. Reference Order No. 32176 at 11-12.

Each of the three Agreements presented for Commission approval was signed by the project developer on December 13, 2010, and signed by Idaho Power on December 15, 2010. The Agreements were filed with the Commission on December 16, 2010. The Agreements contain rates from Order No. 31025, the published rates currently in effect. However, as a result of Order No. 32176, wind and solar QF contracts executed on or after December 14, 2010 for facilities larger than 100 kW are ineligible for those rates.

As a matter of law, Staff considers the effective date of a contract to be that date upon which both parties have signed the agreement. A signature by only one party, Staff believes, does not create an enforceable contract nor establish an effective date. Consequently, for the submitted Agreements, Staff considers the effective date to be December 15, 2010.

Because the effective date of each of the Agreements is not prior to December 14, 2010, the date on which the lowered eligibility cap became effective, and because the size of each proposed wind project clearly exceeds 100 kW, the current eligibility cap for wind and solar facilities to obtain a published rate contract, Staff considers the rates contained in the Agreements to be in violation of Commission Order No. 32176. Consequently, Staff recommends denial of each of the three Agreements.

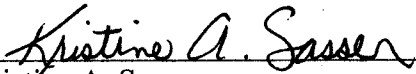
In order for the rates in the Agreements to comply with Commission Orders, Staff believes that they would have to be determined using the IRP methodology. Staff suggests that the Commission deny approval of the Agreements without prejudice and permit revised agreements to be submitted containing rates computed under the prescribed IRP methodology. Alternatively, the

Agreements could be voluntarily withdrawn, then held pending the outcome of the initial phase of Case No. GNR-E-11-01 in which the Commission will determine the disposition of its prior decision to temporarily lower the eligibility cap from 10 aMW to 100 kW.

STAFF RECOMMENDATION

Staff recommends that the Commission not approve any of the three Agreements.

Respectfully submitted this 17th day of March 2011.

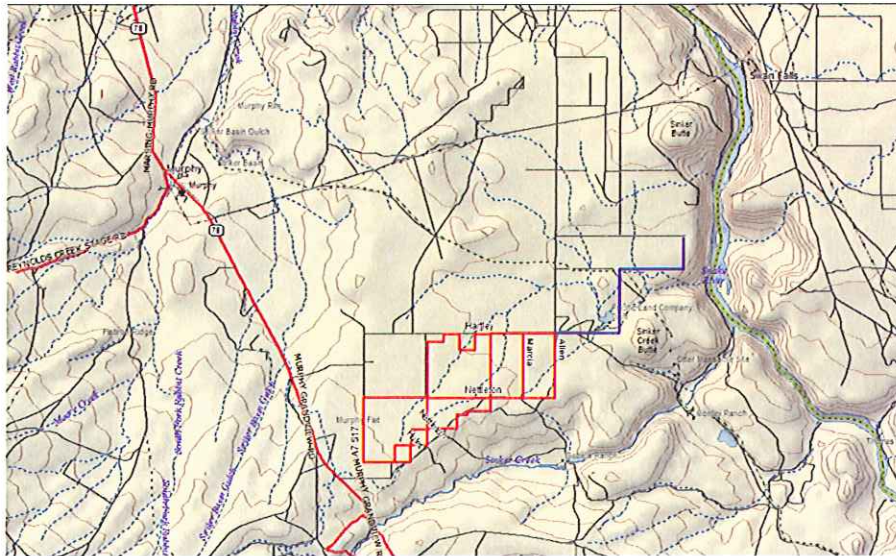


Kristine A. Sasser
Deputy Attorney General

Technical Staff: Rick Sterling

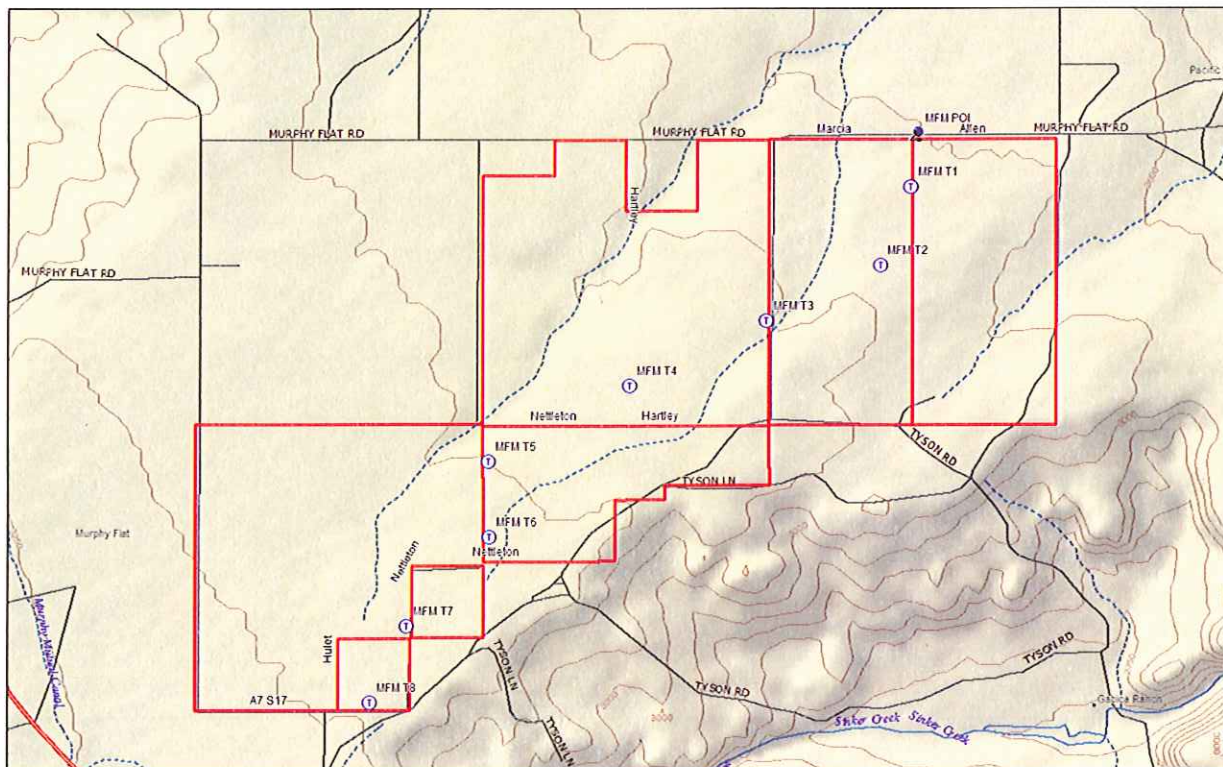
i:\misc:comments\ipce10.56_57_58srps comments

MURPHY FLAT MESA LLC – Preliminary Project Location and Layout



Murphy Flat Mesa:
Owyhee County,
Idaho

Project Location:
27 miles South of
Nampa, Southwest of
Swan Falls Dam as
indicated on map.
Approximately 4.5
miles East-Southeast
of Murphy off
Highway 78.

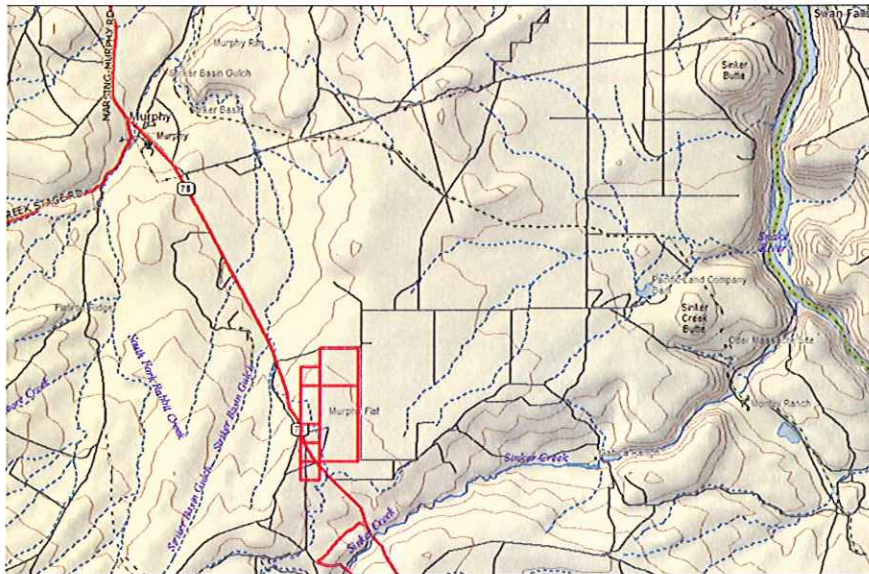


Murphy Flat Mesa – Preliminary Turbine Layout
8 Turbines – Clipper Liberty, 2500 kW each, 20MW Total Project Size

Murphy Flat Mesa, LLC

American Wind Group - Project Development

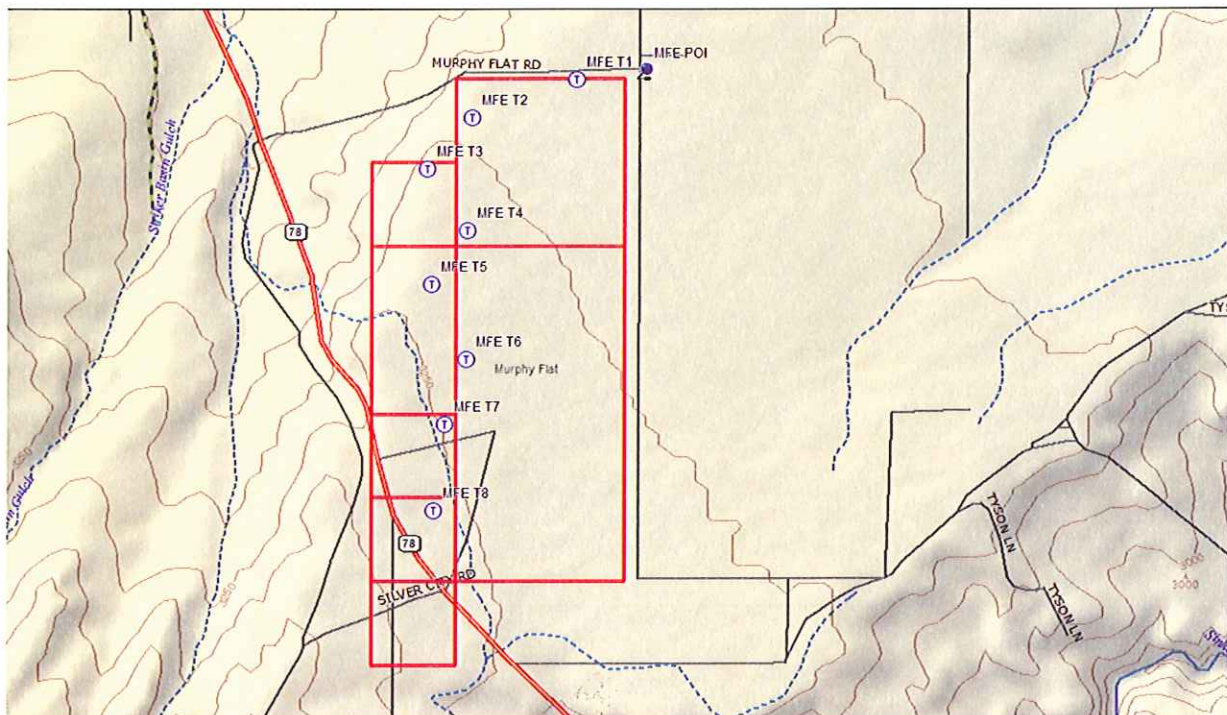
MURPHY FLAT ENERGY LLC – Preliminary Project Location and Layout

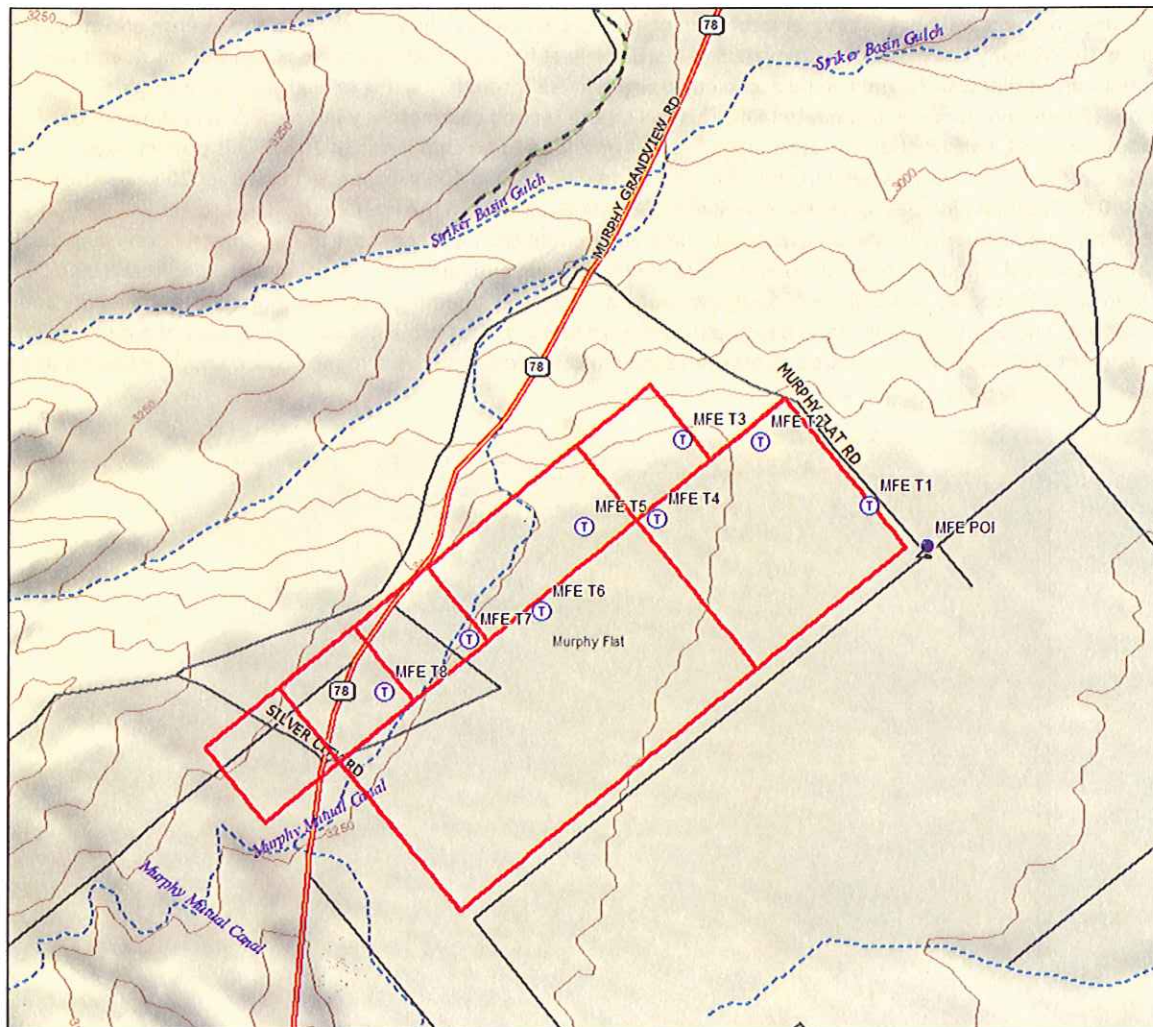


Murphy Flat Energy:
Owyhee County, Idaho

Project Location:
28 miles South of Nampa,
Southwest of Swan Falls
Dam as indicated on map.
3.9 miles South of
Murphy off Highway 78.

Landowners: HFM
Murphy Flats, LLC; Hulet
Farm Management Co.; JG
Hulet Living Trust; Joyce
Livestock Ltd: Nettletons





Project Description:

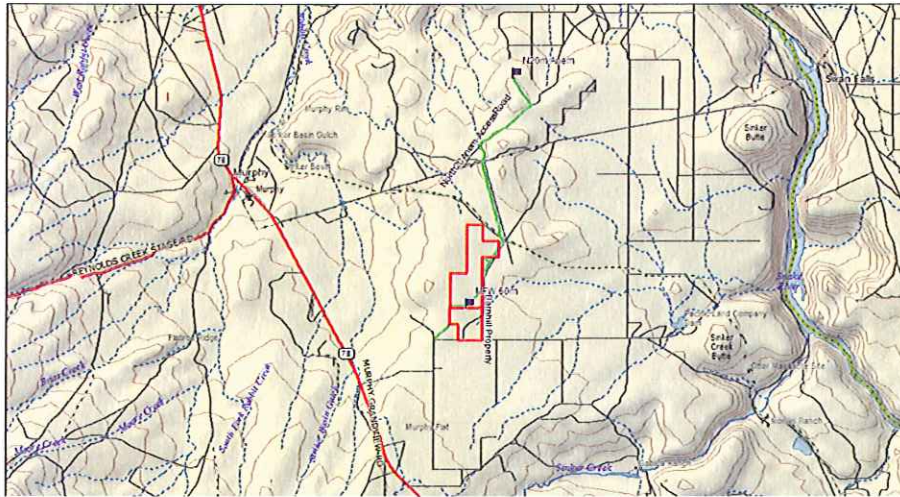
The Murphy Flat Energy LLC wind project is being developed as a PURPA QF facility with a Nameplate capacity of 20MW. The intent is to connect the energy to an upgraded local 34.5 kV distribution line already running from a substation East of the project location onto Murphy Flat.

The substation is served by a major 138kV line that spans the Snake River and connects to Swan Falls Powerplant substation as well as the major 138kV Strike Junction to Caldwell Sub power line that spans the treasure valley and connects to loads in Boise and across the major load area of the state.

The intended turbines for the project are Clipper Liberty 2500kW state of the art American wind machines manufactured in Cedar Rapids, Iowa.

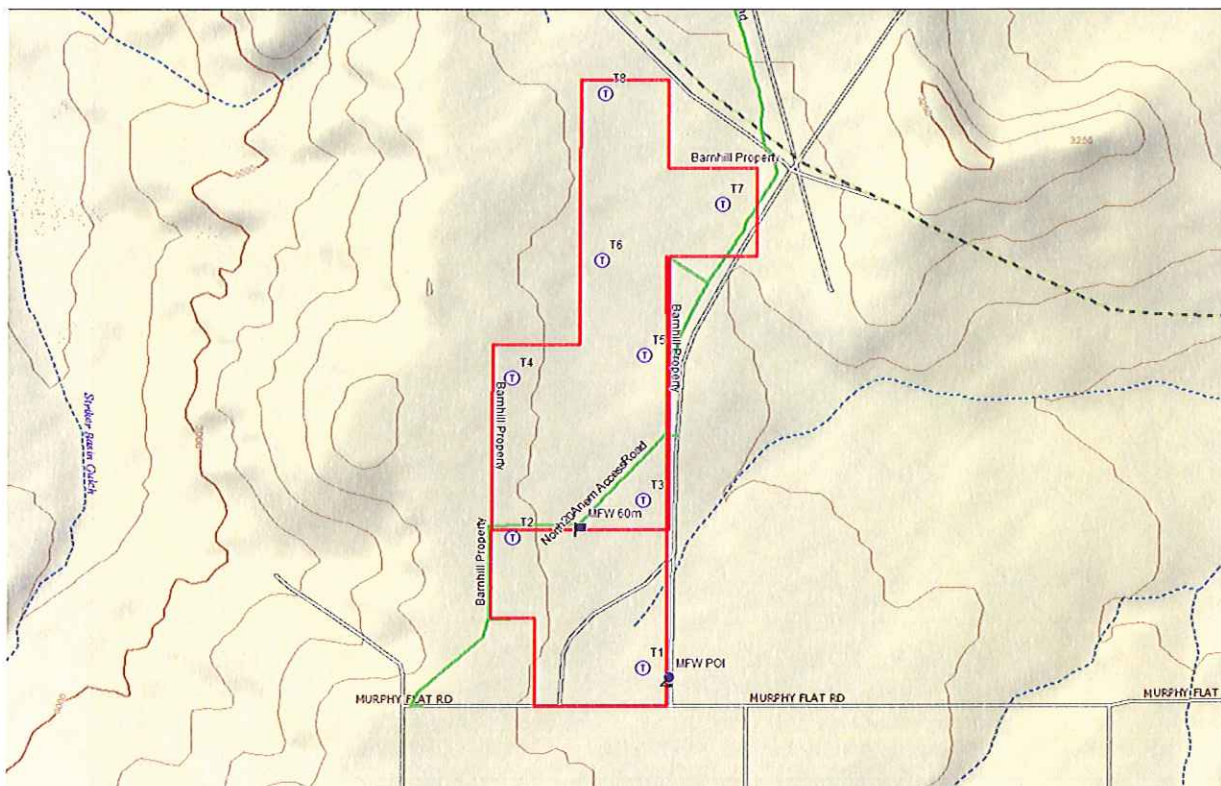
The project is a very simple layout and design that can be developed in a short time frame to help provide local jobs and contracts as well as US manufacturing jobs for Clipper Wind. The 20MW of capacity is developed with just 8 turbines and are arranged to minimize the impact on local farming and ranch operations while maximizing energy on the wind enhancing terrain.

MURPHY FLAT WIND LLC – Preliminary Project Location and Layout



Murphy Flat Wind:
Murphy Flat Energy:
Owyhee County,
Idaho

Project Location:
26 miles South of
Nampa, Southwest of
Swan Falls Dam as
indicated on map. 3.5
miles East-Southeast
of Murphy off
Highway 78.



Murphy Flat Wind – Preliminary Turbine Layout

8 Turbines – Clipper Liberty, 2500 kW each, 20MW Total Project Size

MFW Point of Interconnection: N 43 deg 11.09277' W 116 deg 28.75851' El 3135 ft WGS84

Project Description:

The Murphy Flat Wind LLC wind project is being developed as a PURPA Qualifying Facility with a Nameplate capacity of 20MW. The intent is to connect the energy to an upgraded local 34.5 kV distribution line already running from a substation East of the project location onto Murphy Flat.

The substation is served by a major 138kV line that spans the Snake River and connects to Swan Falls Powerplant substation as well as the major 138kV Strike Junction to Caldwell Sub power line that spans the treasure valley and connects to loads in Boise and across the major load area of the state.

The intended turbines for the project are Clipper Liberty 2500kW state of the art American wind machines manufactured in Cedar Rapids, Iowa.

The project is a very simple layout and design that can be developed in a short time frame to help provide local jobs and contracts as well as US manufacturing jobs for Clipper Wind. The 20MW of capacity is developed with just 8 turbines and are arranged to minimize the impact on local farming and ranch operations while maximizing energy on the wind enhancing terrain.

The wind farm development will benefit several local farming families which have had to deal with the intense and steady winds in farming the Murphy Flat region for many decades. The project has easy highway access from the South and the North as it is just two miles off of Highway 78 and can be accessed by Highway 95 through Marsing or Highway 67 through Grandview out of Mountain Home on Interstate I-84. This will be the first commercial wind project in Owyhee County. With tremendous support, construction can start in 2010 and is intended to be completed in 2011. This project pays premium landowner fees, has local ownership, and will contribute over \$3,000,000 in property taxes over 20 years starting at over \$100,000 per year and increasing yearly to well over \$200,000 per year in the later years. The project will provide local renewable energy to Idaho Power customers and benefit the local economy during construction using local contractors and afterward with local operations and maintenance training and jobs. Coordination with wind technician training at Idaho State University and College of Southern Idaho as well as Engineering interns at Boise State University and with Idaho National Laboratory will help Idaho develop future wind leaders. This project is planned as part of a multi-project development that will minimize costs and maximize overall value to landowners, Idaho Power, Owyhee County and others involved with the project.



CERTIFICATE OF SERVICE

I HEREBY CERTIFY THAT I HAVE THIS 17TH DAY OF MARCH 2011, SERVED THE FOREGOING **COMMENTS OF THE COMMISSION STAFF**, IN CASE NOS. IPC-E-10-56_57_58, BY MAILING A COPY THEREOF, POSTAGE PREPAID, TO THE FOLLOWING:

DONOVAN E WALKER
LISA D NORDSTROM
IDAHO POWER COMPANY
PO BOX 70

BOISE ID 83707-0070

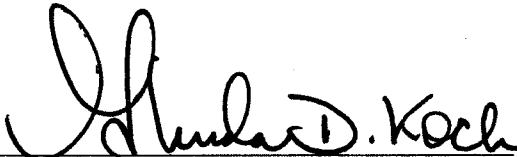
E-MAIL: dwalker@idahopower.com
lnordstrom@idahopower.com

RANDY C ALLPHIN
ENERGY CONTRACT ADMIN
IDAHO POWER COMPANY
PO BOX 70

BOISE ID 83707-0070

E-MAIL: rallphin@idahopower.com

BRIAN D JACKSON
AMERICAN WIND GROUP LLC
2792 DESERT WIND RD
OASIS ID 83647-5020



SECRETARY