

ESSENTIAL MINIMUM CONDITIONS IF TRANSACTION PROCEEDS.

If the Commission does not reject this transaction outright, it cannot approve it without conditions. The conditions below are the minimum necessary to protect captive Montana ratepayers from the risks documented in this record, or at least to mitigate those risks. They are not aspirational. They are not deferred to future dockets. They are enforceable terms the Commission must impose now, while it still has the leverage to do so. Because in the end, this is not about love. It's about money. Enforceable conditions are the necessary prenuptial here.

These conditions have been updated to reflect the most current record before the Commission: the Large Load Tariff filed May 31, 2026, and the 2026 Draft IRP filed May 4, 2026, and the treatment of large choice loads disclosed in connection with both filings. Where earlier testimony recommended a condition based on filings that have since occurred, the condition below reflects the current procedural posture. These conditions draw on the record developed at hearing, and the recommendations of Bodell and Schneider. They are organized as follows:

Condition 1: Treatment of Puget share of Colstrip.

The Commission order NorthWestern to file a rate application with the Commission within 30-60 days to return and include the \$0 investment for 370 MW Puget share to the Montana Utility to be effective at the end of the 21 month contract with Mercuria that is similar to the process used for the Avista 222 MW share that is pending before the Commission. In the event the Commission ultimately rejects or does not approve including the 370 MW Puget share in final rates prior to the expiration of the 21 month contract, the Colstrip 370Pu would retain the 370 MW share.

Regarding this condition, Mr. Bird testified that "I could get comfortable with that, in essence, in order to approve this merger."

Commissioner Fielder asked Schneider about this condition, and to address the difference between the November 11, 2025 letter and Mr. Bird's testimony.

A. [Schneider]: What I recall pretty vividly just in immediate response was his discussion with I think Commissioner Pinocci and Commissioner Molnar about the treatment of that 370 zero investment share and the possibility and timing of the return of that share to potentially serve customers, large customers and data centers.

Q. [Commissioner Fielder]: And do you remember him agreeing with Counselor Tranel that that could be a condition of the merger would be to return 370 -- PU 370 back into the regulated utility if and when that resource was needed to serve Montanans?

A. I listened to that very carefully. I think that's an important step. What I would also add, it is directly in my recommendations on additional concessions or conditions

that the condition ought to include if the -- if you can continue forward with the merger. It's one of the minimum conditions that I recommended.

Condition 2: Revised, Complete IRP.

The Commission must condition any approval of the merger on NorthWestern revising the Draft 2026 Integrated Resource Plan within 60 days to incorporate three elements that are currently missing from the record: First, the 370 MW Puget share of Colstrip must be restored to the Base Case, as it had been until NorthWestern executives directed its removal, a directive reflected in the ETAC minutes of October 29, 2025.

Second, the IRP must incorporate the effects of the merger itself, a revision ETAC members have requested since at least the August 28, 2025 meeting.

Third, the IRP must account for large customer choice loads contemplated under the Large Customer Tariff, including the load associated with returning choice customers.

Fourth, the revised IRP must include a minimum investment commitment for Montana, a specific, enforceable dollar figure or percentage of system capital expenditures dedicated to Montana infrastructure, not a discretionary allocation left to the Bright Horizons board. Without such a commitment, the Commission has no mechanism to ensure that Montana's diminished share of the combined enterprise translates into a guaranteed floor of reinvestment, rather than the residual capital left over after higher-return jurisdictions are served first.

Without an updated IRP that includes all four elements, the Commission cannot determine whether data center infrastructure costs will fall on captive customers, whether choice load returning under the Large Customer Tariff is properly planned for, or whether Montana will receive a defined share of system investment going forward.

Condition 3: The Commission Must Decide the Large Customer Tariff Before Deciding This Merger.

The Commission must reach a Final Order in the Large Customer Tariff proceeding prior to reaching a decision on this transaction, and must incorporate all terms and conditions of that Final Order into its decision in this docket. Brian Bird noted that the risks related to data centers are intertwined with the large load tariff and customer protections.

Condition 4: Ring-Fencing

A. Unregulated Affiliate Supply to Large Customers.

The Commission must condition approval on requiring that any supply service provided by an unregulated affiliate to data centers or other large customer loads be ring-fenced, and acquired or developed only under competitive market conditions. No stranded assets or stranded costs arising from that unregulated supply may be passed on to regulated captive customers.

Bird testified that this protection is necessary "to protect customers so they aren't paying for data center costs. And data centers are required to not only pay for their costs, but make sure that any infrastructure built in advance, they're responsible for that."

Bird further testified that data centers are no longer “price makers” but are now “price takers,” and that “commissions across this country have gotten to the point where we are not going to provide an incentive to bring them to our state. We’re going to make sure that you pay for everything you need to.”

The Commission should hold the Joint Applicants to their own witness’s standard.

B. Strengthened Ring-Fencing of Capital Transfers.

Lail admitted that the current ring-fencing proposal imposes no limit on upstream cash transfers from NorthWestern to Bright Horizons until credit degradation occurs. The Commission must require affirmative reporting and prior approval of all upstream capital transfers, dividends, and distributions of profits and NOLs earned by the Montana utility, rather than relying on a passive credit-rating threshold as the only backstop, and reserve the right to recapture those upstream cash transfers for the use of NorthWestern’s regulated ratepayers

Condition 5: Cost Allocation by Customer Class.

The Commission must require that all incremental infrastructure costs associated with serving data center developers and returning choice customers, including transmission and distribution upgrades, generation reserves, gas infrastructure, interconnection facilities, balancing costs, and stranded cost risk, be allocated to those customer classes, and not to captive residential and commercial ratepayers.

Data center developers chose Montana and have the capital to bear the cost of that choice. Choice customers elected to exit the regulatory compact and accept market risk; their re-entry costs must reflect that election. Captive ratepayers, who had no choice in either decision, must be held harmless from the cost of serving customers who did.

This condition must be imposed in this docket now, not deferred to the Large Customer Tariff proceeding or any later proceeding, because the corporate structure approved here will determine the incentives under which those later proceedings occur.

Condition 6: Least-Cost Dispatch Priority for Captive Customers.

The Commission must require NorthWestern to prioritize least-cost generation resources to serve Montana’s captive customers first. Large customers may be served with excess supply only after captive customer needs are met with least-cost resources.

Condition 7: Commission Approval Required for Future Colstrip Disposition.

The Commission must require that any future NorthWestern acquisition of additional Colstrip shares be owned by the Montana regulated utility, and that any subsequent transfer or assignment of such shares to an unregulated affiliate require prior Commission approval to avoid the Puget 370 fiasco.

Condition 8: Assignment of the 222 MW Colstrip Share to Large Customer Rate Design

In the Large Customer Tariff proceeding, the existing 222 MW share of Colstrip, with a remaining 88 Bird testimony, rate base of \$255 million, should be assigned to data centers in the rate design.

Condition 9: Wildfire Risk Isolation

Montana captive ratepayers must have no exposure to wildfire risk arising from any other jurisdiction in this eight-state enterprise.

Condition 10: Legislative Commitment to Support a Statutory Right to Exit

If the Commission concludes it lacks clear statutory authority to impose a captive-customer right to exit as a merger condition, the Commission should require the Joint Applicants to commit, as a condition of approval, to supporting state legislation establishing that right, including municipal purchase rights at net book value, unlimited customer-owned generation with mandatory utility take-or-pay, and authority for municipal community choice aggregation.

South Dakota Most Favored Nations Clause: The Joint Applicants agreed in the South Dakota settlement to a Most Favored Nations clause: if Montana requires the Joint Applicants to forgo recovery of merger-related costs beyond what South Dakota obtained, South Dakota ratepayers receive that protection automatically. SD PUC Docket No. GE25-001, Settlement Stipulation, ¶ 1. The Joint Applicants cannot now argue that stronger Montana conditions are unreasonable or unprecedented. They already agreed that Montana sets the floor. This Commission should set it high.