

FINDINGS OF FACT FROM THE PSC's MERGER DOCKET

I. What the utilities told investors

A. The August 19, 2025 announcement: data centers and large-load infrastructure

1. On August 19, 2025, the day the transaction was announced, Black Hills and NorthWestern hosted a joint investor conference call explaining the strategic rationale of the transaction to financial analysts.¹
2. On that call, NorthWestern CEO Brian Bird tied the merger to data center expansion, stating: “As you might expect, two smaller companies may not have the same resources to compete again from a data center perspective. I see as we put these two teams together, we will have more resources to do that and be more competitive.” Mr. Bird emphasized the combined company’s geographic dominance, noting it would control 20% of the continental United States, stating: “So if you want to do business in our states, you are going to be talking to us.”²
3. On that call, Black Hills CEO Linn Evans stated that the utilities’ engineers were working to interconnect their systems. Mr. Evans told investors: “We have had our engineers talking to each other for very specific projects about how we could advantageously connect our systems.”³
4. In statements to investors, utility executives Marne Jones and Crystal Lail confirmed that NorthWestern and Black Hills, under “strategic rationale for the merger,” identified “growing demand for data centers and other large load

¹ Hrg. Tr. pp. 229-231, 350 Montana Exhibits 11 (Transcript of Aug. 19, 2025 call) and 16 (investor presentation slides), available online at <https://ir.blackhillscorp.com/static-files/fa6e3568-27d8-4595-9bf9-e82b2394f0a5>.

² Exh. 11, Transcript (Aug. 19, 2025), at 10.

³ Exh. 11, Transcript (Aug. 19, 2025), at p. 10.

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opportunities.”⁴

Strategic Considerations. The Black Hills Board considered a number of factors pertaining to the strategic rationale for the Merger, including the following:

- *Value Creation.* The Black Hills Board considered that the Merger will result in a company with combined operations that provide numerous opportunities to create meaningful additional value for the benefit of Black Hills shareholders, as well as the customers of the combined company. The combination will double the size of each company’s rate base to a total of approximately \$11.4 billion, with approximately \$7.0 billion and \$4.4 billion for electric and natural gas, respectively. The Black Hills Board considered a number of potential sources of value to be created in the Merger, including, among others, greater size and scope of operations and the resulting increased investment opportunities, anticipated operating and cost efficiencies, a broader set of skills that will be brought together in the combined company’s workforce, and the standardization of key processes by leveraging existing best practices at Black Hills and NorthWestern. The Black Hills Board considered both the aggregate potential value that may be created in the Merger, as well as the fact that the numerous opportunities to create value mitigate the risk that any particular opportunity to create value will not be realized.
- *Growing Demand for Data Centers and Other Large-Load Opportunities.* The Black Hills Board also considered the effects that the growing demand for data centers and other large-load opportunities, including associated load generation and transmission requirements, has had on Black Hills’ business and is expected to continue to have. The Black Hills Board considered that the combined company would be better positioned to capture value-creating opportunities to meet such demand in a competitive and dynamic market than Black Hills would on a standalone basis.

5. Black Hills represented, “The combined company would be better positioned to capture value creating opportunities to meet such demand in competitive and dynamic markets than Black Hills would on a stand-alone basis.”⁵

6. Brian Bird: “I think a picture speaks a thousand words in slide five here. This pure-play utility across eight contiguous states.” And “As you look at the map, the states of this combined service territories are going to cover 20% in the continental United States.”⁶

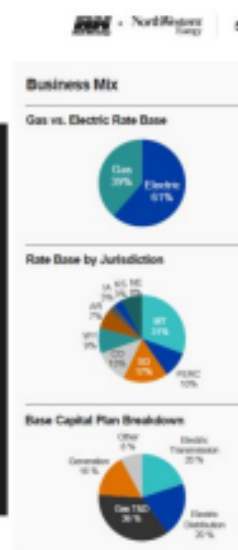
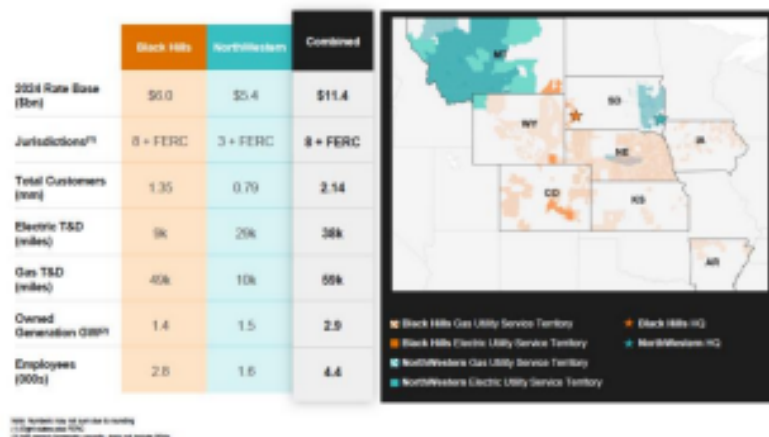
⁴ Hrg. Tr. p. 330-331; Hrg. Tr. p. 644-645.

⁵ Hrg. Tr. p. 646.

⁶ Hrg. Tr. p. 347-348; Exh. 11 slide 5.

Pure-Play Utility Platform Across Eight Contiguous States

Regionally diverse, vertically integrated regulated electric and natural gas utility of scale



7. In response to a question from Brian Russo, Bird said: “Plus as we talked about in the slide, we represent about 20% of the US. So if you want to do business in our states, you are going to be talking to us.”⁷

8. Bird testified: “In every state that we operate, if you’re going to do business and need our services, you’re going to be talking to us.” Then in a follow up question:

Q: [Tranel] So controlling 20 percent of the U.S. for the purposes of having data centers invest in your combined company was important to you, wasn’t it?

A: I think any opportunity to serve our customers in all the states we operate in, we’re happy to serve customers that request our service.⁸

9. Linn Evans talked about a “very specific project” to “advantageously connect” the Black Hills and NorthWestern’s systems.⁹

10. The details of the deal show it to be an acquisition, with Black Hills having the

⁷ Exh. 11 Transcript p. 10; slide 5.

⁸ Hrg. Tr. p. 356:14-25.

⁹ Exh. 11, p. 10; Hrg. Tr. pp. 516-517.

majority of board seats along with the chair; Black Hills acquiring a 56/44 split of the successor entity; and NorthWestern's stock being valued at .98 into Black Hills stock and NorthWestern becoming a wholly owned subsidiary of Black Hills. The confidential materials show that Black Hills made a **[BEGIN CONFIDENTIAL] [END CONFIDENTIAL]** that offered the .98 exchange ratio and 6/5 board split that NorthWestern accepted.¹⁰

11. The institutional shareholders of the corporations are the same, with the overlap between Black Hills and NorthWestern at **[BEGIN CONFIDENTIAL] [END CONFIDENTIAL]**.¹¹

B. The 2026 Q1 Investor calls

12. On April 30, 2026, NorthWestern held its 2026 Q1 call.¹²

13. On this investor call NorthWestern reported, for the first time, the impacts of NorthWestern's ownership of the Puget and Avista shares of Colstrip.¹³

14. On that call, eleven days before the hearing opened, NorthWestern CEO Brian Bird told investors the company had signed its data center development agreement with Quantica, and that the combined demand from its three large-load customers had grown from 500 MW to 1.1 gigawatts, with a targeted start date of early 2029. In spite of administrative rules and legal obligations requiring NorthWestern to supplement responses to data requests, this

¹⁰ Confidential Hrg. Tr. p. 310- 311, minutes of July 11 meeting MCC 051 (Tab 3 in Confidential binder, Confidential PSC-007 Board Meeting Minutes 7.11.2025).

¹¹ Confidential Hrg. Tr. p. 312; MCC 051 Pages from Confidential MCC-051 - BH Goldman Sachs Presentation 06-09-25 [Tab 16 in Confidential Binder slide 19/41].

¹² 350 Montana Exhibit 60; Hrg. Tr. 133:11 – 134:7. NorthWestern objected to inclusion of this investor presentation in the regulatory evidentiary record, claiming that it was not "relevant." The Commission overruled the objection, admitting the transcript into evidence, but limited cross-examination on it. Hrg. Tr. p. 138:12-15.

¹³ Hrg. Tr. p. 380.

information was not provided to Intervenor¹⁴.

15. Asked how NorthWestern would serve Quantica’s load if it exceeded the Puget share of Colstrip, Bird said Quantica would need to bring its own generation for initial needs, with NorthWestern potentially participating in the back half of the ramp-up.¹⁵

16. Bird confirmed NorthWestern was evaluating a build-own-transfer model for utility participation in data center generation, a regulatory structure not disclosed to the Commission and not addressed in NorthWestern base capital plan.¹⁶

17. Lail testified that there is no capital in the base plan to serve the data center customers that have requested service from NorthWestern.¹⁷

18. Lail testified that “the simple premise” of why the merger is good for Montana is that bigger is better.¹⁸

19. Bird also flagged ongoing concerns about Montana’s procurement rules (IRPs, RFPs, preapproval) as “a long process” that “our data center partners would like to move faster.”¹⁹

20. On the April 30, 2026 investor call, Crystal Lail told investors that NorthWestern expects “the annual operating costs to be approximately \$48 million related to that

¹⁴ Hrg. Tr. p. 584:3-10; *See* 350 Montana Exhibit 060, pp. 4–5; 350 Montana Exhibit 062, Slide 17; Hrg. Tr. pp. 383–384). In spite of the ongoing duty to supplement discovery responses mandated by Mont. Admin. R. 38.2.3301(2), M.R. Civ. P. 26(e), and Order No. 8043j (¶¶ 39, 41), the Joint Applicants failed to supplement their responses to Data Requests MFU-001(d) and 350-091 to disclose or produce this signed agreement, withholding it from Intervenor until it was elicited during cross-examination at the hearing (*see* Joint Applicants’ Response to MFU 001(d); Response to 350-091).

¹⁵ 350 Montana Exhibit 060, p. 7; Hrg. Tr., pp. 395:21–396:2

¹⁶ 350 Montana Exhibit 060, p. 6; *see also* Direct Testimony of Bleau J. LaFave, MPSC Docket No. 2026.04.023, pp. 26–27; *see* Joint Applicants’ Response to MFU-001(d); Response to 350-091; Order No. 8043j, ¶ 43; Hrg. Tr. pp. 383–384; pp. 103–104; Joint Applicants’ Response to Data Request 350-087(a).

¹⁷ Hrg. Tr. pp. 103:21–104:4; Joint Applicants’ Response to Data Request 350-087(a); Prefiled Supplemental Rebuttal Testimony of Crystal D. Lail, p. 14, lines 14–18.

¹⁸ Hrg. Tr. p. 164:14-25.

¹⁹ 350 Montana Exhibit 060, p. 5.

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incremental ownership” of Puget and Avista shares of Colstrip.²⁰

21. Lail explained those costs, testifying that the “rough split” between the Puget and Avista shares of that annual \$48 million in operating costs would be “around 30 million for the Puget 370 megawatts on an annualized basis and approximately 18 million on an annualized basis for the Avista interest.”²¹

22. NorthWestern is reserving the right to seek recovery of those operating costs of the Puget and Avista shares from its captive ratepayers.²²

23. On May 7, 2026, five days before the hearing opened, Black Hills Corporation held its Q1 2026 Earnings Call (May 7, 2026). None of the information presented to investors in that call was given to Intervenors despite pending data requests asking for it.²³

24. On its May 7, 2026 investor call, Black Hills announced that it has 3 GW of data service supply in the pipeline, including 600 MW by 2030, driven “by Microsoft's expansion of existing operations and Meta's new AI data center.”²⁴

25. Black Hills’ Chief Utility Officer, Marne Jones, reported to investors that the combined company’s data center pipeline exceeded 3.0 gigawatts (GW) of potential load.²⁵

²⁰ Exh. 60 p. 3/12; Hrg. Tr. p. 139:7-20 to 141; pp. 387–388.

²¹ Hrg. Tr. p. 140:24 – 141:2.

²² Hrg. Tr. p. 141:12 – 142:1.

²³ Hrg. Tr. pp. 500-504, 350 Exhibits 58, 61.

²⁴ Hrg. Tr. p. 647, 350 Exhibit 058.

²⁵ Hrg. Tr. p. 647, 350 Exhibit 058.

26. Black Hills presented its investors with the following slide:²⁶

High-Quality Data Center Pipeline¹ of 3 GW+

Flexible service model

- Innovative tariff² providing flexibility for the unique needs of our customers with a mix of:
 - ✓ Market energy procurement (minimal capital)
 - ✓ Contracted resources (minimal capital)
 - ✓ Utility-owned resources
- Cost-effectively enabling speed to market
- Benefits to other customers and communities

Strong and growing data center demand

Current financial plan includes:

- Data center load of 600 MW by 2030 with minimal capital investment
- Data center demand contributing 10%+ of growing consolidated EPS beginning in 2028

Progress on 2.5 GW+ of upside opportunities:

- Continuing to negotiate multiple definitive agreements with counterparties
- Executed agreement to reserve generation equipment as part of resource mix to serve a 1.8 GW project

¹ Pipeline includes large-load requests under non-disclosure agreements and in active negotiations
² Large Power Contract Service (LPCS) tariff in Wyoming

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27. Black Hills does not currently have enough generation in its supply portfolio to serve 3 GW of load.²⁷

28. Black Hills represented to investors that “generation and transmission investment is one of the upside opportunities of this growing data center pipeline.” Jones testified “We’ve stated multiple times that we can serve up to the 600 megawatts with minimal investment. When we begin to get beyond that we would look at additional opportunities that could require investment.”²⁸

29. Black Hills represented to its investors that the transaction with NorthWestern “expands investment opportunity” specifically “Including addressing the growing demand for

²⁶ Hrg. Tr. pp. 647–652; 350 Montana Exh. 61 BKH Q1 2026 Earnings Transcript and Exh. 63, BKH Earnings Presentation Q1 Slide 14.

²⁷ Hrg. Tr. p. 650:10-17.

²⁸ Hrg. Tr. 668; Exh 057.

energy including from data centers.”²⁹

30. Five days before the hearing opened, Black Hills disclosed for the first time a \$201 million customer-funded reservation agreement tied to its 1.8-gigawatt Cheyenne, Wyoming data center project.³⁰

31. On April 22, 2026, Black Hills’ Wyoming Electric subsidiary (fully regulated Cheyenne Power and Light) “entered into an agreement to procure long lead-time generation equipment with a prospective data center customer seeking to construct a 1.8 GW data center to be served under Wyoming Electric’s Large Power Contract Service Tariff. The customer has provided \$201 million in refundable contributions in aid of construction to date in support of milestone payments to secure generation equipment. The company continues to negotiate several additional definitive agreements with the prospective customer.”³¹

32. CEO Linn Evans closed the call by telling investors the pending NorthWestern merger “will provide us with the advantages of increased scale and new opportunities as a larger, premier regional electric and natural gas utility company.”³²

33. Days after making these representations to investors, Joint Applicants’ repeatedly objected to any questions about these representations, arguing that data center loads were “speculative” and “outside the scope” of the merger proceeding.³³

34. Within the preceding two weeks of the hearing, investor calls and SEC filings

²⁹ Hrg. Tr. p. 669, Exh 57.

³⁰ Hrg. Tr. p. 651:8-14; 661:11-13; p. 662-663, 350 Montana Exhibit 63 Note 3 (Commitments, Contingencies, and Guarantees); Hrg. Tr. p. 761.

³¹ Hrg. Tr. p. 651:8-14; 661:11-13; p. 662-663, 350 Montana Exhibit 63.

³² 350 Montana Exh. 61 (Black Hills Corp. Q1 2026 Earnings Call Transcript, May 7, 2026), Page 4.

³³ See e.g., Hrg. Tr. pp. 374:19–375:1; p. 648:1–4; p. 648:15–19; Joint Applicants’ Objection to the Admission of Data Requests and Exhibits (filed May 11, 2026), pp. 1–2; Commission CONFIDENTIAL Order No. 8043j (Order on Motion to Compel), ¶ 56.

described³⁴

- a. A third signed development agreement scaling to 1.1 GW (NorthWestern, April 30);³⁵
- b. a build-own-transfer generation model under active consideration (NorthWestern, April 30);³⁶ and
- c. a \$201 million customer prepayment securing long-lead-time generation equipment for a 1.8 GW data center (Black Hills, May 7).³⁷

35. The unredacted internal due diligence decks modeled the merger’s financial case around these same developments.³⁸

36. Quantica is an active record issue in this proceeding.³⁹

37. Brian Bird confirmed on NorthWestern’s Q1 2026 earnings call that the primary change driving the upward shift in the utility’s long-term load forecast was “specifically to Quantica... 1.1 gig from them today.”⁴⁰

38. Black Hills Corporation’s public SEC filings and earnings calls from May 2026 confirm that the combined holding company’s growth strategy relies heavily on data

³⁴ Hrg. Tr. p. 651:8-14; 661:11-13; p. 662-663, 350 Montana Exhibit 63; 8-K Ex-99 filed with CIK 0001130464, dated relative to the April 22 agreement.

³⁵ 350 Montana Exh. 060, pp. 4–5; 350 Montana Exh. 62, Slide 17; Hrg. Tr. p. 584:6–15.

³⁶ 350 Montana Exhibit 060, p. 5; Hrg. Tr. Day 2, pp. 395:21–396:2.

³⁷ Hrg. Tr. Day 3, p. 651:11–16; p. 662:4–13; 350 Montana Exhibit 063 (BKH Form 10-Q), Note 3; BKH Form 8-K (CIK 0001130464), Ex. 99.1, filed May 7, 2026).

³⁸ Confidential Tab 12 Confidential MCC-051 - Mizuho Project River Yellowstone Materials 2025 04 21 Slide 16, 31 and 39/99; Confidential Tab 14 Confidential MCC-051 - BH Goldman Sachs Presentation 06-23-25 11/13; MCC-052, Page 13 of 324 (Strategic Rationale Section) and Page 107 of 324 (Financial Projections Footnotes); Confidential PSC-001 Supply Due Diligence Presentation Slide 4 [BEGIN CONFIDENTIAL] [END CONFIDENTIAL] and Slide 11 [BEGIN CONFIDENTIAL] [END CONFIDENTIAL].

³⁹ 350 Montana Exh. 60, pp. 4–5; 350 Montana Exh. 62, Slide 18; Hrg. Tr. pp. 383–384, pp. 395:21–396:2; Confidential Exhibit PSC-001, Slide 12.

⁴⁰ 350 Montana Exhibit 060, p. 11.

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center interconnections.⁴¹

39. Black Hills’ concurrent Form 10-Q filed with the SEC on May 6, 2026, detailed active negotiations to serve a “new customer seeking to construct [a] 1.8-gigawatt data center” matching S-4 standalone forecasts which model that data center earnings will contribute over 5% of total earnings in 2025, growing to 10%+ by 2028.⁴²

II. What utilities did leading up to announcement: data center pipeline developed

40. Prior to the announcement on August 19, 2025, NorthWestern actively and systematically pursued and executed commercial agreements with data center developers throughout 2024, establishing a near-term load pipeline.⁴³ This 2024 commercial campaign included:

- a. Entering into a Mutual Non-Disclosure Agreement with Sabey Data Center on March 27, 2024, which planned a data center load of 50 MW initially, growing to 250 MW;⁴⁴
- b. Executing a Mutual Non-Disclosure Agreement with Atlas Power Group on September 26, 2024, regarding Montana data center interconnections;⁴⁵
- c. Executing a Mutual Non-Disclosure Agreement with Quantica Infrastructure on November 12, 2024, to evaluate serving its

⁴¹ 350 Montana Exhibit 058, p. 2; BKH Q1 2026 Earnings Presentation, Slide 14; 350 Montana Exhibit 061; Hrg. Tr. pp. 646–647, 663–664, pp. 668:1–3; 350 Montana Exhibit 063, Note 3; Confidential Exhibit MCC-052, pp. 71, 107.

⁴² 350 Montana Exhibit 063; Confidential Exhibit MCC-052, p. 96 (p. 106 of 324); *see also* Prefiled Supplemental Testimony of Tanya Bodell Regarding Confidential Information, p. 11, lines 17–19; Hrg. Tr. p. 651:11–16, pp. 663–664.

⁴³ 350 Montana Exhibit 009; 350 Montana Exhibit 012, Slide 28, 30–31, Docket 2022.09.087 (Compliance Filing Dec. 30, 2025); Public Filing, FERC Docket No. ER26-129-000/MPSC Docket No. 2025.12.089) and November 11, 2025 letter regarding allocation of unregulated Puget Colstrip capacity (*see* 350 Montana Exhibit 014; *see also* Hrg. Tr. pp. 485:14–20).

⁴⁴ 350 Montana Exhibit 009, Sabey MNDA; 350 Montana Exhibit 012, Slide 28.

⁴⁵ 350 Montana Exhibit 009; 350 Montana Exhibit 012, Slide 28.

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planned Broadview campus;⁴⁶

d. Executing a formal, non-binding Letter of Intent with Sabey Data Center on December 6, 2024, and subsequently making a confidential investor announcement of the agreement on December 17, 2024;⁴⁷ and

e. Executing a formal, non-binding Letter of Intent with Atlas Power Group on December 9, 2024, to serve a 75 MW data center load in Butte, Montana, and issuing a public press release announcing the project on December 19, 2024.⁴⁸

41. The cost of serving these data centers was not included in NorthWestern's Integrated Resource Plan (IRP) base capital expenditures plan.⁴⁹ During 2024, NorthWestern and Black Hills executed a **[BEGIN CONFIDENTIAL]**⁵⁰ **[END CONFIDENTIAL]**

42. On July 30, 2024, NorthWestern Energy announced that it would acquire Puget Sound Energy's 370 megawatt share of the Colstrip Plant, which it did for \$0.⁵¹

⁴⁶ 350 Montana Exhibit 009, Quantica MNDA; 350 Montana Exhibit 012, Slide 28.

⁴⁷ 350 Montana Exhibit 009, Sabey LOI; 350 Montana Exhibit 012, Slide 28.

⁴⁸ 350 Montana Exhibit 009, Atlas LOI; 350 Montana Exhibit 012, Slide 28.

⁴⁹ 350 Montana Exhibit 006A (2026 Montana Integrated Resource Plan, administrative notice taken), Section 7.5, Page 128; 350 Montana Exhibit 006A (2026 Montana Integrated Resource Plan), Section 7.5, Page 128; 350 Montana Exhibit 052 (Electric Technical Advisory Committee (ETAC) Minutes, October 29, 2025), zero-cost Puget Sound Energy 370 MW Colstrip interest, which is required to serve any data center load under Sensitivities J, K, and L, was removed from the IRP Base Case "at the direction of NorthWestern executives"; Joint Applicants' Response to Data Request 350-087(a), "Neither the \$2.74 billion five-year capital plan (2025–2029)... or the \$3.21 billion five-year capital plan (2026–2030)... includes capital expenditures associated with serving data centers."

⁵⁰ Confidential PSC-008c **[BEGIN CONFIDENTIAL]** **[END CONFIDENTIAL]**

⁵¹ 350 Montana Exhibit 51, NorthWestern Colstrip 370Pu LLC Response to Deficiency Letter, FERC Docket No. ER26-129-000 (Jan. 7, 2026, mistakenly dated Jan. 7, 2025), at pp. 8–9 (part of the underlying record of Exhibit 51); see also 350 Montana Exhibit 014, p. 1; e-filed Responses to Data Requests 350-088 and 350-089); FERC Order Accepting Tariff Revisions, 194 FERC ¶ 61,153 (Feb. 27, 2026), at pp. 2, 28.

43. On October 1, 2024, NorthWestern and Black Hills executed a

[BEGIN CONFIDENTIAL]⁵² [END CONFIDENTIAL]

44. On December 20, 2024, Mr. Evans and Black Hills' Senior Vice President and Chief Financial Officer Kimberly Nooney met with Mr. Bird, and NorthWestern's Chief Financial Officer Crystal Lail in Minneapolis, Minnesota. The parties discussed the strategic rationales and potential value drivers for a potential alternative merger structure.⁵³

45. On February 8, 2025, Black Hills held its Q1 earnings call in which it discussed a recently announced "plan to power Meta's first data center in Cheyenne, Wyoming" and independent analysts subsequently reported that Black Hills expected a "1-GW pipeline of data center demand over the next decade."⁵⁴

46. From early January 2025 through mid-August 2025, representatives of Black Hills and NorthWestern held multiple due diligence meetings to negotiate the merger transaction. This included a June 3, 2025, meeting in New York, New York, where the executives held a dinner "to discuss cultural philosophies and strategic rationales."⁵⁵

47. On February 11, 2025, the Commission sent a letter in Docket 2022.09.087

⁵² Confidential PSC-008c **[BEGIN CONFIDENTIAL] [END CONFIDENTIAL]**

⁵³ See Black Hills Corp., Form S-4 Joint Proxy Statement/Prospectus (filed Jan. 30, 2026), at "Background of the Merger" (December 20, 2024, Minneapolis meeting between CEOs and CFOs regarding strategic rationales; MCC-052 p. 68 of 324.

⁵⁴ Black Hills Corporation Form 8-K (Item 2.02), filed July 31, 2024, Exhibit 99, Electric Utilities Section (disclosing the July 11, 2024, partnership with Meta Platforms, Inc.); Black Hills Corporation Form 8-K (Item 2.02), filed February 5, 2025, Exhibit 99, Press Release (prepared remarks of CEO Linn Evans detailing the 1-GW data center pipeline and the Meta Cheyenne site); 350 Montana Exhibit 031A (or Confidential Exhibit MCC-051 / Mizuho Public Information Book), Page 65 (Scotiabank Daily Edge Report, Thursday, Feb. 6, 2025, reporting BKH's "~1GW of DC demand from existing customers within the next 10 years") Confidential Exhibit MCC-051 (Mizuho Public Information Book), Page 70.

⁵⁵ See Black Hills Corp., Form S-4 Joint Proxy Statement/Prospectus (filed Feb. 6, 2026), at "Background of the Merger" (timeline of due diligence meetings and quoting the June 3, 2025 dinner in New York), filed as confidential document in MCC 052 p. 75/324; negotiations and transaction due diligence at MCC 052 pp. 66-81. Now public.

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asking NorthWestern to explain how it intends to serve large loads and how it interprets its obligations under § 69-8-201, MCA.⁵⁶

48. On March 4, 2025, NorthWestern responded to the Commission taking the position that the Commission had no role in approving new large load customers under the statute.⁵⁷

49. The June 23, 2025 Goldman Sachs Project River presentation identifies the strategic opportunity to [BEGIN CONFIDENTIAL] [END CONFIDENTIAL]⁵⁸

50. On July 11, 2025, NorthWestern and Black Hills received [BEGIN CONFIDENTIAL]⁵⁹ [END CONFIDENTIAL]

51. On July 30, 2025, NorthWestern announced a Letter of Intent for a data center with Quantica Infrastructure, starting at 175 MW and growing to 500 MW by 2030, with plans to ultimately expand up to 1,000 MW. Combined with the agreements for Sabey Data Centers (expected to grow to 250 MW) and Atlas Power Group (expected to grow to 150 MW), NorthWestern's active data center pipeline totals up to 1,400 megawatts.⁶⁰

52. The confidential Project River presentations, spanning April through June 2025, state that a primary value creation and growth opportunity of the merger is to [BEGIN CONFIDENTIAL] [END CONFIDENTIAL].⁶¹

53. Medium term opportunities for transmission build-out from Colstrip were identified as

⁵⁶ 350 Mont. Ex. 013, NorthWestern Letter to Commission (Mar. 4, 2025) (denying Commission authority under § 69-8-201); 350 Mont. Ex. 025, PSC Letter to NorthWestern (Sept. 3, 2025); also Order 8043j, ¶ 52 (§ 69-8-201(1)(b) requires Commission approval for loads of 5 MW or greater and that the customer must demonstrate no adverse impact to existing customers).

⁵⁷ See 350 Mont. Ex. 013, NorthWestern Letter to Commission (Mar. 4, 2025).

⁵⁸ Confidential MCC-051, Goldman Sachs Presentation to the Board of Directors (June 23, 2025) [BEGIN CONFIDENTIAL] [END CONFIDENTIAL]. PSC 008.

⁵⁹ Conf. PSC-008c, [BEGIN CONFIDENTIAL] [END CONFIDENTIAL]

⁶⁰ Hrg. Tr. p. 680-690; 350 Mont. Ex. 012, NorthWestern Dec. 2025 Investor Presentation, at Slide 28.

⁶¹ See Confidential MCC-051, [BEGIN CONFIDENTIAL] [END CONFIDENTIAL]

a merger benefit.⁶²

54. Black Hills due diligence documents identified transmission partnership opportunities of [BEGIN CONFIDENTIAL] [END CONFIDENTIAL]⁶³

55. Black Hills retained Goldman Sachs and NorthWestern retained Greenhill (a Mizuho affiliate) as the exclusive financial advisors for the transaction. Each utility agreed to pay its respective financial advisor a \$30 million transaction fee, totaling \$60 million in Wall Street banker fees. While the Joint Applicants marked these amounts as highly confidential in discovery (Confidential MCC-052), these \$30 million fee agreements are fully disclosed and publicly available in the utilities' SEC filings.⁶⁴

56. In August of 2025, according to unredacted regulatory drafts and confidential compensation briefings, Mr. Bird's personal attorneys at Morrison Cohen LLP exchanged several drafts of the CEO Agreement with the utilities' legal teams between August 9 and August 18, 2025.⁶⁵ This information was marked as confidential until May 8, 2026, when the Joint Applicants filed it as public information in this docket. MCC 052.

57. On August 18, 2025, Brian Bird signed a Chief Executive Officer Agreement that secures him a lump sum severance payment upon a qualifying termination. The details and quantifications of this golden parachute are set out in the unredacted SEC Form S-4 Filing (filed as Confidential MCC-052). The tables in these documents estimate the total

⁶² Confidential Hrg. Tr. p. 685 (included in confidential portion of hearing but no confidential data included in this fact statement).

⁶³ Hrg. Tr. p. 688-689, MCC 051 Confidential Exhibit MCC-051 (Goldman Sachs Presentation to the Board of Directors of Black Hills Corporation, June 23, 2025), Page 13 of 44.

⁶⁴ MCC 052, Black Hills Corp., Form S-4 Joint Proxy Statement/Prospectus (filed publicly with the SEC), at "Opinion of Black Hills' Financial Advisor" and "Opinion of NorthWestern's Financial Advisor" (detailing the respective \$30,000,000 transaction fees paid to Goldman Sachs and Greenhill/Mizuho, despite the Joint Applicants designating these figures as protected trade secrets in Confidential MCC-052).

⁶⁵ 350 Montana Exhibit 031A/Now Public Exhibit MCC-052, p. 67, p. 78 of 324; *see also* Updated MCC-078d; Hrg. Tr. p. 119.

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value of Mr. Bird’s golden parachute, including his cash severance, accelerated equity, and pension benefits, to be between \$13.6 million and \$16 million.⁶⁶

Name	Cash (\$) ⁽¹⁾	Equity (\$) ⁽²⁾	Pension/ NQDC (\$) ⁽³⁾	Benefits (\$) ⁽⁴⁾	Tax Reimbursement (\$) ⁽⁵⁾	Total (\$) ⁽⁶⁾
Brian Bird	5,343,188	9,582,195	1,020,000	58,610	0	16,003,992
Crystal Lail	2,548,986	2,359,647	292,313	59,364	0	5,260,310
Shannon Heim	1,575,855	1,127,865	144,000	78,905	0	2,926,624
John Hines	1,411,495	930,273	135,077	58,787	0	2,535,631
Bobbi Schroepel	1,431,949	930,562	135,800	76,914	0	2,575,226

58. Northwestern filed this information as confidential, and it was not disclosed publicly until May 8, 2026, days before the hearing, in spite of the fact that it is publicly available and was filed with the SEC as a public document.

III. After the August 19, 2025 announcement, the utilities provided a siloed record to the Commission even while the timeline shows significant overlapping events.

59. During the evidentiary hearing held from May 12–15, 2026, the Joint Applicants’ argued that data center developments and transmission interconnections were highly speculative, uncommitted, and outside the scope of the merger docket. Joint Applicants’ witness Crystal Lail testified that NorthWestern’s due diligence materials reflect pre-existing capital plans independent of merger-driven data center growth.⁶⁷

60. This sworn testimony is directly contradicted by the Joint Applicants investor statements, and by highly confidential due diligence, board minutes, and financial advisory decks prepared for the Joint Applicants in assessing the reasons to proceed. Unredacted “Project

⁶⁶ 350 Montana Exh 059; MCC 052; MCC-078d, Chief Executive Officer Agreement (Aug. 18, 2025), at § 2(a); Confidential MCC-052, Form S-4, at “Quantification of Payments and Benefits” (calculating Brian Bird’s total parachute at \$16,003,992; Hrg. Tr. p. 119:12–22. p. 330.

⁶⁷ Hrg. Tr. p. 103:21–23; p. 361:4–7; p. 586:3–6; p. 590:10–12; p. 648:1–4; Joint Applicants’ Response to Data Request 350-087(a); 350 Montana Exhibit 073, Response to Data Request 350- 090 (Post-hearing exhibit).

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River” transaction analyses prepared by financial advisors Mizuho and Greenhill as early as April 2025 identify the primary strategic driver of the merger as providing the financial scale to [BEGIN CONFIDENTIAL] [END CONFIDENTIAL].

61. On August 28, 2025, NorthWestern held ETAC Meeting #8 regarding the 2026 Integrated Resource Plan. During this meeting and throughout the IRP process, NorthWestern did not include the impacts of the proposed merger in its modeling, despite stakeholder requests. NorthWestern’s Draft 2026 IRP openly states that “potential data center load is not included in NorthWestern’s load forecasts,” but is modeled as separate sensitivities.⁶⁸

62. On September 3, 2025, the Commission issued a letter in the Resource Adequacy Investigation (Docket No. 2022.09.087) rejecting NorthWestern’s interpretation of § 69-8-201, MCA. The Commission stated its position that § 69-8-201(1)(b) requires Commission approval before a public utility may provide electric service to a new retail customer with an average monthly demand of 5 megawatts or greater.⁶⁹

63. On September 22, 2025, a [BEGIN CONFIDENTIAL] [END CONFIDENTIAL]⁷⁰

64. On October 20, 2025, Black Hills and NorthWestern filed a Joint Application with the Montana Public Service Commission seeking regulatory approval of the merger, initiating Docket No. 2025.10.078.⁷¹

⁶⁸ Exhibit 6A (IRP), Page 128 (Section 7.5.1); Page 127, Table 46; Exh. 52, NorthWestern ETAC Meeting #8 Minutes (Aug. 28, 2025), at 1; Draft 2026 MT IRP (Jan. 15, 2026), at 54 (data center load is not included in the load forecast and only modeled as sensitivities).

⁶⁹ See Order 8043j, at ¶¶ 39, 52; *see also* Prefiled Supplemental Testimony of Tanya Bodell (March 25, 2026), p. 3, fn. 11; Hrg. Tr. pp. 69:24–70:13.

⁷⁰ Confidential PSC-008c [BEGIN CONFIDENTIAL] [END CONFIDENTIAL] ⁷¹ See Procedural Order 8043, at ¶ 1 (Dec. 10, 2025); *see also* Black Hills Corp., Form S-4 Joint Proxy Statement/Prospectus (filed Feb. 6, 2026), at 104.

⁷¹ See Procedural Order 8043, at ¶ 1 (Dec. 10, 2025); *see also* Black Hills Corp., Form S-4 Joint Proxy Statement/Prospectus (filed Feb. 6, 2026), at 104.

65. On October 29, 2025, NorthWestern held ETAC Meeting #9 to review the 2026 IRP's PowerSIMM finalized Automatic Resource Selection (ARS) results and preliminary Production Cost Model (PCM) results. NorthWestern announced the executive decision to remove 370 MW Puget acquisition from the Base Case.⁷² NorthWestern actively modeled the Puget Share in every Data Center Sensitivity (Sensitivities I, J, K, and L) in its draft IRP.

66. On October 29, 2025, the NorthWestern Group Board of Directors authorized the assignment of the Puget Agreement away from the regulated Montana Utility to an unregulated affiliate, NorthWestern Colstrip 370Pu LLC.⁷³

67. On October 31, 2025, NorthWestern Colstrip 370Pu LLC filed for FERC approval of its 21-month wholesale energy contract with Mercuria Energy America. This followed its October 14, 2025 filing for a Cost-Based Rate Tariff to authorize short-term market sales.⁷⁴

68. That rate is \$16.30/MWh, one of the lowest cost rates in NorthWestern's entire portfolio, and the 222 MW share that has \$255 million left and will be paid through 2042, and is being used to serve captive ratepayers which is one of the most expensive

⁷² 350 Montana Exhibit 006A (2026 Montana IRP), Page 29 [Table 3], Page 127 [Table 46], and Page 128 [Section 7.5.1]; ETAC Meeting #9 Minutes (October 29, 2025), Page 2 [admitted as part of Cross-Intervenor Testimony of Thomas J. Schneider]; Cross-Intervenor Testimony of Thomas J. Schneider (March 16, 2026), Page 12, Lines 1–18; 350 Montana Exhibit 021 (Colstrip and Merger Events Timeline), October 29, 2025 Entry; Hrg. Tr. Day 2 (May 13, 2026), pp. 640:12–641:15). See Appendix B, Colstrip and Merger Events Timeline.

⁷³ 350 Montana Exhibit 014, Letter from Michael Green to Will Rosquist Re: Acquisition of additional Colstrip shares (Nov. 11, 2025), p. 1; *see also* Exh. 52, NorthWestern Colstrip 370Pu LLC Response to Deficiency Letter, FERC Docket No. ER26-129-001 (Jan. 7, 2026), p. 8.

⁷⁴ 350 Montana Exhibit 051 (FERC Order Accepting Tariff Revisions, 194 FERC ¶ 61,153), p. 1 & fn. 29; NorthWestern Colstrip 370Pu LLC Response to FERC Deficiency Letter, FERC Docket Nos. ER26-129-001 and ER26-411-000 (Jan. 7, 2026), pp. 1–2, 8 [M.R. Evid. 106 as part of Exhibit 51]; 350 Montana Exhibit 014 (NorthWestern Letter to Will Rosquist, Nov. 11, 2025), p. 1; Cross-Intervenor Testimony of Thomas J. Schneider, p. 12, lines 6–18; *see also* FERC Docket No. ER26-411-000, Master PPA and Confirmation with Mercuria Energy America, LLC (filed Oct. 31, 2025).

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shares in the portfolio.⁷⁵

69. Cash flows from the unregulated Puget share will flow up to Bright Horizon.⁷⁶

70. There is no requirement that the parent holding entity, Bright Horizons, send money back down to the Montana utility in the form of a lower rate.⁷⁷

71. On November 5, 2025, the Commission sent a formal letter to NorthWestern requesting clarification on its plans for the newly acquired 370 MW Puget Sound share of the Colstrip Plant. The Commission noted its authority over the transfer of utility property and asked NorthWestern to clarify whether it intended to seek MPSC approval prior to effectuating the transfer of the 370 MW share to its unregulated affiliate, NorthWestern Colstrip 370Pu LLC.⁷⁸

72. On November 11, 2025, NorthWestern submitted a formal letter to the Commission responding to its inquiry regarding the 370 MW Puget Share acquisition.⁷⁹

73. In the letter, NorthWestern confirmed its intent to hold the asset in an unregulated subsidiary, stating that “[a]cquiring the Puget Share in Colstrip 370Pu outside the Montana Utility’s ring-fencing [...] provides maximum flexibility to deploy this resource in a way that assists existing large loads and facilitates economic development without impacting current utility customers.”⁸⁰

⁷⁵ Hrg. Tr. p. 433-434; 350 Montana Exhibit 051 (FERC Order Accepting Tariff Revisions, 194 FERC ¶ 61,153), p. 3, fn. 10 [Docket No. ER26-129-001, itemizing the cost-based rate of \$16.30/MWh]; Hrg. Tr. p. 422:18–20 [Commissioner Molnar’s cross-examination of CEO Brian Bird on the \$16.30 rate]; p. 424:7–9 [Commissioner Molnar on the \$16.30 as the cheapest baseload power in the portfolio].

⁷⁶ Hrg. Tr. p. 435.

⁷⁷ Hrg. Tr. p. 971-972.

⁷⁸ 350 Montana Exhibit 014 (NorthWestern Response Letter to Will Rosquist, Nov. 11, 2025), p. 1; Prefiled Cross-Intervenor Testimony of Thomas J. Schneider, p. 11; Hrg. Tr. p. 345:1–15; Mont. Pub. Serv. Comm’n Letter to Charles Lane, NorthWestern Energy, Re: FERC Docket ER26-129 (Nov. 5, 2025).

⁷⁹ Hrg. Tr. p. 431-432; 350 Mont. Ex. 014, NorthWestern Letter to PSC (Nov. 11, 2025).

⁸⁰ Hrg. Tr. p. 1016; 350 Mont. Ex. 014, NorthWestern Letter to PSC (Nov. 11, 2025), at 4.

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74. Schneider included the relevant timeline in his testimony.⁸¹

75. Thomas Schneider testified that NorthWestern’s November 11, 2025 letter, written in response to a Commission letter inquiring as to how the Puget share of Colstrip would be treated, is “Key to my testimony and much more importantly key to your consideration of how that whole zero investment 370-megawatt Colstrip share is treated.”⁸²

76. The sequence of events around Colstrip are described by Thomas Schneider in his testimony. Schneider testified “removal of Puget 370 from the base case of the Integrated Resource Plan. It involved the assignment of that 370 share of the Puget resource to the unregulated entity outside of the ring fencing of the Commission in the unregulated affiliate. It involved the filing then of the application with FERC for approval of a tariff for competitive supply. All of those things and more as described in my testimony happened in a relatively short period of time. That gave me great pause.”⁸³

77. On November 14, 2025, Black Hills and NorthWestern **[BEGIN CONFIDENTIAL]**
[END CONFIDENTIAL]⁸⁴

78. Jones testified that the planned transmission route from **[BEGIN FURTHER REDACTION UNDER PROTEST]** **[END FURTHER REDACTION UNDER PROTEST]** **[BEGIN CONFIDENTIAL]** **[END CONFIDENTIAL]**⁸⁵

79. The **[BEGIN FURTHER REDACTION UNDER PROTEST]** **[END FURTHER REDACTION UNDER PROTEST]** to **[BEGIN CONFIDENTIAL]** **[END**

⁸¹ Hrg. Tr. p. 1016; 350 Montana Exhibit 021; see also Appendix B with timeline. ⁸² Hrg. Tr. p. 1016.

⁸² Hrg. Tr. p. 1016.

⁸³ 83 Hrg. Tr. p. 1016.

⁸⁴ Hrg. Tr. pp. 696-698; See Conf. PSC-008c, **[BEGIN CONFIDENTIAL]** **[END CONFIDENTIAL]**

⁸⁵ Confidential Hrg. Tr. p. 697:11–20; Page 698, Lines 1–20 [Cross-Examination of Marne Jones]; see also Confidential Exhibit PSC-008c **[BEGIN CONFIDENTIAL]** **[END CONFIDENTIAL]**

CONFIDENTIAL]⁸⁶

80. Putting the public transmission map from **[BEGIN FURTHER REDACTION UNDER PROTEST] [END FURTHER REDACTION UNDER PROTEST]** next to the confidential map from **[BEGIN CONFIDENTIAL] [END CONFIDENTIAL] [BEGIN FURTHER REDACTION UNDER PROTEST] [END FURTHER REDACTION UNDER PROTEST]**⁸⁷

81. The analysis for this transmission line has been completed.⁸⁸

82. On December 9, 2025, NorthWestern publicly presented at the Wells Fargo Energy & Power Symposium at Lone Peak in Big Sky, Montana where it identified “Data centers & new large-load opportunities” as a core component of “The NorthWestern Value Proposition” driving incremental earnings growth. The slide deck mapped out NorthWestern’s “Data Center Process,” detailing 17 data center projects actively sitting in various stages of the utility’s queue.⁸⁹

83. NorthWestern’s IRP shows that the utility’s historical retail energy load growth has been relatively flat, growing at a nearly flat 0.4% average annual rate from 2010 to 2019, such that data center and large-load capture rather than organic system growth is the principal driver of the merged company’s projected load growth.⁹⁰

84. On December 23, 2025, FERC issued a deficiency letter to NorthWestern Colstrip regarding its cost-based rate tariff filing for the 370 MW Puget Share of Colstrip. FERC specifically demanded that NorthWestern provide detailed information explaining the

⁸⁶ Confidential Hrg Tr. p. 698.

⁸⁷ Confidential Hrg. Tr. p. 706-707, 350 Montana demonstrative exhibit 64 [Not including confidential information].

⁸⁸ Confidential Hrg. Tr. p. 702. [Not including confidential information.]

⁸⁹ Hrg. Tr. 349:7-10; See 350 Mont. Ex. 012, NorthWestern Dec. 2025 Wells Fargo Investor Presentation, at Slide 8 and Slide 29; see also Draft 2026 MT IRP (Jan. 15, 2026), at 53.

⁹⁰ Hrg. Tr. 349:7-10; See 350 Mont. Ex. 012, NorthWestern Dec. 2025 Wells Fargo Investor Presentation, at Slide 8 and Slide 29; see also Draft 2026 MT IRP (Jan. 15, 2026), at 53.

ownership arrangements, the timing and structure of the transfer, and the original undepreciated cost of the Colstrip interest transferred to the unregulated affiliate.⁹¹

85. On December 30, 2025, NorthWestern made a compliance filing in the Commission’s Resource Adequacy Investigation (Docket No. 2022.09.087) submitting its three executed Letters of Intent with Sabey Data Centers, Atlas Power, and Quantica Infrastructure. NorthWestern heavily redacted the public versions of these LOIs, completely blacking out the critical details of the draft term sheets, including the specific quantities, delivery start dates, delivery points, and rates. By doing so, the utility successfully withheld the financial commitments, system upgrade obligations, and specific terms of this 1,400 MW pipeline from public and stakeholder scrutiny during the initial phases of the merger proceeding.⁹²

86. At the end of 2025, the Ready Wyoming transmission service project from Cheyenne to Donkey Creek in Gillette, Wyoming, was placed into service.⁹³

87. On January 7, 2026, NorthWestern Colstrip filed its formal response to the FERC deficiency letter regarding the 370 MW Puget share acquisition. Notice of this response was subsequently published in the Federal Register, triggering an intervention and protest period that ran through January 28, 2026.⁹⁴

88. On January 15, 2026, NorthWestern released its Draft 2026 Integrated Resource Plan (IRP). Consistent with its decision to exclude the merger from its planning process, NorthWestern modeled its “Data Center Sensitivities” (Sensitivities J, K, and L) on a

⁹¹ Exh. 51, 194 FERC ¶ 61,153, Order Accepting Tariff Revisions, Docket No. ER26-129-001 (Feb. 27, 2026), at 5, 9; also NorthWestern Colstrip 370Pu LLC Resp. to Deficiency Letter, FERC Dkt. ER26-129-000 (Jan. 7, 2026), at 5–6.

⁹² 350 Montana Exhibit 009, Exhibit A (Draft Term Sheets); Commission Order No. 8043i, ¶¶ 38, 40; Commission Order No. 8043j, ¶ 51); *see also* Prefiled Direct Testimony of Tanya Bodell, p. 24, fn. 37 & fn. 56).

⁹³ Hrg. Tr. p. 670.

⁹⁴ Exh. 51, 194 FERC ¶ 61,153, Order Accepting Tariff Revisions, Docket No. ER26-129-001 (Feb. 27, 2026), at 5 (Jan. 7, 2026 Deficiency Response and the Jan. 28, 2026 protest deadline).

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standalone basis. Under Sensitivity L, adding 1,160 MW of data center load causes the 20-year Net Present Value Total Portfolio Cost to increase to \$13.288 billion, a 135% increase over the base case.⁹⁵

89. In January and February of 2026, NorthWestern gave public presentations across the state at the Bureau of Business and Economic Research (BBER) Economic Outlook Seminars, publicly pitching data center expansion as a “Benefit for Existing Customers” and a “Stakeholder Benefit.” The utility stated to the Montana public that capturing data center loads would provide “Revenue Stability,” “Downward Pressure on Rates,” and “Strengthened Utility Financials.”⁹⁶

90. On February 9, 2026, intervening parties filed direct testimony in the merger docket including experts representing 350 Montana, the Montana Consumer Counsel (MCC), the Montana Large Customer Group (LCG), the Joint Energy Advocates (JEA), the Laborers’ International Union, and the Montana Farmers Union. At the time that intervenor testimony was filed, no confidential information had been produced.

NorthWestern maintained that Brian Bird’s employment agreement and the SEC filing made on February 6, 2026 was confidential. That information, produced after 350 Montana’s motion to de-designate was filed, was in fact public but unavailable to Intervenor at the time of filing direct testimony.⁹⁷

⁹⁵ 350 Montana Exh. 6, Draft 2026 MT IRP (Jan. 15, 2026), at Section 7.5 & Table 55 (Summary of Scenario and Sensitivity Results) (calculating the 20-year NPV total portfolio cost of Sensitivity L, an addition of 1,160 MW of data center load, at \$13,288,000,000).

⁹⁶ See 350 Mont. Ex. 012, NorthWestern BBER Energy Overview (Jan. - Feb. 2026), at Slide 2 (identifying data centers as a “Benefit for Existing Customers”) and Slide 8 (data centers as “Stakeholder Benefits” that provide “Revenue Stability/Downward Pressure on Rates”).

⁹⁷ See, e.g., Prefiled Direct Test. of Tanya Bodell on behalf of 350 Mont. (Feb. 9, 2026); Direct Test. of Ralph C. Smith on behalf of MCC (Feb. 9, 2026); Direct Test. of Michael P. Gorman on behalf of Mont. LCG (Feb. 9, 2026); Pre-filed Direct Test. of Benjamin J. Otto on behalf of JEA (Feb. 9, 2026); Test. of Adam Haight on behalf of Laborers’ Int’l Union (Feb. 9, 2026); Test. of Walter Schweitzer on behalf of the Montana Farmers Union.

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91. Financial risk analyses confirm that pairing the merger with highly speculative, large load data center capital projects fundamentally alters the utility’s risk profile and threatens future ratepayer stability.⁹⁸

92. On February 18 and 23, 2026, following Applicants’ objections to producing due diligence documents, the Commission issued Protective Orders 8043b, 8043c, 8043d, and 8043e covering multiple disparate topics. Granting the Applicants’ request for an “omnibus-style” protective order, the Commission largely cut and pasted the analysis and rationale for protecting the documents rather than applying the rigorous, document specific scrutiny required by the Montana Constitution. Protective Order 8043b was issued with the placeholder date “DONE and DATED February XX, 2026.”⁹⁹

93. On February 27, 2026, FERC issued its Order in Docket No. ER26-129-001, accepting NorthWestern Colstrip’s cost-based rate tariff to make short-term wholesale market sales from the newly acquired 370 MW Puget share of Colstrip. In its order, FERC ruled that because the transaction price was \$0, the transfer to the unregulated affiliate bypassed the requirement for prior federal authorization under Section 203 of the Federal Power Act. FERC placed the burden of protecting Montana ratepayers on this Commission, ruling: “The Montana PSC can, through its retail rate authority, protect NorthWestern’s captive retail customers from any improper cost shifts.”¹⁰⁰

94. On March 4, 2026, the Commission issued Protective Order 8043f. That evening, at 5:28 p.m., NorthWestern made a secure file available, including thousands of pages of

⁹⁸ 350 Mont. Exh. 40, Prefiled Direct Testimony of Tanya Bodell, pp. 24–25.

⁹⁹ See Order 8043k, at ¶ 5 (Apr. 14, 2026); Protective Order 8043b (issued with the unedited placeholder “DONE and DATED February XX, 2026”); Compare Doc. 141, 142, 144, and 145.

¹⁰⁰ Exh. 51, See 194 FERC ¶ 61,153, Order Accepting Tariff Revisions, Docket No. ER26-129-001 (Feb. 27, 2026), at 16–18 (finding the \$0 transfer did not require prior FPA Section 203 authorization, but noting that “[t]he Montana PSC can, through its retail rate authority, protect NorthWestern’s captive retail customers from any improper cost shifts”).

highly confidential due diligence documents that were prepared in the summer of 2025.

This production included the unredacted “Project River” investment bank decks (Confidential MCC-051), unredacted Board of Directors minutes (Confidential PSC-007), and Black Hills 891-page 2024 Consolidated Federal Tax Return (Confidential MCC-087).¹⁰¹

95. On March 13, 2026, the Montana Consumer Counsel (MCC) and 350 Montana filed supplemental intervenor testimony addressing the Joint Applicants’ late production of confidential information. 350 Montana’s expert Tanya Bodell challenged the Joint Applicants’ claimed synergies, testifying that despite the production of thousands of pages of internal documents, “there remains no concrete, calculated plan detailing how operational synergies will or will not be achieved, or whether service to Montana customers will be degraded.”¹⁰²

96. On March 16, 2026, the day cross-intervenor testimony was due, the Joint Applicants filed a late update to MCC-010, producing their highly confidential PwC “Value Creation Workstream Update.” The internal models disclose for the first time that the largest source of the merger’s “savings” relies on eliminating **[BEGIN CONFIDENTIAL] [END CONFIDENTIAL]** driving \$36 million in labor reductions. These cuts target **[BEGIN CONFIDENTIAL] [END CONFIDENTIAL]** WTW Compensation Matters Briefing and draft SEC Form S-4 show that the merger triggers tens of millions in executive “Golden Parachutes” including accelerated equity vesting and a specialized \$9 million to \$11 million retention pool exclusively

¹⁰¹ Doc. 162, Doc. 163 - 168; Order 8043k (Apr. 15, 2026), at ¶¶ 8–9.

¹⁰² See Order 8043k, at ¶¶ 11, 26 (Apr. 15, 2026); see also Prefiled Test. of Tanya Bodell Reg. Conf. Info. (Pub. Version) (Mar. 13, 2026), at 10; Doc. 172, Bodell Testimony on confidential information.

for executive awards.¹⁰³

97. The Consumer Counsel’s witness testimony filed on February 9, 2026, stated that there were no quantified benefits to the transaction, that “No specific categories for savings have not yet been identified.”¹⁰⁴

98. On March 30, 2026 NorthWestern’s interconnection queue showed entries for gas-fired firming and storage generation (LGIP-0004 and LGIP-0005) totaling 1,835 MW at the Broadview Substation, directly next to the proposed Quantica data center campus. LGIP 0004 (585 MW), LGIP-0005 (1,000 MW), and LGIP-0022 (250 MW) show active natural gas-fired firming and storage generation queued at Broadview.¹⁰⁵

99. On March 31, 2026, NorthWestern filed an Application with the Montana Public Service Commission requesting approval of a Large New Load Service Tariff. The proposed tariff establishes strict minimum service terms, collateral requirements, and exit fees for new loads of 5 MW or greater. The proposed tariff creates a tiered structure requiring direct Commission review and approval of any executed Electric Service Agreement for “Very Large Customers” with loads of 50 MW or greater.¹⁰⁶

The filing does not include Rate Design, Class Costs & Prices.¹⁰⁷

¹⁰³ See Conf. MCC-010, PwC Value Creation Workstream Update (Mar. 16, 2026), at 7, 10 labor savings driven by [BEGIN CONFIDENTIAL] [END CONFIDENTIAL]; Conf. MCC-051, WTW Compensation Matters Briefing (Aug. 13, 2025), at 9 (outlining a \$9M to \$11M executive retention pool); MCC-052, SEC Form S-4, at 128 (calculating change-in-control severance and equity acceleration payouts for named executives).

¹⁰⁴ Hrg. Tr. p. 889-891.

¹⁰⁵ Post-Hearing Exhibit 070 (NorthWestern Energy Public Interconnection Queue, NWE26 Cluster, March 6, 2026), Yellowstone County/Broadview Substation Entries LGIP-00002, -00004, -00005, -00010, -00011, and -00022; 350 Montana Exhibit 060, p. 4.

¹⁰⁶ See NorthWestern Application for Large New Load Tariff Rule (Mar. 31, 2026), at 1, 6–8.

¹⁰⁷ NorthWestern Energy’s Application for Large New Load Tariff Rule, Docket No. 2026.04.023 (filed March 31, 2026), pp. 1, 6–8; Exhibit CRL-1 (Large New Load Service Tariff Rule No. 24), Sheets R24.1, R24.4 to R24.6, and R24.10 to R24.11 (admitted as Exhibit CRL-1); Direct Testimony of Charles R. Lane, pp. 5, 11–12, 36–37 (confirming that the LNL filing excludes a new base rate class, class cost allocations, and rate design, reserving them for a future general rate proceeding); Direct Testimony of Bleau J. LaFave, pp. 3, 14–15; Direct Testimony of Dr.

100. On April 2, 2026, at their respective special meetings, shareholders of both Black Hills and NorthWestern voted to approve the merger. Upon the consummation of the transaction, the combined holding company will be officially renamed Bright Horizon Energy Corporation.¹⁰⁸

101. On April 14, 2026, Microsoft publicly announced plans to purchase 3,200 acres of land near Cheyenne, Wyoming, to expand its data center operations. In its announcement, Microsoft highlighted its innovative utility partnership with Black Hills Energy, which is governed by the utility's Large Power Contract Service (LPCS) tariff. The LPCS tariff utilizes a flexible service model that generates revenue through a microgrid management fee in lieu of capital investments in new generation.

¹⁰⁹

102. The physical integration of the merger is tied directly to Colstrip's output. While Montana retail ratepayers continue to bear a \$255 million rate base burden on the original regulated 222 MW share of Colstrip, NorthWestern has taken its newly acquired 370 MW share, acquired for \$0, and placed it into unregulated Colstrip 370Pu.¹¹⁰

103. Crucial information modifying the Net Operating Loss (NOL) metrics in Data Request 350-100 were provided to Intervenors for the first time on May 11, 2026, the

Sanem Sergici, pp. 27, 36–37; see also Prefiled Supplemental Testimony of Tanya Bodell on Large New Load Tariff and Right to Exit (filed April 2026), pp. 1–3)(administrative notice).

¹⁰⁸ MCC 052, Black Hills Corp., Form S-4 Joint Proxy Statement/Prospectus (filed Feb. 6, 2026), Notice of Special Meeting & 44 - 45; 350 Exhibit 058 (Black Hills Q1 2026 Press Release), p. 1; Hrg. Tr. p. 748:14–20.

¹⁰⁹ Hrg. Tr. pp. 647:21–648:20; 350 Exhibit 058 (Black Hills Q1 2026 Earnings Release), p. 1; see also MCC 053, Black Hills Corp. Investor Presentation (Dec. 2025), at Slides 7–8 [BEGIN CONFIDENTIAL] [END CONFIDENTIAL] Conf. MCC-051[BEGIN CONFIDENTIAL] [END CONFIDENTIAL]

¹¹⁰ Hrg. Tr. p. 373; 480.

night before the evidentiary hearing began.¹¹¹

104. When asked by Commissioner Molnar for a witness to ask questions of about this, NorthWestern did not provide one and Crystal Lail, the Chief Financial Officer of the company, was unable to answer Commissioner questions.¹¹²

105. In January, Black Hills sent an email to NorthWestern identifying the NOLs as “380.1 million for Black Hills NOL at 12-31-2025.”¹¹³

106. The Joint Applicants provided the NOL amount in response to data request 350 Montana 100, and updated the NOL amount to \$155 million in April.¹¹⁴

107. Consumer counsel witness testified that net operating losses (NOL) “NOLs, carryforwards, can be used to offset taxable income, you know, particularly up to 8 percent of the taxable income in that year.”¹¹⁵

108. NorthWestern has significant NOLs available to be used.¹¹⁶ Those NOLs would be available to NorthWestern without the transaction as a benefit to NorthWestern (and Montana ratepayers); with the transaction, those NOLs flow up to the parent company for use by the enterprise wide entity and are therefore no longer within the control or necessarily used to the benefit of Montana ratepayers.¹¹⁷

IV. The hearing: admitted documents but curtailed cross-examination.

109. Black Hills and NorthWestern have existed side by side for a century, and have

¹¹¹ Hrg. Tr. pp. 190-192; Hrg. Tr. p. 926; updated response to 350 Montana 084.

¹¹² Hrg. Tr. pp. 190-194.

¹¹³ Hrg. Tr. p. 926:2-4.

¹¹⁴ Hrg. Tr. p. 926:15-20.

¹¹⁵ Hrg. Tr. p. 880:9-12.

¹¹⁶ Hrg. Tr. p. 880.

¹¹⁷ Hrg. Tr. p. 881-888.

considered combining their utilities for operational efficiencies over the years.¹¹⁸

110. When asked “why now” Lail testified at the hearing:

Q: [Tranel] What changed in 2025 to make this merger make sense today when it didn't make sense five years ago?

A: [Lail] Sure. The last five years have had dramatic change in the backdrop for utilities in the macroeconomic environment.¹¹⁹

111. Lail testified that “high demand from our customers and ongoing growth from a base perspective” also contributing to the utilities decision to move forward with this transaction now.¹²⁰

112. The Consumer Counsel witness, Ralph Smith, testified that operational efficiencies was not one of the reasons for the transaction:

Q: [Tranel]: ...the justification for a merger from the applicant's presentation to this Commission has been operational efficiencies, correct?

A. Not – it’s not really. That wasn’t one of their main reasons for doing it. I think they’re looking at being bigger, having better access to capital because they are two groups of regulated utilities there ought to be some savings there that once they integrate they can achieve.”¹²¹

113. Smith testified in response to questions from Commissioner Pinocci that “You know, I think they’re trying to get a little bit bigger to better attract capital.”¹²²

114. Mr. Bird testified that “why now” is because of what’s happening in the utility

¹¹⁸ Hrg. Tr. p. 770.

¹¹⁹ Hrg. Tr. p. 153:7-13.

¹²⁰ Hrg. Tr. p. 154:1-2.

¹²¹ Hrg. Tr. p. 873:14-22.

¹²² Hrg. Tr. p. 903:7-9.

space today and the exciting growth from data centers.¹²³

115. Mr. Bird testified that “our ability” to capture that exciting new load growth “will be enhanced with this merger.”¹²⁴

116. Load growth from residential customers has been flat for at least ten years.¹²⁵

117. Data centers are considered customers.¹²⁶

118. The utilities told investors that the reason why the merger is happening now is because the successor entity “will be better positioned to meet the growing demand from data centers – for data centers as a large load opportunity.”¹²⁷

119. The confidential materials confirm that the strategic rationale to proceed with this transaction now is to serve data centers. Lail testified that the due diligence materials identified the transaction rationale and benefits as **[BEGIN CONFIDENTIAL] [END CONFIDENTIAL]**¹²⁸

120. In response to a question from Commissioner Pinocci, Tanya Bodell testified “data centers want to get quickly onto the system, quickly. They now consume 6 percent of the electricity produced in the United States and are projected to consume 17 to 20 percent according to the Department of Energy going forward. This is a huge change. The regulatory system is not set up to deal with that.”¹²⁹

121. The risk to captive Montana ratepayers from the significant increase in load from

¹²³ Hrg. Tr. p. 362-363, Exh. 11.

¹²⁴ Hrg. Tr. p. 363.

¹²⁵ Hrg. Tr. p. 154:19-24; P. 365, Lines 8–10, 17–20; 2026 Montana Integrated Resource Plan (350 Montana Exhibit 006A), Page 38 (Section 4.1, documenting that retail load grew at a nearly flat average annual rate of 0.4% for the decade of 2010–2019, even though customer accounts grew at 1.2% per year).

¹²⁶ Hrg. Tr. p. 104:5–12, p. 155:2–3. Exh. 6, Draft 2026 Integrated Resource Plan, p. 128.

¹²⁷ Hrg. Tr. p. 242:9-12.

¹²⁸ Confidential Hrg. Tr. Day 2 p. 294-295; MCC 051, Project River Mizuho Slide Deck p. 53/99 (Project River Transaction Considerations and Merger Analysis).

¹²⁹ Hrg. Tr. p. 968.

data centers was not addressed, as cross-examination was prohibited.¹³⁰

122. Bodell testified that Black Hills and NorthWestern “combined they have 4,500 megawatts of potential additions and that is more than a doubling of the system. In the case of Black Hills it’s a tripling of the size of their peak system, their regulated system.”¹³¹

123. This was prior to Quantica’s press release on May 20, 2026, five days post hearing, disclosing its true size of several gigawatts that would, by itself, quintuple the load on NorthWestern’s system.¹³²

124. As a regulated public utility, NorthWestern can serve customers and recover the costs of doing so in its rates; it can finance its operations through borrowing money; and as Lail testified has “a strong track record of very good service” and does not need to merge to provide reliable service, borrow money, or recover costs of service from its customers.¹³³

125. NorthWestern testified it will serve the data center customers seeking service from NorthWestern without the Black Hills transaction.¹³⁴

126. Bird testified that data centers and regional transmission costs are not in NorthWestern’s capital plans, and that NorthWestern’s “ability to do those things are certainly going to be increased, improved, when we actually combine as two companies into one.”¹³⁵

127. When asked to identify for the Commission any activities and projects that

¹³⁰ Commission Order No. 8043j, ¶ 56; p. 396:3–5 Hrg. Tr. pp. 414:12–415:4; pp. 633:12–25, pp. 734:10–25; see also Cross-Intervenor Testimony of Walter Schweitzer, p. 5; Cross-Intervenor Testimony of Tanya Bodell, p. 7.

¹³¹ Hrg. Tr. p. 973-974.

¹³² Post-Hearing Exhibit 069 – 073 (pending and offers of proof requested).

¹³³ Hrg. Tr. 155:2-23.

¹³⁴ Hrg. Tr. p. 156:5-10.

¹³⁵ Hrg. Tr. 361:5-18.

NorthWestern cannot do on a standalone basis using private contracts, joint development agreements, third-party commitments, Bird did not identify any activities or projects.¹³⁶

128. Black Hills witness Marne Jones testified that “in a growing footprint that we're in, capital is not finite.”¹³⁷

129. Brian Bird testified that investors were told that data centers were a prime reason for the transaction.¹³⁸

130. Bird testified that the utilities are pursuing data centers “on a combined basis because financing is going to be available to us to finance all of our investments at a lower financing cost.”¹³⁹

131. Public interconnection queue entries show Broadview-area requests at the 230 kV Broadview Substation.¹⁴⁰

132. DEQ-related records identify approximately 1,785 MW of gas-fired generation.¹⁴¹ 133. The record does not establish who pays for related transmission, gas, and interconnection upgrades.

134. The record does not contain the Quantica development agreement.

135. The record does not establish stranded-cost protections.

136. Bird 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.”¹⁴²

¹³⁶ Hrg. Tr. p. 403.

¹³⁷ Hrg. Tr. p. 739:6-8.

¹³⁸ Hrg. Tr. 347-349.

¹³⁹ Hrg. Tr. p. 356:2-5.

¹⁴⁰ Post-Hearing Exhibit 069 – 073 (pending and offers of proof requested).

¹⁴¹ Post-Hearing Exhibit 069 – 073 (pending and offers of proof requested).

¹⁴² Hrg. Tr. p. 368-369.

137. The record does not establish whether Colstrip capacity will be used after Mercuria for large-load customers.

138. Post transaction, if Bright Horizons decided to put the entire unregulated share of Puget Colstrip into another entity outside of Montana, there is nothing the Montana Commission could do about that.¹⁴³

139. Bird testified that NorthWestern acquired the Puget and Avista shares of Colstrip because without those shares, it only owned a 30% interest of the Colstrip plant, and it was necessary to acquire the additional shares so NorthWestern had control “to decide what's going to happen with Colstrip in the future, not an out-of-state interest.”¹⁴⁴

140. Mr. Bird testified that control of Colstrip is important, but will be lost post transaction:

Q: [Tranel]: Great. And I really appreciate this, Mr. Bird. And I just want to point out here on this chart, because what you're telling the Commission is control is important; yes? That's what you just said.

A: [Bird]: It is.

Q: Okay. And -- and your decisions about how you use Colstrip are really important. That's what you just said; correct?

A: Correct.

Q: Okay. So what happens with this transaction is Northwest [sic] Energy Group becomes a subsidiary of what will be Bright Horizon; correct?

A: Correct.

Q: Okay. So what if Bright Horizon and the board, the six-member board, is all of a

¹⁴³ Hrg. Tr. 482-483.

¹⁴⁴ Hrg. Tr. p. 390.

sudden taken over by a bunch of Greenies who hate coal, and they vote six to five, no more coal, out, you're done. You don't have any say over that, do you?

A: That is correct.¹⁴⁵

141. Post-transaction, Bright Horizons will “be governed by an eleven-member board of directors comprised of six directors designated by Black Hills (including the chair) and five designated by NorthWestern.”¹⁴⁶

142. Commissioner Molnar asked Brian Bird why Montana should take the risk of relinquishing control over Colstrip. Bird did not provide an answer as to why, but instead said that there was no concern about having a minority number of votes on the board.¹⁴⁷

143. Lail testified that “NorthWestern Energy existing shareholders, their stock will be exchanged into the Black Hills shares, which will then become traded as Bright Horizons Energy. And that will be an exchange ratio of .98 for every share.”¹⁴⁸

144. The Montana Commission will continue to regulate NorthWestern, but its status in the holding company will change and go to a minority interest as one wholly owned subsidiary in an eight state holding company that has fiduciary obligations to make money for its shareholders; this transaction changes who decides where the money goes, and where it comes from.¹⁴⁹

145. Lail testified that while the Commission will retain regulatory authority over the Montana utility, today “Montana is a bit over 80 percent of our business. In the combined business, it’s a third of the business. But the control in the sense of that word, 100 percent of the equity interest of the Montana utility is currently held within NorthWestern Energy

¹⁴⁵ Hrg. Tr. p. 391:6 – 392:3.

¹⁴⁶ MCC 052, p. 32/324.

¹⁴⁷ Hrg. Tr. p. 447-448.

¹⁴⁸ Hrg. Tr. p. 237:6-10.

¹⁴⁹ Hrg. Tr. p. 249:9-25.

Group.”¹⁵⁰

146. Walter Schweitzer for the Montana Farmers’ Union testified that this docket is “all about the Public Service Commission’s ability to protect me. You can do that now when you are overseeing NorthWestern Energy when 90 percent of that is here in Montana, but if we move forward with this acquisition and we lose to where we only have 30 percent of what you guys have oversight on and we’re at the mercy of a huge company that can move the shells around a little bit with the peas underneath it to keep you guys.”¹⁵¹

147. Commissioner Pinocci asked Mr. Schweitzer about conditions that Montana Farmers Union could agree to, and Schweitzer testified that “I am concerned that they down the road wouldn’t follow through with the protections and I don’t believe you guys will have the power as the Public Service Commission to enforce those protections when you only are dealing with about a third of this monster.”¹⁵²

148. Schweitzer testified that members of the Montana Farmers Union should not have to bear the costs of putting data centers on the Montana grid.¹⁵³

149. Bird testified investors will go where they get better returns on their money.¹⁵⁴ 150. In the eight state merged entity, the return on equity from the Montana commission is one of the lowest in the eight states.¹⁵⁵

151. NorthWestern’s fiduciary duty is to its shareholders, not to its customers.¹⁵⁶ The

¹⁵⁰ Hrg. Tr. 228:16-24.

¹⁵¹ Hrg. Tr. p. 822.

¹⁵² Hrg. Tr. p. 826.

¹⁵³ Hrg. Tr. p. 830.

¹⁵⁴ 350 Montana Exhibit 056 (Brian Bird PBS Interview Transcript), p. 3; see also Hrg. Tr. pp. 367–368, p. 383; p. 102; pp. 608–609.

¹⁵⁵ Hrg. Tr. p. 102; p. 333; 350 Montana Responses to Data Request PSC-044, pp. 15–16; Prefiled Direct Testimony of Tanya Bodell.

¹⁵⁶ Hrg. Tr. p. 606:4-11.

utility's duty is to maximize returns for its shareholders.¹⁵⁷

152. Bright Horizons holding company will have a fiduciary duty to its investors to invest capital in the states where they receive the highest return on their investment.¹⁵⁸

153. The new holding company will have an incentive to invest in Wyoming, over Montana, as it will return more on its money there.¹⁵⁹ Lail testified that the parent company will allocate capital and that "ultimately it's not where that initial cash flow comes from, it's recovery over time."¹⁶⁰

154. Lail testified that the "regulatory diversity that is being referred to there is simply that the new combined entity would be over eight jurisdictions, so there's not a single concentration amongst any of them."¹⁶¹

155. Bird testified that the Commission's regulatory jurisdiction over what happens post-transaction is a function of NorthWestern's role in this post-merger company."¹⁶²

156. In response to questions from Commissioner Molnar, Lail testified that the combined entity would be coming in for a rate case: "in this docket we're not asking to change rates" but "we'll be -- in the future we'll be in for those, we'll be talking about those, giving you the math on what is (*sic*) costs to serve customers."¹⁶³

¹⁵⁷ Hrg. Tr. p. 606:16-24.

¹⁵⁸ Hrg. Tr. p. 606-607.

¹⁵⁹ Hrg. Tr. p. 448; see also Confidential Exhibit MCC-051, p. 26; Prefiled Direct Testimony of Tanya Bodell, pp. 20, 29; 350 Montana Responses to Data Request PSC-044, pp. 15-16.

¹⁶⁰ Hrg. Tr. pp. 201-202:14-18.

¹⁶¹ Hrg. Tr. p. 199:7-10.

¹⁶² Hrg. Tr. p. 372 - 373.

¹⁶³ Hrg. Tr. p. 209:8-11; 20-21.

V. There is no evidence of benefits and concrete evidence of harm to captive Montana ratepayers.

157. Lail testified that “much has been made” of the fact that they didn’t put any quantifiable number to the claim that there may be potential benefits to the transaction, and that “We’ve all (*sic*) those customer experiences where bigger wasn’t better.” ¹⁶⁴

158. Bird testified that “The Joint Applicants have not concluded -- conducted any studies quantifying rate impacts.” ¹⁶⁵

159. The utilities claim a benefit of the merger is reduced cost of debt, but have not “presented this Commission in this docket with a quantified number of the benefits of the merger of what the cost of debt will change the rates for Montana customers.” ¹⁶⁶

160. Lail testified that the utilities will seek all post-closing transition costs from captive ratepayers. ¹⁶⁷

161. Bodell testified that “there is potentially hundreds of millions of dollars of transition costs associated with this merger. We don’t have an actual number in the record. In the confidential docket we’ve gotten some indicators and a share of that is going to most likely be placed onto NorthWestern and those would be the reasons why I would anticipate there is going to be upward stress on the tariffs and we haven’t heard anybody say there might be lower rates as a result of this.” ¹⁶⁸

162. The date of closing was not defined. Whether some of the bankers costs of \$60 million will be invoiced post-closing was not explained. ¹⁶⁹

¹⁶⁴ Hrg. Tr. p. 211:14-24.

¹⁶⁵ Hrg. Tr. 402-403.

¹⁶⁶ Hrg. Tr. p. 243:1-6.

¹⁶⁷ Hrg. Tr. p. 214:17-23; MCC-28 and MCC-29 (transition cost data requests); MCC-10; Tr. 239:9-14.

¹⁶⁸ Hrg. Tr. p. 974:16-25.

¹⁶⁹ MCC-052 (SEC Form S-4 Registration Statement), p. 27, p. 85, and p. 102; Merger

163. When asked at the hearing to identify benefits the utility can only achieve with the acquisition, Lail identified “access to capital” and “operational efficiencies” in general terms, without once saying data center opportunities were a benefit of the transaction.¹⁷⁰

164. The unredacted record shows that the Joint Applicants claimed gross merger synergies of [BEGIN CONFIDENTIAL] [END CONFIDENTIAL] which is for all 8 states, are fundamentally dependent on systematic local utility job cuts rather than operational efficiencies. PwC’s “Value Creation Workstream Update, withheld from intervenors until the issuance of Protective Order 8043f, relies on the [BEGIN CONFIDENTIAL] [END CONFIDENTIAL].¹⁷¹

165. The claimed benefits of \$48 to \$70 million (higher than the confidential number) is a gross number from which the costs to achieve the number must be subtracted.¹⁷²

166. MCC’s testimony was that the claim of benefits was supported by the confidential documents, so the lower claim in the confidential numbers would be the controlling range of claimed benefits, none of which are quantified.¹⁷³

167. The top end claimed benefit of \$70 million was presented as a one-time net present value number; no Joint Applicant witness presented any testimony that it was an annualized or ongoing number.¹⁷⁴

168. Transition costs for a transaction of this nature are between [BEGIN CONFIDENTIAL] [END CONFIDENTIAL].¹⁷⁵

Agreement, Section 1.02; Hrg. Tr. p. 119:22–25, p. 120:1–12, p. 245:2–15; see also Joint Applicants' Responses to 350 Montana Data Request 350-09.

¹⁷⁰ Hrg. Tr. p. 327-329; MCC 010.

¹⁷¹ Hrg Tr. Confidential Day 2 p. 282:6-22; p. 322:1-7 (citing FERC benchmarking data).

¹⁷² Hrg Tr. Confidential Day 2 p. 286:9-19.

¹⁷³ Hrg. Tr. p. 866-868.

¹⁷⁴ Hrg. Tr. p. 989.

¹⁷⁵ Hrg Tr. Confidential Day 2 p. 288- 289.

169. The dollar cost to achieve this transaction will incur transition costs of [BEGIN
CONFIDENTIAL] [END CONFIDENTIAL.]¹⁷⁶

170. Consumer Counsel witness Mr. Smith testified that the transition costs are a cost to achieve the claimed benefits of the transaction.¹⁷⁷

171. Smith testified that “there is a number of identified benefits that they expect to receive out of the proposed transaction. You know, some of those will probably be achieved, others may be a little more doubtful.”¹⁷⁸

172. Lail did not know at the time of hearing what the transaction costs to date are.¹⁷⁹

173. Transition and transaction costs must be subtracted from the gross number, as those are “costs to achieve” any claimed benefits, regardless of who pays them.¹⁸⁰

174. The Joint Applicants’ claimed operational efficiencies were not quantified. As of the date of the hearing, Mr. Smith testified “what they have at this point is they don’t have a fully detailed integration plan. What they have at this point are high-level estimates of areas in which savings could occur.”¹⁸¹

175. The Joint Applicant’s claimed operational efficiencies have no timeline, are not set to materialize by a certain date, and may never be realized.¹⁸²

176. That gross highest number of \$70 million is reduced by the \$10 million MCC settlement one-time rate payer credit (which is \$18 once to each ratepayer household in Montana).¹⁸³

¹⁷⁶ Hrg Tr. Confidential Day 2 p.290:1-6.

¹⁷⁷ Hrg. Tr. p. 874:14-17; p. 897:3-5.

¹⁷⁸ Hrg. Tr. p. 910:16-20.

¹⁷⁹ Hrg Tr. Confidential Day 2 p.291:11-15.

¹⁸⁰ Hrg Tr. Confidential Day 2 p. 286-287.

¹⁸¹ Hrg. Tr. p. 894-896.

¹⁸² Hrg. Tr. p. 894-896.

¹⁸³ Hrg. Tr. p. 132:24 – 133:5; p. 866.

177. That gross highest number of \$70 million is reduced by bankers' fees of \$60 million, which are a cost to achieve the claimed "benefits" of the transaction, regardless of who pays those costs.¹⁸⁴

178. The record does not establish that the merger creates net benefits to Montana customers. In response to questions from Commissioner Molnar to quantify the benefits of the transaction, Lail pointed to benchmarks in confidential information provided in response to MCC 010. No specific benefits were provided.¹⁸⁵

179. At hearing, Lail testified that the cost allocation manual, which allocates common costs, has not been finalized and will not be finalized prior to the Commission acting on the proposed transaction.¹⁸⁶

180. Bodell testified that even accounting for the \$10 million settlement "there is harm to Montana customers and here is why":

You start with \$10 million, that's the only valid number with respect to the benefits to the Montana customers that's in the record. The net operating losses are an offset to that. These are \$800 million of net operating losses," which "have value" and "with a new merger are able to flow up in the corporate entity."¹⁸⁷

VI. Colstrip, Mercuria, and large-load optionality remain unresolved.

181. Joint Applicants objected to cross-examination on what will happen to Colstrip shares, which was over-ruled.¹⁸⁸

182. At the hearing, Lail testified that Quantica could receive the Puget share, and the

¹⁸⁴ Hrg. Tr. p. 245:5 – 246:4; p. 125:7-12; MCC 052.

¹⁸⁵ Hrg. Tr. 185 – 188.

¹⁸⁶ Hrg. Tr. p. 142:6-9; p. 143:4-6; p. 144:16-20.

¹⁸⁷ Hrg. Tr. p. 982-983.

¹⁸⁸ Hrg. Tr. p. 374-375.

profits from that will “get uploaded to Bright Horizons” the parent company “for their discretionary use.”¹⁸⁹

183. The amount of money that can get uploaded is unlimited by the ring-fencing until there is a degradation in the credit rating. Until that point, there is no real limit to what can be uploaded to the Bright Horizon holding company in the new enterprise being proposed.¹⁹⁰

184. NorthWestern has contracted with Mercuria for the Puget shares, through 2027.¹⁹¹

185. The profit from that contract will flow up to the parent company holding Mercuria as a subsidiary. Today, that parent company is NorthWestern Energy Group. Post transaction, those profits will flow up to Bright Horizon as the parent of the combined utility.¹⁹²

186. When asked whether NorthWestern intended to use the Puget share to serve data centers in Montana, Bird answered “it’s a possibility.”¹⁹³

187. The Commission prevented follow-up questions on whether NorthWestern intended to use the Puget share to serve Quantica.¹⁹⁴

188. The Commission prevented cross-examination on whether NorthWestern intended to use the Puget share of Colstrip to serve large load customers in Montana.¹⁹⁵

189. Schneider identified a significant evidentiary gap in the record, that the “large load tariff relates to the service, proposed service of loads above 5 megawatts, including a

¹⁸⁹ Hrg. Tr. p. 184:7-25.

¹⁹⁰ Hrg. Tr. pp. 929-930.

¹⁹¹ Hrg. Tr. p. 375:14-24.

¹⁹² Hrg. Tr. p. 376:20-24; p. 377; 378:13-16.

¹⁹³ Hrg. Tr. p. 395:21 – 396:4.

¹⁹⁴ Hrg. Tr. p. 396.

¹⁹⁵ Hrg. Tr. p. 589-590. Intervenors made an offer of proof as to the need for the Commission to consider how the Puget share would be used and the impact the transaction will have on who controls that share and who will benefit from it. Hrg. Tr. p. 591.

special provision for large loads greater than 50 megawatts and the filing in the large load tariff is clear that it is intended to serve not only data centers but also returning large customer group choice customers that have been in the competitive market since deregulation.” ... “Those new -- those potential large customer choice loads have not been included in the Integrated Resource Plan.”¹⁹⁶

190. When Intervenors attempted to ask Mr. Merkel at hearing “what was the magnitude of the potential returning choice customers that were not included” in the IRP, no answer was provided.¹⁹⁷

191. On the third day of the hearing, the Commission noted that “the question of how the merged company will handle the Colstrip 370 PU resource” is relevant to this matter, after precluding cross-examination on that issue of Lail and Bird in earlier testimony.¹⁹⁸

192. Lail testified that how the costs relating to the Colstrip plant will be handled and allocated are not final or addressed, and are deferred to later proceedings.¹⁹⁹

193. NorthWestern filed its Application for a Large New Load Service Tariff Rule on March 31, 2026, in Docket No. 2026.04.023, establishing minimum service terms, collateral requirements, and exit fees for new loads of 5 MW or greater, with direct Commission review required for executed Electric Service Agreements for “Very Large Customers” of 50 MW or greater.²⁰⁰

194. At the hearing, Joint Applicants objected to any questions about data centers and Colstrip as outside scope of the merger transaction.²⁰¹

¹⁹⁶ Hrg. Tr. p. 1027.

¹⁹⁷ Hrg. Tr. p. 1027; p. 629:1–4, p. 629:17–21, p. 631:2–10, p. 633:8–13; 3; p. 969:10–19.

¹⁹⁸ Hrg. Tr. p. 592:17–21.

¹⁹⁹ Hrg. Tr. p. 144:21–25.

²⁰⁰ Docket No. 2025.10.078 Staff Fact Sheet (May 1, 2026).

²⁰¹ See e.g., as one example only, Hrg. Tr. 384, where the mental gymnastics require to make the

195. The Commission limited cross-examination of documents admitted into the evidentiary record by artificially separating inquiry based on whether a slide or paragraph was titled “merger” or if a slide or paragraph was titled “data centers.”²⁰² The Commission then over-ruled objections on relevance of Colstrip issues.²⁰³

196. Then, Commissioner questions on impacts of data centers and whether they would increase rates to captive Montana customers was objected to, and the objection was sustained, meaning that Commissioners were not allowed to explore direct impact of data centers on rates to captive Montana customers.²⁰⁴

197. Commissioner questions on how the Puget share of Colstrip would be used and whether it could be used to benefit captive ratepayers were objected to on the basis of relevance. Those objections were over-ruled.²⁰⁵

198. Bird testified that “in some parts of the country, customers’ rates have gone up because of data centers.”²⁰⁶

199. Lail testified, in response to a question from Commissioner Pinocci about whether the addition of the Puget and Avista shares of Colstrip added value to the merger, that “certainly that conversation of why Colstrip, why it serves our customers, why it’s necessary to be able to serve our customers in Montana today and to be resource adequate, why control is necessary -- that was certainly a fundamental part of that.”²⁰⁷

objections began to reach comical levels: (Norcott) “the Quantica project and some of the information on this slide, I think, are -- this is a conversation with our investors about our first quarter at NorthWestern. It talks about many things. So we can’t conflate, just because it’s about data centers, it’s also – that’s connected to the merger. I continue to urge the Commission to deny this line of questioning as irrelevant.”

²⁰² Hrg. Tr. pp. 385 – 389; Hrg. Tr. pp. 583-587 (limiting cross on admitted exhibit 350 Montana 62).

²⁰³ Hrg. Tr. p. 389:8-14.

²⁰⁴ Hrg. Tr. p. 415-416.

²⁰⁵ Hrg. Tr. p. 423.

²⁰⁶ Hrg. Tr. p. 416:21-22.

²⁰⁷ Hrg. Tr. p. 157:19 – 158:11.

200. Lail testified under oath that NorthWestern and Black Hills' systems are not connected, and that the utilities have no plans to connect them.²⁰⁸

Q: [Tranel] at Lines 3 to 6 of your settlement testimony, it's your sworn statement to this commission that the NorthWestern and Black Hills grids are not connected; yes?

A: [Lail] Yes. It notes here that the Montana system for Black Hills and NorthWestern's system are not electrically connected.²⁰⁹

Q: And then you go on to say that there are no plans to connect them; correct?

A: That's correct.

Q: Okay. And that's your sworn testimony to this Commission; yes?

A: Yes.

201. When asked specifically about whether there are plans in place to connect transmission on Path 80, Lail denied that there were any plans to do so:

Q: [Tranel] Is there a specific transmission project on Path 80 today?

A: As my testimony says here, the Joint Applicants don't have a current plan, but we certainly expect to look at that if there's customer benefit to Montanans to connecting those two systems.²¹⁰

[...]

Q: Thank you, Ms. Lail. My question – is there a specific project today? A: There has been no plan made on Path 80.²¹¹

²⁰⁸ Hrg. Tr. p. 146:7-19.

²⁰⁹ Hrg. Tr. p. 146:11-13, referring to Lail Settlement Testimony on MCC Settlement, p. 10.

²¹⁰ Hrg. Tr. p. 150:6-12; 350 Exh. 11, Aug. 18, 2026 announcement investor call.

²¹¹ Hrg. Tr. p. 150:21-23.

202. In direct contradiction to Lail’s sworn testimony, the documents produced by the Joint Applicants show projects that would interconnect the systems, including exploration of gas resources and storage and transmission interconnections.²¹²

203. Joint Applicants are actively working on a [BEGIN CONFIDENTIAL] [END CONFIDENTIAL.]²¹³

204. The cost for the Joint Applicants [BEGIN FURTHER REDACTION UNDER PROTEST] [END FURTHER REDACTION UNDER PROTEST] was [BEGIN CONFIDENTIAL] [END CONFIDENTIAL]. Lail, CFO of NorthWestern, was unable to identify what portion of that cost NorthWestern was responsible for.²¹⁴

205. The cost estimate for the [BEGIN FURTHER REDACTION UNDER PROTEST] [END FURTHER REDACTION UNDER PROTEST] is [BEGIN CONFIDENTIAL] [END CONFIDENTIAL.]²¹⁵

206. This transmission line is Path 80, which is not in NorthWestern’s financial plan.²¹⁶

207. Bird testified about Path 80: “There is great advantages of connecting the two systems for efficiencies to serve our customers from a larger access of resources. And we would want to provide the flexibility.”²¹⁷

²¹² Hrg. Tr. p. 91:9-19; Confidential Hrg. Tr. Day 2 p. 298-301; pp. 300:20–25, 306:20–25, 325:22–326:8; Confidential Exhibit PSC-008c [BEGIN CONFIDENTIAL] [END CONFIDENTIAL], Slide 4, Slide 6; Confidential Exhibit PSC-008c [BEGIN CONFIDENTIAL] [END CONFIDENTIAL]; Confidential Exhibit PSC-001 (Transmission Due Diligence), Slide 33, Slide 39, Slide 40; Confidential Exhibit PSC-001 (Supply Due Diligence), Slide 11, Slide 12; Day 2 Confidential Hearing Transcript.

²¹³ Confidential Hrg. Tr. Day 2 p. 301:1-20.

²¹⁴ Confidential Hrg. Tr. Day 2 p. 305.

²¹⁵ Confidential Hrg. Tr. Day 2 p. 306-307.

²¹⁶ Hrg. Tr. p. 341:9-14.

²¹⁷ Hrg. Tr. p. 360:5-9.

208. Jason Merkl testified that generation from the Yellowstone Gas Plant can flow to Colstrip, which would put it in the transmission line to go to Meta’s servers in Cheyenne:

Q: [Tranel]: ... the power that's generated from the Yellowstone gas facility in Laurel, can that flow to Colstrip?

A: The power at Yellowstone Generating Station joins to the system that connects just adjacent to that, all of our systems are connected through transmission. So can it flow that direction? It could.²¹⁸

209. Lail was asked about Linn Evans’ statement to investors in August of 2025 about “very specific projects about how we could advantageously connect our systems” and Lail reiterated that there are no plans for “connecting those two systems. They are not today. There are no plans to do so. But it’s something we’re excited about considering.”²¹⁹

210. Jones testified that the Ready Wyoming transmission line from Cheyenne, Wyoming to Donkey Creek in Gillette, Wyoming cost \$350 million and was paid for by “retail customers” including Microsoft.²²⁰

VII. NorthWestern’s Quantica development agreement was material and not produced

211. Five days after the hearing, a Quantica press release disclosed a 5,100-acre campus with 7,235 MW maximum additional capacity; the interconnection Broadview queue; and a 1,785 MW gas-fired generation.²²¹

²¹⁸ Hrg. Tr. p. 583:8-15.

²¹⁹ Hrg. Tr. 148:7-12.

²²⁰ Hrg. Tr. p. 671.

²²¹ Post hearing exhibits 69-73.

212. DEQ emails that were first published post hearing triggered a motion to reopen filed on June 5, 2026.²²²

213. The physical scale and complexity of the Broadview development changed materially on May 20, 2026, when Quantica publicly announced the filing of formal interconnection applications with NorthWestern for an 1,100 MW “Big Sky Campus” in Broadview, Montana. These active applications cover a maximum of 7,235 MW of total capacity comprising renewable generation, battery storage, and gas-fired firming generation.²²³

214. Unredacted investment banking presentations prepared by Goldman Sachs and presented to the Black Hills Board of Directors justify the transaction based on **[BEGIN CONFIDENTIAL] [END CONFIDENTIAL]** and advise that the merged entity would provide the financial capacity to build data center infrastructure to boost EPS growth to an aggressive 5% to 7% range.²²⁴

215. While the Joint Applicants publicly assert that their base capital plans excludes data center-related capital, NorthWestern’s highly confidential internal due diligence files identify **[BEGIN CONFIDENTIAL] [END CONFIDENTIAL]** as the primary driver to “Improve Natural Gas Transmission Capacity” and detail a planned **[BEGIN CONFIDENTIAL] [END CONFIDENTIAL]** project located geographically proximate to **[BEGIN FURTHER REDACTION UNDER PROTEST] [END**

²²² Post hearing exhibits 69-73.

²²³ Post hearing exhibits 69-73.

²²⁴ Confidential Exhibit MCC-051 (Goldman Sachs Presentation to the Board of Directors, June 23, 2025), Slide 11 & Slide 13; Confidential Exhibit MCC-051 (Goldman Sachs Presentation to the Board of Directors, June 9, 2025); Confidential Hrg. Tr. pp. 681–683, pp. 687–688; Prefiled Direct Testimony of Tanya Bodell Regarding Confidential Information, pp. 26–27.

FURTHER REDACTION UNDER PROTEST.]²²⁵

VIII. The settlements do not resolve the public interest issues

216. The JEA settlement does not resolve Colstrip cost allocation issues.²²⁶

217. The JEA settlement doesn't resolve whether existing customers should pay for future large load or transmission costs.²²⁷

218. The Montana Consumer Counsel settlement did not address the outstanding cost allocation issues related to Colstrip.²²⁸

219. The Montana Consumer Counsel did not address the outstanding issues related to the large load tariff or the Integrated Resource Plan (IRP).²²⁹

SERVED ON Joint Applicants on September 9, 2026, under protest, reserving all objections, solely to comply with Order 80430 ¶108 and without waiving objections thereto.

By: /s/ Monica J. Tranel
*Attorneys for 350 Montana and
the Montana Farmers Union*

²²⁵ Confidential Exhibit PSC-001 (NorthWestern Transmission Due Diligence Presentation), Slide 33, Slide 39, and Slide 40; Confidential Exhibit PSC-001 (NorthWestern Supply Due Diligence Presentation), Slide 4, Slide 11, and Slide 12; Day 1 Public Hearing Transcript, p.103:21–23; Joint Applicants' Responses to 350 Montana Data Request 350-087(a) and 350-090.

²²⁶ Hrg. Tr. p. 524.

²²⁷ Hrg. Tr. p. 524.

²²⁸ Hrg. Tr. p. 877.

²²⁹ Hrg. Tr. p. 878.

FURTHER REDACTED UNDER PROTEST APPENDIX DOCUMENT A

INTERVENORS PROPOSED FINDINGS OF FACT

CERTIFICATE OF SERVICE

I hereby certify that on September 9, 2026 **350 MONTANA and the MONTANA FARMERS UNION MOTION AND SUPPORTING BRIEF TO RECONSIDER ORDER 8043**n was served on the Joint Applicants under protest, reserving all objections, solely in order to comply with Order 8043o ¶108 and without waiving objections to Order 8043o ¶108, via email to the email list below.

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By: /s/ Monica Tranel

FURTHER REDACTED UNDER PROTEST APPENDIX DOCUMENT A
INTERVENORS PROPOSED FINDINGS OF FACT