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**SOUTH DAKOTA PUBLIC
UTILITIES COMMISSION**

195 FERC ¶ 61,160
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Laura V. Swett, Chairman;
David Rosner, Lindsay S. See,
Judy W. Chang, and David LaCerte.

Black Hills Corporation
NorthWestern Energy Group, Inc.

Docket No. EC26-44-000

ORDER AUTHORIZING MERGER AND DISPOSITION OF JURISDICTIONAL
FACILITIES AND ACQUISITION OF SECURITIES

(Issued May 29, 2026)

1. On December 22, 2025, pursuant to sections 203(a)(1) and 203(a)(2) of the Federal Power Act (FPA)¹ and Part 33 of the Commission's regulations,² Black Hills Corporation (Black Hills), on behalf of its subsidiaries and affiliates that are public utilities (Black Hills Public Utilities),³ and NorthWestern Energy Group, Inc. (NorthWestern Group), on behalf of its subsidiaries and affiliates that are public utilities, (NorthWestern Public Utilities)⁴ (NorthWestern Group, together with Black Hills, Applicants) submitted an application (Application) seeking authorization for a transaction through which the Black Hills and NorthWestern Group holding companies will complete an all-stock merger (Proposed Transaction).

¹ 16 U.S.C. § 824b(a)(1), (a)(2).

² 18 C.F.R. pt. 33 (2025).

³ Applicants identify the following as the Black Hills Public Utilities: Black Hills Colorado Electric, LLC (Black Hills Colorado); Black Hills Colorado IPP, LLC (Black Hills Colorado IPP); Black Hills Colorado Wind, LLC (Black Hills Colorado Wind); Black Hills Electric Generation, LLC (Black Hills Electric Generation); Black Hills Power, Inc. (Black Hills Power); Black Hills Wyoming, LLC (Black Hills Wyoming); and Cheyenne Light, Fuel and Power Company (Cheyenne Light). Application at 1 n.4.

⁴ Applicants identify the following as the NorthWestern Public Utilities: NorthWestern Corporation; NorthWestern Energy Public Service Corporation (NorthWestern Energy); and NorthWestern Colstrip 370Pu LLC (NorthWestern Colstrip 370). *Id.* at 2 n.6.

2. We have reviewed the Proposed Transaction under the Commission's Merger Policy Statement.⁵ As discussed below, we authorize the Proposed Transaction as consistent with the public interest.

I. Background

A. Description of Applicants and Affiliates

1. Black Hills and the Black Hills Public Utilities

3. Applicants state that Black Hills is a publicly traded energy holding company that conducts its electric utility business through three wholly owned franchised public utility operating company subsidiaries: Black Hills Power, Cheyenne Light, and Black Hills Colorado (collectively, Black Hills Electric Opcos). Applicants state that Black Hills also conducts additional market-regulated business through four subsidiaries that are engaged in the generation and sales of electricity pursuant to market-based rate authority: Black Hills Electric Generation, Black Hills Colorado IPP, Black Hills Colorado Wind, and Black Hills Wyoming.⁶

4. Applicants state that Black Hills, through its subsidiary Black Hills Utility Holdings, Inc., also owns and operates Black Hills Shoshone Pipeline, LLC, an interstate natural gas pipeline that has a tariff on file with the Commission. According to Applicants, a number of other Black Hills' subsidiaries own intrastate natural gas transmission and distribution facilities located in Arkansas, Colorado, Iowa, Kansas, Nebraska, and Wyoming.⁷ Applicants also state that Black Hills' indirect subsidiary,

⁵ *Inquiry Concerning the Comm'n's Merger Pol'y Under the Fed. Power Act: Pol'y Statement*, Order No. 592, FERC Stats. & Regs. ¶ 31,044 (1996) (cross-referenced at 77 FERC ¶ 61,263) (Merger Policy Statement), *reconsideration denied*, Order No. 592-A, 79 FERC ¶ 61,321 (1997); *see also FPA Section 203 Supplemental Pol'y Statement*, 120 FERC ¶ 61,060 (2007) (Supplemental Policy Statement), *order on clarification & reconsideration*, 122 FERC ¶ 61,157 (2008); *Transactions Subject to FPA Section 203*, Order No. 669, 113 FERC ¶ 61,315 (2005), *order on reh'g*, Order No. 669-A, 115 FERC ¶ 61,097, *order on reh'g*, Order No. 669-B, 116 FERC ¶ 61,076 (2006); *Revised Filing Requirements Under Part 33 of the Comm'n's Reguls.*, Order No. 642, FERC Stats. & Regs. ¶ 31,111 (2000) (cross-referenced at 93 FERC ¶ 61,164), *order on reh'g*, Order No. 642-A, 94 FERC ¶ 61,289 (2001).

⁶ Application at 3-4.

⁷ Applicants state that Black Hills' subsidiaries that own intrastate natural gas transmission and distribution facilities include Black Hills Energy Arkansas, Inc.; Black Hills Colorado Gas, Inc.; Black Hills/Iowa Gas Utility Company, LLC; Black Hills/Kansas Gas Utility Company, LLC; Black Hills Nebraska Gas, LLC; Black Hills

Wyodak Resources Development Corporation, owns and operates a coal mine in Wyoming's Powder River Basin.⁸

5. Applicants state that Black Hills has two institutional upstream investors that each own greater than 10 percent of Black Hills – BlackRock Inc. (BlackRock) and The Vanguard Group, Inc. (Vanguard). Applicants state that BlackRock and Vanguard have received blanket authorization under FPA section 203(a)(2) to acquire up to 20 percent of the voting securities of public utilities subject to certain commitments and reporting requirements designed to prevent them from exercising control over such public utilities.⁹ Applicants represent that other than BlackRock and Vanguard, no individual shareholder owns a 10 percent or greater interest in Black Hills.¹⁰

6. Applicants state that Black Hills Power generates, transmits, and distributes electricity to retail customers in South Dakota, Wyoming, and Montana. Black Hills Power owns approximately 591 megawatts (MW) of generation capacity within the Western Area Power Administration-Colorado Missouri (WACM) balancing authority area, and has approximately 125.7 MW of long-term purchases. Applicants state that Black Hills Power has market-based rate authority.¹¹ Applicants state that Black Hills Power also owns transmission facilities which are operated pursuant to a Commission-accepted Joint Open Access Transmission Tariff (OATT), and that Black Hills Power is the administrator of the Joint OATT. Applicants state that the Joint OATT provides for

Wyoming Gas, LLC; and Rocky Mountain Natural Gas LLC (Black Hills Intrastate Gas Utility Providers). In addition, Black Hills Energy Arkansas, Inc., Black Hills Wyoming Gas, LLC, and Rocky Mountain Natural Gas LLC each own natural gas storage facilities. Application at n.14.

⁸ Application at 5.

⁹ *Id.* at 4 n.10 (citing *BlackRock, Inc.*, 191 FERC ¶ 61,052 (2025) (granting request for reauthorization of BlackRock's blanket authorization originally granted in 2010 for an additional three years)). Applicants state that Vanguard's current blanket authorization was filed on November 7, 2022, in Docket No. EC19-57-000, and became effective by operation of law as of May 7, 2023. *The Vanguard Grp. Inc.*, Notice of Filing Granted by Operation of Law, Docket No. EC19-57-002 (issued May 8, 2023). The Commission extended Vanguard's blanket authorization for an additional three years on December 31, 2025. *The Vanguard Grp., Inc.*, 193 FERC ¶ 62,198 (2025).

¹⁰ Application at 3-4.

¹¹ *See id.* at 6 (citing *Rocky Road Power, LLC*, 87 FERC ¶ 61,163 (1999) (granting Black Hills Corporation market-based rate authority)).

transmission service over the transmission facilities of Black Hills Power, Basin Electric Power Cooperative, and Powder River Electric Corporation.¹²

7. Applicants state that Cheyenne Light is a vertically integrated franchised public utility with captive customers that generates, transmits, and distributes electricity to retail electric customers in southeastern Wyoming. Applicants state that Cheyenne Light owns approximately 197 MW of generation capacity in the WACM balancing authority area and has approximately 339.7 MW of long-term firm power purchases. Applicants state that Cheyenne Light has market-based rate authority.¹³ Applicants state that Cheyenne Light also owns transmission facilities and offers transmission service pursuant to a Commission-accepted OATT.¹⁴

8. Applicants state that Black Hills Colorado is a vertically integrated franchised public utility with captive customers that generates, transmits, and distributes electricity to retail electric customers in south central Colorado. Applicants state that Black Hills Colorado owns approximately 343 MW of generation capacity in the Public Service Company of Colorado (PSCo) balancing authority area and has approximately 380.1 MW in long-term firm power purchases. Applicants state that Black Hills Colorado has market-based rate authority.¹⁵ Applicants state that Black Hills Colorado also owns transmission facilities and provides transmission service pursuant to a Commission-accepted OATT.

9. Applicants state that Black Hills Electric Generation, Black Hills Colorado IPP, and Black Hills Colorado Wind, each hold interests in generation capacity in the PSCo balancing authority area, and do not own, operate, or control any transmission facilities other than the limited facilities necessary to interconnect its generation facility with the grid. The facilities owned by Black Hills Electric Generation, Black Hills Colorado IPP, and Black Hills Colorado Wind, have 59.4, 200, and 29 MW of capacity respectively.

10. Applicants state that Black Hills Colorado IPP has market-based rate authority.¹⁶ Applicants state that Black Hills Colorado IPP is an indirect subsidiary of Black Hills

¹² *Id.* at 5-6.

¹³ *Id.* at 8 (citing *Cheyenne Light, Fuel & Power Co.*, Docket No. ER08-401-000 (Feb. 26, 2008) (delegated order) (granting Cheyenne Light market-based rate authority)).

¹⁴ *Id.* at 7-8.

¹⁵ *Id.* at 9 (citing *Black Hills/Colo. Elec. Util. Co., L.P.*, Docket No. ER08-1385-000 (Oct. 3, 2008) (delegated order) (accepting market-based rate tariff)).

¹⁶ *Id.* at 11 (citing *Black Hills Colo. IPP, LLC*, Docket No. ER11-2724-000 (May

which owns 50.1 percent of the membership interests of Black Hills Colorado IPP. Applicants state that the remaining membership interests of Black Hills Colorado IPP are held by AIA Colchis LLC (AIA Colchis), a special-purpose entity formed for the purpose of investing in energy infrastructure projects. Applicants state that the owner of AIA Colchis is an individual, Jason Zibarras.¹⁷

11. Applicants state that Black Hills Colorado Wind owns an undivided 50 percent interest in the Busch Ranch I wind farm. Applicants state that Black Hills Colorado Wind has market-based rate authority.¹⁸

12. Applicants state that Black Hills Wyoming owns a 76.5 percent interest in the 90 MW Wygen I facility located in the WACM balancing authority area and sells 60 MW of the energy and capacity from the Wygen I facility to Cheyenne Light pursuant to a Commission-approved power purchase agreement. Applicants state that Black Hills Wyoming has market-based rate authority,¹⁹ and that Black Hills Wyoming does not own, operate, or control any transmission facilities other than the limited facilities necessary to interconnect the generation facility to the grid.

2. NorthWestern Group and the NorthWestern Public Utilities

13. Applicants state that NorthWestern Group is a publicly traded, diversified energy holding company that is engaged in the generation, transmission, and distribution of electricity, and the supply, storage, transmission, and distribution of natural gas through its two wholly owned, franchised public utility operating company subsidiaries: NorthWestern Corporation and NorthWestern Energy. Applicants explain that only BlackRock and Vanguard own more than 10 percent of NorthWestern Group's publicly traded shares.²⁰

19, 2011) (delegated order)).

¹⁷ Applicants state that, in the Application, they are not identifying entities affiliated with AIA Colchis through the owners of AIA Colchis as those entities will not be under common control with Applicants pursuant to 18 C.F.R. § 33.3(a)(1) (2025). *Id.* at 10-11.

¹⁸ *Id.* at 11 (citing *AltaGas Renewable Energy Colo. LLC*, 140 FERC ¶ 61,089 (2012)).

¹⁹ *Id.* at 12 (citing *Black Hills Gen., Inc.*, Docket No. ER01-1844-000 (June 22, 2001) (delegated order)).

²⁰ *Id.* at 12-13.

14. Applicants state that NorthWestern Corporation is a public utility engaged in the generation, transmission, and distribution of electricity and the supply and transportation of natural gas and that its facilities are located in Montana. Applicants state that NorthWestern Corporation is a transmission owner/operator and operator in the NorthWestern Energy market (NWMT) balancing authority area. Applicants state that NorthWestern Corporation is also a participant in the Western Energy Imbalance Market (WEIM) administered by the California Independent System Operator Corporation (CAISO), where it is authorized to transact at market-based rates.²¹

15. Applicants explain that NorthWestern Corporation owns 843 MW of generation in the NWMT balancing authority area. Applicants state that NorthWestern Corporation holds a 30 percent ownership interest in Unit 4 of the Colstrip Generating Station in Eastern Montana (Colstrip), which represents approximately 222 MW of the capacity in the NWMT balancing authority area. Applicants indicate that on January 1, 2026, NorthWestern Corporation will acquire the 15 percent (222 MW) share of Units 3 and 4 of Colstrip owned by Avista Corporation. Applicants state that NorthWestern Corporation's transmission system in Montana includes approximately 6,819 miles of transmission lines that are governed by NorthWestern Corporation's OATT.²²

16. Applicants state that, in Montana, NorthWestern Corporation owns and operates approximately 2,095 miles of intrastate natural gas transmission pipeline,²³ 4,930 miles of distribution mains, and three natural gas storage fields with an aggregate capacity of approximately 18 billion cubic feet and deliverability of 194 million cubic feet per day. Applicants state that NorthWestern Corporation also owns and operates two transmission pipelines through its subsidiaries – Canadian-Montana Pipeline Corporation, which owns a natural gas pipeline in Montana that crosses the Canadian border; and Havre Pipeline Company, LLC, which owns a natural gas transmission and gathering system in northern Montana. Applicants represent that NorthWestern Corporation's Montana intrastate

²¹ *Id.* at 13-14.

²² *Id.*

²³ Applicants state that NorthWestern Corporation owns the following intrastate natural gas companies: Canadian-Montana Pipe Line Corporation, which owns a natural gas pipeline that crosses the Canadian border; Willow Creek Gathering, LLC, which owns a natural gas gathering system in northern Montana; Lodge Creek Pipelines, LLC, which owns a natural gas gathering system in northern Montana; and Havre Pipeline Company, LLC, which owns a natural gas transmission and gathering system in northern Montana. *Id.* at 15 n.47.

natural gas system is governed by existing regulatory provisions to ensure that all potential customers have non-discriminatory access.²⁴

17. Applicants state that NorthWestern Energy is a public utility engaged in the generation, transmission, and distribution of electricity and the transportation and distribution of natural gas, with facilities located in South Dakota and Nebraska. Applicants represent that NorthWestern Energy is a transmission-owning member of the Southwest Power Pool, Inc., (SPP) and has transferred functional control of its electric transmission facilities in South Dakota to SPP.²⁵ Applicants state that NorthWestern Energy owns 320 MW of generation in SPP and 210 MW of generation in the Midcontinent Independent System Operator, Inc. (MISO) region.²⁶ Applicants state that NorthWestern Energy has market-based rate authority.²⁷ Applicants state that NorthWestern Energy also owns a 55 mile intrastate natural gas transportation facility subject to the Commission's jurisdiction and operates approximately 2,524 miles of distribution pipeline in South Dakota and Nebraska.²⁸

18. Applicants state that NorthWestern Colstrip 370 is a subsidiary of NorthWestern Group and was formed as an unregulated, special-purpose subsidiary to hold Colstrip. Applicants state that effective January 1, 2026, NorthWestern Corporation will acquire Puget Sound Energy, Inc's 25% (370 MW) share of Units 3 and 4 of Colstrip. Applicants represent that NorthWestern Colstrip 370 intends to make cost-based sales from its share of Colstrip into the NWMT balancing authority area,²⁹ and that NorthWestern Colstrip 370 will not own transmission, intrastate natural gas transportation facilities, or natural gas storage facilities.³⁰

²⁴ *Id.* at 15.

²⁵ *Id.*

²⁶ *Id.* at 22.

²⁷ *Id.* at 16 (citing *NorthWestern Energy Pub. Serv.*, Docket No. ER24-1088 (Mar. 26, 2024) (delegated order)).

²⁸ *Id.*

²⁹ The Commission accepted the cost-based rate tariff. *NorthWestern Colstrip 370Pu LLC*, 194 FERC ¶ 61,153 (2026).

³⁰ Application at 16-17.

B. Description of the Proposed Transaction

19. Applicants explain that, pursuant to the Proposed Transaction, a newly created wholly owned subsidiary of Black Hills, River Merger Sub Inc. (Merger Sub), will be merged with NorthWestern Group, with NorthWestern Group continuing as the surviving entity and Black Hills becoming the ultimate parent company of the NorthWestern Public Utilities. Applicants state that the Black Hills Public Utilities will continue as direct and/or indirect subsidiaries of Black Hills and are not, and will not be, subsidiaries of Merger Sub. Applicants state that, upon completion of the merger, it is anticipated that current Black Hills shareholders will own approximately 56% of Black Hills and NorthWestern Group shareholders will own approximately 44% of Black Hills.³¹

II. Notice of Filing and Responsive Pleadings

20. Notice of the Application was published in the *Federal Register*, 91 Fed. Reg. 368 (Jan. 6, 2026), with interventions and protests due on or before Feb. 20, 2026. Timely motions to intervene were filed by Central Montana Electric Power Cooperative, Inc., Colorado Office of the Utility Consumer Advocate, Powder River Energy Corporation, Public Citizen, Inc., and Rushmore Electric Power Cooperative, Inc.

21. On March 10, 2026, Basin Electric Power Cooperative filed an out-of-time motion to intervene.

III. Discussion

A. Procedural Matters

22. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2025), the timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding.

23. Pursuant to Rule 214(d) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214(d), we will grant Basin Electric Power Cooperative's late-filed motion to intervene given its interest in the proceeding, the early stage of the proceeding, and the absence of undue prejudice or delay.

³¹ *Id.* at 17.

B. Substantive Matters**1. FPA Section 203 Standard of Review**

24. FPA section 203(a)(4) requires the Commission to approve proposed dispositions, consolidations, acquisitions, or changes in control if the Commission determines that the proposed transaction will be consistent with the public interest.³² The Commission's analysis of whether a proposed transaction is consistent with the public interest generally involves consideration of three factors: (1) the effect on competition; (2) the effect on rates; and (3) the effect on regulation.³³ FPA section 203(a)(4) also requires the Commission to find that the proposed transaction "will not result in cross-subsidization of a non-utility associate company or the pledge or encumbrance of utility assets for the benefit of an associate company, unless the Commission determines that the cross-subsidization, pledge, or encumbrance will be consistent with the public interest."³⁴ The Commission's regulations establish verification and informational requirements for entities that seek a determination that a proposed transaction will not result in inappropriate cross-subsidization or pledge or encumbrance of utility assets.³⁵

2. Analysis of the Proposed Transaction**a. Effect on Horizontal Competition****i. Applicants' Analysis**

25. Applicants assert that the Proposed Transaction will not have an adverse effect on horizontal competition. Applicants explain that the generation owned or controlled by the NorthWestern Public Utilities is located in the NWMT balancing authority area and in the SPP and MISO markets. In contrast, the generation owned or controlled by the Black Hills Public Utilities is located in the WACM and PSCo balancing authority areas. As a result, according to Applicants, there is no overlap in the geographic markets where the Black Hills Public Utilities on the one hand and the NorthWestern Public Utilities on

³² 16 U.S.C. § 824b(a)(4). Approval of the Proposed Transaction is also required by other regulatory agencies pursuant to their respective statutory authorities before the Proposed Transaction may be consummated. *See* Ex. L. Our findings under FPA section 203 do not affect those agencies' evaluation of the Proposed Transaction pursuant to their respective statutory authorities.

³³ Merger Policy Statement, FERC Stats. & Regs. ¶ 31,044 at 30,111.

³⁴ 16 U.S.C. § 824b(a)(4).

³⁵ 18 C.F.R. § 33.2(j) (2025).

the other have generation, and therefore, no horizontal competitive market screen is required.³⁶

26. Applicants explain that, on November 29, 2023, the WACM balancing authority notified all of its balancing authority area customers that it had made the decision to join SPP as part of SPP's expansion into the Western Interconnection (SPP West). According to Applicants, the WACM balancing authority area indicated that the anticipated go-live date for SPP West would be April 1, 2026, and that as of that date, it would no longer provide balancing authority services.³⁷ In light of this notification, Black Hills Power and its affiliate Cheyenne Light, which owns generation capacity that is also located within the WACM balancing authority area, were required to find an alternative path for balancing authority services. Applicants explain that Black Hills Power determined that standing up a balancing authority was the most practical solution for obtaining balancing authority services. Applicants state that, on December 12, 2025, Black Hills Power filed with the Commission to effectuate that result and plans to provide balancing authority services to Cheyenne Light and a handful of other entities beginning on April 1, 2026.³⁸ Shortly after instituting balancing authority services, Black Hills' balancing authority area will also begin operations in WEIM.³⁹

27. Applicants state that the creation of the new Black Hills balancing authority area that will be established when WACM joins SPP results in no overlap between the Black Hills Public Utilities' generation located in this new balancing authority area and any

³⁶ Application at 20.

³⁷ SPP West began operations on April 1, 2026. *See* SPP, SPP and member utilities successfully complete historic western expansion (Apr. 2, 2026), <https://spp.org/news-list/spp-and-member-utilities-successfully-complete-historic-western-expansion/>.

³⁸ On March 23, 2026, the Commission set Black Hills Power's filing for hearing and settlement judge procedures. *Black Hills Power, Inc.*, 194 FERC ¶ 61,229 (2026). Black Hills is registered as a balancing authority area. *See* North American Electric Reliability Corporation (NERC), NERC Compliance Registry Matrix Excel, line 1625, https://view.officeapps.live.com/op/view.aspx?src=https%3A%2F%2Fwww.nerc.com%2Fglobalassets%2Fprograms%2Fregistration%2Fcompliance-registry-files%2Fnerc_compliance_registry_matrix_excel.xlsx&wdOrigin=BROWSELINK.

³⁹ Application at 6-7. Black Hills Power and Cheyenne Light joined WEIM effective May 6, 2026. *See* CAISO, *Black Hills Corp.'s South Dakota and Wyoming electric utility subsidiaries join Western Energy Imbalance Market* (May 6, 2026), <https://www.caiso.com/about/news/news-releases/black-hills-corp-s-south-dakota-and-wyoming-electric-utility-subsidiaries-join-western-energy-imbalance-market>.

generation of the NorthWestern Public Utilities. Therefore, Applicants assert that no horizontal competitive market screen is required.⁴⁰

28. In addition, Applicants examined the participation of a portion of the NorthWestern Public Utilities' generation in WEIM once Black Hills Power and Cheyenne Light's subsidiaries join WEIM in 2026. Applicants state that the combined generation of NorthWestern Energy and Black Hills that will participate in WEIM, approximately 3,600 MW, will represent less than a two percent share of generation currently participating in WEIM, approximately 200,000 MW, which Applicants argue is a *de minimis* combined market presence in WEIM and does not necessitate a horizontal competitive market screen.⁴¹

ii. Commission Determination

29. In analyzing whether a proposed transaction will adversely affect horizontal competition, the Commission examines the effects on concentration in the generation markets and whether the proposed transaction otherwise creates the incentive and ability to engage in behavior harmful to competition, such as withholding of generation.⁴²

30. Based on Applicants' representations, we find that the Proposed Transaction will not have an adverse effect on horizontal competition. Applicants have demonstrated that there is either no generation overlap or a *de minimis* amount of generation overlap in the markets and balancing authority areas where they own or control generation. With respect to the markets and balancing authority areas at the time of filing, Applicants have demonstrated that there is no overlap in the geographic markets where the Black Hills Public Utilities and the NorthWestern Public Utilities have generation, as the Black Hills Public Utilities are located in the WACM and PSCo balancing authority areas and the NorthWestern Public Utilities are located in the NWMT balancing authority area and the SPP and MISO markets. Applicants have also demonstrated that there is no overlap between the Black Hills Public Utilities' generation located in the new Black Hills balancing authority area and any generation of the NorthWestern Public Utilities. The Commission has determined that a market power analysis is only required for relevant markets where the proposed transaction resulted in an overlap in generation.⁴³ Applicants note that there will be some future overlap of generation in WEIM once Black Hills Power and Cheyenne Light's subsidiaries join WEIM in 2026. However,

⁴⁰ *Id.* at 20.

⁴¹ *Id.*; Solomon Aff. at 3-4 and n.9.

⁴² *Nev. Power Co.*, 149 FERC ¶ 61,079, at P 28 (2014).

⁴³ *Energy Harbor Corp.*, 186 FERC ¶ 61,129, at P 121 (2024).

Applicants demonstrate that the combined generation will represent a less than two percent share of generation currently participating in WEIM. Consistent with Commission precedent, such overlap in generation capacity is *de minimis* and thus does not raise horizontal competition concerns.⁴⁴

b. Effect on Vertical Competition

i. Applicants' Analysis

31. Applicants state that the Black Hills Electric franchised public utility operating company subsidiaries own transmission facilities in the PSCo and WACM balancing authority areas and the NorthWestern Public Utilities own transmission facilities in the NWMT balancing authority area and the SPP market. According to Applicants, the transmission facilities owned by the Black Hills Electric Opcos and the NorthWestern Public Utilities are subject to each public utility's respective OATT on file with the Commission, and NorthWestern Energy's transmission facilities have been turned over to SPP and are subject to SPP's OATT on file with the Commission. Applicants assert that their transmission facilities will remain subject to the relevant OATTs on file with the Commission after the Proposed Transaction and therefore present no vertical market power concerns downstream of generation.⁴⁵

32. Applicants state that the Proposed Transaction will not result in a new combination of entities that own or control inputs to electricity products and electric generation products with the exception of minor overlaps in the MISO and SPP markets. According to Applicants, the Black Hills Intrastate Gas Utility Providers own intrastate natural gas transmission, distribution, and storage facilities in the PSCo, SPP, WACM, MISO and PACE balancing authority areas and markets, and the NorthWestern Public Utilities own intrastate pipelines in NWMT and SPP, as well as an interstate pipeline from Montana to Alberta, Canada.⁴⁶

⁴⁴ See *Panda Stonewall LLC*, 177 FERC ¶ 61,048, at P 23 (2021) (finding that overlapping generation capacity in the relevant geographic markets with market shares of 2.05% and 2.81% was *de minimis*, and the proposed transaction did not require a horizontal market power analysis); *Tenaska Frontier Partners*, 191 FERC ¶ 61,037, at P 26 (2025) (finding that the overlapping generation capacity of 2.16% of the installed capacity in the MISO market is *de minimis*); *Chalk Point Power*, 189 FERC ¶ 61,042, at P 29 (2024) (finding that the overlapping generation capacity of 2.4% of the installed capacity in the PJM market is *de minimis*).

⁴⁵ Application at 21.

⁴⁶ *Id.*

33. Applicants state that, when analyzing the MISO market where Black Hills owns inputs to electric generation and NorthWestern Group owns generation and inputs to electric generation, NorthWestern Group's controlled generation (210 MW) is a *de minimis* market share of approximately 0.1%. Likewise, in SPP, where Black Hills owns inputs to production and NorthWestern Group owns generation, NorthWestern Group's generation (320 MW) is also a *de minimis* market share of approximately 0.4%. Applicants contend that although Black Hills Intrastate Gas Utility Providers are the primary gas supplier for approximately 666 MW of generation capacity in the SPP market and 35 MW in the MISO market, these are *de minimis* shares of one percent and a small fraction of one percent of their relevant markets, respectively. Applicants contend that because the generation attributed to Applicants is *de minimis* in the relevant markets where there is overlap of transmission and/or inputs to electric generation, it is not necessary to conduct a detailed vertical analysis of those markets.⁴⁷

34. In addition, Applicants represent that all of the intrastate natural gas pipelines, natural gas distribution assets, and gas storage assets indirectly owned by NorthWestern Group and Black Hills in the MISO and SPP markets are regulated by the state commissions in which these assets operate and are subject to regulatory oversight. Applicants also claim that these affiliations do not raise vertical market power concerns because the Commission has adopted a rebuttable presumption that ownership or control of such inputs does not allow a seller to erect barriers to entry.⁴⁸ Applicants reiterate that, except for the MISO and SPP markets as described above, the Proposed Transaction does not otherwise result in a new combination of entities that own or control inputs to electricity products and electric generation products in the same geographic markets. Applicants assert that because no vertical market power concerns are raised by the Proposed Transaction, no vertical competitive analysis is required.⁴⁹

ii. Commission Determination

35. In analyzing whether a proposed transaction presents vertical market power concerns, the Commission considers the vertical combination of upstream inputs, such as natural gas transmission or natural gas supply or fuel, with downstream generating capacity and transmission. As the Commission has previously found, transactions that combine electric generation assets with inputs to generating power can harm competition if the transaction increases an entity's ability or incentive to exercise vertical market power in wholesale electricity markets. For example, by denying rival entities access to inputs or by raising their input costs, an entity created by a transaction could impede

⁴⁷ *Id.* at 22-23.

⁴⁸ *Id.* at 23 n.71.

⁴⁹ *Id.* at 23.

entry of new competitors or inhibit existing competitors' ability to undercut an attempted price increase in the downstream wholesale electricity market.⁵⁰

36. Based on Applicants' representations, we find that the Proposed Transaction will not have an adverse effect on vertical competition. First, Applicants' transmission facilities are operated pursuant to Commission-approved OATTs, which mitigates potential vertical market power concerns.⁵¹ Second, while Applicants state that they have overlapping generation and inputs to generation in the SPP and MISO markets, Applicants have shown that the generation they hold in these markets is *de minimis*.⁵² Under the Commission's regulations, a vertical competitive analysis need not be filed if the applicant can demonstrate that the extent of the business transactions among merging entities in the same geographic market is *de minimis* and no intervenor has alleged that one of the merging entities is a perceived potential competitor in the same geographic market as the other.⁵³ Accordingly, we find that the Proposed Transaction does not create new opportunities for Applicants or their affiliates to withhold inputs to generation to rivals or to erect barriers to entry in the markets.

c. Effect on Rates

i. Applicants' Analysis

37. Applicants claim that the Proposed Transaction will have no adverse effect on wholesale sales or transmission service rates. Applicants state that the Black Hills Public Utilities exclusively and the NorthWestern Public Utilities almost exclusively make wholesale sales of electric energy, capacity, and certain ancillary services pursuant to their market-based rate tariffs. Applicants state that NorthWestern Colstrip 370, however is the exception, and will make sales at cost-based rates. Applicants state that, with

⁵⁰ *Upstate N.Y. Power Producers*, 154 FERC ¶ 61,015, at P 15 (2016); *Exelon Corp.*, 138 FERC ¶ 61,167, at P 112 (2012).

⁵¹ *Oleander Power Project, Ltd. P'ship*, 176 FERC ¶ 61,040, at P 27 (2024) ("Applicants' facilities are subject to an OATT on file with the Commission, which adequately mitigates vertical market power concerns.").

⁵² *See Energy E. Corp.*, 121 FERC ¶ 61,236, at P 27 (2007) (finding that applicants will not be able to exert vertical market power because, among other things, the generation they own or control in the relevant markets is *de minimis*).

⁵³ 18 C.F.R. § 33.4(a)(2)(i) (2025).

respect to market-based wholesale power sales, the Commission has concluded that such sales do not raise concerns about a transaction's possible adverse effect on rates.⁵⁴

38. Applicants state that, to ensure that the Proposed Transaction will have no adverse effect on rates, Applicants commit to hold harmless the Black Hills Public Utilities' and the NorthWestern Public Utilities' jurisdictional transmission customers and wholesale cost-of-service customers from any transaction-related costs of the Proposed Transaction for five years after closing. Applicants explain that this commitment is consistent with the same type of "hold harmless" commitment addressed in the Merger Policy Statement and described in the Policy Statement on Hold Harmless Commitments. Specifically, Applicants will not include any transaction-related costs in the transmission or wholesale power cost-of-service rates for any of the Black Hills Public Utilities and the NorthWestern Public Utilities' wholesale customers for a period of five years after closing, except to the extent that Applicants can demonstrate in a separate FPA section 205 proceeding that such costs are offset by transaction-related savings. Applicants state that should they seek to recover transaction-related costs through their transmission rates, they will submit a new filing under FPA section 205⁵⁵ and a concurrent informational filing in this docket, consistent with the Commission's instructions in *Exelon Corp.*⁵⁶

ii. Commission Determination

39. Based on Applicants' representations, we find that the Proposed Transaction will not have an adverse effect on rates. In evaluating the effect of a proposed transaction on rates, we examine the effect of the proposed transaction on wholesale ratepayers and transmission customers.⁵⁷ Applicants represent that the Black Hills Public Utilities exclusively and the NorthWestern Public Utilities almost exclusively make wholesale sales of electric energy, capacity, and certain ancillary services pursuant to their market-based rate tariffs on file with the Commission. With respect to wholesale power rates, the Commission has stated that, when there are market-based rates, the effect on rates is

⁵⁴ Application at 24.

⁵⁵ 16 U.S.C. § 824d.

⁵⁶ Application at 25-26 n.83 (citing *Exelon Corp.*, 149 FERC ¶ 61,148, at PP 106-109 (2014); *Constellation Energy Corp.*, 192 FERC ¶ 61,074, at ordering para. I (2025)). Applicants state that the FPA section 205 filing would specifically identify the merger-related costs that Applicants would be seeking to recover and also demonstrate that those costs are exceeded by the savings generated by the merger. *Id.* (citing *Exelon Corp.*, 149 FERC ¶ 61,148 at P 109).

⁵⁷ Merger Policy Statement, FERC Stats. & Regs. ¶ 31,044 at 30,123.

not of concern “because market-based rates will not be affected by the seller’s cost of service and, thus, will not be adversely affected by the [proposed transaction].”⁵⁸

40. With respect to Applicants’ wholesale cost of service and transmission customers, we accept Applicants’ commitment to hold customers harmless from costs related to the Proposed Transaction. We interpret Applicants’ hold harmless commitment to apply to all transaction-related costs, including costs related to consummating the Proposed Transaction, incurred prior to the consummation of the Proposed Transaction, or in the five years after the Proposed Transaction’s consummation in accordance with the Commission’s policy on hold harmless commitments.⁵⁹ Accordingly, we find that the Proposed Transaction will not have an adverse effect on rates.

d. Effect on Regulation

i. Applicants’ Analysis

41. Applicants claim that the Proposed Transaction will not have an adverse effect on regulation at either the federal or state level. According to Applicants, the Proposed Transaction will neither change nor impact the Commission’s jurisdiction over the Black Hills Public Utilities or the NorthWestern Public Utilities. In addition, Applicants represent that the Proposed Transaction will not affect the manner or extent to which any state may regulate the Black Hills Public Utilities or the NorthWestern Public Utilities, to the extent applicable. Applicants state that, upon consummation of the Proposed Transaction, the Black Hills Public Utilities and the NorthWestern Public Utilities will continue to be subject to the jurisdiction of the Commission (and any other regulatory agency or office) to the same extent as before the Proposed Transaction. Therefore, Applicants claim that the Proposed Transaction will not impair the effectiveness of federal or state regulation.⁶⁰

ii. Commission Determination

42. The Commission’s review of a transaction’s effect on regulation focuses on ensuring that it does not result in a regulatory gap.⁶¹ As to whether a proposed

⁵⁸ *Cinergy Corp.*, 140 FERC ¶ 61,180, at P 41 (2012) (citing *Duquesne Light Holdings, Inc.*, 117 FERC ¶ 61,326, at P 25 (2006)); accord *The Dayton Power & Light Co.*, 160 FERC ¶ 61,034, at P 31 (2017)).

⁵⁹ *Pol’y Statement on Hold Harmless Commitments*, 155 FERC ¶ 61,189 (2016).

⁶⁰ Application at 26-27.

⁶¹ Merger Policy Statement, FERC Stats. & Regs. ¶ 31,044 at 30,124.

transaction will have an effect on state regulation, the Commission explained in the Merger Policy Statement that it ordinarily will not set the issue of the effect of a proposed transaction on state regulatory authority for a trial-type hearing where a state has authority to act on the proposed transaction. However, if the state lacks this authority and raises concerns about the effect on regulation, the Commission may set the issue for hearing and it will address such circumstances on a case-by-case basis.⁶²

43. Based on Applicants' representations, we find no evidence that either state or federal regulation will be impaired by the Proposed Transaction. There is no evidence that the Proposed Transaction will create a regulatory gap. We note that no party alleges that regulation, state or federal, would be impaired by the Proposed Transaction, and no state commission has requested that the Commission address the issue of the effect on state regulation.

e. Cross-Subsidization

i. Applicants' Analysis

44. Applicants argue that the Proposed Transaction will not result in cross-subsidization. Applicants contend that the Proposed Transaction falls within two of the three "safe harbors" identified in the Supplemental Policy Statement. First, Applicants assert that the Proposed Transaction is within the scope of the "safe harbor" for transactions involving only non-affiliates because the Proposed Transaction is a bona fide, arm's-length, bargained-for exchange between non-affiliates.⁶³ Applicants explain that the Commission has recognized that, where the transacting parties are not affiliated, "the potential for inappropriate cross-subsidization of a non-utility associate company or the pledge or encumbrance of utility assets for the benefit of an associate company generally is not present."⁶⁴

45. Second, Applicants claim that the Proposed Transaction falls within the "safe harbor" for transactions "that are subject to review by a state commission."⁶⁵ Applicants argue that the Commission has stated that it "intends to defer to state commission where the state adopts or has in place ring-fencing measures to protect customers against inappropriate cross-subsidization or the encumbrance of utility assets for the benefit of

⁶² *Id.*

⁶³ Application at 28 (citing Supplemental Policy Statement, 120 FERC ¶ 61,060 at P 19).

⁶⁴ *Id.* (citing Supplemental Policy Statement, 120 FERC ¶ 61,060 at P 19).

⁶⁵ *Id.* (citing Supplemental Policy Statement, 120 FERC ¶ 61,060 at P 18).

the ‘unregulated’ affiliates.”⁶⁶ Applicants explain that the Merger Agreement attached as Exhibit I to the Application specifically includes a requirement to seek and obtain state regulatory approvals for the Proposed Transaction from state commissions, where required, and that approval has been sought from the Montana Public Service Commission, Nebraska Public Service Commission, and South Dakota Public Utilities Commission.⁶⁷

46. Third, Applicants include verifications in Exhibit M to the Application, representing that, based on facts and circumstances known or reasonably foreseeable to Applicants, the Proposed Transaction will not result in, at the time of the Proposed Transaction as well as in the future, cross-subsidization of a non-utility associated company or pledge or encumbrance of utility assets for the benefit of an associate company.⁶⁸

ii. Commission Determination

47. Based on Applicants’ representations, we find that the Proposed Transaction will not result in the cross-subsidization of a non-utility associate company by a utility company, or in a pledge or encumbrance of utility assets for the benefit of an associate company.⁶⁹ We note that no party has argued otherwise.

3. Other Considerations

48. Information and/or systems connected to the Bulk Power System involved in this transaction may be subject to reliability and cybersecurity standards approved by the Commission pursuant to FPA section 215.⁷⁰ Compliance with these standards is

⁶⁶ *Id.* (citing Supplemental Policy Statement, 120 FERC ¶ 61,060 at P 18).

⁶⁷ *Id.*

⁶⁸ *Id.* at 29, Ex. M.

⁶⁹ Applicants argue that the Proposed Transaction meets the safe harbor established in the Supplemental Policy Statement for transactions involving only non-affiliates. *See supra* P 44. However, we note that the Commission stated in the Supplemental Policy Statement that this safe harbor “does not include mergers with, or acquisitions of, public utilities” and, therefore, we find that the safe harbor does not apply here. Supplemental Policy Statement, 120 FERC ¶ 61,060 at P 19. We rely instead on Applicants’ Exhibit M and the representation that the Proposed Transaction falls within the safe harbor for transactions that are subject to review by a state commission.

⁷⁰ 16 U.S.C. § 824o.

mandatory and enforceable regardless of the physical location of the affiliates or investors, information database, and operating systems. If affiliates, personnel or investors are not authorized for access to such information and/or systems connected to the Bulk Power System, a public utility is obligated to take the appropriate measures to deny access to this information and/or the equipment/software connected to the Bulk Power System. The mechanisms that deny access to information, procedures, software, equipment, etc., must comply with all applicable reliability and cybersecurity standards. The Commission, the North American Electric Reliability Corporation, or the relevant regional entity may audit compliance with reliability and cybersecurity standards.

49. FPA section 301(c) gives the Commission authority to examine the books and records of any person who controls, directly or indirectly, a jurisdictional public utility insofar as the books and records relate to transactions with or the business of such public utility.⁷¹ The approval of the Proposed Transaction is based on such examination ability. In addition, applicants subject to Public Utility Holding Company Act of 2005 (PUHCA 20025)⁷² are subject to the record-keeping and books and records requirements of PUHCA 2005.

50. Section 35.42 of the Commission's regulations requires that sellers with market-based rate authority timely report to the Commission any change in status that would reflect a departure from the characteristics the Commission relied upon in granting market-based rate authority.⁷³ To the extent that a transaction authorized under FPA section 203 results in a change in status, sellers that have market-based rates are advised that they must comply with the requirements of section 35.42.

51. The authorization in this proceeding is made under FPA section 203, and is not an authorization for the licensee to transfer its license or any rights thereunder granted, including property rights that are necessary to operate and maintain the hydroelectric generation facilities listed in the exhibits to the Application. The licensee is prohibited from selling, leasing, transferring, abandoning, or otherwise disposing of the hydroelectric generation facilities, including all property covered by the license, until Commission authorization is also received pursuant to Part 9 of the Commission's regulations,⁷⁴ and as required by standard Article 5 of the license.⁷⁵ The authorization in

⁷¹ *Id.* § 825(c).

⁷² 42 U.S.C. §§ 16451-63.

⁷³ 18 C.F.R. § 35.42 (2025).

⁷⁴ 18 C.F.R. pt. 9 (2025).

⁷⁵ 18 C.F.R. § 2.9 (2025).

this proceeding under FPA section 203 does not prejudice the Commission's determination on an application for approval to transfer a license or to voluntarily sell, lease, transfer, abandon, or otherwise dispose of the hydroelectric generation facilities listed in the exhibits to the Application.

The Commission orders:

(A) The Proposed Transaction is hereby authorized, as discussed in the body of this order.

(B) Applicants must inform the Commission of any material change in circumstances that departs from the facts or representations that the Commission relied upon in authorizing the Proposed Transaction within 30 days from the date of the material change in circumstances.

(C) The foregoing authorization is without prejudice to the authority of the Commission or any other regulatory body with respect to rates, service, accounts, valuation, estimates or determinations of costs, or any other matter whatsoever now pending or which may come before the Commission.

(D) Nothing in this order shall be construed to imply acquiescence in any estimate or determination of cost or any valuation of property claimed or asserted.

(E) The Commission retains authority under sections 203(b) and 309 of the FPA to issue supplemental orders as appropriate.

(F) Applicants shall make any appropriate filings under section 205 of the FPA, as necessary, to implement the Proposed Transaction.

(G) Applicants shall notify the Commission within 10 days of the date on which the Proposed Transaction is consummated.

(H) If Applicants seek to recover transaction-related costs through their transmission or wholesale requirements rates, they must make a new FPA section 205 filing and submit concurrently an informational filing in the instant FPA section 203 docket. In the FPA section 205 filing, Applicants must: (1) specifically identify the transaction-related costs they are seeking to recover; and (2) demonstrate that those costs are exceeded by the savings produced by the Proposed Transaction.

(I) If the transaction affects the books and records of a jurisdictional entity required to follow the Commission's Uniform System of Accounts, then Applicants shall submit their final accounting entries within six months of the date that the transaction is consummated, and the accounting submissions shall provide all the accounting entries

and amounts related to the transaction along with narrative explanations describing the basis for the entries.

By the Commission.

(S E A L)

Debbie-Anne A. Reese,
Secretary.