

September 10, 2009

Mr. James J. McNulty, Secretary
Pennsylvania Public Utility Commission
P.O. Box 3265
Harrisburg, PA 17105-3265

Re: Docket No. M-2009-2093217 – Petition of Duquesne Light Company for Approval of its Energy Efficiency and Conservation and Demand Side Response Plan

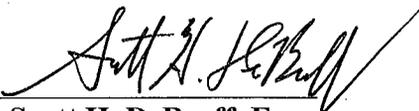
Dear Mr. McNulty:

Enclosed herewith please find an original copy of the “**Reply Brief on Behalf of EnerNOC, Inc.**” in the above captioned proceeding. This document has been electronically filed through the PUC’s efilng system. Please enter this into the docket and timestamp the additional five (5) copies. A copy of the Brief will also be served to the parties on the service list.

Should you have any questions, please do not hesitate to contact me at (717) 237-6716.

Sincerely,

RHOADS & SINON LLP

By: 
Scott H. DeBroff, Esq.

Enclosures

cc: Service List for Docket M-2009-2093217

**COMMONWEALTH OF PENNSYLVANIA
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

PETITION OF DUQUESNE LIGHT COMPANY
FOR APPROVAL OF ITS ENERGY
EFFICIENCY AND CONSERVATION AND
DEMAND SIDE RESPONSE PLAN

DOCKET NO. M-2009-2093217

REPLY BRIEF ON BEHALF OF ENERNOC, INC.

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DATED: SEPTEMBER 10, 2009

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I. INTRODUCTION

EnerNOC, Inc. ("EnerNOC"), a leading demand response ("DR") and energy management services provider throughout the United States, appreciates the opportunity to offer comments on Duquesne Light Company's ("Duquesne" or "Company") Energy Efficiency and Conservation Plan ("EE&C Plan"). As discussed in more detail herein, EnerNOC supports several aspects of Duquesne's EE&C Plan, specifically its Curtailable Load Program; however, as discussed herein, room for improvement exists in order to maximize the cost efficiency and effectiveness of this proposed demand response initiative.

EnerNOC currently manages over 3,150 MW of demand response resource capability from over 2,400 customers across 5,450 sites nationwide. As an active demand response provider across three Independent System Operators ("ISOs") or Regional Transmission Organizations ("RTOs") (*i.e.*, New York Independent System Operator, Inc., ISO New England, Inc., and PJM) and numerous states with various statutory and regulatory regimes, EnerNOC has a broad base of experience on which to draw and, as a result, has a unique perspective to offer in this proceeding. EnerNOC also has signed contracts with a variety of utilities to provide demand response services, including Allegheny Power, Baltimore Gas and Electric, Delmarva Power and PEPCO, Southern California Edison, Pacific Gas & Electric, San Diego Gas & Electric, the Tennessee Valley Authority, Tampa Electric Company, Public Service Company of New Mexico, Xcel Energy (Colorado), Salt River Project, and Idaho Power.

EnerNOC's demand response activities are implemented via automated, aggregated, and intelligent management of end-user lighting, HVAC, distributed generation, and industrial process equipment. Every one of EnerNOC's thousands of sites is connected to its Network Operations Center (the "NOC" in EnerNOC) and communicates real-time load data over a secure

Internet connection, allowing its operations staff to monitor and verify facility load reductions in real time. This customer visibility allows EnerNOC to ensure that customers are delivering their contracted reductions and where they are not to take efforts to "coach" them, or to dispatch technicians to take corrective action. As a result, EnerNOC dispatched emergency demand response resources in its network over 100 times during 2008 and delivered performance that averaged over 100% during the year, based on nominated versus delivered capacity.

II. PROCEDURAL HISTORY

Governor Rendell signed into law House Bill 2200, or Act 129 of 2008 ("Act 129" or "Act"), on October 15, 2008. Consistent with the Act's requirements, on July 1, 2009, all Pennsylvania EDCs filed with the Commission proposed energy efficiency and conservation plans ("EE&C Plan") that seek to meet the Act's energy efficiency and conservation requirements.

By letter issued July 2, 2009, the PUC also approved EnerNOC's Application to Register as a Conservation Service Provider.¹ On July 28, 2009 the Prehearing Conference was held. On August 3, 2009, EnerNOC filed a Petition to Intervene in this proceeding. On August 7, 2009, EnerNOC filed its initial comments in this proceeding. On August 19-20, 2009 an Evidentiary Hearing was held. On August 31, 2009, EnerNOC filed its Main Brief.

Consistent with the procedural schedule for this proceeding, EnerNOC is submitting this Reply Brief in order to address its positions and concerns regarding party positions taken in their Main Briefs.

¹ See generally Docket No. A-2009-2102368.

III. DESCRIPTION OF DUQUESNE'S PLAN

As required by the Implementation Order, on June 30, 2009, the Company submitted its EE&C Plan. To fulfill the requirements of Act 129, Duquesne's EE&C Plan proposes the implementation of 16 energy efficiency and conservation programs and demand response programs targeting the Company's Residential (including low-income), Commercial, Industrial and Governmental/Non-Profit customer sectors.² Specifically, Duquesne's EE&C Plan proposes five programs for the residential sector, five programs for the Small Commercial and Industrial ("C&I") sector, five programs for the Large C&I sector, and one program for government, school and non-profit customers.³

IV. SUMMARY OF ARGUMENT

While EnerNOC supports many of the key program implementation details for Duquesne's Curtailable Load Program for Large C&I Customers, including the use of an RFP process for CSP selection and leveraging of existing PJM Demand Response programs and the customers who are enrolled in them, it disagrees with Duquesne's interpretation of Act 129 in regard to DR program duration.

EnerNOC disagrees with the Duquesne Industrial Intervenors' argument regarding access to multiple CSPs and supports the single CSP structure for Duquesne's demand response program. EnerNOC also supports the concept that the approved CSP for the Duquesne program

² See EE&C Plan, pp. 6-8.

³ See Direct Testimony of Thomas Crooks, DLC Statement No. 2, pp. 8-10.

would be the one that all large C&I customers would work through, whether or not they had an existing relationship with a Duquesne-contracted PJM CSP or were acting as their own CSP.

Finally, EnerNOC disagrees with the Department of Environmental Protection's recommendation that distributed generation to reduce peak demand should be prohibited.

V. ARGUMENT

A. Duquesne Light Company

In Duquesne's Main Brief at page 6, it represents its position on "Overall Demand Reduction Requirements" and states that its plan also provides for the required demand reductions in the amount of 4.5% percent of annual system peak in the 100 hours of highest demand to be met by May 31, 2013, which is to be measured against the EDC's peak demand for June 1, 2007 through May 31, 2008." 66 Pa.C.S. § 2806.1(d)(1)

While EnerNOC supports many of the key program implementation details for Duquesne's Curtailable Load Program for Large C&I customers, including the use of an RFP process for CSP selection and leveraging of existing PJM Demand Response programs and the customers who are enrolled in them, it disagrees with Duquesne's interpretation of Act 129 in regard to DR program duration.

Term of the Plan

EnerNOC disagrees with Duquesne's interpretation of Act 129 in regard to DR program duration.

In support of its argument here, EnerNOC cites to its argument made concurrently in its Reply Brief in the PPL EE&C Plan docket. PPL, in its Plan, argues that its current portfolio

design contemplates that it will need to enter into contracts with CSPs that extend beyond the end of this EE&C plan (May 31, 2013).

The result of Duquesne's proposed plan is that their initial Plans terminate at the end of 42 months unless the PUC affirmatively determines that the actual benefits outweigh the actual costs and that the PUC would establish new DR goals for the utility.

In its Main Brief, EnerNOC explained why 66 Pa.C.S. § 2806.1(d)(2) supports the EDCs entering into long term contracts with a CSP and how it would ultimately be more "prudent and reasonable" for the EDCs to do so.

EnerNOC disagrees with the stance that the Legislature should have intended that Duquesne, PPL or any EDC for that matter, would be forced into dropping a successful peak load reduction program just as it got underway.

EnerNOC supports PPL's plan design and testimony that supports the continuation of its DR program beyond 2013 as necessary. PPL has argued that its current portfolio design contemplates that the Company will need to enter into contracts with CSPs that extend beyond the end of its EE&C plan (May 31, 2013), although those payments are not included in the current portfolio and would likely be structured in the CSP contract to be contingent on the Commission's extension of peak load reduction targets and funding beyond the life of their current plan. (PPL EE&C Plan, p. 13 [emphasis added]).

Further, in the PPL case, the Company states that if it were limited to contracts that expire on September 12, 2012, which is the compliance date for peak load reductions, they contend that these short-term contracts could be more costly – at approximately \$5 million beyond the current portfolio. Id. at 13-14. PPL is proposing, and EnerNOC is supporting PPL's

position that it be allowed to enter into contracts with CSPs in many cases for five (5) to eight (8) years. See PPL Response to OTS 1-3(b).

As PPL states, “assuming a contract is awarded in late 2009 and demand reduction programs (and associated incentive payments to participants and the CSP) will start gradually in mid-2010, a five (5) to eight (8)–year contract term would extend to 2015-2017.” Id.; see also Tr. at 166. Mr. Cleff, a witness for PPL, confirmed that the total projected costs in each of the extra years will be approximately \$5 million - \$10 million per year. Tr. at 168.

The testimony of PPL in its EE&C case supports the continuation of the DR programming beyond the 2013 time frame, and EnerNOC contends that this is the best decision this Commission could make, in all of the EE&C cases, in order to generate successful demand response opportunities for both ratepayers and the utilities.

EnerNOC disagrees with Duquesne’s interpretation of Act 129 and contends that our argument in support of PPL’s testimony on the differing DR program costs and the ability to conduct a more effective and cost-conscious DR program, in its own EE&C case, is the only interpretation that will provide both program benefits to ratepayers and accomplish the reduction goals of Act 129.

In support of our argument, we cite to 66 Pa.C.S. § 2806.1(d)(1) and (2) of Act 129 which states:

- (1) By May 31, 2013, the weather-normalized demand of the retail customers of each electric distribution company shall be reduced by a minimum of 4.5% of annual system peak demand in the 100 hours of highest demand. The reduction shall be measured against the electric distribution company's peak demand for June 1, 2007, through May 31, 2008; and
- (2) By November 20, 2013, the Commission shall compare the total costs of energy efficiency and conservation plans and capacity costs to retail customers in this Commonwealth or other costs determined by the Commission. If the Commission determines that the benefits of the plans exceed the costs, the

commission shall set **additional incremental requirements** for reduction in peak demand for the 100 hours of great demand or an alternative reduction approved by the Commission. Reductions from demand shall be measured from the Electric Distribution Company's peak demand for the period from June 1, 2011, through May 31, 2012. The reduction in consumption required by the Commission shall be accomplished no later than May 31, 2017. (emphasis added)

Here we only find plain meaning of the words “additional incremental requirements”, which means requirements for demand reductions beyond those already obtained. Had the Legislature intended for the Commission to reinstitute demand response requirements, obtained once and then allowed to lapse, it would have said so.

Our interpretation is that the intent of the Legislature was to have the EDCs maintain the status quo with the DR program, while the potential for “additional incremental” (not “existing”) reductions was being assessed by the Commission. Unlike energy efficiency investments, demand response programs will only work if the EDCs provide continuing support. It would be prudent and most beneficial to the ratepayers if the EDCs maintained the current demand response and peak load reductions during that time of the Commission review. If these programs are not maintained during that interim period, the EDCs will have to incur more costs to meet any new requirements beyond the 4.5% peak demand reduction goal for 2013⁴.

Further, other components of the EE&C plan, such as deployment of Smart Metering, that will tie into the Load Control Program, will certainly continue to be in service and operational long after the May 31, 2013 deadline. Energy Efficiency Programs and Demand

⁴ Some parties may argue that the Act 129 DR resources will continue to exist in the PJM demand response programs. This may true for many of those resources, however, the Commission should understand that a resource's participation in the PJM capacity programs is highly unlikely to result in a reduction in peak demand for the customer or the state. This is due to the fact that such resources are only called during emergencies or periodic tests which have generally not correlated with the times at which peak load contributions are set.

Response Programs work together in the same demand side management spectrum, and will need to be available to work in concert with Smart Metering, which contributes the platform for measurement, verification and evaluation of such programming. With this Commonwealth's commitment to the deployment of advanced metering and the creation of a Smart Grid, there is every reason to infer that the Demand Response and Energy Efficiency programming once started, was meant to endure as well.

Number of Providers

In Duquesne's Main Brief at page 16, the Company states that in addressing ClearChoice Energy's concerns that Duquesne would select only **one** CSP, the Company clarified that it intends to go through an RFP process and could select one or several CSPs. Tr. At 190.

EnerNOC opposes this rationale and supports a single CSP model for the C&I Curtailable Load Program. As we have stated in our Main Brief in this case, DR program success for Duquesne, as with any utility, is based upon a clearly defined program that can be implemented with a reputable and credit-worthy CSP partner who can successfully market that program to the utility's customers and is willing to shoulder significant penalties for failure to perform. By diluting the load and splitting up the program responsibilities, the utility makes aggregation more difficult and creates more risk of program failure.⁵

⁵ The essence of what CSPs do is aggregate customers to allow the over-performance of some to offset the under-performance of others. It is only in this way that CSPs can take upon themselves the performance risks that would otherwise be borne by the EDCs. Customers, especially smaller ones, are generally unwilling to accept non-performance risks/penalties themselves and will simply not participate if required to do so. Obviously, the larger the aggregation, the less likely it is that the performance of a few large resources will jeopardize the performance of the entire group. Thus, larger aggregations allow for achieving a given level of performance with less of a "cushion" and therefore lower costs that would otherwise be borne by the EDCs .

In our PPL Reply Brief, we support a program design that will provide confidence to the utility as well as to the Commission and offers the best chance for success. In this case, we support a single CSP model for the Curtailable Load Program.

EnerNOC, in reflecting on the design of the Duquesne Curtailment Program, believes that oversubscription will not be necessary if RFP terms, security and penalties are appropriate.⁶

B. The Duquesne Industrial Intervenors (DII)

In the Duquesne Industrial Intervenors (“DII”) Main Brief at pages 10-12, they support a position that Duquesne should be required to use multiple CSPs for its large C&I Curtailable Program. DII seeks clarification that the Company intends to award the RFP to multiple CSPs and that customers can retain or use their own PJM CSPs and participate in Duquesne’s program in order to fully support this proposal.

As we stated earlier relating to our position in the PPL EE&C case, by diluting the load and splitting up the program responsibilities, the utility creates more risk of program failure. EnerNOC supports a program design that will provide confidence to the utility as well as to the Commission and offers the best chance for success. We oppose DII’s argument and support the concept that other CSPs and customers could participate through the CSP that was selected in the RFP process by Duquesne.

⁶ It is difficult to overstate how much more difficult it is to enroll customers in a 50-hour per year program, than a less than 10-hour per year program such as the PJM Emergency program. EnerNOC is a party to several bilateral contracts with such terms and we can attest to the fact that customer recruitment is far more difficult than it first appears to those who have not attempted it. It will be a significant challenge for any CSP to meet the aggressive goals envisioned by Duquesne. Oversubscription is a luxury that Duquesne and its customers cannot afford and even if they can, may simply not be possible.

C. ClearChoice Energy

In its Main Brief on page 11, ClearChoice Energy (“ClearChoice”) states that it believes the prevention of anticompetitive or discriminatory conduct and the unlawful exercise of market power must be considered in the structure of Duquesne’s demand response programs under the EE&C Plan.”

On pages 10-11 of ClearChoice’s Main Brief, they cite to 66 Pa.C.S.§2811(a), which states that “The Commission shall monitor the market for the supply and distribution of electricity to retail customers and take steps as set forth in this section to prevent anticompetitive or discriminatory conduct and unlawful exercise of market power.” EnerNOC strongly disagree with ClearChoice’s representation that Duquesne’s Demand Response program is somehow discriminatory in nature and requires correction. This is simply not the case with their program, as EnerNOC would contend that Duquesne’s program design is just the opposite. Duquesne has developed a competitive and fair DR Curtailable Load Program through the use of an RFP process that will consider the position retention of one or more CSPs to manage their program. ClearChoice seems to believe that any result that does not include defacto set asides for itself is “anticompetitive”.

ClearChoice goes on to indicate that the Commission appeared to acknowledge the importance of preventing undue discrimination and of continuing to encourage the competitive endeavors of existing PJM CSPs like them in Footnote 23 on page 38 of the PA PUC Implementation Order, where it states that subsidies or incentives not offered to competitive providers of service cannot be cost subsidized.

EnerNOC contends that ClearChoice has taken the meaning of the footnote and what it refers to completely out of context. This footnote refers to a phrase in the Implementation Order that indicates that when EE&C plans are offered by EDCs, those programs will benefit customer choice and default customers equally. The footnote only tries to alert us to the fact that some customer programs may not be subsidized if they only impact certain classes of customers. ClearChoice's argument that it has some pre-established right to participate in every DR program, no matter what the requirements, has nothing to do with this section.

In ClearChoice's Main Brief, at page 12, they discuss marketing efforts of Duquesne's to support their DR program and it explains why it wants Duquesne to take steps to ensure that their marketing program is "nondiscriminatory and competitively neutral." Specifically, ClearChoice recommends "that any marketing by Duquesne be competitively neutral so as to not to prefer the use of one curtailment service provider over another, and all information provided to CSPs participating in the Duquesne program, also must be provided to non participating CSPs." (Main Brief at page 12).

EnerNOC disagrees with ClearChoice's marketing recommendation. It is imperative to present customers with easy to read and understandable marketing materials that will create less confusion to the customer. As stated above, EnerNOC believes that Duquesne should pursue a strategy that includes issuing a competitive RFP that selects the most qualified demand response provider. It would only cause confusion in program implementation and instability in running the program, if the marketing material also promoted CSPs that were not selected as the most qualified demand response provider for the service area.

In its Main Brief, on page 11, ClearChoice further argues that the Commission should place a cap on the amount a CSP can be awarded so that no CSP can be awarded more than

“50% of the demand reduction required by the plan.” ClearChoice Statement No. 1, p.11. ClearChoice seemingly makes this recommendation to ensure that multiple CSPs can participate in the Demand Response program.

EnerNOC strongly disagrees and opposes this concept of placing any “cap” on the amount of demand reduction that any one CSP can be awarded under Duquesne’s plan. The amount of demand reduction awarded would create a situation in which multiple CSPs would be crowding the market and attempting to implement the same program. Having a number of CSPs attempting to market to the same customer group will drive the customer acquisition costs higher and the resource will be less reliable for the aggregation reasons noted previously.

Instead, EnerNOC recommends that Duquesne issue an RFP and then select the CSP that provides the most reliable, efficient, and economic services to the Curtailable Load Program.

Also in its Main Brief, on page 13, ClearChoice proclaims that Duquesne should make several allowances for “disadvantaged businesses” such as itself. ClearChoice claims that EDCs should not be allowed to ask CSPs to post collateral or provide third party guarantees as a guarantee of performance of the demand side resources participating in the program through the CSP.” (p. 13).

ClearChoice cites to page 26 of the Commission’s Implementation Order, which states that part of the minimum criteria for reviewing and approving of the CSP bidding process is that EDCs should “encourage efforts to acquire bids from ‘disadvantaged businesses’ (i.e., minority owned, women-owned, persons-with-disability-owned, small companies, companies located in Enterprise Zones, and similar entities) consistent with the Commission’s Policy Statements at 52 Pa. Code §§ 69.804, 69.807 and 69.808.” ClearChoice states that the “essence of what makes a disadvantaged business “disadvantaged” is the limited capital to fund its operations. In its

alternative argument, ClearChoice states that if Duquesne's program includes posting collateral as a performance guarantee, it will significantly impede and discourage participation by companies including ClearChoice and that Duquesne has not indicated how it will encourage participation by "disadvantaged businesses" in its load curtailment program as a result. ClearChoice recommends that Duquesne set aside 25 percent of its demand response program for disadvantaged businesses with the proviso that the disadvantaged business would not have to post collateral or provide third party guarantees to participate in the program. (pg 14).

EnerNOC strongly opposes ClearChoice's recommendation and interpretation of the Implementation Order and the Pennsylvania Code. To begin with, the section in the Implementation Order and the provisions of the Code require that "disadvantaged businesses" be given "an equal opportunity to compete." Also a disadvantaged business is defined in the Order and the Code as "minority/women/person-with-disabilities-owned." Nowhere in the Code or the Order does it define "disadvantaged business" as one with "limited capital." EnerNOC believes that the rationale behind the Commission's citing to Policy Statements at 52 Pa. Code §§ 69.804, 69.807 and 69.808, on page 26 of its Implementation Order, was to ensure that no inherent discrimination between two equally **qualified** businesses takes place. All RFPs given out for any EDC program should be awarded to the most **qualified** CSP that meets the requirements of the program. The Code and Implementation Order simply align with national policy concerns against discrimination. Utilities should not be forced to rely on unreliable DR providers when the program successes are so critical.

Duquesne has provided an "equal opportunity" for all CSPs to bid on its program. To begin with, in the formation of its EE&C plan, it has widely published stakeholder meetings and

welcomed input from all people in attendance. In addition, its plan promotes a “competitive RFP” that will be open to all CSPs.

EnerNOC fully supports an open and competitive RFP and welcomes the challenge of equally qualified opponents in the bid to be chosen as the most qualified and effective CSP to implement a program for Duquesne to meet its aggressive Act 129 mandate for peak demand reduction.

Further, setting aside any percentage of a program to a company that ultimately admits it will not be able to make payment on penalties for non-performance would not be a “prudent or reasonable” business decision on Duquesne’s behalf. Under Act 129, Duquesne has a duty to make “prudent and reasonable” decisions and to protect its ratepayers. (66 Pa. C.S. §2806.1). It would **not** be prudent or reasonable for an EDC to award a program bid to a company who lacked experience and capital to back up its performance guarantee.

EnerNOC requests that the Commission require Duquesne to submit competitive RFPs and to choose one CSP that is the most qualified to implement and run the demand response program that is needed for the EDC to meet its requirements under Act 129.

D. Department of Environmental Protection (DEP)

In the Department of Environmental Protection’s Main Brief, on pages 9-10, it argues that the use of emergency or backup generators to reduce peak demand should be prohibited. DEP states that using distributed generation to reduce peak demand is not permitted under Act 129 and that the only acceptable strategies to reduce peak demand are to reduce overall consumption or shift consumption to non-peak hours.

DEP continues by stating that reducing consumption of electricity during the highest specified period simply cannot occur by generating electricity with a behind the meter source other than solar energy. They state that grid demand reduction that is merely replaced by higher emitting distributed generation has negative air impacts, and is an unacceptable strategy for Pennsylvania.

EnerNOC believes that backup generators can be an effective type of demand response programming for PECO. Backup generation is a low cost piece of the DR solution set, which PECO has sought to include in its Distributed Energy Resources Program Number 6 and which CSPs should be allowed to use to meet their commitments in the Demand Reduction Aggregator Contracts program, provided that such generation has a permit to allow such participation and that the operation of such units fully comports with their environmental permits.

EnerNOC supports Duquesne's program strategy in targeting eligible commercial/industrial customers in their service territory who have existing backup generation resources or are interested in having grid-connected generating units installed at their facilities in order to realize energy savings and peak demand reductions

VI. CONCLUSION

For all of the foregoing reasons as well as the reasons expressed in EnerNOC's initial comments, EnerNOC proposes that these changes be made to Duquesne's EE&C Plan.

VII. PROPOSED ORDERING PARAGRAPHS

IT IS ORDERED:

1. That Duquesne's Curtailment Load Program be structured in a way in which it can continue on successfully after the statutory deadline of May 31, 2013.
2. That Duquesne issue a competitive RFP and select one CSP to implement and run its Curtailment Load Program.

Respectfully submitted,

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DATED: SEPTEMBER 10, 2009

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**COMMONWEALTH OF PENNSYLVANIA
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

PETITION OF DUQUESNE LIGHT COMPANY
FOR APPROVAL OF ITS ENERGY
EFFICIENCY AND CONSERVATION AND
DEMAND SIDE RESPONSE PLAN

DOCKET NO. M-2009-2093217

CERTIFICATE OF SERVICE

I hereby certify that I have served the foregoing document upon the parties, listed on the next page, in accordance with the requirements of §1.54 (relating to service by a party).

Dated: **September 10, 2009**

By:



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