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August 31, 2012

Via Electronic Filing

Rosemary Chiavetta, Secretary
PA Public Utility Commission
PO Box 3265
Harrisburg, PA 17105-3265

Re: Joint Petition of Metropolitan Edison Company, Pennsylvania Electric Company,
Pennsylvania Power Company and West Penn Power Company for Approval of Their
Default Service Programs, Docket Nos. P-2011-2273650, P-2011-2273668,
P-2011-2273669 and P-2011-2273670

Dear Secretary Chiavetta:

On behalf of the Retail Energy Supply Association ("RESA") enclosed for electronic filing is its Petition for Reconsideration with regard to the above-referenced matter. Copies being served in accordance with the attached Certificate of Service.

Sincerely,

A handwritten signature in cursive script that reads "Deanne M. O'Dell".

Deanne M. O'Dell

DMO/lww
Enclosure

cc: Hon. Elizabeth H. Barnes w/enc.
Cert. of Service w/enc.

CERTIFICATE OF SERVICE

I hereby certify that this day I served a copy of RESA's Petition for Reconsideration upon the persons listed below in the manner indicated in accordance with the requirements of 52 Pa. Code Section 1.54.

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Dated: August 31, 2012

* Indicates that I do not have a record of
receiving an Executed Protective Order
Agreement

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Joint Petition of Metropolitan Edison	:	Docket Nos.	P-2011-2273650
Company, Pennsylvania Electric Company,	:		P-2011-2273668
Pennsylvania Power Company and West Penn	:		P-2011-2273669
Power Company For Approval of Their	:		P-2011-2273670
Default Service Programs	:		

**RETAIL ENERGY SUPPLY ASSOCIATION
PETITION FOR RECONSIDERATION AND/OR
CLARIFICATION OF THE COMMISSION'S
AUGUST 16, 2012 ORDER**

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RETAIL ENERGY SUPPLY ASSOCIATION
PETITION FOR RECONSIDERATION AND/OR CLARIFICATION OF THE
COMMISSION'S AUGUST 16, 2012 ORDER

Pursuant to Section 703(g) of the Public Utility Code, 66 Pa.C.S. §703(g), and Section 5.572 of the Pennsylvania Public Utility Commission's ("Commission") regulations, 52 Pa. Code §5.572, the Retail Energy Supply Association ("RESA")¹ submits this Petition for Reconsideration and/or Clarification of the Opinion and Order of the Commission entered August 16, 2012, in the above-captioned proceeding ("*FirstEnergy Default Service Order*"). The scope of this Petition is limited to seeking clarification regarding a few issues related to the retail market enhancement initiatives including: the customer referral programs (both the New/Moving Customer Program and the Standard Offer Program) and the Opt-In Aggregation Program. Specifically, RESA asks the Commission to: (1) clarify its erroneous conclusion that RESA proposed elimination of the New/Moving Customer Referral Program; (2) to clarify that electric generation suppliers ("EGSs") who chose to participate in the Standard Offer Customer Referral Program are not required to change their price each time the Price-to-Compare ("PTC") changes during the one-year contract term; (3) to clarify that participating customers will be equally allocated to participating suppliers in the Retail Opt-In Aggregation Program; and, (4) to clarify that EGSs will have the flexibility to determine the price for customers in months five through twelve of the Retail Opt-In Aggregation Program.

¹ RESA's members include: Champion Energy Services, LLC; ConEdison Solutions; Constellation NewEnergy, Inc.; Direct Energy Services, LLC; Energetix, Inc.; Energy Plus Holdings LLC; Exelon Energy Company; GDF SUEZ Energy Resources NA, Inc.; Green Mountain Energy Company; Hess Corporation; Integrys Energy Services, Inc.; Just Energy; Liberty Power; MC Squared Energy Services, LLC; Mint Energy, LLC; NextEra Energy Services; Noble Americas Energy Solutions LLC; PPL EnergyPlus, LLC; Reliant; Stream Energy; TransCanada Power Marketing Ltd. and TriEagle Energy, L.P.. The comments expressed in this filing represent the position of RESA as an organization but may not represent the views of any particular member of RESA.

RESA submits that each of these requested clarifications meet the standard for granting a petition for reconsideration and each clarification is important to permit all parties to move forward in successfully implementing the directives of the Commission for the benefit of all consumers.

In support of this Petition, RESA states as follows:

I. BACKGROUND

1. The *FirstEnergy Default Service Order* adjudicates the exceptions regarding the Recommended Decision (“RD”) of Administrative Law Judge (“ALJ”) issued June 15, 2012 which addressed the default service plans submitted by Metropolitan Edison Company (“Met-Ed”), Pennsylvania Electric Company (“Penelec”), Pennsylvania Power Company (“Penn Power”), and West Penn Power Company (“West Penn”) (collectively the “Companies” or “FirstEnergy”) on November 17, 2011. The Order covers a variety of topics related to default service procurement issues as well as retail market enhancement initiatives.

2. These retail market enhancement initiatives have been the subject of the Commission’s current and on-going Retail Markets Investigation (“RMI”) which was opened on April 29, 2011 with the goal “of making recommendations for improvements to ensure that a properly functioning and workable competitive retail electricity market exists in the state.”² Guidance regarding the retail market enhancement initiatives that the Commission directed electric distribution companies (“EDCs”) like the FirstEnergy companies to include in their default service petitions were set forth in the *Intermediate Work Plan Final Order*.³

² *Investigation of Pennsylvania’s Retail Electricity Market*, I-2011-2237952, Order entered April 29, 2011 at 2 (“*April 29 RMI Order*”) at 2.

³ *Investigation of Pennsylvania’s Retail Electricity Market: Intermediate Work Plan*, Docket No. I-2011-2237952, Final Order entered March 2, 2012 (“*Intermediate Work Plan Final Order*”).

3. RESA was an active participant in this proceeding. RESA filed direct, rebuttal and surrebuttal testimony of two witnesses as well as a main brief, reply brief, exceptions and reply exceptions. RESA is also an active participant in the RMI process, participating in the various *en banc* hearings as the various technical conferences. RESA has also provided numerous discussion documents for use by stakeholders in the RMI process. In addition, RESA has submitted numerous formal and informal comments in the RMI process as requested by the Commission.

4. A Petition for Reconsideration, under the provisions of 66 Pa. C.S. § 703(g), may properly raise any matters designed to convince the Commission that it should exercise its discretion under the Public Utility Code to rescind or amend a prior order in whole or in part.⁴ Parties cannot be permitted by a second motion to review and reconsider, to raise the same questions which were specifically decided against them. What the Commission expects in petitions for reconsideration are new and novel arguments, not previously heard or considerations which appear to have been overlooked by the Commission. Additionally, a Petition for Reconsideration is properly before the Commission where it pleads newly discovered evidence, alleges errors of law, or a change in circumstances.

II. BASIS FOR RECONSIDERATION

5. The scope of this Petition is limited to seeking clarification regarding a few issues related to the retail market enhancement initiatives including: the customer referral programs (both the New/Moving Customer Program and the Standard Offer Program) and the Opt-In Aggregation Program. RESA is not asking the Commission to reverse its decision on all issues that were decided against RESA's advocacy in the case. Rather, the issues identified here

⁴ *Duick v. Pennsylvania Gas and Water Co.*, Docket No. C-R0597001 *et al.*, 56 Pa. P.U.C. 553 (1982).

are narrowly limited to those that require further clarification to ensure that they are appropriately implemented consistent with the intent of the Commission so as to best serve the public interest. As explained further below, reconsideration of these limited issues is appropriate and, therefore, RESA respectfully requests that the Commission grant this Petition.

6. Regarding the customer referral programs, RESA submits that granting this petition is appropriate on two bases. First, the Commission's conclusion that RESA recommended "dropping" the New/Moving Customer Referral program entirely was in error as it either overlooked or misinterpreted RESA's advocacy on this issue. Thus, granting this Petition to reconsider this issue is appropriate. Second, clarification regarding the Commission's intention regarding the terms of standard offer is appropriate as the text of the Commission's Order directing a seven percent discount from the Price-to-Compare *at the time the offer is made* and noting that the resolution is consistent with the *Intermediate Work Plan Order* does not appear to be consistent with the Commission's decision to adopt the recommendation of the ALJ to adopt the proposal of FirstEnergy to require that the seven percent discount apply for the entire contract term even if the PTC changes during that term.⁵ Therefore, clarification on this important program term would be useful for all the parties as they move forward to implement the directives of the Commission.

7. Regarding the Opt-in Aggregation Program, it is a "new" program recommended by the Commission to replace the Retail Opt-In Auction program that had been proposed by the Companies and addressed by the parties in the evidentiary proceeding.⁶ In consideration of this, the Commission recognized that its new Retail Opt-In Aggregation

⁵ *FirstEnergy Default Service Order* at 146.

⁶ *FirstEnergy Default Service Order* at 131.

Program would require some “modifications” regarding the customer notification and opt-in enrollment process and directed the Companies, in consultation with the EGSs, to update their proposals in this regard.⁷ While RESA is in the process of undertaking this process, clarification of a few key issues (as discussed further below) in the context of this Petition would be helpful for all parties as they move forward. Thus, in consideration of the Commission’s actions to direct implementation of a new program and to recognize that logistical details will need to be addressed, RESA submits granting this Petition is appropriate.

8. For these reasons, RESA submits that this Petition meets the standards for reconsideration and, therefore, should be granted and that the issues discussed below be clarified as requested.

III. CUSTOMER REFERRAL PROGRAMS

A. RESA Did Not Propose Elimination Of The New/Moving Customer Referral Program

9. In the *FirstEnergy Default Service Order*, the Commission stated that the New/Moving Customer Referral Program can be implemented in a relatively short period of time with minimal effort on the part of an EDC. The Commission concluded that the Companies should implement the New/Moving Customer Referral Program as articulated in the RD as soon as possible, while anticipating refinement of the program once the RMI working group is able to finalize the “call center scripts”⁸

10. In reaching this conclusion, the Commission erroneously stated that “RESA and the Companies suggested ‘dropping’ the New/Moving Customer Referral Program entirely,

⁷ *Id.* at 109.

⁸ *FirstEnergy Default Service Order* at 154.

and instead, focusing its resources solely on the Standard Offer Customer Referral Program.”⁹ RESA is and has always been a strong proponent of customer referral programs and has consistently advocated in the RMI proceedings as well as in current and prior default service proceedings that a customer referral programs should be implemented as soon as possible.¹⁰ RESA continues to maintain that a standard offer customer referral program can and should be implemented in Pennsylvania and that such program could be implemented in a relatively short period of time. Only because of the obstacles raised against implementation of a customer referral program, did RESA offer the interim proposal of implementing a New/Moving Customer Referral Program in the RMI that could be implemented quickly and in advance of a full customer referral program.¹¹

11. In this proceeding, RESA analyzed the proposed New/Moving Customer Referral Program offered by the FirstEnergy Companies and concluded that it was unlikely to be worth the cost and effort and instead recommended that the Standard Customer Referral Program be merged with the New/Moving Customer Referral Program as a way to more efficiently allocate resources with the goal of implementing a viable program. RESA also recommended that whether or not the “new/mover” process does go forward for FirstEnergy, that the Companies should implement a procedure whereby an applicant or moving customer that already knows the EGS to which he or she wishes to subscribe should be enrolled with that EGS by the

⁹ *FirstEnergy Default Service Order* at 154.

¹⁰ *See, e.g., Petition of the West Penn Power Company d/b/a Allegheny Power for Approval of its retail Electric Default Service Program and Competitive Procurement Plan for Service at the Conclusion of the Restructuring Transition Period, Docket No. P-00072342, Opinion and Order entered May 21, 2008* (wherein RESA advocated that passing on the opportunity to implement a referral program was unjustified).

¹¹ *See* [http://www.puc.state.pa.us/electric/PDF/RetailMI/RESA_DISCUSSION%20FOR_NEW_MOVING_CUSTOMER_PROGRAM_AND_RELATED_CUSTOMER_CHOICE_EDUCATION_\(L0456130\).pdf](http://www.puc.state.pa.us/electric/PDF/RetailMI/RESA_DISCUSSION%20FOR_NEW_MOVING_CUSTOMER_PROGRAM_AND_RELATED_CUSTOMER_CHOICE_EDUCATION_(L0456130).pdf)

EDC and that the details and timelines of this process should be established in a workshop initiated immediately after the end of this case, with the goal of implementing this process as soon as possible.¹²

12. During the evidentiary phase of this proceeding, RESA advocated that the New/Moving Customer referral program as proposed by FirstEnergy was unlikely to be worth the cost and effort. Under FirstEnergy's proposal, applicants for new service and customers changing service .residential and small commercial customers that call an EDC to initiate service or to move service within an EDC's service territory would be provided information about the competitive marketplace so that they would not harbor the erroneous assumption that EDC-provided default service is their first (or only) option for generation supply. If such a customer knows which EGS he or she wants to select, then the EDC should have processes in place to transfer the caller to his or her chosen EGS. If a customer does not select a specific EGS, he or she should be referred to www.PAPowerSwitch.com.¹³

13. In direct testimony, RESA Witness Kallaher explained that FirstEnergy's proposed "new/mover" customer referral program, as described by the Companies, is too complicated and, most importantly, are not likely to result in achieving the two main goals of the program – to encourage customers to participate in the competitive market and to begin the process of putting competitive supply on a level playing field with default service. Ten to fifteen percent of the market establishes new service or service after a move each year, so this is not an unimportant area of concern. However, customers unfamiliar with choice would be directed to its PowerSwitch website and only those customers who already know which EGS they want to

¹² RESA Main Brief at 89.

¹³ Met-Ed/Penelec/Penn Power/West Penn St. No. 7 at 28-29.

select will be "hot transferred" to the EGS. This requires the customer to end the call with the FirstEnergy service representative, go to the internet, navigate to the Commission's choice website and then study the offers listed to determine whether or not the customer should switch. By designing this program in this way, RESA Witness Kallaher explained, the core purpose of any customer referral program – to give the customer a one-stop shopping experience whereby he or she can learn about choice and make an easy and convenient decision at the time to switch to an EGS or choose an EGS at service initiation – is not being fulfilled.¹⁴

14. Based on these concerns, RESA recommended that, rather than implement the full scale "New/Mover" program as proposed by FirstEnergy, a "standard offer" customer referral program should be implemented as soon as possible with the New/Mover program folded into the standard offer program.¹⁵ In response to these concerns, FirstEnergy revised its initial proposal for the New/Moving Customer Referral Program and proposed to dispense with this effort.¹⁶

15. Because RESA did not advocate the elimination of the New/Moving Customer Referral Program but rather recommended that the Standard Customer Referral Program be merged with the New/Moving Customer Referral Program as a way to more efficiently allocate resources with the goal of implementing a viable program, RESA respectfully requests clarification of this issue. Additionally, since the Commission rejection of the RESA recommendation was based on an apparent misunderstanding of its position, RESA respectfully requests that the Commission reconsider its initial determination adopt the RESA recommendation as set forth above.

¹⁴ RESA St. No. 2-R at 21-23.

¹⁵ RESA St. No. 2-R at 21-23.

¹⁶ Met-Ed/Penelec/Penn Power/West Penn St. No. 7-SR at 11-12.

B. Clarification That EGSs Are Not Required To Change Their Price Each Time The PTC Changes During The One-Year Contract Term Of The Standard Offer Customer Referral Program

16. RESA seeks further clarification confirming the Commission's intention that the 7% discount off the PTC at the time of the standard customer referral offer does not require a competitive supplier to alter its price to maintain the same level of discount when the PTC changes during the twelve (12) month standard offer customer referral program term. While the Commission states that the "Customer Referral Program should be based upon a seven percent discount from the PTC *at the time the offer is made* and should extend for a one-year service term," the Commission also stated that it "concur[s] with the ALJ's recommendation and denies RESA's exception on this issue."¹⁷ Clarification is warranted because these two statements appear to be in conflict given RESA's exception to the ALJ's recommendation to adopt the proposal of the Companies which – by necessary operation – would mean that EGSs serving customers in the customer referral program would be required to alter their price to 7% below the PTC when the PTC changes during the one-year service term.

17. The RD, which recommended adoption of the Companies' position, never specifically addresses how PTC changes during the one-year term of the standard offer customer referral are to be addressed by EGSs. Since the PTCs in the service territories for all of the FirstEnergy EDCs change on a quarterly basis, there is no dispute that there will be four PTC changes during the one year service term of the standard offer customer referral program. How the Commission expects EGSs to react to these changes is a critical program element.

18. During the proceeding, FirstEnergy made clear that it expected EGS prices to change to 7% off the PTC at the time the PTC changed during the one-year service term of the

¹⁷ *FirstEnergy Default Service Order* at 146 (emphasis original).

standard offer customer referral program.¹⁸ In response, RESA Witness Kallaher testified that while the “Standard Offer” contract term could be as long as 12 months, the 7% mandated discount from the EDC’s PTC should only be available for four months (which would equal the quarter during which the PTC was current). After the four month discount period, the price should then revert to a price that is disclosed to the customer in a mailing from the EGS serving the customer shortly after enrollment. FirstEnergy’s proposal to require participating EGSs to provide a 7% discount for an entire year in any event is not practicable and will likely severely limit the ability of EGSs to participate.¹⁹

19. In the *FirstEnergy Default Service Order*, the Commission appears to require that the initial price of 7% off the then effective PTC should remain static throughout the one-year service term but this determination appears contrary to the ALJ’s recommendation (which the Commission states it was adopting) to approve the FirstEnergy proposal that the EGS price is required to change to 7% off the PTC when the PTC changes throughout the one-year service term.

20. This interpretation is consistent with the Commission’s conclusion in the *FirstEnergy Default Service Order* that its decision is consistent with the *Intermediate Work Plan Final Order*.²⁰ The Commission’s *Intermediate Work Plan Final Order* states that “[t]he 7% reduction is a constant price established against the PTC effective on the date the standard offer is made.”²¹ By this clear language, the Commission did not establish in the *Intermediate*

¹⁸ FirstEnergy Reply Exceptions at 39 (“Customers should be assured that the standard offer discount will be in place for the duration of the contract.”)

¹⁹ RESA St. No. 2 at 29.

²⁰ RESA Exceptions at 42.

²¹ *Intermediate Work Plan Final Order* at 31.

Work Plan Final Order that the 7% discount was required to change quarterly with the PTC. Therefore, adopting the ALJ's contrary recommendation – as the Commission stated it was doing in the *FirstEnergy Default Service Order* – would be contrary to what appears to be the Commission's intent.

21. Given this apparent inconsistency, RESA requests that the Commission clarify its intention that the price offered by the EGS at the time an offer is made in the standard offer customer referral program (which is to equal 7% discount off the then effective PTC) is to remain the same price throughout the one-year term of the standard offer program regardless of how the PTC changes during that time.

22. If, contrary to RESA's interpretation of the intention of the Commission, the Commission maintains that it intended EGSs to alter their standard offer customer referral price each time the PTC changes, then RESA respectfully requests that the Commission make clear that participating EGSs have the flexibility to leave the customer referral program with thirty (30) days notice when the new PTC is set. Requiring EGSs to keep a constant 7% discount from the quarterly-changing PTC for a full 12 months will undoubtedly reduce EGS participation. While RESA cannot know whether this suggested "30 day notice to leave" proviso will incent suppliers to participate in a standard offer customer referral program that requires quarterly price changes at 7% off the PTC, its inclusion is better than the alternate.

IV. OPT-IN AGGREGATION PROGRAM

23. The *FirstEnergy Default Service Order* directs the Companies to "eliminate" their proposed Retail Opt-In Auction Program and instead implement a Retail Opt-in Aggregation Program.²² In consideration of the fact that the parties in the case focused their

²² *FirstEnergy Default Service Order* at 131.

advocacy on the implementation of a Retail Opt-In Auction Program, the Commission also directed that the Companies, in consultation with the EGS, update their proposals for customer notification, opt-in enrollment and customer assignment “to coordinate with this revised ROI Program design.”²³ While RESA is in the process of fulfilling this requirement, clarification from the Commission regarding the two issues below is important to ensure that the Commission’s intention regarding this new program are satisfied and that the program is structured in a way that is most likely to lead to a successful outcome for all involved.

A. Clarification That Participating Customers Will Be Equally Allocated To Participating EGSs In The Retail Opt-In Aggregation Program

24. The *FirstEnergy Default Service Order* does not address how customers will be allocated to participating EGSs. Under the auction structure, EGSs would be competitively selected based on the lowest fixed price and customers would have been randomly assigned to the winning bidders.²⁴ With removal of the auction process, the Commission appears to be permitting any EGS who can offer the product directed by the Commission and is willing to share in the cost recovery to participate in the program. The Commission, however, does not establish how customers will be assigned to the participating EGSs.

25. RESA submits that clarification on this point is important because it is one of the key elements for EGSs to assess in deciding whether or not to participate in the Retail Opt-In Aggregation Program. Consistent with the FirstEnergy proposal for customer allocation for the Retail Opt-In Auction, RESA recommends that the Commission clarify that customers will be allocated on an equitable basis to all EGSs who are willing to participate. Such clarification would remove any doubts on the part of the EGSs about this important aspect of the program

²³ *FirstEnergy Default Service Order* at 109.

²⁴ FirstEnergy Main Brief at 110.

structure and will assist the parties as they move forward to update their proposals on these issues consistent with the directives of the *FirstEnergy Default Service Order*.

B. Clarification That EGSs Will Have The Flexibility To Determine The Price For Customers In Months Five Through Twelve In The Retail Opt-In Aggregation Program

26. Regarding the product that EGSs are required to offer through the Retail Opt-In Aggregation Program, the Commission directed that EGSs agree to provide a \$50 bonus plus a price that is five percent off the PTC at the time of enrollment and guaranteed for four months.²⁵ For months five through twelve, the Commission determined that EGS must agree to provide a fixed-price product.²⁶ The Commission also noted that its pricing proposal “closely mirrors RESA’s recommendation for the Standard Offer Program.”²⁷ The *FirstEnergy Default Service Order* does not provide any specific direction on how the price after the first four months is to be set but it does require that EGSs participating in the program “provide to the Commission for review and approval, the terms and conditions of the eight-month ROI fixed-price offering.”²⁸

27. RESA requests that the Commission clarify that EGSs have the flexibility to individually determine the price for their customers in months five through twelve. This is an important issue because it will help EGSs assess whether or not they will participate in the Retail Opt-In Aggregation Program. RESA interprets the Commission’s requirement that participating in the program submit, for review and approval, their customer terms and conditions of service to be focused on ensuring that participating EGSs do not impose any early termination fees or

²⁵ *FirstEnergy Default Service Order* at 117-118.

²⁶ *Id.* at 118.

²⁷ *Id.* at 118, n. 28.

²⁸ *Id.* at 118.

otherwise stymie the ability of customers to leave the program. RESA does not object to such requirement.

28. RESA would object, however, if the requirement of review and approval is for the Commission to approve the price that the EGS plans to offer the customer in months five through twelve because law is clear that “[t]he generation of electricity shall no longer be regulated as a public utility service or function.”²⁹ The Commission is required to establish the rates for the distribution and transmission services of the EDC but generation (whether provided by EDC or EGS) is not a public utility service or function and it is not regulated by the Commission pursuant to its ratemaking authority in Chapter 13.³⁰

29. Since this is an important aspect of the Retail Opt-In Aggregation Program, RESA requests that the Commission clarify this issue consistent with this Petition.

V. CONCLUSION

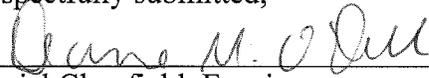
30. In conclusion, RESA asks the Commission to: (1) clarify its erroneous conclusion that RESA proposed elimination of the New/Moving Customer Referral Program, RESA Did Not Propose Elimination Of The New/Moving Customer Referral Program; (2) to clarify that EGSs who chose to participate in the Standard Offer Customer Referral Program are not required to change their price each time the Price-to-Compare (“PTC”) changes during the one-year contract term; (3) to clarify that participating customers will be equally allocated to participating suppliers in the Retail Opt-In Aggregation Program; and, (4) to clarify that EGSs will have the flexibility to determine the price for customers in months five through twelve of the Retail Opt-In Aggregation Program

²⁹ 66 Pa. C.S. §§ 2802(14), 2806(a).

³⁰ 66 Pa. C.S. § 2804(10).

WHEREFORE, RESA respectfully requests that the Commission grant this Petition for Reconsideration and/or Clarification and issue an order consistent with the recommendations set forth herein.

Respectfully submitted,



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