

**UNITED STATES OF AMERICA  
BEFORE THE  
FEDERAL ENERGY REGULATORY COMMISSION**

<b>City of Anaheim, California</b>	)	<b>Docket Nos. EL03-15-000</b>
	)	
<b>City of Riverside, California</b>	)	<b>EL03-20-000</b>

**JOINT MOTION OF THE CITIES OF ANAHEIM AND  
RIVERSIDE AND THE CALIFORNIA INDEPENDENT SYSTEM  
OPERATOR CORPORATION FOR SUMMARY DISPOSITION**

**To: Honorable Carmen A. Cintron, Presiding Administrative Law Judge**

Pursuant to Rules 212 and 217 of the Commission’s Rules of Practice and Procedure, 18 C.F.R. §§385.212 and 385.217, the Cities of Anaheim and Riverside, California (“Cities”) and the California Independent System Operator Corporation (“ISO”) hereby submit this Joint Motion for Summary Disposition requesting a determination that costs associated with the Cities’ Entitlements in the facilities known as the Southern Transmission System (“STS”), the Northern Transmission System (“NTS”), and related contracts with the Los Angeles Department of Water and Power (“LADWP”)<sup>1</sup> are properly included in the Cities’ Transmission Revenue Requirements (“TRRs”) for purposes of the development of the charges for transmission service under the ISO’s Tariff. As set forth in detail below, the Cities’ Entitlements in the STS, NTS and related

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<sup>1</sup> The NTS consists of one 230kv line between the Intermountain Power Project in Utah and the Gonder substation in Nevada and two 345 kv lines between the Intermountain Power Project and the Mona substation in Utah. The STS consists of a single  $\pm$  500 kv DC line between the Intermountain Power Project and the Adelanto substation in California. The related contracts with LADWP provide for service between the Adelanto substation and the midpoint of the Victorville-Lugo line between LADWP and the Southern California Edison Company (“SCE”) Lugo substation.

contracts with LADWP indisputably constitute network transmission which, under the Commission's applicable policies and precedents, are fully includable in the Cities' TRRs, and there is no disputed issue of material fact that would support a contrary conclusion.

## **I. PROCEDURAL HISTORY AND BACKGROUND**

On October 18, 2002, Anaheim filed a petition for a declaratory order in Docket No. EL03-15-000 requesting a determination by the Commission accepting Anaheim's TRR and Transmission Owner ("TO") Tariff, as approved by Anaheim's rate setting authority, for the purpose of becoming a Participating Transmission Owner ("PTO") in the ISO. On October 29, 2002, Riverside filed a similar petition in Docket No. EL03-20-000 requesting the same relief.

The California Department of Water Resources State Water Project ("SWP"), the Cities of Redding, Santa Clara and Palo Alto, California and the M-S-R Public Power Agency, the City of Vernon, California ("Vernon"), the California Electricity Oversight Board, the Northern California Power Agency, The Metropolitan Water District of Southern California, the Modesto Irrigation District, the Pacific Gas and Electric Company ("PG&E"), the ISO, and the Transmission Agency of Northern California filed timely motions to intervene. The Southern California Edison Company ("SCE"), the San Diego Gas & Electric Company, and PG&E jointly filed protests in both of the dockets captioned above and in Docket Nos. EL03-14-000 and EL03-21-000 filed by the Cities of Azusa and Banning, California. SWP filed protests requesting a hearing in the Anaheim and Riverside proceedings, Docket Nos. EL03-15-000 and EL03-20-000 respectively.

The California Public Utilities Commission (“CPUC”) had timely intervened in Docket No. EL00-105-000 and Docket No. ER00-2019-000, which subsequently were set for joint settlement proceedings with the Anaheim, Riverside, Azusa, and Banning dockets. The ISO filed comments in all of the proceedings described above.

By order dated December 23, 2002, the Commission granted the timely motions to intervene and initiated settlement proceedings with respect to the four petitions filed by Azusa, Anaheim, Riverside and Banning and Docket Nos. EL00-105-006 and ER002019-005. 101 FERC ¶61,352. On February 6, 2003, the Commission issued an order clarifying that the Cities’ TRRs and TO Tariffs became effective, subject to the outcome of these proceedings and potential refunds, on January 1, 2003, the date that the Cities transferred Operational Control over their transmission facilities and entitlements to the ISO. 102 FERC ¶61,153.

Settlement discussions ensued under the guidance of Settlement Judge Judith Dowd. On July 18, 2003, the Cities (along with Azusa and Banning) filed an Offer of Settlement and Settlement Agreement in Docket Nos. EL03-14-000, EL03-15-000, EL03-20-000, and EL03-21-000 (“Settlement”). The Settlement completely settled Docket Nos. EL03-14-000 and EL03-21-000 by resolving all issues concerning the TRRs for Azusa and Banning. Subject to the establishment of this evidentiary proceeding, the Settlement also resolved all issues concerning the TRRs for Anaheim and Riverside except, as set forth in Paragraph 9 of the Settlement, “the issue whether the Anaheim and Riverside TRRs associated with the STS, NTS, and related contracts with LADWP should be included in the ISO’s transmission rates and charges.” Paragraph 10 of the Settlement established that the “amounts of \$18,365,000 and \$10,612,000 are the

portions of Anaheim's and Riverside's respective HVTRRs [High Voltage Transmission Revenue Requirements], as set forth in paragraph 6 [of the Settlement], that are associated with the NTS, STS, and related LADWP contracts."

On December 18, 2003, the Commission issued its order accepting the Settlement and establishing this proceeding to address the unresolved issue concerning the appropriateness of including the costs associated with the STS, NTS, and related contracts with LADWP in the Anaheim and Riverside TRRs. 105 FERC ¶61,293 (2003). In accordance with the procedural schedule established by the Presiding Administrative Law Judge, Anaheim and Riverside filed the Direct Testimony and Exhibits of Stephen Page Daniel on February 9, 2004. On March 8, 2004, SWP, SCE, PG&E, and the ISO each filed testimony and supporting exhibits. The testimony filed by the ISO supports the inclusion of the costs associated with the Cities' Entitlements in the STS, NTS, and related contracts with LADWP in the Cities' TRRs. The testimony filed by SWP opposes the inclusion of the costs associated with the STS, NTS and related LADWP contracts in the Cities' TRRs, and the testimony filed by SCE suggests exclusion of a portion of the STS/NTS costs. As discussed in greater detail below, however, none of the testimony filed by SWP or SCE identifies any issue of material fact that would support exclusion of any portion of the STS/NTS and related LADWP contracts costs from the Cities' TRRs.

## **II. MOTION FOR SUMMARY DISPOSITION**

Summary disposition is appropriate where no genuine issue of material fact exists, and there is no need for a hearing to develop an evidentiary record. *See, Pa. Pub. Util.*

*Comm'n v. FERC*, 881 F.2d 1123, 1126 (D.C. Cir. 1989); *Columbia Gulf Transmission Co.*, 79 FERC ¶61,351 at 62,501 (1997). Although the March 8<sup>th</sup> testimony submitted by SWP and SCE asserts a variety of factual contentions that are subject to dispute, none of that testimony identifies any material fact in dispute. As described below, under the Commission's long-standing policies and precedents, the only material question is whether the Cities' Entitlements in the STS, NTS, and related LADWP contracts form part of the integrated transmission network. Under the standards and criteria that the Commission has applied to determine whether transmission facilities are network or direct assignment facilities, no party has submitted any evidence that would support a conclusion that the STS, NTS and related LADWP contracts are not network facilities.

#### **I. Commission Policy Requires Rolled-In Pricing for Network Transmission Facilities**

For nearly thirty years the Commission consistently has applied a rolled-in pricing policy for network transmission facilities. *See Southern California Edison Company*, 20 FERC ¶61,301 at 61,588-589 (1982), *reh'g denied*, 21 FERC ¶ 61,211 (1982), *aff'd sub nom. Cities of Riverside and Colton, California v. FERC*, 765 F.2d 1434 (9th Cir. 1985); *Public Serv. Co. of Ind., Inc.*, 56 FPC 3003, 3034-36 (1976), *aff'd in pertinent part*, 57 FPC 1173, 1191-93 (1977); *Utah Power & Light Company*, 45 FERC ¶61,095 at 61,299-300 (1988), *aff'd in pertinent part*, 47 FERC ¶61,209 at 61,751 (1989). Rolled-in pricing for network facilities is based on the Commission's repeated recognition that transmission systems operate as an integrated whole, and that all users of the transmission grid derive benefit from facilities that support the grid. *See, e.g., Public Serv. Co. of Colo.*, 62 FERC ¶61,013 at 61,061 (1993).

The Commission recently reaffirmed the rolled-in pricing policy for facilities that perform a network function in *Pacific Gas and Electric Company*, 106 FERC ¶61,144 (2004) (“*PG&E*”). In *PG&E*, the Commission determined that certain PG&E transmission lines that previously had been classified as generation tie lines should be included in PG&E’s TRR (and hence in the ISO’s rates and charges) because those lines in part perform a network function. Notwithstanding Staff evidence that the lines at issue transmitted power from specific generators to the grid between 81% and 100% of the time (*Id.* at P 18), the Commission made clear that use of the lines to transmit power from specific generation stations “does not invalidate their status as part of the integrated grid.” The Commission rejected a proposal in the Initial Decision (advanced by SWP) for proportional pricing of “dual use” facilities and emphasized that the rolled-in pricing policy should apply.

Most notably, the *PG&E* decision explicitly rejected the suggestion that the unbundling policy adopted by the Commission in the Order No. 888 series<sup>2</sup> reversed or modified the long-standing policy of rolled-in pricing for network facilities. The Commission stated at P 22:

While it is true, as the judge observed, that the advent of unbundling under Order No. 888 has influenced the Commission to allow refunctionalization of costs in some circumstances, we have not modified our policy of requiring rolled-in pricing for high voltage transmission facilities that comprise the integrated transmission grid. The basis of this policy is that the integrated grid is a single interconnected system serving and benefiting all transmission customers; indeed, it is the grid’s interconnected nature that makes for a reliable system consistently

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<sup>2</sup> *Promoting Wholesale Competition Through Open Access Non-discriminatory Transmission Services by Public Utilities; Recovery of Stranded Costs by Public Utilities and Transmitting Utilities*, Order No. 888, 61 Fed. Reg. 21,540 (May 10, 1996), FERC Stats. & Regs. ¶31,036 (1996), *order on reh’g*, Order No. 888-A, 62 Fed. Reg. 12,274 (March 14, 1997), FERC Stats. & Regs. ¶31,048 (1997), *order on reh’g*, Order No. 888-B, 81 FERC ¶61,248 (1997), *order on reh’g*, Order No. 888-C, 82 FERC ¶61,046 (1998), *aff’d in part, remanded in part, Transmission Access Policy Study Group, et al. v. FERC*, 225 F.3d 667 (D.C. Cir. 2000), *aff’d sub nom. New York v. FERC*, 535 U.S. 1 (2002).

providing for the delivery of electric energy to all customers even when particular facilities go out of service, either due to scheduled maintenance or unexpected outages. Our rolled-in pricing policy recognizes the inherent benefit of the integrated grid to customers, by spreading the costs of the integrated grid among all customers. With the limited exceptions noted above, we have consistently adhered to this policy.

The *PG&E* order further makes clear that the “limited exceptions” involve generation related facilities used solely to deliver generation output to the grid that would “serve[] no purpose without the generator.” *Id.* at P 19. Thus, under the Commission’s long-standing rolled-in pricing policy as applied most recently in the *PG&E* case, the only material issue is whether the Cities’ Entitlements in the STS, NTS, and related LADWP contracts form part of the integrated transmission grid.

## **II. There Is No Dispute That the Cities’ STS, NTS, and Related LADWP Contract Entitlements Serve a Network Function**

A series of Commission orders in cases involving interconnection arrangements provides further guidance concerning the nature of network transmission facilities. The rolled-in pricing policy underlies the Commission’s determination in Order No. 2003<sup>3</sup> to require that transmission providers reimburse generators that fund network upgrades through credits against transmission charges. Through such credits, all transmission customers ultimately share the costs for network upgrades funded initially by an interconnecting generator. The Commission has made clear that direct assignment of the costs of network upgrades is prohibited even if the facilities would not have been installed “but for” a particular generator’s requests for service. *Consumers Energy Co.*, 96 FERC ¶61,132 at 61,561 (2001); *Tampa Elec. Co.*, 99 FERC ¶61,192 at 61,796

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<sup>3</sup> *Standardization of Generator Interconnection Agreements and Procedures*, 104 FERC ¶61,103 (2003) (“Order No. 2003”), *order on reh’g*, 106 FERC ¶61,220 (“Order No. 2003-A”).

(2002); *Southwest Power Pool, Inc.*, 100 FERC ¶61,248 at P 15 (2002); *Southern Co. Servs. Inc.*, 105 FERC ¶61,221 at P 10 (2003). Network facilities include “all facilities at or beyond the point where the customer or generator connects to the grid without regard to the purpose of the up grade.” *Entergy Gulf States, Inc.*, 99 FERC ¶61,095 at P 3 (2002), *affirming* 98 FERC ¶61,014; *Tampa Elec. Co., supra*; *Entergy Louisiana, Inc.*, 99 FERC ¶61,199 at P 35 (2002); *Southwest Power Pool, Inc., supra*; *Am. Elec. Power Serv. Corp.*, 101 FERC ¶61,194 at P 10 (2002); *Illinois Power Co.*, 103 FERC ¶61,032 at PP 9-11 (2003); Order No. 2003 at P 66.

Cities’ Witness Daniel, ISO Witness LeVine, and even SCE Witness Cuillier presented uncontradicted testimony that the STS, NTS, and related LADWP contracts perform network functions separate and apart from their use to deliver power from the Intermountain Generating Station (“IGS”). The STS, NTS, and facilities associated with the related LADWP contracts are at or beyond the point at which power from the IGS is delivered to the grid and intermingles with power from other sources. (*See* Exh. ISO-1 at page 7, lines 13-23). In addition, the STS, NTS, and related LADWP contracts provide an inter-utility interconnection between the ISO control area and the control areas of other utilities, including the Pacificorp Control Area and the Sierra Pacific Control Area (Exh. SWP-1 at page 30, lines 7-9; Exh. CIT-1 at page 15, line 21 to page 16, line 15; Exh. SCE-1 at page 9, line 9 to page 10, line 7).

The SWP testimony does not and cannot challenge these fundamental characteristics of the STS, NTS, and related LADWP contracts that clearly establish their status as network facilities. Indeed, the SWP testimony itself includes a number of statements that compel the conclusion that the Cities’ STS/NTS and related LADWP

contract Entitlements constitute network facilities under the Commission's policy and precedent described above. The testimony of SWP Witness Marcus acknowledges: (1) that other market participants use the Cities' Entitlements in the STS, NTS, and related contracts with LADWP (Exh. SWP-1 at page 6, line 23 to page 7, line 1; page 8, lines 18-19; page 9, lines 6-14; page 41, line 9 to page 42, line 12); (2) that flows over the STS and NTS are from multiple resources (Exh. SWP-1 at page 13, line 10 to page 14, line 10; page 16, line 19 to page 17, line 1); (3) that the STS, NTS, and related LADWP contracts can be used for inter-regional energy transactions (Exh. SWP-1 at page 46, line 16 to page 47, line 15), and (4) that the STS line remains operational even when the IGS generators are off-line (Exh. SWP-1, page 12, line 15 to page 13, line 3; page 28, lines 3-12). Given these statements, it is indisputable that the Cities' STS, NTS, and related LADWP contract Entitlements serve a network function. Accordingly, under the ISO Tariff and the Commission's rolled-in pricing policy, they are properly included in the Cities' TRRs.

### **III. Asserted Limitations on the Magnitude of Network Use Do Not Justify Exclusion of STS/NTS Costs from the Cities' TRRs.**

All of SWP's and SCE's attempted justifications for excluding all or a portion of the STS/NTS costs from the Cities' TRRs amount to collateral attacks on the Commission's rolled-in pricing policy or prior Commission determinations. The vast majority of the testimony submitted by SWP and the portion of the SCE testimony that suggests partial exclusion of the STS/NTS costs from the Cities' TRRs focus on scheduling restrictions imposed by the ISO based on the zonal and branch groups network modeling that the ISO currently has in place, which limit the use of portions of

the Cities' STS, NTS and related LADWP contract Entitlements by other market participants. (Exh. SWP-1 at page 6, lines 7-12; page 7, lines 1-6; page 9, lines 16-19; page 10, lines 14-16; page 15, line 20 to page 16, line 18; page 22, lines 16 to page 27, line 4; page 31, line 21 to page 39, line 4; page 42, line 15 to page 48, line 11; page 51, line 1 to page 53, line 20; Exh. SCE-1 at page 17, line 11 to page 23, line 15). Assuming for purposes of this motion that SWP's and SCE's descriptions of the ISO's scheduling restrictions are accurate, the existence of such restrictions does not negate the network nature of the Cities' STS/NTS Entitlements or justify exclusion of any portion of the costs associated with these Entitlements from the Cities' TRRs. At most, the scheduling restrictions imposed by the ISO limit the use of the Cities' STS, NTS, and related LADWP contract Entitlements for network purposes. The recent *PG&E* decision, *supra*, makes clear that the costs associated with any facility that performs a network function are fully includable in the Participating Transmission Owner's ("PTO's") TRR, even if the predominant use of the facility is to deliver energy from a specific generating facility. Consistent with the Commission's long-standing policy of rolled-in pricing for network facilities, the *PG&E* decision rejects any apportionment or partial exclusion of the costs for "dual use" facilities that perform both a network function and deliver the output of a specific generator to the grid, as urged in that case by SWP. So long as the Cities' STS/NTS and related LADWP contracts perform any network function, as they indisputably do, the full costs associated with those Entitlements are includable in the Cities' TRRs.<sup>4</sup>

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<sup>4</sup> Although it may be possible, as suggested by SCE Witness Cuillier (Exh. SCE-1 at page 22, lines 3-14), that the scheduling restrictions imposed by the ISO could be modified so as to give all market participants, including the Cities, maximum flexibility for the efficient use of all of the Cities' Entitlements, that is beyond the scope of this proceeding for the reasons set forth above.

As a corollary to its contentions that the Cities' STS, NTS, and related LADWP contract Entitlements are used primarily to deliver power from the IGS to the Cities, SWP argues that inclusion of the costs associated with the Cities' STS/NTS entitlements in the ISO's rates and charges would encourage cost shifting from generators to transmission customers. (Exh. SWP-1 at page 10, lines 1-9; page 48, line 14 to page 50, line 12; page 54, line 1 to page 55, line 10; page 60, line 7 to page 62, line 13). To the extent SWP's cost shift arguments challenge the full inclusion in the Cities' TRRs of the costs associated with transmission facilities that are used for both a power delivery and network transmission function, they are simply a collateral attack on the Commission's rolled-in pricing policy as applied in the *PG&E* decision. If inclusion of the full costs of the PG&E facilities used 81% to 100% of the time to deliver output from PG&E's generation to the grid, but also performing a network function, did not result in impermissible cost shifting, then including the STS/NTS costs in the Cities' TRRs and in the ISO's rates and charges likewise is appropriate. To the extent SWP bases its cost shift arguments on a comparison of the costs associated with the Cities' STS, NTS, and related LADWP contract Entitlements in relation to average costs of facilities included in the ISO Controlled Grid, such arguments constitute an attack on the ISO's basic method for developing its transmission Access Charge ("TAC"). The TAC methodology and allegations that cost shifts result from the application of that methodology have been litigated extensively in Docket No. ER00-2019-000, in which DWR participated actively. Any cost shift claims associated with the implementation of the TAC methodology simply are outside the scope of this proceeding.

**IV. The Commission Already has Rejected All Other Arguments Purporting to Justify Exclusion of STS/NTS Costs from the Cities' TRRs.**

SWP's testimony also suggests that the Cities' STS, NTS and related LADWP contracts are not sufficiently under the ISO's Operational Control, because they are in the LADWP control area. (Exh. SWP-1 at page 7, lines 10-17; page 17, line 13 to page 22, line 15; and page 50, lines 16-19). The Commission, however, already has ruled that the ISO should accept Operational Control of facilities located in another control area unless such facilities "cannot be integrated into the ISO Controlled Grid due to technical considerations . . . ." *Pacific Gas & Electric Company, et al.*, 81 FERC ¶61,122 at 61,568 (1997). Moreover, SWP acknowledges that the ISO has taken Operational Control of other facilities that are located both in the LADWP control area and the Arizona Public Service Company control area. (See Exh. SWP-1 at page 22, lines 5-12). SWP claims that the degree of the ISO's Operational Control over the STS, NTS, and related LADWP contracts is less than for the other facilities located outside the ISO's control area, but the only distinctions it identifies other than the scheduling restrictions discussed above concern the reduction in transfer capability of the STS when one or more of the Intermountain Generating Station units is off-line and restrictions on counterscheduling. (Exh. SWP-1 at page 24, line 6 to page 29, line 13). As discussed above, however, such partial limitations on use for network purposes do not negate the fundamental network status of a facility or support the apportionment of costs associated with facilities that perform any network function.

Finally, both SWP and SCE complain that because the Cities have been allocated Firm Transmission Rights ("FTRs") for the capacity turned over to the ISO's Operational

Control, they have preferential access to the STS, NTS, and related LADWP contract Entitlements. (Exh. SWP-1 at page 8, lines 10-11 and page 37, line 5 to page 40, line 19; Exh. SCE-1 at page 24, line 18 to page 25, line 11). This issue, too, has been resolved by the Commission. Section 9.4.3 of the ISO Tariff provides that during the ten-year transition period provided for under the TAC methodology, a new PTO that turns Operational Control over existing transmission rights to the ISO will receive FTRs for those rights directly, without the necessity of participating in the ISO's FTR auction. In Docket No. ER00-2019-000, the Commission expressly approved this allocation of FTRs to new PTOs under §9.4.3 of the ISO Tariff, stating:

Generally, we find that the ISO's proposed treatment of FTRs is reasonable. As explained by the ISO, the proposal to exempt new Participating TOs from the auction process during the transition period is a feature that has been offered as an inducement to encourage participation in the ISO. The proposal will afford new Participating TOs protection against cost increases during the transition period.

*Cal. Indep. Sys. Operator Corp.*, 91 FERC ¶61,205 at 61,726 (2000).

Responding to requests for rehearing by SCE and other parties contending that the allocation of FTRs to new PTOs under §9.4.3 was discriminatory, the Commission subsequently reaffirmed its approval of the award of non-auctioned FTRs to new PTOs, stating:

Regarding [SCE's] and Enron's rehearing request concerning possible discriminatory treatment, we find that the ISO's [FTR] proposal is not unduly discriminatory but a balance of incentives intended to encourage other transmission owners to join the ISO.

*Cal. Indep. Sys. Operator Corp.*, 104 FERC ¶61,062 at P 29 (2003). *See also Cal. Indep. Sys. Operator Corp.*, 106 FERC ¶63,026 at PP 204-207 (Initial Decision in Docket No. ER 00-2019-000, issued March 10, 2004). It is self-evident that disallowing TRR

recovery of costs associated with transmission Entitlements turned over to the ISO's Operational Control because they are associated with FTRs allocated pursuant to ISO Tariff §9.4.3 would defeat the very purpose for the §9.4.3 allocation and be incompatible with the Commission's determinations in Docket No. ER00-2019-000 quoted above.

## **CONCLUSION**

The testimony submitted by SWP and SCE fails to identify any issue of material fact. SCE's testimony explicitly affirms that the Cities' STS, NTS, and related LADWP contract Entitlements perform a network function, and SWP statements compel the same conclusion. The Commission's rolled-in pricing policy as applied most recently in the *PG&E* case provides that the costs associated with facilities that perform a network function are fully includable in the transmission owner's TRR, even if such facilities also perform a generation delivery function. Accordingly, the Cities and the ISO respectfully urge the Presiding Administrative Law Judge to grant summary disposition, in accordance with Rule 217, concluding that the costs associated with the Cities' STS,

NTS, and related LADWP contract Entitlements may be included fully in the Cities' TRRs for purposes of developing the rates and charges under the ISO Tariff.

Respectfully submitted,

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March 17, 2004

## **CERTIFICATE OF SERVICE**

I hereby certify that I have on this 17th day of January, 2005, caused a copy of the foregoing document to be sent by electronic mail and by United States mail to all parties on the list compiled by the Secretary of the Commission in this proceeding.

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