

January 2, 2015

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of	)	
	)	
ENTERGY NUCLEAR OPERATIONS, INC.	)	Docket Nos. 50-247-LR/286-LR
	)	
(Indian Point Nuclear Generating	)	
Units 2 and 3)	)	

NRC STAFF'S 35<sup>th</sup> STATUS REPORT  
IN RESPONSE TO THE ATOMIC SAFETY AND  
LICENSING BOARD'S ORDER OF FEBRUARY 16, 2012

In accordance with the Atomic Safety and Licensing Board's ("Board") "Order (Granting NRC Staff's Unopposed Time Extension Motion and Directing Filing of Status Updates)" ("Order"), issued on February 16, 2012, the NRC Staff ("Staff") herewith provides its 35<sup>th</sup> monthly status report to the Board.

Safety Issues

1. Track 2 Safety Issues. On November 6, 2014, the Staff issued Supplement 2 to its Safety Evaluation Report ("SER") related to license renewal of Indian Point Units 2 and 3 ("IP2/IP3").<sup>1</sup> Therein, the Staff addressed changes made to the license renewal application ("LRA") through Amendment 14;<sup>2</sup> revisions to the IP2 Updated Final Safety Analysis Report

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<sup>1</sup> See (1) Letter from Sherwin E. Turk, Esq. to the Board (Nov. 7, 2014); (2) Letter from Christopher G. Miller (NRC) to Vice President, Operations (Entergy) (ADAMS Accession No. ML14288A608); (3) "Safety Evaluation Report Related to the License Renewal of Indian Point Nuclear Generating Unit Nos. 2 and 3, Supplement 2," NUREG-1930, Supp. 2 (Nov. 2014) ("SER Supplement 2" or "SSER2") (ADAMS Accession No. ML14310A803). On November 12, 2014, the Staff transmitted SSER 2 to the Advisory Committee on Reactor Safeguards ("ACRS") for its consideration. See Letter from Yoira Diaz-Sanabria, NRR to Edwin Hackett, ACRS (Nov. 12, 2014).

<sup>2</sup> See Letter from Fred Dacimo, Entergy, to NRC Document Control Desk, "Amendment 14 to License Renewal Application," NL-13-131 (Sept. 26, 2013) (ADAMS Accession No. ML13269A452).

("UFSAR");<sup>3</sup> information provided by Entergy Nuclear Operations, Inc. ("Entergy" or "Applicant") in response to Staff requests for additional information ("RAIs") following the issuance of SER Supplement 1;<sup>4</sup> and the Staff's evaluation of the IP2/IP3 Reactor Vessel Internals ("RVI") Aging Management Program and Inspection Plan ("AMP"), which relates to Contention NYS-25.

On December 9, 2014, the Board issued a "Revised Scheduling Order," in which it ordered, *inter alia*, that new and amended contentions arising from SSER 2 are to be filed by February 9, 2015.<sup>5</sup> Further, the Order directs that motions for summary disposition of Track 2 safety contentions (Contentions NYS-25, NYS-26B/ RK-TC-1B, and NYS-38/RK-TC-5) are to be filed by March 1, 2015 or, if new or amended contentions are filed, within 20 days after issuance of the Board's ruling on contention admissibility. In addition, the Order establishes a schedule for filing new or revised statements of position, written testimony with affidavits, and exhibits; motions to strike; proposed Board questions; and motions for leave to conduct cross-examination and cross-examination plans.<sup>6</sup>

### Environmental Issues

2. FSEIS Supplement. There has been no change in this item since the Staff filed its previous status report.<sup>7</sup> As stated previously, the Staff intends to issue a second supplement to the Final Supplemental Environmental Impact Statement ("FSEIS") for license renewal of IP2

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<sup>3</sup> See Letter from Fred Dacimo, Entergy, to NRC Document Control Desk, "Indian Point Energy Center Letters to NRC, License Renewal Application, dated April 23, 2007," NL-13-130 (Sept. 26, 2013) (ADAMS Accession No. ML13269A452).

<sup>4</sup> "Safety Evaluation Report Related to the License Renewal of Indian Point Nuclear Generating Plant Units 2 and 3," NUREG-1930, Supp. 1 (Aug, 2011) ("SER Supplement 1").

<sup>5</sup> Revised Scheduling Order (Dec. 9, 2014), at 2.

<sup>6</sup> *Id.* at 2-3.

<sup>7</sup> See "NRC Staff's 34<sup>th</sup> Status Report in Response to the Atomic Safety and Licensing Board's Order of February 16, 2012" (Dec. 1, 2014) ("34<sup>th</sup> Status Report"), at 2-3.

and IP3,<sup>8</sup> which will address new information received by the Staff since preparation and publication of the previous FSEIS Supplement (FSEIS Vol. 4) in June 2013. The matters to be addressed in this FSEIS supplement include the Applicant's May 6, 2013 submittal of engineering project cost information for severe accident mitigation alternatives (SAMAs); Entergy's February 19, 2014 submittal of new aquatic impact information; the June 2013 revision of 10 C.F.R. Part 51, Table B-1, and the Generic Environmental Impact Statement for license renewal; and the September 2014 amendment of 10 C.F.R. § 51.23(b) regarding the continued storage of spent nuclear fuel.<sup>9</sup> The Staff expects to issue the Draft FSEIS Supplement in July 2015 and the Final FSEIS Supplement in March 2016.<sup>10</sup>

3. Contention NYS-35/36. On July 14, 2011, the Board issued LBP-11-17, granting summary disposition on Contention NYS-35/36 (Cost-Beneficial SAMAs) in favor of New York.<sup>11</sup> On February 14, 2014, the Applicant and Staff filed petitions for Commission review of that decision;<sup>12</sup> New York filed an answer opposing those petitions on March 25, 2014; replies were filed on April 9, 2014. The petitions are currently pending before the Commission.

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<sup>8</sup> "Generic Environmental Impact Statement for License Renewal of Nuclear Plants, Supplement 38 Regarding Indian Point Nuclear Generating Unit Nos. 2 and 3, Final Report," NUREG-1437, Supplement 38 (Dec. 2010) ("FSEIS") (Ex. NYS000133A-J).

<sup>9</sup> See (1) NUREG-1437, Revision 1, "Generic Environmental Impact Statement for License Renewal of Nuclear Plants" (NUREG-1437, Rev. 1) (June 2013); (2) NUREG-1437, Volumes 1-2: Generic Environmental Impact Statement for License Renewal of Nuclear Plants (May 1996) ("GEIS-LR") (Exh. NYS000131A-I).

<sup>10</sup> See Letter from Christopher G. Miller (NRC) to Vice President, Operations (Entergy) (Nov. 3, 2014) (ADAMS Accession No. ML14254A207).

<sup>11</sup> *Entergy Nuclear Operations, Inc.* (Indian Point Nuclear Generating Units 2 and 3), LBP-11-17, 74 NRC 11, *petition for interlocutory review denied*, CLI-11-14, 74 NRC 801 (2011).

<sup>12</sup> See (1) "Applicant's Petition for Review of Board Decisions Regarding Contentions NYS-8 (Electrical Transformers), CW-EC-3A (Environmental Justice), and NYS-35/36 (SAMA Cost Estimates)" (Feb. 14, 2014) ("Applicant's Petition for Review"); and (2) "NRC Staff's Petition for Commission Review of LBP-13-13 in Part (Contentions NYS-8 and CW-EC-3A), and LBP-11-17 (Contention NYS-35/36)" (Feb. 14, 2014) ("Staff Petition for Review").

On May 7, 2013, the Applicant notified the Board that it had submitted a letter to the Staff (NL-13-075), reporting the results of its completed engineering project cost estimates for Severe Accident Mitigation Alternatives (“SAMAs”) that previously had been identified as potentially cost-beneficial.<sup>13</sup> The Applicant noted, *inter alia*, that it was submitting the information “to support resolution of certain issues identified by the Board” in LBP-11-17. On October 6, 2014, the Staff transmitted RAIs to the Applicant concerning its refined engineering project cost information; the Applicant submitted its responses on November 20, 2014.<sup>14</sup> As stated previously, the Staff plans to present its evaluation of the Applicant’s revised SAMA cost information in the draft FSEIS Supplement to be issued in July 2015.<sup>15</sup> In accordance with the Board’s Order of July 9, 2013, “adjudicatory submissions based on NL 13 075 are due no later than 60 days after the Staff issues its draft FSEIS supplement or an equivalent document discussing its review of NL 13 075. . . .”<sup>16</sup> The Staff will provide further information to the Board regarding this issue when available.

4. Contention NYS-12C (SAMAs). There has been no change in this item since the Staff filed its previous status report.<sup>17</sup> On February 14, 2014, New York filed a petition for Commission review of the Board’s decision in LBP-13-13,<sup>18</sup> concerning its resolution of

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<sup>13</sup> See Letter from Kathryn M. Sutton, Esq., *et al.*, to the Board (May 7, 2013), attaching Letter from Fred Dacimo (Entergy) to the NRC Document Control Desk, NL-13-075 (May 6, 2013) (ADAMS Accession No. ML13142A014).

<sup>14</sup> Letter from Fred Dacimo (Entergy) to NRC Document Control Desk (NL-14-143) (Nov. 20, 2014) (ADAMS Accession No. ML14337A042).

<sup>15</sup> See Letter from Sherwin E. Turk, Esq., to the Board (July 15, 2014); Tr. at 4598; “Indian Point Nuclear Generating Units 2 and 3; Entergy Nuclear Operations, Inc., License Renewal Application; Intent to Prepare A Second Supplement to Final Supplemental Environmental Impact Statement,” 79 Fed. Reg. 52,058 (Sept. 2, 2014).

<sup>16</sup> “Order (Granting Entergy’s Motion [for] Clarification” (July 9, 2013), at 3.

<sup>17</sup> See NRC Staff’s 34<sup>th</sup> Status Report, at 4-5.

<sup>18</sup> *Entergy Nuclear Operations, Inc.* (Indian Point Nuclear Generating Units 2 and 3), LBP-13-13, 78 NRC 246 (Nov. 27, 2013).

Contention NYS-12C;<sup>19</sup> Entergy and the Staff responded to that petition on April 28, 2014; New York filed its reply on May 22, 2014.<sup>20</sup> On April 28, 2014, New York filed a petition for review of the Board's Order denying its motion to reopen and reconsider.<sup>21</sup> Entergy and the Staff filed answers to that petition on May 23, 2014, to which New York replied on June 2, 2014. The petitions are currently pending before the Commission.

5. CZMA Issues.

(a) *Previous Reviews.* On June 12, 2013, the Board denied the Applicant's and New York's motions seeking the entry of a declaratory order regarding Entergy's claim that New York had previously conducted a review of IP2/IP3 for consistency with the New York State Coastal Management Program ("CMP"), such that no further review is required under the Coastal Zone Management Act ("CZMA").<sup>22</sup> The Board left open the possibility that the motions might be re-filed after consultations between the Staff and New York pursuant to 15 C.F.R. § 930.51(e). The Staff has since engaged in consultations with the New York State Department of State ("NYSDOS") and the Applicant. On December 6, 2013, the Staff transmitted a request for information to NYSDOS regarding prior reviews of Indian Point's consistency with the New York State Coastal Management Program.<sup>23</sup> A series of written and oral communications

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<sup>19</sup> "State of New York Petition for Review of Atomic Safety and Licensing Board Decision LBP-13-13 With Respect to Consolidated Contention NYS-12C" (Feb. 14, 2014).

<sup>20</sup> Petitions for review of LBP-13-13 were also filed by Clearwater (on Contention CW-EC3A), and by Entergy and the Staff (on Contentions NYS-8, CW-EC3A, and NYS-35/36); answers to those petitions were filed on March 25, 2014; replies were filed on April 9, 2014.

<sup>21</sup> See (1) "State of New York Petition for Review of Atomic Safety and Licensing Board's April 1, 2014 Decision Denying the State's Motion to Reopen the Record and for Reconsideration of the Board's November 27, 2013 Partial Initial Decision Concerning Consolidated Contention NYS-12C" (Apr. 28, 2014); and (2) "Order (Denying New York's Motion to Reopen the Record; Setting Deadline for New or Amended Contention)" (Apr. 1, 2014).

<sup>22</sup> "Order (Granting New York's Motions, Denying Clearwater's Motion, and Denying CZMA Motions)" (June 12, 2013).

<sup>23</sup> See Letter from Sherwin E. Turk to the Board (Dec. 12, 2013), transmitting letter from David J. Wrona (NRC) to George Stafford (NYSDOS) (Dec. 6, 2013) (ADAMS Accession No. ML13281A065).

between the Staff and NYSDOS occurred,<sup>24</sup> and on May 30, 2014, NYSDOS provided its response to the Staff.<sup>25</sup> On July 15, 2014, Entergy submitted its views regarding the NYSDOS response,<sup>26</sup> to which NYSDOS replied on July 25, 2014.<sup>27</sup> Entergy and New York submitted additional correspondence to the Staff on November 25 and December 3, 2014, respectively.<sup>28</sup> The Staff is reviewing the NYSDOS and Entergy submittals, and will provide further information to the Board when available.

(b) *Grandfathering*. On December 11, 2014, the State of New York Supreme Court, Appellate Division, Third Judicial Department, reversed the Supreme Court's December 2013 decision, and held (in a 5-0 decision) that Indian Point Units 2 and 3 were "grandfathered" under New York's Coastal Management Program and are therefore exempt from consistency review under the CMP.<sup>29</sup> New York has stated that it intends to file a motion for re-argument

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<sup>24</sup> See (1) Letter from George R Stafford (NYSDOS) to David J. Wrona (NRC) (Jan. 6, 2014) (ADAMS Accession No. ML14028A209); (2) "Summary of Phone Call Between [NYSDOS] and [NRC] on January 13, 2014" (Feb. 19, 2014) (ADAMS Accession No. ML14024A372); (3) Letter from David J. Wrona (NRC) to George Stafford (NYSDOS) ("Consistency of the Indian Point Nuclear Generating Unit Nos. 2 and 3 License Renewal Application with New York State Coastal Management Program") (Mar. 4, 2014) (ADAMS Accession No. ML14024A064); and (4) Summary of Phone Call Between New York State Department of State and U.S. Nuclear Regulatory Commission on May 7, 2014, Regarding the Coastal Zone Management Act Consistency Review (May 27, 2014) (ADAMS Accession No. ML14136A005).

<sup>25</sup> See Letter from Linda M. Baldwin, Esq., General Counsel (NYSDOS), to David J. Wrona (NRC) (May 30, 2014) (ADAMS Accession No. ML14154A334).

<sup>26</sup> See Letter from Bobby R. Burchfield, Esq., to David J. Wrona (NRC) (July 15, 2014) (ADAMS Accession No. ML141198A229).

<sup>27</sup> See Letter from Linda M. Baldwin, Esq., General Counsel (NYSDOS), to David J. Wrona (NRC) (July 25, 2014) (ADAMS Accession No. ML14230A005).

<sup>28</sup> See (1) Letter from Bobby R. Burchfield, Esq., to David J. Wrona (NRC) (Nov. 25, 2014) (ADAMS Accession No. ML14336A084); and (2) Letter from Linda M. Baldwin, Esq., General Counsel (NYSDOS), to David J. Wrona (NRC) (Dec. 3, 2014) (ADAMS Accession Nos. ML14351A539, ML14351A541, ML14351A542, ML14351A543, ML14351A545).

<sup>29</sup> *Entergy Nuclear Operation, Inc. v. New York State Department of State*, 518510, \_\_\_ N.Y.S.2d \_\_\_, 2014 N.Y. App. Div. LEXIS 8686; 2014 NY Slip Op 08702 (App. Div. 3d Dep't, Dec. 11, 2014).

and/or a motion for leave to appeal the Appellate Division's decision to the New York Court of Appeals.<sup>30</sup>

(c) *2012 Consistency Certification.* On December 17, 2012, Entergy filed a certification with the NYSDOS, asserting that license renewal of IP2/IP3 is consistent with the New York CMP; NYSDOS then commenced a review of that consistency certification. On November 5, 2014, Entergy submitted a letter to NYSDOS, stating that it was withdrawing its consistency determination, subject to resubmittal following issuance of the Staff's Final FSEIS Supplement in March 2016.<sup>31</sup> In response, NYSDOS stated that the withdrawal was not effective and it offered Entergy an opportunity to request a stay of NYSDOS's decision;<sup>32</sup> Entergy replied to NYSDOS on December 1, 2014.<sup>33</sup> On December 26, 2014, NYSDOS and Entergy entered into an agreement (as corrected on December 29, 2014), staying New York's review of Entergy's consistency certification until June 30, 2015; absent any further extension, NYSDOS indicated it will issue its consistency determination by July 7, 2015.<sup>34</sup>

6. Aquatic Impacts. There has been no change in this item since the Staff filed its previous status report.<sup>35</sup> As stated previously, on February 19, 2014, Entergy submitted new information to the Staff regarding the impacts of plant operation on various aquatic species in

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<sup>30</sup> See Agreement between [Entergy] and [NYSDOS] (Dec. 24, 2014) at 3, attached to E-mail message from Linda M. Baldwin, Esq. (NYSDOS) to Lois James (NRC) (Dec. 29, 2014) (ADAMS Accession No. ML14363A559).

<sup>31</sup> See Letter from John Sipos to the Board (Nov. 6, 2014), attaching letter from Fred Dacimo (Entergy) to NRC Document Control Desk and Linda M. Baldwin, Esq. (NYSDOS), NL 14 140 ("Withdrawal of December 17, 2012 Coastal Zone Management Act Consistency Certification") (Nov. 5, 2014) (ADAMS Accession No. ML14310A346).

<sup>32</sup> Letter from Linda M. Baldwin, Esq., General Counsel (NYSDOS), to Fred Dacimo (Entergy) (Nov. 21, 2014) (ADAMS Accession No. ML14328A474).

<sup>33</sup> Letter from Martin R. Healy, Esq. (Goodwin Proctor), to Linda Baldwin, Esq. (NYSDOS) (Dec. 1, 2014) (ADAMS Accession No. ML14335A779).

<sup>34</sup> See n.30, *supra*.

<sup>35</sup> See 34<sup>th</sup> Status Report, at 6-7.

the Hudson River,<sup>36</sup> modifying the information that had been evaluated in the FSEIS and FSEIS Supplement (FSEIS Vol. 4).<sup>37</sup> The Staff transmitted a request for additional information to the Applicant on August 28, 2014, as amended on September 26, 2014;<sup>38</sup> Entergy's responses were submitted on October 27, 2014.<sup>39</sup> As stated previously, the Staff plans to present its evaluation of the new information in a draft FSEIS supplement to be issued in July 2015. The Staff will provide further information to the Board regarding this issue when available.

7. Continued Storage Petition and New Contention. There has been no change in this item since the Staff filed its previous status report.<sup>40</sup> On October 3, 2014, Riverkeeper filed a petition seeking the suspension of this proceeding and a new contention (Contention RK-EC-10) alleging that the Commission erred in issuing its Continued Storage Rule without making findings regarding the safety of continued spent fuel storage or disposal of spent nuclear fuel.<sup>41</sup> In an Order issued October 7, 2014, the Commission undertook review of those

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<sup>36</sup> See Letter from Fred Dacimo (Entergy), to Lois James and NRC Document Control Desk, "Final Supplemental Environmental Impact Statement," NL-14-030 (Feb. 19, 2014) (ADAMS Accession No. ML14063A528).

<sup>37</sup> "Generic Environmental Impact Statement for License Renewal of Nuclear Plants, Supplement 38 Regarding Indian Point Nuclear Generating Unit Nos. 2 and 3, Final Report," NUREG-1437, Supplement 38, Volume 4 (June 2013) (ADAMS Accession No. ML13162A616).

<sup>38</sup> See (1) Letter from Michael Wentzel (NRC) to Vice President, Operations (Entergy), "Request for Additional Information for the Review of the Indian Point Nuclear Generating Unit Nos. 2 and 3, License Renewal Application Environmental Review" (Aug. 28, 2014) (ADAMS Accession No. ML14225A847); and (2) Letter from Michael Wentzel (NRC) to Vice President, Operations (Entergy), "Request for Additional Information for the Review of the Indian Point Nuclear Generating Unit Nos. 2 and 3, License Renewal Application Environmental Review" (Sept. 26, 2014) (ADAMS Accession No. ML14261A031).

<sup>39</sup> See Letter from Fred Dacimo (Entergy) to NRC Document Control Desk, "Reply to Request for Additional Information Regarding the License Renewal Application," NL-14-133 (Oct. 27, 2014) (ADAMS Accession No. ML14300A704).

<sup>40</sup> See 34<sup>th</sup> Status Report, at 7-8.

<sup>41</sup> See (1) "Petition to Suspend Final Decision in Indian Point Relicensing Proceeding Pending Issuance of Waste Confidence Safety Findings" (Oct. 3, 2014); and (2) "Riverkeeper Consolidated Motion for Leave to File a New Contention and New Contention RK-10 Concerning the Absence of Required Waste Confidence Safety Findings" (Oct. 3, 2014).



filings and similar petitions and contentions that were filed in other proceedings.<sup>42</sup> Entergy and the Staff responded to Riverkeeper's suspension petition and contention on October 31, 2014; Riverkeeper replied on November 7, 2014.<sup>43</sup> This matter remains pending before the Commission.

8. Other Matters. The Staff is not currently aware of any other matter that has the potential to impact the schedule for hearings in this proceeding. In accordance with the Board's direction (Order, at 2), the Staff will notify the Board as soon as any other event with potential to alter the hearing schedule arises.

Respectfully submitted,

**/Signed (electronically) by/**

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Dated at Rockville, Maryland  
this 2<sup>nd</sup> day of January 2015

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<sup>42</sup> *DTE Electric Co.* (Fermi Nuclear Power Plant, Unit 3), CLI-14-09, 80 NRC \_\_\_\_ (Oct. 7, 2014), slip op. at 3.

<sup>43</sup> See (1) "NRC Staff Consolidated Answer to Petitions to Suspend Final Reactor Licensing Decisions, Motions to Admit A New Contention, and Motions to Reopen the Record" (Oct. 31, 2014); (2) "Entergy's Combined Answer to Riverkeeper's Proposed New Contention RK-10 and Petition to Suspend Final License Renewal Decision Pending Issuance of Waste Confidence 'Safety' Findings" (Oct. 31, 2014). See also "Nuclear Energy Institute, Inc.'s Motion for Leave to File *Amicus Curiae* Brief" and "*Amicus Curiae* Brief of the Nuclear Energy Institute, Inc. in Response to Suspension Petitions and Waste Confidence Safety Contentions" (Oct. 31, 2014); and (3) "Petitioners' and Intervenors' Consolidated Reply to Answers to Petitions to Suspend Final Reactor Licensing Decisions, Motions to Admit A New Contention, and Motions to Reopen the Record" (Nov. 7, 2014).

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In the Matter of	)	
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ENTERGY NUCLEAR OPERATIONS, INC.	)	Docket Nos. 50-247/286-LR
	)	
(Indian Point Nuclear Generating	)	
Units 2 and 3)	)	

CERTIFICATE OF SERVICE

Pursuant to 10 C.F.R § 2.305 (as revised), I hereby certify that copies of the foregoing "NRC STAFF'S 35th STATUS REPORT IN RESPONSE TO THE ATOMIC SAFETY AND LICENSING BOARD'S ORDER OF FEBRUARY 16, 2012," dated January 2, 2015, have been served upon the Electronic Information Exchange (the NRC's E-Filing System), in the above- captioned proceeding, this 2<sup>nd</sup> day of January, 2015.

**/Signed (electronically) by/**

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