



STATE OF NEW JERSEY
Board of Public Utilities
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Trenton, New Jersey 08625-0350
www.nj.gov/bpu/

CLEAN ENERGY

IN THE MATTER OF THE IMPLEMENTATION OF THE ) ORDER
SOLAR ACT L. 2012, C. 24, N.J.S.A. 48:3-87 (D)(3)(C): )
THE LIMITED EXEMPTION OF CERTAIN BASIC )
GENERATION SERVICE PROVIDERS FROM THE )
INCREASED SOLAR REQUIREMENTS ) DOCKET NO. QO14050402

Parties of Record:

- Stefanie A. Brand, Esq., Director, New Jersey Division of Rate Counsel
Philip J. Passanante, Esq., Atlantic City Electric Company
Margaret Comes, Esq., Rockland Electric Company
Marc B. Lasky, Esq., Morgan, Lewis & Bockius, LLP, on behalf of Jersey Central Power & Light Company
Tamara L. Linde, Esq., Public Service Electric and Gas Company

BY THE BOARD:

On July 23, 2012, Governor Christie signed into law L. 2012, c. 24, codified at N.J.S.A. 48:3-51 - 87 ("Solar Act"), effective immediately. The Solar Act effected many changes to the legal and regulatory framework for solar development. Among these were an increase in the solar portion of the Renewable Portfolio Standard ("RPS"), beginning in Energy Year 2014 ("EY14")1, and a change in the way each Basic Generation Service ("BGS") provider and third party electric power supplier ("TPS") was to calculate its obligations under the solar portion of the RPS from EY14 forward. Specifically, the Solar Act provides:

"[T]he board shall . . . adopt . . . renewable energy standards that shall require . . . (3) that the board establish a multi-year schedule, applicable to each electric power supplier or basic generation service provider in this State . . . the following number or percentage, as the case may be, of kilowatt-hours sold in this State by each electric power supplier and each basic generation service provider to be from solar electric power generators connected to the distribution system in this State:

An Energy Year or EY is defined as the period beginning on June 1 and ending on May 31 of the next year, numbered according to the calendar year in which it ends. N.J.S.A. 48:3-51.

EY 2013	596 GWhrs
EY 2014	2.050%
EY 2015	2.450%
EY 2016	2.750%
EY 2017	3.000%
EY 2018	3.200%
EY 2019	3.290%
EY 2020	3.380%
EY 2021	3.470%
EY 2022	3.560%
EY 2023	3.650%
EY 2024	3.740%
EY 2025	3.830%
EY 2026	3.920%
EY 2027	4.010%
EY 2028	+> 4.010%

[N.J.S.A. 48:3-87(d)(3)]

The statute further provides that:

(c) The solar renewable portfolio standards requirements in this paragraph shall exempt those existing supply contracts which are effective prior to the date of enactment of [the Solar Act] from any increase beyond the number of SRECs mandated by the solar renewable portfolio standards requirements that were in effect on the date that the providers executed their existing supply contracts. This limited exemption for providers' existing supply contracts shall not be construed to lower the Statewide solar sourcing requirements set forth in this paragraph. Such incremental requirements that would have otherwise been imposed on exempt providers shall be distributed over the providers not subject to the existing supply contract exemption[.]

[N.J.S.A. 48:87(d)(3)(c)]

The Solar Act exempts BGS providers' electricity supply from the new higher solar requirements if the supply is covered by a BGS contract that was executed prior to enactment of the Solar Act. The solar obligation for this exempt electricity is determined under the rules in place when the BGS contract was executed. Thus, exempt electricity carries a lower solar obligation than non-exempt electricity. However, the Solar Act requires that the State-wide solar target for each year must still be met. Therefore, during EY14 and EY15, when some electricity supply will be exempt, the incremental solar obligation that is not met because of the exemption must be distributed among the non-exempt electricity supplied by BGS providers in each energy year until the prior BGS contracts with exempt supply expire. This Order includes provisions for calculating a BGS provider's solar obligation under the new requirements as a function of whether the electricity supplied is exempt or not. The obligation of the TPSs is also addressed.

Staff proposed a calculation methodology for implementing this requirement in advance of the RPS compliance true-up period for EY14 which begins on June 1, 2014. In developing an allocation methodology, Staff's primary consideration was proposing a process for calculating the solar obligation that is consistent with the law. To that end, Staff developed and presented for comment the methodology set out below.

On March 11, 2014, Staff posted a straw proposal for calculating the solar RPS obligation for exempt and non-exempt electricity supplied by BGS providers, and also circulated this straw proposal to the Renewable Energy listserv. The proposal set forth, in numbered steps, the calculation which Staff believed provided the most accurate method for exempt providers, non-exempt providers, and TPS to determine their solar obligation for EY14 and EY15. For ease of reference while reading comment summaries and responses, which sometimes reference steps in the calculation only by the number assigned to that step in the straw proposal, the calculation methodology proposed by Staff is set forth below.

Proposal to Calculate Exempt & Non-exempt Solar RPS Obligation  
Pursuant to c. 24 (C.48:3-87) 38 d. (3) (c)

For any exempt electricity supplied, a BGS provider shall calculate its solar obligation as follows:

1. Determine the solar electric generation requirement, converted from GWhs to MWhs, in effect when the BGS contract subject to N.J.A.C. 14:8-2.3 (k) was executed (Existing Table B); and
2. Determine market share of all electricity supplied Statewide during the applicable Energy Year , i.e., EY2014 or EY2015 as follows;
  - i. Consult the Board's New Jersey Clean Energy Program ("NJCEP") website to determine the total number of MWhs of electricity supplied Statewide during the energy year by all supplier/providers subject to this subchapter;
  - ii. Determine the MWhs of exempt electricity supplied during the energy year from supply contracts which were in effect prior to the date of enactment of P.L. 2012 c. 24;
  - iii. Divide 2ii above by 2i above to calculate market share.
3. Multiply result from 2 iii by 1 above to arrive at the solar obligation for an individual exempt electricity (BGS) provider.

For any non-exempt electricity supplied by a BGS provider, such **provider** shall calculate its solar obligation as follows:

4. Multiply the individual provider's total non-exempt retail electricity sales during the energy year in MWh by the applicable percentage requirement in N.J.S.A. 48:87(d)(3).
5. Determine the market share-based allocation of the increased obligation avoided by exempted electricity by consulting the Board's NJCEP website to determine the additional obligation amount which must be ***distributed*** from the exempted providers to the non-exempt providers (to be calculated by staff as follows);
  - i. Determine the total retail electricity sales of exempt providers Statewide;
  - ii. Determine the total retail electricity sales of non-exempt providers Statewide;
  - iii. Determine the total retail electricity sales of all providers and suppliers Statewide;
  - iv. Divide 5i by 5 iii to calculate market share of exempt providers Statewide;

- v. Determine the total solar obligation of exempt providers Statewide during the energy year by multiplying 5 iv by 1 above;
  - vi. Multiply the applicable percentage requirement in N.J.S.A. 48:87(d)(3) by 5 i and subtract 5 v.
  - vii. Calculate the percentage share of total non-exempt electricity sold by dividing non-exempt electricity sold by the individual provider by 5 ii.
  - viii. Multiply 5 vi by 5 vii.
6. Add 4 above to 5. Viii to arrive at an individual non-exempt provider's obligation in MWh.

For any electricity supplied by a Third Party Electricity Supplier, such supplier shall calculate its solar obligation by multiplying its total retail sales by the applicable percentage requirement in N.J.S.A. 48:87(d)(3).

Comments were accepted through March 28, 2014. Comments were received from: ReNu Energy ("ReNu"); NextEra Energy Power Marketing ("NextEra"); New Jersey Electric Distribution Companies ("EDCs"); Division of Rate Counsel ("Rate Counsel"); Retail Energy Supply Association ("RESA"); South Jersey Energy Company ("SJE"); and Independent Energy Producers of New Jersey ("IEPNJ").

### **Comments and Responses**

#### **Rockland Electric Company**

(On behalf of the EDCs):

Comment: The EDCs agree with the methodology proposed by Staff in the straw proposal for distributing exempt providers' share of the solar RPS obligation, making three additional suggestions. First, the EDCs suggest that Staff circulate "Existing Table B" referenced in the straw proposal so that all parties are clear on the calculation methodology. Second, the EDCs want Staff to confirm the EDCs' understanding of the meaning of "providers who are not exempt" referenced in the straw proposal. It is the EDCs' understanding that "providers who are not exempt" and "non-exempt providers" mean suppliers who provide BGS Fixed Pricing service and suppliers who provide BGS Commercial and Industrial Pricing service.

Response: "Existing Table B" as referenced by the EDCs, is contained within the Board's Renewable Portfolio Standard rules at N.J.A.C. 14:8-2.3 (o). Consistent with past practice in assisting regulated and licensed entities in compliance with the RPS, Staff will circulate instructions on compliance that includes a copy of "Existing Table B" excerpted from the rules. The terms "provider" and "supplier" refer to "Basic Generation Service Provider" and "Electric Power Supplier" respectively, as those terms are defined in the law at N.J.S.A. 48:3-51 and the Board's rules at N.J.A.C. 14:4-1.2 and N.J.A.C. 14:8-1.2. Staff will clearly define these terms in the annual compliance instructions that are traditionally issued in late August or early September when retail sales figures are available for the previous Energy Year.

Comment: the EDCs suggest that Staff include, in their methodology, changing the deadline for filing the Annual Reports for EY 2014 and EY 2015 from October 1 to December 1. Since a similar change in methodology and requirement for "grandfathering" certain supplier/providers have resulted in requests for the same extension for the last three years, and the Board has

granted these requests, the EDCs suggest that the reporting deadline be changed now rather than going through a request and separate Order at the end of each reporting year. Lastly, the EDCs request that in the interest of administrative efficiency, the reporting deadline for Class I and II REC compliance also be extended to December 1 for both Energy Years so that only one Annual Report is required.

Response: While this request is not specifically related to implementation of the Solar Act's provision of a "limited exemption" of certain BGS providers from the increased solar requirements, Staff has recommended approval of similar requests in each of the last three years. The Solar Energy Advancement and Fair Competition Act of 2009 also provided exemptions and requirements which were complicated in administration and compliance. In anticipation that suppliers and providers would request and Staff would recommend the same extensions even in the absence of the requested change, Staff will recommend that the Board pre-emptively extend the due date for compliance reports for the solar portion of the RPS to December 1, 2014 consistent with past practice. However, the extension of compliance deadlines for RPS compliance effectively weakens the demand for RECs adversely impacting some market participants. Since the limited exemption of the increased solar requirements for certain BGS providers has no bearing on the NJ Class I or NJ Class II RPS compliance markets, Staff is not recommending these compliance deadlines be extended.

#### **IEPNJ:**

Comment: IEPNJ, which states that it is a trade association whose members own approximately 80% of the electricity capacity in the State, states that the general methodology presented by Staff appears to provide an equitable distribution of the exempt providers' share of the solar RPS obligation. However, IEPNJ also asserts that the straw proposal risks being overly general by not identifying how exactly suppliers and providers are to determine their solar obligations. The commenter also asserts that the straw is not sufficiently specific as to the source of the data underpinning these determinations.

IEPNJ makes three recommendations to cure these perceived problems.

- Staff should ensure that the data underpinning the straw proposal's sections 2, 4, 5, 6, and the following paragraph, applicable to third party electricity suppliers, is provided by a uniform and verifiable source. The commenter believes that the straw proposal should clearly delineate the data sources that will be used to arrive at the market-based allocation of the increased obligation for non-exempt providers, as described in Sections 5i and 5ii.
- IEPNJ recommends that a specific website address be identified for sections 2 (i) and 5.
- The commenter also recommends that Staff implement the calculation set out in the straw proposal consistent with the level of detail provided by the "frequently asked questions" posted on [www.bgs-auction.com](http://www.bgs-auction.com). The commenter believes that this approach will ensure that the regulation implements the same methods relied upon by BGS suppliers when determining their potential renewable obligations under BGS.

Finally, IEPNJ recommends that the Board change the compliance deadline under the RPS for solar from October 1<sup>st</sup> to December 1<sup>st</sup>.

Response: Staff reiterates that the terms "suppliers" and "providers" have specific and distinctly different meaning provided in the law and the Board's rules implementing the state's Energy Competition provisions and RPS. The Solar Act provides a "limited exemption for providers'

existing supply contracts. N.J.S.A. 48:3-87(d)(3)(c). Early versions of the bill did extend the exemption to electric power suppliers (TPS) but these provisions were removed by the legislature prior to enactment.

The law does not address how regulated and licensed entities, providers or suppliers, are to demonstrate the amount of annual retail sales subject to compliance. Staff has not proposed a change to the methods employed by Staff annually since the RPS solar obligations for regulated and licensed entities were changed from a percentage basis to a market share basis for EY11 with the Solar Energy Advancement and Fair Competition Act. The data sources used by Staff and regulated/licensed entities to demonstrate the amount of retail sales sold during an Energy Year will remain the same. Staff will provide preliminary retail sales data to regulated entities for reconciliation when it is available from PJM in August or September. Subsequent to reconciliation of the preliminary retail sales data by regulated entities, Staff will issue final retail sales data to enable the calculation of market share and obligation amounts for compliance purposes.

Staff assists regulated and licensed entities with RPS compliance annually by sharing retail sales data provided by PJM-EIS from its Generator Attribute Tracking System (GATS) originating from the PJM wholesale electricity market and providing detailed instructions on compliance methods. The Board has designated PJM-EIS GATS as the entity that issues SRECs and provides an accounting of SRECs retired by suppliers and providers (N.J.A.C. 14:8-2.11). The retail sales data and compliance instructions are posted to the New Jersey Clean Energy Program website on a page dedicated to the RPS, as well as being distributed directly to the account holders of the regulated/licensed entities using GATS for RPS compliance.

With respect to the request for a different level of detail for confirming retail sales, the EDCs currently facilitate RPS compliance for the BGS providers supplying electricity within their territories. Each EDC is aware of the level of detail provided by the "frequently asked questions" posted on the BGS auction website. Staff does not believe that further change in demonstrating annual retail sales for the purposes of RPS compliance, beyond what has been proposed, is warranted at this time.

#### **South Jersey Energy Company:**

Comment: SJE, a licensed, deregulated energy supplier, interprets the straw proposal to mean that only "Basic generation service providers" or "providers," as those terms are defined in N.J.S.A. 48:3-51, are responsible for making up the difference in solar RPS obligations between exempt and non-exempt electricity. More specifically, SJE interprets the Proposal to include only public utilities participating in the BGS auction process. Utilizing this interpretation, SJE calculates its own solar RPS obligation by multiplying its total retail sales by 2.050% for Energy Year 2014.

Pending confirmation by the Board of the foregoing interpretation, SJE believes that the straw proposal is consistent with the intent and instruction of the N.J.S.A. 48:3-87 (d) (3) and provides an equitable distribution of the exempt providers' share of the solar RPS obligation.

Response: Staff will attempt to more clearly define, within the annual RPS compliance instructions, the fact that only electric supply from BGS providers (providers) with contracts existing prior to the enactment of the Solar Act can be "exempt" and that this provision was not extended to third party electricity suppliers (suppliers).

## Renu Energy:

Comment: Renu believes that there is an inconsistency in the OCE straw proposal, pointing out that the opening paragraph cites both BGS providers and TPS as being responsible for making up the incremental SREC obligations which would otherwise be provided by the exempted electricity. The methodology, however, identifies the BGS furnishing non-exempt electricity as the only parties responsible for making up that portion of the statewide solar obligation. The commenter notes that TPS are apparently not responsible for any "pro rata" allocation of the exempted SRECs. Renu does not believe this is fair and suggests that the statement preceding step four in the proposed calculation should be revised to read: "For any non-exempt electricity supplied by BGS or TPS, such **providers** shall calculate their solar obligations as follows." (emphasis in original).

Response: The prefacing statement in Staff's straw proposal references the fact that the Solar Act increases the solar obligation for regulated and licensed entities, third party electric "suppliers" and BGS "providers". The Solar Act increases the compliance obligation for both general types of entity participating in New Jersey's retail electricity market. The contracts for supply of electricity by BGS providers entered into prior to the passage of the Solar Act were exempted from this increase. However, no such exemption was given to the supply of electricity under contract executed after passage of the Solar Act or to the supply of electricity by TPS. The increased obligation that would have otherwise been imposed on exempt BGS providers shall be distributed to the non-exempt BGS providers. Hence, the prefatory statement referencing the fact that the Solar Act increases the solar obligation for both types of retail electricity market participants.

Comment: Renu also states that the BGS providers providing exempted electricity under contracts in effect in EY 2013 ought to be accountable for fulfilling the required Solar Renewable Energy Certificates ("SRECs") in effect under SEAFCA over the duration of their 3-year contracts according to their respective market shares.

Renu goes on to describe the changes it believes should be made to the calculation proposed in the straw. As an appendix, Renu has provided a concise list of these changes.

- ◆ Steps 1 – 4 remain unchanged.
- ◆ Steps 5i – 5iii remain unchanged.
- ◆ Step 5iv – Multiply the result of 5i by the appropriate percentage corresponding to the energy year as prescribed in N.J.S.A. 48:87(d)(3).
- ◆ Step 5v – Subtract the result of Step 3 from Step 5iv. This figure represents the incremental SREC obligations owed by the BGS of exempt electricity which must be allocated among the BGS and TPS providers of non-exempt electricity.
- ◆ Step 5vi retains the same language as straw proposal Step 5vii.
- ◆ Step 5vii – Multiply Step 5v by Step 5vi.
- ◆ Step 6 – Add result of Step 4 to Step 5vii to arrive at an individual non-exempt provider's obligation in MWh.

Response: Staff has proposed a methodology to allocate the increased solar obligation that would have been due from exempt providers, had the law not included the exemption provision, to non-exempt providers. Staff will attempt to more clearly define the fact that only electric supply from BGS providers (providers) with contracts existing prior to the enactment of the Solar

Act is "exempt" and that this provision was not extended to BGS contracts executed since the Solar Act nor was it extended to TPS (suppliers).

**NextEra:**

Comment: NextEra, which provides a wide range of electricity products to electric utilities, municipalities, cooperatives and other load-serving entities, believes that the proposal is consistent with N.J.S.A. 48:3-87(d)(3)(c) and provides for a transparent, equitable, and predictable implementation of the increase in and allocation of the solar obligations which will begin in EY 2014.

Response: Staff thanks NextEra for its comments in support of the proposed RPS solar compliance methodology.

**Rate Counsel:**

Comment: Rate Counsel had no comments but reserved the right to comment on any future rulemaking proceedings.

Response: Staff thanks Rate Counsel for its response to the request for public comment.

**Retail Energy Supply Association:**

Comment: RESA, which represents a group of retail third party suppliers of energy ("TPS"), states that a principal concern for it is ensuring that the pertinent sections of the Solar Act are implemented in a fair and competitively neutral manner, although RESA believes that the Solar Act is unfair on its face because it allows BGS providers to exempt existing contracts from the increased RPS requirements but does not allow TPSs to do so.

RESA also acknowledges that the calculations for TPSs are straightforward as no TPSs are exempted from the new solar obligation. With regard to Staff's calculations for exempt and non-exempt BGS provider compliance, RESA cannot tell from the information provided how Staff will derive the total retail electricity sales for New Jersey, although the commenter assumes this determination will be based on data similar to that used in previous years when the solar obligation of exempt providers needed to be allocated among non-exempt providers and suppliers. RESA asserts that understanding how Staff will derive this information would be beneficial for determining whether the proposed calculations are equitable with respect to BGS providers.

Response: Staff has not proposed changes to RPS compliance processes beyond those contained in the straw proposal. No changes have been proposed to the methods that have been employed by Staff annually since the RPS solar obligations for regulated/licensed entities were changed from a percentage basis to a market share basis for EY11 with the Solar Energy Advancement and Fair Competition Act. The data sources used by staff and regulated entities to demonstrate the amount of retail sales sold during an Energy Year will remain the same. Staff will provide preliminary retail sales data to regulated entities when it is available for reconciliation from PJM in August or September. Subsequent to reconciliation of the preliminary retail sales data by regulated entities, Staff will issue final retail sales data to enable the calculation of market share and obligation amounts for compliance purposes.



Comment: RESA notes that BGS-Fixed Price contracts are of three-year duration while BGS-Commercial and Industrial Energy Pricing contracts last for only one-year, it appears that two years of BGS-FP contracts will be exempted from the new solar requirements while no BGS-CIEP contracts are exempt. Although pleased that no TPSs are required to make up the exempt BGS Providers' share of the solar obligation, the commenter questions whether it is fair to require non-exempt BGS-CIEP providers to make up the solar obligation of exempt BGS-FP providers. However, RESA acknowledges that the Solar Act makes no distinction between the two types of BGS contracts, and that Staff's straw proposal appears to be consistent with the legislative intent.

Response: Staff thanks RESA for its confirmation that the proposed methodology is consistent with the law.

Comment: RESA notes that as TPSs are not exempt from the increased solar obligation imposed by the Solar Act, they are competitively disadvantaged because they must re-open all their existing contracts to pass the increased cost on to their customers. RESA's concern is that the Board's Energy Competition rules bar TPSs from changing contract prices without the consent of the customer. The sole exception to this rule is found at N.J.A.C. 14:4-7.6(1), which allows such unilateral price changes if there is a change in the Sales and Use Tax "or other state-mandated change." RESA asks that the Board amend N.J.A.C. 14:4-7.6(1) to include changes in the RPS among "state-mandated" changes. Lastly, RESA would like more information on the Board's RPS compliance calculation and feels that an understanding of the calculation would be "beneficial in determining whether or not the calculations proposed are equitable as to BGS providers."

Response: Staff's straw proposal provides regulated/licensed entities with guidance on how Staff intends to implement the Solar Act, particularly the methodology for allocating the increased RPS obligation from exempt BGS providers to non-exempt BGS providers. The proposal was designed to accurately apply the changes in the law to RPS compliance. Staff provided, as a courtesy to market participants, a straightforward one sentence explanation of how third party electric suppliers calculate their new solar obligation. An application for exemption from or amendment to the Board's Energy Competition rules for third party suppliers is outside the scope of this straw proposal.

### **STAFF RECOMMENDATION**

Staff has reviewed the comments set forth above and considered the clarifications suggested carefully. In light of the comments received, Staff has identified several clarifications to definitions and applicability of the straw proposal that it proposes to add to its annual communication of compliance instructions sent to regulated entities and published on the New Jersey Clean Energy Program website.

Staff recommends that the straw proposal, as modified by the clarifications discussed above, be approved by the Board. Staff further recommends that the Board direct Staff to promptly initiate a formal rulemaking proceeding so that the process for implementing the Solar Act's changes to the solar portion of the RPS requirements may go through a formal public comment process and be incorporated into the Board's rules with all deliberate speed.

Staff also recommends that the Board approve an extension in the time for filing of the solar portion of the RPS compliance Annual Report to December 1, 2014 for the compliance period ending May 31, 2014.

**DISCUSSION AND FINDINGS**

The Board **FINDS** that the Solar Act mandates that the aggregate solar requirements of New Jersey's RPS be increased and that the extent of each BGS provider's obligation under the law be determined based upon the date of execution of the BGS providers' supply contracts. The Board **FINDS** that certain providers who entered into three-year contracts prior to the effective date of the Solar Act are exempted from the increased solar requirement but that the statewide solar requirement has not been reduced because of the exemption. The Board **FINDS** that the non-exempt BGS providers must provide the portion of the solar obligation that would otherwise have been provided by the exempt providers.

The Board **FINDS** that to implement the law, Staff devised a calculation methodology designed to be transparent, logical, and equitable while entirely consistent with the Solar Act. The Board **FINDS** that Staff's proposed calculation methodology is transparent, logical, and equitable. The Board also **FINDS** that the proposed calculation may nonetheless be improved by incorporation of some of the clarifications suggested by various commenters RPS compliance process.

The Board **HEREBY APPROVES** the proposed calculation methodology as clarified by the recommendations made by Staff in this Order.


The Board also **HEREBY APPROVES** Staff's recommendation to extend the deadline for the filing of the solar portion of the Annual RPS Compliance Report for the period ending May 31, 2014 to December 1, 2014 given the complexities of the required calculations.

DATED: 5/21/14

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I HEREBY CERTIFY that the within document is a true copy of the original in the files of the Board of Public Utilities



IN THE MATTER OF THE IMPLEMENTATION OF THE SOLAR ACT L. 2012, C. 24, N.J.S.A.  
48:3-87 (D)(3)(C): THE LIMITED EXEMPTION OF CERTAIN BASIC GENERATION SERVICE  
PROVIDERS FROM THE INCREASED SOLAR REQUIREMENTS  
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