

STATE OF RHODE ISLAND
ENERGY FACILITY SITING BOARD

In re: The Narragansett Electric Company : Docket No. SB 2021-04
d/b/a/ Rhode Island Energy :
Portable LNG Vaporization Project, :
Old Mill Lane, Portsmouth, Rhode Island :

DIVISION OF PUBLIC UTILITIES & CARRIERS
POST-HEARING MEMORANDUM

I. Introduction

On April 1, 2022, pursuant to Chapter 98 of Title 42 of the Rhode Island General Laws, the Narragansett Electric Company (“TNEC”) d/b/a Rhode Island Energy (“RIE”) filed an application for a license to mobilize and operate a liquified natural gas facility at its property located on Old Mill Lane in Portsmouth, R.I.¹ Gen. Laws §42-98-4 requires the issuance of a license by the Energy Facility Siting Board (“EFSB” or “Board”) to construct or alter a major energy facility within the State of Rhode Island.² The Board may only grant the license upon a finding that:

1. Construction of the proposed facility is necessary to meet the needs of the state and/or region for energy of the type to be produced by the proposed facility.
2. The proposed facility is cost-justified, and can be expected to produce energy at the lowest reasonable cost to the consumer consistent with the objective of ensuring that the construction and operation of the proposed facility will be accomplished in compliance with all of the requirements of the laws, rules, regulations, and ordinances, under which, absent this chapter, a permit, license, variance, or assent would be required, or that consideration of the public health, safety, welfare, security and need for the proposed facility justifies a waiver of some part of the requirements when compliance cannot be assured.

¹ See Docketing Letter for Supplemental Application, May 26, 2022; https://ripuc.ri.gov/sites/g/files/xkgbur841/files/2022-07/Docketing%20Letter_Supplemental%20Application_SB-2021-04.pdf

² The within application is the result of an order issued by the Board on September 17, 2021.

3. The proposed facility will not cause unacceptable harm to the environment and will enhance the socio-economic fabric of the state.

In reviewing applications for an energy facility, the Board is authorized to seek Advisory Opinions from state and municipal agencies with interests affected by the application or that have particular expertise needed for the Board's understanding and deliberations. In this case, the Board sought and received advisory opinions from the Town of Portsmouth Building Official³, Town of Portsmouth Town Council⁴, Town of Portsmouth Planning Board⁵, Town of Portsmouth Department of Public Works⁶, Town of Portsmouth Zoning Board of Review⁷, the Rhode Island Historic Preservation & Heritage Commission⁸, the Rhode Island Division of Statewide Planning⁹, the Rhode Island Department of Health¹⁰, the Rhode Island Public Utilities Commission¹¹, and the Rhode Island Department of Environmental Management.¹² The EFSB conducted a full evidentiary hearing

³ Town of Portsmouth Building Official Advisory Opinion, <https://ripuc.ri.gov/sites/g/files/xkgbur841/files/2023-06/Advisory%20Opinion%20signed%205%2031%2023%20filed%20and%20served%206.5.23.pdf>

⁴ Town of Portsmouth Town Council Advisory Opinion, <https://ripuc.ri.gov/sites/g/files/xkgbur841/files/2023-08/Portsmouth%20TC%20Advisory%20Opinion%20for%20Sound%20Variance%20correction.pdf>

⁵ Town of Portsmouth Planning Board Advisory Opinion, <https://ripuc.ri.gov/sites/g/files/xkgbur841/files/2023-08/PB%20AdOp7.19.23%20%28003%29.pdf>

⁶ Town of Portsmouth Department of Public Works Advisory Opinion, <https://ripuc.ri.gov/sites/g/files/xkgbur841/files/2023-06/Portsmouth%20DPW%20Advisory%20Opinion%205.18.23.pdf>

⁷ Town of Portsmouth Zoning Board of Review Advisory Opinion, https://ripuc.ri.gov/sites/g/files/xkgbur841/files/2023-08/TNEC.dbaRIEnergy.SUPAdvisoryOpinion.ZBR_.pdf

⁸ The Rhode Island Historic Preservation & Heritage Commission Advisory Opinion, https://ripuc.ri.gov/sites/g/files/xkgbur841/files/2023-06/230327.06_TNEC%20vaporization%20facility%20Old%20Mill%20Lane%20Portsmouth.pdf

⁹ Rhode Island Division of Statewide Planning Advisory Opinion⁹, <https://ripuc.ri.gov/sites/g/files/xkgbur841/files/2023-06/Luly%20Massaro%20Letter%20%28and%20Advisory%20Opinion%29%5Bre%23SB-2021-04%5D%5BNatural%20Gas%20%28LNG%29%20Vaporization%20Facility%20-%20Old%20Mill%20Lane%20Portsmouth%5D%2806-02-2023%29.pdf>

¹⁰ Rhode Island Department of Health Advisory Opinion, <https://ripuc.ri.gov/sites/g/files/xkgbur841/files/2023-06/RIDOH%20Aquidneck%20EFSB%20Opinion%20Letter.pdf>

¹¹ Rhode Island Public Utilities Commission Advisory Opinion https://ripuc.ri.gov/sites/g/files/xkgbur841/files/2023-06/Dkt.%2022-42-NG%20PUC%20Advorsory%20Opinion%20%286-5-23%29_0.pdf

¹² Rhode Island Department of Environmental Management Advisory Opinion, <https://ripuc.ri.gov/sites/g/files/xkgbur841/files/2023-06/RIDEM%20Advisory%20Opinion%20SB-2021-04%20Old%20Mill%20Lane.pdf>

on the application on April 23, April 24, and April 30, 2024. The within post-hearing memorandum is filed at the Board's direction to address the following questions:

1. What Board rulings are sought by each party?
2. What is the rationale for the rulings sought by each party?
3. What is each party's position relative to the following two questions:
 - A. Should the EFSB place a condition on the license that requires the Company to put in place a moratorium on new gas connections across all of Aquidneck Island (including Portsmouth, Middletown, and Newport) to prevent or substantially temper natural gas demand growth?
 - B. Regarding the concerns relating to noise expressed by residents with homes in close proximity to the LNG facility, if the Board grants a license for the construction and operation of a new facility re-located further back from Old Mill Lane (including the purchase of the new equipment) should the Board place a condition on the license that requires the Company to make offers to purchase the thirteen homes within the original noise radius identified by the Company in Appendix G of the Site Report? If so, when should such offers be made (i.e., before or after the re-located facility has had full winter of operation).

In reference to the RI Public Utilities Commission's ("PUC" or "Commission") Advisory Opinion, this Opinion was issued after a full contested evidentiary hearing. The Commission's Advisory Opinion, however, is not the same as an order in a contested case and was not appealable by any party. R.I. Gen Laws § 42-98-10 (b). The project reviewed before the Commission was substantially the same as that reviewed in the within proceeding, except for updated materials submitted by TNEC on March 29, 2024, and April 11, 2024.

II. Requested Board Rulings & Rationale

In the PUC proceeding, PUC Docket, No. 22-42-NG, the Division offered joint direct and surrebuttal testimony of Bruce R. Oliver and Paul Roberti. The summary recommendations from

both the direct and surrebuttal testimony provides the Division’s general positions on the application for the permanent relocated LNG facility. These positions, which have not changed are:

Direct Testimony of Bruce R. Oliver and Paul Roberti at 40-42¹³

First, based on the extreme weather conditions experienced on February 3, 2023, we recognize that there is currently a need for LNG vaporization on Aquidneck Island to supplement TNEC’s contracted pipeline gas deliveries under extreme winter weather conditions. However, we do not believe the Commission should accept the Company’s estimates of future shortfalls in gas supply capacity under design weather conditions. We also find no reason to give substantial weight to the Company’s repeatedly expressed concerns regarding the potential impacts of upstream pipeline gas supply disruptions. However, the Company’s submissions in this proceeding leave unanswered questions regarding the amount of time and expense TNEC will require to eliminate its need for LNG vaporization on Aquidneck Island. We believe more geographically sensitive and Aquidneck Island customer sensitive forecasting efforts may significantly reduce, if not eliminate, the Company’s forecasted peak hour gas supply shortfalls and thereby allow much earlier elimination of LNG vaporization requirements. Second, greater examination of the energy efficiency programs, electrification programs, and rate structure programs that focus on the specific needs of Aquidneck Island is needed. Given the potential for avoiding a \$15 million investment and \$1.5 million in annual operating costs, the Company’s offerings for Aquidneck Island customers can be enhanced relative to those for other parts of its system without eroding the cost-effectiveness of such offerings. We believe the combination of more Aquidneck-sensitive forecasting and Aquidneck-focused programs to reduce gas use on the island can produce sufficient design peak hour load reductions to provide for reasonably near-term elimination of LNG vaporization requirements for Aquidneck Island.

However, if that is not the case, the Commission should consider: (1) a moratorium on new gas service connections; and/or (2) instituting service curtailment priorities to provide for removal of non-essential gas uses from the system during comparatively rare extreme weather conditions which might otherwise yield a gas supply capacity shortfall if the Company’s LNG vaporization project is not pursued.

Surrebuttal Testimony of Bruce R. Oliver and Paul Roberti at 34-36¹⁴

“The Company’s proposals in this proceeding can be viewed in two parts. Those are: (1) the relocation of LNG operations to the further back on the Old Mill 9 Lane site

¹³ Joint Direct Testimony of Bruce R. Oliver and Paul Roberti, March 13, 2023; <https://ripuc.ri.gov/sites/g/files/xkgbur841/files/2023-03/2242-DIV-Testimony-Oliver-Roberti.pdf>

¹⁴ Joint Surrebuttal Testimony of Bruce R. Oliver and Paul Roberti, May 2, 2023; https://ripuc.ri.gov/sites/g/files/xkgbur841/files/2023-05/2242-DIV-Oliver-Roberti_5-2-23.pdf.

(i.e., further away from the road); and (2) the purchase of LNG equipment with increased storage and vaporization capacity. Although this winter's experience (i.e., the peak hour loads encountered on February 4, 2023) displays a current need for the availability of supplemental gas supplies for Aquidneck Island to meet load requirements under extreme weather conditions, the long-term need for such LNG vaporization on the island has not been established. Our position remains that TNEC has not adequately assessed either its anticipated load growth for Aquidneck Island or the potential for non-infrastructure alternatives (e.g., energy efficiency and electrification programs) to eliminate Aquidneck Island LNG vaporization requirements within the foreseeable future (i.e., 10-years or less). In the context of an expectation that the proposed Old Mill Lane Project will only be utilized for 10 years or less, continued reliance on the current site with rental LNG vaporization and storage equipment is a more appropriate and cost-effective option for the Company to pursue. Furthermore, in the context of expectations that the Old Mill Lane Project will be operated 10 years or less, the \$12-\$15 million investment costs for the proposed "site work" is not justified."

The proceeding before this Board, however, established that the true cost of the proposed facility is not just the \$12-\$15 million for the site work, but also includes an additional \$12 million for new portable LNG storage tanks & vaporizers, \$0.5 million for a sound wall, and potentially an additional \$7.7 million for off season/off site equipment storage in Exeter, Rhode Island, for a total cost of \$33.4 million. (Record Request 7-1).¹⁵ While the Division acknowledges that there are some advantages to purchasing/owning equipment, there is insufficient evidence in the record upon which to rely to support a finding that purchasing is the least cost overall. The Division continues to support a temporary facility, not a permanent facility. Indeed, the Division supported and the Company agreed to implement a portable LNG facility on Aquidneck Island. See Division's Report on the Interruption of Gas Service of January 21, 2019.¹⁶ Efforts to locate such a facility were explored for locations owned by the Navy but were rejected by the Navy (extending existing lease for former LNG site) or by the Company for infeasibility/ cost considerations (Tank Farm).

¹⁵ Record Request 7-1 (May 16, 2024); <https://ripuc.ri.gov/sites/g/files/xkgbur841/files/2024-05/SB202104%20-%20TNEC%20Resp%20to%20RR%20-%20Batch%20%20-%2005-16-2024.pdf>.

¹⁶ See Report at Section 8.2 https://ripuc.ri.gov/sites/g/files/xkgbur841/files/eventsactions/AI_Report.pdf.

As stated by the PUC’s Advisory opinion, “RI Energy has shown that there is a need for LNG vaporization on Aquidneck Island to meet the winter capacity constraint now and in the short-term, even if an island-wide moratorium on new connections was to be imposed. Although they may be reasonable long-term solutions, the non-infrastructure alternatives are not technically feasible alternatives to solve the problem now or in the short-term.”¹⁷

The record herein demonstrated that there continues to be substantial uncertainty as to the speed, timing, and eventual uptake of energy efficiency, demand response, and electrification efforts. The Future of Gas proceeding is currently underway and federal funding for electrification from the Inflation Reduction Act (which will be managed by the Office of Energy Resources) is pending. Therefore, the Division agrees with the PUC’s Advisory Opinion that the EFSB issue a license, subject to periodic demonstration of continued need by the Company through five-year reviews commencing in 2028, if the EFSB grants the license to relocate the facility on-site. If the EFSB declines to grant the relocation but permits the continuation of the facility as it has been operated, periodic reviews of the Company’s efforts to reduce gas demand could commence at an earlier date.¹⁸

However, the Division also recommends some specific actions be taken immediately, partially in response to what appears to be a decided disinterest or lack of effort on RI Energy’s part to educate itself on large customer gas usage.

1. Direct the Company to engage with the United States Navy to ascertain the Navy’s measures, if any, that would reduce natural gas consumption on Aquidneck Island and to file a report with the Board, no later than six months from the date of the Board’s decision in SB-2021-04. Said report should include

¹⁷ PUC Advisory Opinion at 3, June 5, 2023.

¹⁸ To be clear, the Division does not take the position that all efforts for reduction of gas on Aquidneck Island, or in the State overall, is the sole responsibility of the electric distribution company. The transition to the clean energy future will require efforts from all Rhode Islanders- not only for creating various conservation programs and funding mechanisms, but for uptake and acceptance of the need to make the changes. The citizenry simply must “buy-in” to gas reduction efforts if gas distribution infrastructure is to ever be taken offline.

information concerning the Navy's energy conservation goals and energy efficiency plans, including any proposed timetable.¹⁹

2. Direct the Company to directly engage with its twenty-five highest gas usage customers to discuss energy efficiency opportunities, demand response, and positions on voluntary curtailment. The purpose of this engagement is to specifically quantify what level of reduced gas demands might be possible. Direct the Company to report back to the Board within six months on these efforts.
3. Direct the Company to file a report concerning the recent testing of the Cumberland equipment with the noise results and whether this equipment would meet the sound ordinances of Portsmouth and Middletown. To be filed prior to the Board's decision in this matter.

III. Should the EFSB place a condition on the license that requires the Company to put in place a moratorium on new gas connections across all of Aquidneck Island (including Portsmouth, Middletown, and Newport) to prevent or substantially temper natural gas demand growth?

The issue of a moratorium on all new gas connections has been previously discussed in proceedings that led to Board Order #150, and Order #150 itself.²⁰ There, the Board recognized at least four categories of issues implicated by a potential moratorium on new gas connections: (1) the authority of the Board to issue a moratorium; (2) whether there is substantial evidence supporting a moratorium as it relates to the waiver; (3) conflicting policy considerations; and (4) due process concerns. This matter was discussed at length by the Board and the parties at the August 26, 2021 hearing during the interim proceedings. There, the Acadia Center argued that policy considerations in R.I. Gen Laws §42-98-et seq. created "an intent for the Energy Facility Siting Board to look at

¹⁹ See Testimony of Mr. Alfonso, Apr. 23 at 131; "I am not familiar with any conversations with that, but I know the Navy is developing their own- they have their own study... Specific questions about their future use for gas and so forth and the needs, your know, specifically to ask them to reduce the use, I don't think these conversations have happened... I think they had an energy efficiency rep that retired a few years ago... Again, going back full circle to your question about us asking them to reduce the usage of gas, or opinions for that, I am not aware of any conversations with that, but that might be a questions for the Energy Efficiency Department."

²⁰ Board's Preliminary Order, No. 150. https://ripuc.ri.gov/sites/g/files/xkgburMr_Alfinso841/files/2022-10/Order%20156_SB-2021-04.pdf

more issues than simply the siting”, but rather against the backdrop of state needs.”²¹ This expansive view of the EFSB’s enabling statute is more wishful than authoritative.

The EFSB is a state agency which derives its powers from its enabling statute.

R. I. Gen Laws §42-98-11 (c) provides:

(c) Within sixty (60) days of the conclusion of the final hearing the board shall issue its final decision on the application. A decision in favor of the application shall constitute a granting of all permits, licenses, variances, or assents, which under any law, rule, regulation, or ordinance of the state or of a political subdivision thereof which would, absent this chapter, be required for the proposed facility. ***The decision may be issued requiring any modification or alteration of the proposed facility and may be issued on any condition the board deems warranted by the record and may be issued conditional upon the applicant’s receipt of permits required by federal law.*** The board’s decision shall explicitly address each of the advisory opinions received from agencies, and the board’s reasons for accepting, rejecting, or modifying, in whole or in part, any of those advisory opinions. The board shall, within ten (10) days of granting a license, with or without conditions, deliver the decision to the speaker of the Rhode Island house of representatives, and the president of the Rhode Island senate. (Bolding and italics added).

The Division submits that the language emphasized above (cited by others as the authority for the EFSB to issue a moratorium) pertains specifically to the proposed facility only and not to the business operations of the gas company. For instance, the Board could require the facility to have certain hours of operation, noise and light mitigation measures, traffic controls, visual impact screening, or a decommissioning plan. These are appropriate and pertain to the facility itself. The above language could be construed to mean that the EFSB could impose any condition on the gas company’s operation that the EFSB “deemed warranted by the record”, then what would stop the Board from conditioning a license upon the removal of gas employees who gave testimony that the Board considered less than adequate? Could the EFSB issue such a condition? The Division argues that the EFSB could not take such an action and submits that the “any condition...deemed warranted

²¹ TR. Aug 26, 2021 at 27.

by the application” refers to the energy facility or the site upon which it is located and not to the business operations of the owner of the facility.

Nowhere within the EFSB’s statute is there any reference to a moratorium. The General Assembly has enacted moratoria pertaining to issues of statewide importance: (1) § 23-93-5. Moratorium state-wide health plan; inventory of healthcare facilities, equipment, and services; (2) § 23-17-44. Moratorium on new initial nursing-facility licensed beds and on increases to the licensed capacity of existing nursing-facility licenses; (3) § 37-20-1. Big River Reservoir — Development prohibited; (4) § 21-28.11-7. Licensed cannabis cultivators, two-year moratorium. In addition, the General Assembly has also provided authority for municipalities to issue moratoria to address land use issues: § 45-22.2-13, a one-time moratorium, for the purpose of providing interim protection for a planned future land use or uses.

The Division submits that a moratorium against new gas connections on Aquidneck Island would certainly have concerns and impacts that could affect statewide interests. The EFSB has not been granted specific statutory authority to issue a moratorium. As such, the Division avers that such authority does not exist for the EFSB and likely rests with the General Assembly or possibly the PUC.

Acadia Center also argued that the Act on Climate, specifically R.I. Gen Law. §42-6.2-8, provides the EFSB with additional authority to issue a moratorium.

R.I. Gen Law. §42-6.2-8 states:

“Addressing the impacts on climate change shall be deemed to be within the powers, duties, and obligations of all state departments, agencies, commissions, councils, and instrumentalities, including quasi-public agencies, and each shall exercise among its purposes in the exercise of its existing authority, the purposes set forth in this chapter pertaining to climate change mitigation, adaptation, and resilience in so far as climate change affects its mission, duties, responsibilities, projects, or

programs. Each agency shall have the authority to promulgate rules and regulations necessary to meet the greenhouse gas emission reduction mandate established by § 42-6.2-9.”

The EFSB has not promulgated rules and regulations necessary to meet the greenhouse gas emission reduction mandate established by § 42-6.2-9. To suggest that the EFSB would have the authority to order a moratorium on gas connections for unknown persons and businesses who are not represented in this proceeding, when the EFSB has not even proposed, let alone implemented, any regulations describing the scope of its perceived regulatory powers, is far more than just an overreach. The Division submits that the EFSB does not have statutory authority to issue a moratorium, whether under its own enabling statute or under the Act on Climate.

Even if the Board had the authority to issue a moratorium, which the Division does not concede, such an action has not been noticed to the public and all the potential stakeholders. Therefore, it would be a violation not only of due process, but also of the notice requirements of the Open Meetings Act, R.I. Gen Laws §42-46-6. A review of the notice for these proceedings reveals quite quickly that there is no indication that the EFSB would be considering a moratorium for new gas connections on Aquidneck Island.²² In the Division’s view, since there is no legal authority for the EFSB to issue a moratorium on gas connections, and no notice to the public that this topic would even be discussed or considered in this proceeding, additional policy discussions concerning desirability of moratorium are moot- for the purposes of this proceeding.²³

²² Notice of Final Hearings, Docket SB-2021-04; <https://ripuc.ri.gov/sites/g/files/xkgbur841/files/2024-03/SB202104%20Notice%20of%20Final%20Hearing%20-%202024-23-24%20Rev.pdf>.

²³ This is not to say that the Division disagrees with the Chairman’s underlying premise of that curtailing gas connections would certainly be a measure that could help to “bridge the gap” between demand and supply. It’s just not ripe for consideration by this Board, in these proceedings. Moreover, moratoria should be considered as a very last resort, after failure of other options to reduce gas consumption.

IV. Regarding the concerns relating to noise expressed by residents with homes in close proximity to the LNG facility, if the Board grants a license for the construction and operation of a new facility re-located further back from Old Mill Lane (including the purchase of the new equipment) should the Board place a condition on the license that requires the Company to make offers to purchase the thirteen homes within the original noise radius identified by the Company in Appendix G of the Site Report? If so, when should such offers be made (i.e., before or after the re-located facility has had full winter of operation).²⁴

The Division submits that this inquiry is premature and assumes that the facility, as currently proposed, will constitute a noise nuisance to the surrounding properties. This implied assumption is, in the Division's view, misplaced. The testimony in the record established that while the existing facility has in fact exceeded the Town of Portsmouth's noise ordinance limits, the proposed facility has been re-designed over time to comply with both daytime and nighttime noise limits. The only exception to the limits is for storage tank venting. (Testimony of Sanvisna Kogelen, Apr. 24, 2024, second transcript at 8).

Mr. Brian Kirkwood testified that when the LNG facility was first established, it was done so in a hurry in response to the 2019 emergency. He acknowledged that the facility was much louder in the early years of operation, in part because there was not a recovery manifold on the LNG tank and venting was occurring at least every other day. (Tr. Apr. 24, 2024, second transcript at 9). He stated that the Company has now changed the way it is operating its equipment; - it limited hours of operations to weekdays during business hours, and is proposing additional noise mitigation measures for the project since the preparation of the Siting Report.

A silencer is now proposed for the vent stack to lower the sound emission. (Testimony of Brian Kirkwood, TR. Apr. 23, 2024 at 58). He did acknowledge that the amount of sound reduction achievable is not known. This piece of equipment would require operational status when first

²⁴ PUC Docket 22-42-NG, Surrebuttal Testimony of Bruce R. Oliver and Paul Roberti.

mobilizing the equipment to cool tanks for LNG, and then when receiving deliveries of LNG. (TR. Apr. 23 at 60). The site of the equipment (if approved) would be moved further back on the subject property, further away from abutters. (TR. Apr. 23 at 80). Mr. Jeffrey Montigny testified that RIE has purchased similar equipment for its Cumberland facility and that equipment testing was scheduled for approximately May 1.

Mr. Kogelen testified that the current equipment exceeds daytime noise limits of 60 decibels by 2 decibels but that the proposed project, *without mitigation*, complies with the noise ordinance at 57 decibels. For nighttime, the current project exceeds noise limits by 7 decibels, but that the proposed project, with mitigation, will be 47 decibels and within limits. (TR. Apr. 23 at 87-88). The mitigation measures include a 24-foot noise barrier that goes across the vaporizers with 20-foot noise barriers on either side. Draped over the long sides and the top of the vaporizer is an industrial noise control quilt. (TR. Apr. 23 at 89). With the proposed mitigation measures, the project will comply with Portsmouth's noise limits. (TR. Apr. 23 at 128).

In reviewing the public comments filed with the Board, the Division does not see anyone requesting RIE to purchase their property. The abutting property owners are clearly upset and troubled by the existence of an industrial facility in a residential zone and rightly so. In a perfect world, sufficient gas would be available from the pipeline and there would not be a need for the facility which has existing gas infrastructure. Regrettable, that is not the case, currently.

In the event that the Board grants the license, the Board could consider holding additional hearings after a full year of operations for further input and consideration on this topic. However, based on the unrebutted testimony in the record, this facility will be noise compliant, except for the possibility of an occasional exceedance for venting. Therefore, the Division cannot support a buyout at this time.

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