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March 20, 2017

***VIA ELECTRONIC FILING***

Rosemary Chiavetta, Secretary  
Pennsylvania Public Utility Commission  
Commonwealth Keystone Building  
400 North Street, 2nd Floor North  
P.O. Box 3265  
Harrisburg, PA 17105-3265

**Re: Application of Laurel Pipe Line Company, L.P. for All Necessary Authority, Approvals, and Certificates of Public Convenience To change the Direction of Petroleum Products Transportation Service to Delivery Points West of Eldorado, Pennsylvania  
Docket No. A-2016-2575829**

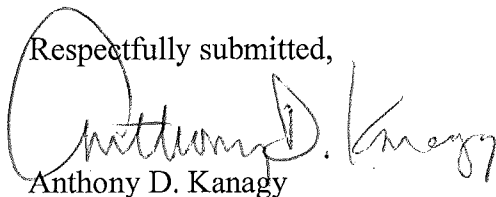
**Pipeline Capacity Agreement Between Laurel Pipe Line Company, L.P. and Buckeye Pipe Line Company, L.P.  
Docket No. G-2017-2587567**

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Dear Secretary Chiavetta:

Enclosed please find Laurel Pipe Line Company, L.P.'s Brief in Opposition to the Petition of Gulf Operating, LLC and Philadelphia Energy Solutions Refining and Marketing, LLC for Certification of a Material Question in the above-referenced proceeding. Copies will be provided as indicated on the Certificate of Service.

Respectfully submitted,



Anthony D. Kanagy

ADK/skr

Enclosure

cc: Certificate of Service  
Honorable Eranda Vero

## CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing has been served upon the following persons, in the manner indicated, in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a participant).

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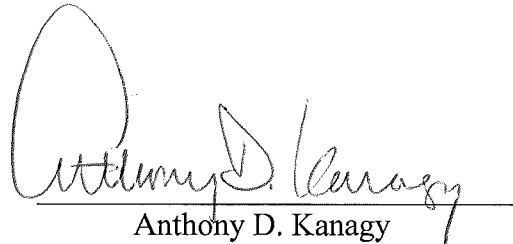
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Date: March 20, 2017



Anthony D. Kanagy

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

|  |   |   |                           |
|--|---|---|---------------------------|
| Application of Laurel Pipe Line Company,<br>L.P. for All Necessary Authority, Approvals,<br>and Certificates of Public Convenience To<br>Change the Direction of Petroleum Products<br>Transportation Service to Delivery Points<br>West of Eldorado, Pennsylvania | : | : | Docket No. A-2016-2575829 |
|  | : | : |                           |
| Pipeline Capacity Agreement Between<br>Laurel Pipe Line Company, L.P. and<br>Buckeye Pipe Line Company, L.P.   | : | : | Docket No. G-2017-2587567 |
|  | : | : |                           |

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**LAUREL PIPE LINE COMPANY, L.P.'S BRIEF IN OPPOSITION  
TO THE PETITION OF GULF OPERATING, LLC AND  
PHILADELPHIA ENERGY SOLUTIONS REFINING AND MARKETING, LLC  
FOR CERTIFICATION OF A MATERIAL QUESTION**

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**I. INTRODUCTION**

Laurel Pipe Line Company, L.P. (“Laurel” or the “Company”), pursuant to 52 Pa. Code § 5.304(d), hereby files this Brief in Opposition to the Petition of Gulf Operating, LLC (“Gulf”) and Philadelphia Energy Solutions Refining & Marketing, LLC (“PESRM”) for Certification of a Material Question (“Petition”). The Petition seeks review of the Order Regarding Motions to Compel issued by Administrative Law Judge Eranda Vero (the “ALJ”) on March 8, 2017, wherein the ALJ denied the Motions to Compel filed by Gulf and PESRM.

**II. PROCEDURAL SUMMARY**

On November 14, 2016, Laurel filed the above-captioned Application with the Pennsylvania Public Utility Commission (“Commission”) at Docket No. A-2016-2575829. The Application sought all necessary, authority, approvals and Certificates of Public Convenience, to the extent required, authorizing Laurel to change the direction of its petroleum products transportation service over a portion of its system west of Eldorado, Pennsylvania, and confirming that Laurel may, in its discretion, reinstate the current direction of service in the future without further Commission approval.

In support of its Application, Laurel also filed the direct testimony of six witnesses and associated exhibits on February 7, 2017. Therein, Laurel more fully explained the details of the proposed change in direction of flow over the western portion of its system, and why the Company believes that the proposed change in direction of flow either does not require Commission approval; or if it does require Commission approval, why the Company believes that the proposed change in direction of flow is in the public interest and should be approved consistent with Sections 1102(a)(2) and 1103(a) of the Public Utility Code.

Additionally, Laurel filed a Capacity Agreement at Docket No. G-2017-2857567 on February 6, 2017, and a Motion to Consolidate the Capacity Agreement with the Application

pending at Docket No. A-2016-2575829 on February 7, 2017. Gulf and PESRM were among the parties to file an Answer Opposing Laurel's Motion to Consolidate on February 13, 2017.<sup>1</sup> On March 2, 2017, the ALJ granted Laurel's Motion to Consolidate.

Importantly, Laurel's Application deals solely and exclusively with a proposal to reverse the direction of flow over a specific and discrete section of its pipeline—*i.e.* from Midland to Eldorado. The Application does not request approval to reverse the direction of flow to any point(s) east of Eldorado.

On February 3, 2017, Gulf served Gulf Set I interrogatories, and PESRM served PESRM Set I Interrogatories.

On February 13, 2017, Laurel submitted timely Objections to Gulf's Set I Interrogatories. Laurel objected to Gulf Set I, Instruction No. 13, Gulf Set I, Definition Nos. 5 and 13, and Gulf Set I Interrogatories Nos. 3, 4, 17, 19(iv), 21, 23, 24, 26, 28, 32, 33, and 37. Following discussions between both parties, Gulf timely submitted a Motion to Compel with respect to Gulf Set I, Interrogatory No. 28.

Similarly, on February 13, 2017, Laurel submitted timely Objections to PESRM's Set I Interrogatories. Laurel objected to PESRM Set I, Instruction No. 13, PESRM Set I, Definition Nos. 5 and 13, and PESRM Set I Interrogatories Nos. 1, 5, 22 and 23. Following discussions between both parties, PESRM timely submitted a Motion to Compel with respect to PESRM Set I, Interrogatory No. 1.

Gulf Set I, Interrogatory No. 28, and PESRM Set I, Interrogatory No. 1 (the "Disputed Interrogatories") both requested the following information:

Provide all internal or external studies, analyses, reports, etc. prepared by or for Laurel within the last 5 years addressing in any

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<sup>1</sup> See Answer of Indicating Parties Opposing Laurel's Motion to Consolidate, Docket Nos. A-2016-2575829; G-2017-2857567, at p. 1 n. 1 (filed Feb. 13, 2017).



way the possibility of extending the reversal of flow along the Laurel pipeline to any points further east of those described in the Application.

Laurel timely filed Answers in response to the substantially similar Motions to Compel filed by Gulf and PESRM on February 28, 2017.

On March 8, 2017, the ALJ issued an Order Regarding Motions to Compel (“Order Denying Motions to Compel”), and denied the Motions to Compel filed by Gulf and PESRM. Therein, ALJ Vero determined that the information sought in the Disputed Interrogatories was irrelevant to the subject matter of this proceeding. Order, at p. 3. ALJ Vero explained that Laurel’s Application for approval to change the direction of petroleum products transportation service to delivery points west of Eldorado, Pennsylvania involves two claims for relief: (1) that the Commission issue an order determining that the proposed change in direction of service does not require Commission approval; or, in the alternative, (2) that the Commission grant Laurel a Certificate of Public Convenience and all other necessary approvals to effectuate the proposed change in direction of service. *See id.* ALJ Vero further explained that the first issue was “a question of law, to the resolution of which the information requested by the two interrogatories in question is irrelevant.” *Id.* Moreover, regarding the second issue, ALJ Vero explained:

...the subject matter of this Application concerns only the proposed change in direction of a portion of the Application’s intrastate service for points west of Eldorado. Even the request that the Commission confirm ‘[Laurel’s] ability to reinstate service in the original direction in the future without Commission approval’ concerns only the portion of the Applicant’s intrastate service for points west of Eldorado, PA.

*Id.* (emphasis added).

On March 13, 2017, Gulf and PESRM filed the instant Petition, requesting that the ALJ certify the following material question for review by the Commission:

Should Laurel Pipe Line Company (“Laurel”), which asserts in its Application that Commission approval for changes in flow direction is not required and seeks Commission confirmation that it may reinstate the direction of flow at its discretion in the future, be required to furnish the information intended to determine whether the proposal to reverse flow on its PUC-jurisdictional pipeline for points west of Altoona/Eldorado is a stand-alone proposal or an initial phase of a documents plan to reverse flows easterly to Philadelphia as requested by Gulf’s Set I Interrogatory No. 28 and PESRM’s Set I Interrogatory No. 1?

Petition ¶ 2.

### III. LEGAL STANDARD

The Pennsylvania Public Utility Code (“Code”) states that:

an interlocutory appeal from a ruling of the presiding officer on discovery shall be allowed only upon certification by the presiding officer that the ruling involves an important question of law or policy which should be resolved at that time. Notwithstanding the presiding officer's certification, the commission shall have the authority to dismiss summarily the interlocutory appeal if it should appear that the certification was improvident. An interlocutory appeal shall not result in a stay of the proceedings except upon a finding by the presiding officer and the commission that extraordinary circumstances exist.

66 Pa. C.S. § 333(h). Interlocutory review will not be granted except upon a showing by a petitioner of “extraordinary circumstances” or “compelling reasons” for review exist. *See In re Application of Knights Limousine Service, Inc.*, 59 Pa. PUC 538, 1985 Pa. PUC LEXIS 46, at \*4 (Order entered July 11, 1985) (“*Knights*”). Compelling reasons may exist where certification is necessary to prevent substantial prejudice to the parties or to expedite the conduct of the proceeding. *Id.*; *see also* 52 Pa. Code § 5.304(c)(3).

In particular, review of discovery orders are generally disfavored and are only permitted in limited circumstances. *See MCI WorldCom Communications, Inc. v. Verizon Pennsylvania Inc.*, Docket No. C-00015149, at pp. 14-15 (Order entered Nov. 13, 2001) (“*MCI WorldCom*”). Section 5.304(b) of the Commission’s regulations states that “[a] presiding officer may certify

that a discovery ruling is appropriate for interlocutory review when the ruling involves an important question of law or policy that should be resolved immediately by the Commission.” 52 Pa. Code § 5.304(b) (emphasis added). Important questions of law or policy are not implicated by routine discovery rulings that deem information outside the scope of a case to be irrelevant. See *Whemco-Steel Castings, Inc. v. Duquesne Light Company*, Docket No. C-2014-2459527, at pp. 4-5 (Interim Order issued by Administrative Law Judge Jeffrey A. Watson Aug. 27, 2015) (“*Whemco-Steel*”); see also *Pa. Pub. Util. Comm’n v. Dauphin Consolidated Water Supply Co.*, 1987 Pa. PUC LEXIS 215, at \*9 (Opinion and order entered Aug. 21, 1987) (“*Dauphin Consolidated*”) (“there is nothing exceptional about disputes over the scope of discovery...”).

#### **IV. ARGUMENT**

The Petition should be denied because it fails to satisfy the Commission’s high burden to grant interlocutory review of discovery rulings. The Petition neither identifies an important question of law or policy to be resolved by certification of the question posed nor demonstrates that discovery of the requested information is necessary to prevent substantial prejudice to the parties or expedite the conduct of this proceeding. Rather, the ultimate result sought by the Petition would substantially prejudice Laurel and the shippers on its system, and delay the conduct of this proceeding. As such, Gulf and PESRM have failed to demonstrate that compelling reasons or extraordinary circumstances that justify interlocutory review exist. For the reasons more fully explained below, the Petition should be denied.

**A. THE DISCOVERY RULING DOES NOT INVOLVE AN IMPORTANT QUESTION OF LAW OR POLICY.**

**i. Gulf And PESRM Have Failed To Demonstrate A Discovery Ruling Related To The Scope Of Discovery Involves An Important Question Of Law Or Policy.**

Review of discovery orders are generally disfavored and are only permitted in limited circumstances. *See MCI WorldCom*, at pp. 14-15. Certification of a material question regarding a discovery ruling is only appropriate where the discovery ruling “involves an important question of law or policy that should be resolved immediately by the Commission.” 52 Pa. Code § 5.304(b). However, important questions of law or policy are not implicated by rulings on the scope of discovery. *Whemco-Steel*, at pp. 4-5. The Commission has previously explained that “there is nothing exceptional about disputes over the scope of discovery in a matter where reasonable persons can disagree.” *Dauphin Consolidated*, at \*9.

In *Whemco-Steel*, the presiding officer denied Duquesne Light Company’s Petition to Certify a Material Question regarding the presiding officer’s prior order, which denied Duquesne’s Motion to Compel. *Whemco-Steel*, at p. 5. The presiding officer explained that the interrogatories implicated by the material questions “were properly dismissed by the undersigned presiding officer due to lack of relevance to the allegations of the complaint and on speculation grounds.” *Id.* (emphasis added). As such, the presiding officer denied Duquesne’s petition, because it involved “routine discovery matters” that did not constitute important law or policy questions that justified the Commission’s time and resources at that stage in the proceeding. *See id.*

Similarly, in *Dauphin Consolidated*, the Commission denied a petition for interlocutory review that requested review and reversal of a discovery ruling by a presiding officer. *See Dauphin Consolidated*, at p. \*1. While the petitioner in *Dauphin Consolidated* sought review of

an order granting a motion to compel discovery, the Commission explained that review of this order was not necessary because “[t]here is nothing "exceptional" about disputes over the scope of discovery in a matter...” *Id.*, at \*9. Therefore, the Commission denied review of the discovery ruling because it recognized a ruling regarding the scope of discovery was not an “exceptional situation where interlocutory review is appropriate.” *Id.*

Indeed, Gulf and PESRM cannot demonstrate that the Order involves an important question of law or policy, because the Order resolves a dispute over the scope of discovery in this proceeding. The Order expressly stated that:

information regarding studies, analyses, reports, etc. addressing the possibility of extending the reversal of flow along the Laurel pipeline to any points further east of those described in the Application falls outside the scope of this proceeding, and consequently, the information [is] irrelevant to it.

Order Denying Motions to Compel, at p. 3.

Gulf and PESRM have failed to demonstrate how the information sought by the Disputed Interrogatories or the question submitted relate to an important question of law or policy. Gulf and PESRM’s conclusory allegations to the contrary are unsupported. *See* Petition ¶ 4. The only question raised by Gulf and PESRM in their Petition is related to the scope of discovery in this proceeding—*i.e.* whether the information sought by the Disputed Interrogatories is relevant to one of the two claims for relief raised in Laurel’s Application. This question does not raise an “important question of law or policy,” but instead seeks to reargue a discovery ruling by the ALJ that only addressed the scope of discovery in this proceeding.

**ii. The Information Requested By Gulf And PESRM Is Not Relevant To This Proceeding.**

The information sought by the Disputed Interrogatories is irrelevant because Laurel is not seeking Commission approval to reverse the flow of the pipeline to points east of Eldorado; the Application is limited in scope to Eldorado and points west. Therefore, the possibility of extending the reversal past Eldorado is not relevant to either of Laurel's two alternative claims for relief involved in this proceeding. Despite Gulf and PESRM's attempts to misconstrue Laurel's Application and the issues raised therein, there is nothing in the record to support the relevancy of the sought information as within the subject matter of Laurel's Application.

Gulf and PESRM continue to argue the information sought by the Disputed Interrogatories is relevant to this proceeding. *See* Petition ¶ 9. Laurel's first argument is that Commission approval is not required to reverse the flow of petroleum products to Eldorado. Whether Laurel is authorized to reverse the flow of service without Commission approval is a purely legal determination involving an evaluation of the authorization contained in Laurel's Certificate and federal law. Under this claim for relief, the proper subject matter to determine relevance is the authority granted to Laurel in the Certificate of Public Convenience issued by the Commission and federal law. The issue of whether Laurel would possibly at some unspecified point in the future reverse the flow of its pipeline for points east of Eldorado is entirely irrelevant to determining whether Laurel can reverse the flow of service without Commission approval.

Laurel's second, alternative claim for relief involves an evaluation of facts to determine whether Laurel's proposal is in the public interest, if and only if the Commission determines that approval is required. Under this claim for relief, the proper subject matter to determine relevance is the proposal as stated in Laurel's Application. Clearly, any information related to

possible plans to reverse other, unidentified segments of the Laurel pipeline east of Eldorado at an unspecified future date is irrelevant to determining whether the proposed reversal to Eldorado and points west, described in the Application, is in the public interest. Such a proposal would necessarily involve delivery points, engineering work, timing, financing, and other issues that are irrelevant, and entirely outside the scope of Laurel's Application. Moreover, should the Commission determine that Laurel requires authorization to effectuate the reversal to points west of Eldorado, as described in the Application, then other "possible future actions" (*i.e.* reversals) would be subject to review and approval in another proceeding before the Commission.

In addition, for the reasons fully described in described in Laurel's Answer to the Motions to Compel, Gulf and PESRM's reliance on *Koken v. One Beacon Ins. Co.* is misplaced. Gulf and PESRM have failed to identify facts in the record that demonstrate the information sought by the Disputed Interrogatories is relevant to either of the two alternative claims for relief in this proceeding. *See Koken v. One Beacon Ins. Co.*, 911 A.2d 1021, 1025 (Pa. Cmwlth. Ct. 2006) (explaining "if there is nothing in the record from which relevancy can be ascertained, this Court may place the burden of establishing relevancy upon the requesting party."). As such, the ALJ properly found that the information sought by the Disputed Interrogatories is outside the scope of discovery in this proceeding.

For the reasons more fully explained above, the ALJ correctly held that the subject matter of discovery must be relevant to one of the two issues raised by Laurel in its Application, and properly limited the scope of discovery in this proceeding to the issues relevant to the alternative claims for relief requested by Laurel in its Application. The question raised by Gulf and PESRM in the Petition solely involves a ruling on the scope of discovery in this proceeding. Therefore,

the Petition does not raise an important question of law or policy that requires immediate resolution by the Commission, and should be denied.

**B. THE PETITION FAILS TO DEMONSTRATE THAT DISCOVERY OF THIS INFORMATION IS NECESSARY TO PREVENT SUBSTANTIAL PREJUDICE TO THE PARTIES OR TO EXPEDITE THE CONDUCT OF THIS PROCEEDING.**

**i. Gulf And PESRM Have Failed To Demonstrate Certification Would Prevent Substantial Prejudice Or Expedite the Conduct of the Proceeding.**

Other factors that the Commission considers when deciding to grant certification of a material question where “it is necessary to do so to prevent substantial prejudice to any party or to expedite the conduct of the proceeding.” 52 Pa. Code § 5.304(c)(3); *see also Knights*, at \*4. However, where a material question is irrelevant to the resolution of an application, the Commission has explained that interlocutory review will not prevent substantial prejudice or expedite the conduct of the proceeding. *See Application of Verizon North Inc.*, 2009 Pa. PUC LEXIS 1858, at \*10 (Order entered Sept. 24, 2009) (“*Verizon North*”). In *Verizon North*, the Commission denied a petition for interlocutory review and answer to material question, because the material question presented by the petition was irrelevant to the resolution of a pending application related to the corporate restructuring of Verizon North, Inc. *Id.* The Commission explained that the pending application involved all approval necessary for one corporate transaction, but that the material question presented seeks a ruling from the Commission related to a second, separate corporate transaction by Verizon North, Inc. *Id.*, at \*10-11.

Gulf and PESRM do not explain how certification would prevent substantial prejudice, other than to restate their arguments that the information sought is relevant to this proceeding, or how certification would expedite the conduct of this proceeding. The question submitted by Gulf and PESRM is solely related to the ALJ’s determination that the information sought by the



Disputed Interrogatories is irrelevant to the resolution of Laurel’s Application. Similar to the material question in *Verizon North*, the material question submitted by Gulf and PESRM seeks a ruling from the Commission related to a separate project(s) outside the scope of, and irrelevant to, the pending Application. Granting certification of a material question that is irrelevant to the pending Application will not prevent substantial prejudice or expedite the conduct of this proceeding. *See Verizon North*, at \*10.

Moreover, Gulf and PESRM suggest that discovery of information related to possible, subsequent reversals of segments of Laurel’s pipeline system east of Eldorado—where the Application is limited in scope to points west of Eldorado—is not only necessary, but would somehow serve to expedite the conduct of this proceeding. Gulf and PESRM take this position despite the fact, as stated of above, that review and consideration of possible, subsequent reversals to points outside the scope of Laurel’s Application would necessarily involve different delivery points, different shipper commitments, different engineering work, different timing, and different economics, among other issues. As such, the discovery sought by Gulf and PESRM would add issues to the current proceeding, and would not expedite this proceeding.

For the reasons more fully explained above, granting certification would not prevent substantial prejudice to Gulf and PESRM, or expedite the conduct of this proceeding. Therefore, the Petition should be denied.

**ii. Granting Certification Would Substantially Prejudice Laurel And Its Shippers.**

As explained in Laurel’s Answer to the Motions to Compel, the highly sensitive nature of the information sought by the Disputed Interrogatories enhances the need to deny certification and deny disclosure, given the information’s lack of relevance. Granting certification, and potentially requiring disclosure of this irrelevant information, would in fact substantially

prejudice Laurel and its shippers in a manner that could not be cured in the normal course of Commission proceedings. *See Dauphin Consolidated*, at \*6-7. As a general matter, the highly competitive petroleum products refining and transportation industries regularly involve interactions between directly and indirectly affiliated entities. To the extent that such information exists, disclosure would provide market participants involved in this proceeding access to highly sensitive commercial information regarding possible future business plans of the Applicant. Market participants who currently use Laurel's pipeline system, or may use it in the future, could use this otherwise confidential information in commercial interactions and business planning, to the detriment of Laurel and/or other shippers. It would also provide certain of them with an unfair competitive advantage over other market participants in the highly competitive petroleum products market and, in particular, over other shippers on Laurel's system who are not involved in this proceeding. Due to the lack of relevance, the Disputed Interrogatories appear to be nothing more than an attempt to abuse the regulatory process in order to access highly sensitive commercial information.

For the reasons more fully explained above, granting certification would substantially prejudice Laurel and its shippers. Therefore, the Petition should be denied.

#### **V. STAY OF THE PROCEEDING**

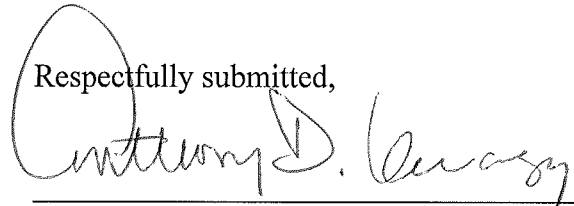
Under Section 5.304(d)(3), parties writing a Responsive Brief to a Petition for Certification must address whether a stay of the proceedings is required to protect the substantial rights of a party. 52 Pa. Code § 5.304(d)(3). Laurel does not believe that a stay of the proceedings is necessary in order to protect the substantial rights of the parties. Gulf and PESRM's Petition involves a discovery ruling, and this proceeding is yet in the early stages of discovery. The direct testimony of Gulf and PESRM is not due until June 14, 2017. Therefore,

if the presiding officer grants the Petition, there is sufficient time for the Commission to rule on the certified question.

**VI. CONCLUSION**

WHEREFORE, Laurel Pipe Line Company, L.P. respectfully requests that Administrative Law Judge Eranda Vero deny the Petition of Gulf Operating, LLC and Philadelphia Energy Solutions Refining & Marketing, LLC for Certification of a Material Question.

Respectfully submitted,



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Date: March 20, 2017

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