UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

12/13/78

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| In the Matter of | ) | |
| WASHINGTON PUBLIC POWER SUPPLY SYSTEM | ) | Docket No. 50-397-OL |
| (WPPSS Nuclear Project No. 2) | ) | |

APPLICANT'S ANSWER IN OPPOSITION TO
AMENDED PETITION FOR LEAVE TO INTERVENE

## I. BACKGROUND

On July 26, 1978, the Nuclear Regulatory Commission published a Notice of Opportunity for Hearing in the captioned matter. 43 Fed. Reg. 32338 (1978). In response thereto, a petition for leave to intervene dated August 28, 1978, was filed by two individual petitioners, Susan M. Garrett and Helen Vozenilek, on their own behalf and on behalf of a group calling itself the "Hanford Conversion Project" ("HCP"). The petition was opposed by the NRC Staff, the Washington Public Power Supply System ("Applicant"), and the State of Washington.

By Order dated October 11, 1978, the Atomic Safety and Licensing Board ("Board") indicated that a prehearing conference would be held on November 15, 1978. The Board also noted that the Applicant and NRC Staff had correctly identified certain deficiencies in the petition for leave to intervene,

and advised that any amended petition to correct these deficiencies was required to be filed by November 1, 1978. Thereafter, by Order dated October 30, 1978, the Board confirmed that petitioners had been granted until November 10, 1978 to amend their petition, and that a prehearing conference had been scheduled for November 21, 1978.

On November 10, 1978, an undated amended petition for leave to intervene was filed by Susan M. Garrett and a new petitioner, Creg Darby, on their behalf and on behalf of HCP. Attached to the amended petition were several "form-letter" affidavits submitted by alleged members of HCP, including an affidavit and letter submitted by A. C. Roll, an affidavit submitted by the Chairperson of HCP authorizing Creg Darby to replace Helen Vozenilek as its authorized representative, and an undated "Memo In Support Of Amended Petition To Intervene." 1/ Thereafter, petitioners Garrett and Darby advised on a conference call with the Board and the parties that petitioner Vozenilek had withdrawn as a petitioner or representative of HCP in this proceeding and that an appropriate notice of withdrawal would be filed shortly. To date we have not received petitioner Vozenilek's notice of withdrawal.

## II. ARGUMENT

We submit that this proceeding and the issues before this Board are governed by the Appeal Board's admonition in

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1/ We request that the Licensing Board direct that petitioners hereafter date any pleading which they file in this proceeding.

Cincinnati Gas and Electric Co. (William H. Zimmer Nuclear Power Station), ALAB-305, 3 NRC 8, 12 (1976),[2/] viz.,that the question of potential intervention at the operating licensing stage is a significant one which must be answered with the "utmost care". Applicant maintains that the amended petition fails to correct the deficiencies which the Board agreed were characteristic of the original petition. Whatever might be the case if this petition were viewed against standards for intervention enunciated in construction permit proceedings, the petition (as amended) is legally insufficient in this operating license proceeding in that neither the individual petitioners nor HCP has demonstrated sufficient interest (i.e., "a real stake in the proceeding"--Zimmer, supra, 3 NRC at 12) to support intervention as of right. Further, Applicant maintains that the petition, as amended, also fails to establish any basis for a grant of discretionary intervention. Applicant, therefore, opposes the amended petition for leave to intervene.

A. Petitioners Are Not Entitled To Intervene As A Matter Of Right

1. Petitioners Have No Legal Interest In The Proceeding

As we discussed in "Applicant's Answer In Opposition To Petition For Leave To Intervene," dated September 22, 1978,

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2/ Accord, Gulf States Utilities Co. (River Bend Station, Units 1 and 2), ALAB-183, 7 AEC 222, 226, n. 10 (1974); Detroit Edison Co. (Enrico Fermi Atomic Power Plant, Unit 2), LBP- 78-37, 8 NRC ___ (Slip Opinion, at 10) (November 13, 1978); Tennessee Valley Authority (Watts Bar Nuclear Plant, Units 1 and 2), LBP-77-36, 5 NRC 1292, 1297 (1977).

the Commission's decision in Portland General Electric Co. (Pebble Springs Nuclear Plant, Units 1 and 2), CLI-76-27, 4 NRC 610 (1976), and subsequent Appeal Board decisions,[3] clearly establish that a petitioner for intervention of right must assert an "interest which may be affected" by the proceeding. Applying contemporaneous judicial concepts of standing,[4] the Commission in Pebble Springs interpreted this "interest" requirement as mandating the allegation of facts which support findings of both (1) some injury in fact which has occurred or will probably result from the action involved, and (2) an interest "arguably within the zone of interests" to be protected or regulated by the statute sought to be invoked.

Since petitioner Vozenilek apparently has withdrawn her petition to intervene, the remaining petitioners are Susan M. Garrett, Creg Darby, and HCP. We address these petitioners seriatim below. In the event that petitioner Vozenilek has not withdrawn, we stand on our response to the original petition as to her interest, since as to her that pleading has not been amended.

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3/ E.g., Detroit Edison Co. (Enrico Fermi Atomic Power Plant, Unit No. 2), ALAB-470, 7 NRC 473 (1978); Tennessee Valley Authority (Watts Bar Nuclear Plant, Units 1 and 2), ALAB-413, 5 NRC 1418 (1977); Public Service Co. of Oklahoma (Black Fox Station, Units 1 and 2), ALAB-397, 5 NRC 1143 (1977).

4/ See Warth v. Seldin, 422 U.S. 490 (1975); Sierra Club v. Morton, 405 U.S. 727 (1972); Association of Data Processing Service Organizations, Inc. v. Camp, 397 U.S. 150 (1970).

a. Petitioner Susan M. Garrett

Petitioner Garrett asserts that her interest in this proceeding is based upon her place of residence, Portland, Oregon, as well as her alleged use of the Columbia River for recreational purposes and consumption of food grown within 50 miles of the plant site. However, Portland is approximately 180 air miles and 220 Columbia River miles from WNP-2, and is neither within the geographical zone which might be affected by routine or accidental releases of fission products from WNP-4,[5/] nor within a distance generally recognized by the NRC in the past to be sufficiently close to give rise to an interest in the proceeding.[6/]

Petitioner Garrett's vague assertions that she "uses the Columbia River for recreational purposes, including swimming, fishing and boating" are too remote and lacking in specificity to provide the legal interest necessary to support intervention.

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5/ Louisiana Power and Light Co. (Waterford Steam Electric Station, Unit 3), ALAB-125, 6 AEC 371, 372, n. 6 (1973).

6/ E.g., Portland General Electric Co. (Trojan Nuclear Plant), ALAB-496, 8 NRC ___, slip op. (September 12, 1978) (40 miles); River Bend, supra, 7 AEC 222 (1974) (25 miles); Virginia Electric and Power Co. (North Anna Power Station, Units 1 and 2), ALAB-146, 6 AEC 631 (1973) (16 miles); Northern States Power Co. (Prairie Island Nuclear Generating Plant, Units 1 and 2), ALAB-107, 6 AEC 188 (1973) (40 miles); Waterford, supra, 6 AEC 371 (1973) (20 miles); Pacific Gas and Electric Co. (Humboldt Bay Power Plant, Unit No. 3), ASLB Order (May 15, 1978) (20 miles).

It is clear that recreational activities in an area may provide the requisite interest only if the area is in close proximity to a plant site and the recreational activities are stated with specificity and are substantial in nature. The Appeal Board has provided guidance as to what in its view the petition must contain to comply with these specificity and substantiality tests. As to specificity, the Appeal Board in Mississippi Power and Light Co. (Grand Gulf Nuclear Station, Units 1 and 2), ALAB-130, 6 AEC 423, 425 (1973), stated that while the issue of recreational use "should have been advanced in greater particularity," in the absence of opposition from other parties, an allegation of boating "on the Mississippi River right by the site . . . 'every several months'" was sufficiently specific to support intervention. As to substantiality, the Appeal Board in Public Service Company of Oklahoma (Black Fox Station, Units 1 and 2) ALAB-397, 5 NRC 1143, 1150 (1977) stated that "there is no conceivable justification for allowing her to participate . . . [her] interest is remote, resting entirely on her occasional trips from her residence in Oklahoma City [125 miles from the site] to Tulsa [23 miles from the site] . . ." (emphasis supplied).

Evaluating the instant petition, as amended, against this guidance, it is clear that petitioner Garrett has failed to establish the requisite interest to support her intervention request. Petitioner Garrett totally fails to allege specific

facts which demonstrate substantial recreational use of the area around the site. Her vague and general assertions relating to recreational use of the Columbia River (presumably in the Portland area) are precisely the types of claims which both the Appeal Board and the Commission have recognized are insufficient to establish standing.

Petitioner Garrett's final assertion that she consumes food grown or produced within 50 miles of the plant is too generalized and lacking in specificity to establish a legal interest in the proceeding. To confer standing on a petitioner residing hundreds of miles from a site based on an assertion that some food consumed by the petitioner may have been grown near the site would emasculate judicial concepts of standing as well as the interest requirements of the Atomic Energy Act and the Commission's Rules of Practice. The logical extension of such a proposition would be that an individual living in Washington, D.C. who consumed California oranges could be awarded standing in a proceeding relating to a nuclear facility in California. Congress did not intend and has not sanctioned such an interpretation of the Atomic Energy Act, and the Commission and the courts certainly have not judicially construed the Act in such a manner.

Clearly, so generalized an interest raised by a petitioner residing hundreds of miles from a site cannot fall within the "zone of interests" protected by the Atomic Energy Act or the National Environmental Policy Act. In every case in

which food chain and water supply has been addressed specifically, the petitioner in question resided in close proximity to the proposed site.[7/]

Thus, Applicant submits that Petitioner Garrett has added nothing in the amended petition to correct the deficiencies in her efforts to intervene here. Her asserted interests are so remote, generalized and lacking in specificity that "prima facie, there would appear to be no reasonable chance of [her] being at all adversely affected by either normal operations or a credible accident." River Bend, supra, 7 AEC at 226. An award of standing to Petitioner Garrett based on the remote nature of her asserted interests would be contrary to the teachings of the Supreme Court in Sierra Club v. Morton, 405 U.S. 727, 740 (1972), where it warned against opening "review at the behest of organizations or individuals who seek to do no more than vindicate their own value preferences through the judicial process."

Based upon the foregoing, and upon the argument set forth in Applicant's answer to the original petition, we submit that Petitioner Garrett's petition for leave to intervene should be denied. In addition, we submit that for the same reasons, HCP cannot derive representational standing through this petitioner.

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7/ E.g., Duquesne Light Company (Beaver Valley Power Station, Unit No. 1) ALAB-109, 6 AEC 243, 244 (1973); Prairie Island, supra, 6 AEC at 193.

b. Petitioner Creg Darby

Petitioner Darby's asserted interests in this proceeding as a resident of Portland are the same as those of petitioner Garrett discussed on pages 5-8, supra, with the exception that he does not allege recreational use of the Columbia River. Accordingly, for the reasons discussed heretofore, petitioner Darby has no legal interests in this proceeding, and his petition for leave to intervene should be denied. Further, HCP cannot derive representational standing through Mr. Darby.

In addition, the amended petition is, as to Mr. Darby, a non-timely filing which wholly fails to comply with the requirements in 10 CFR §2.714 for late petitions. These requirements include, inter alia, a "substantial showing of good cause" for the non-timely filing, and a discussion of availability of other means whereby the petitioner's interest will be protected and the extent to which petitioner's interest will be represented by existing parties. In these circumstances, petitioner Darby's late request to intervene should be denied on two grounds, viz., lack of interest in the proceeding, and, in any event, failure to comply with the Rules of Practice as to his late petition.

c. Petitioner HCP

It is well established that for an organization to intervene as the representative of its members, the organization

must establish that at least one of its members has standing on his own right. Simon v. Eastern Kentucky Welfare Rights Organization, 426 U.S. 26, 40 (1976); Warth v. Seldin, 422 U.S. 490 (1975). Following this mandate, the cases are clear that the individual member from whom organizational standing is derived must, in some manner (e.g., affidavit), state his concerns and interest in detail sufficient to establish individual standing.[8/] Thus the question of HCP's standing must be resolved on the demonstration of interest by five of its members.[9/]

In an attempt to establish representational standing, HCP asserts that its members' interests are based upon (1) recreational use of the Columbia River, (2) consumption of food produced within 50 miles of WNP-2, and (3) general statements of interest. The generalized assertions of recreational use of the Columbia River (with no details as to location and frequency) and consumption of food produced within 50 miles of the Hanford Reservation are too vague and unspecific to provide the requisite interest.

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8/ Allied General Nuclear Services (Barnwell Fuel Receiving and Storage Station) LBP-76-12, 3 NRC 277, 286 (1976), aff'd, ALAB-328, 3 NRC 420, 423 (1976); Duke Power Company (Catawba Nuclear Station, Units 1 and 2) LBP-73-28, 6 AEC 666, 680 (1973), aff'd, ALAB-150, 6 AEC 811 (1973); Long Island Lighting Co. (Shoreham Nuclear Power Station, Unit 1) LBP-77-11, 5 NRC 481, 482-483 (1977).

9/ The five members are A. C. Roll, Albert Snow, Deborah D. Beadle, Nancy Faller, and Ruth C. Long. The remaining named members are either organizations listed on page 3 of the amended petition or individuals listed in the original and amended petitions who reside from 80 to 150 miles from the plant. As to the latter, they lack interest in their individual capacities in view of their remoteness from the site and their unacceptably vague and general assertions. See the discussion relating to petitioners Garrett and Darby, supra.

For example, nothing in the amended petition describes which of these five members of HCP, if any, make substantial use of the Columbia River in the vicinity of WNP-2. Further, the assertions that HCP members consume food grown or produced within 50 miles of the Hanford Reservation is equally lacking in the requisite specificity to provide interest. Such generalized assertions fail to satisfy the Pebble Springs mandate of a showing of specific "interest which may be affected" by the proceeding and fail to provide an adequate basis for demonstrating "a distinct and palpable harm." Transnuclear, Inc., CLI-77-24, 6 NRC 525, 531 (1977). Indeed, it is precisely such assertions which are proscribed by the rationale in Warth v. Seldin, supra, 422 U.S. at 499, that a claim of interest will not normally be entertained if the "asserted harm is a 'generalized grievance' shared in substantially equal measure by all or a large class of citizens . . . ." It is precisely such a "generalized grievance" which these members of HCP have alleged.

The affidavits of four of the five HCP members in question (excluding affiant Roll) are "form-letter" type affidavits containing four blanks to be filled in by the affiants (i.e., the affiant's name, address, number of miles residing from WNP-2, and "interests in this proceeding"). The affidavits include a "boilerplate" incorporation by reference of the

amended petition (my interests . . . are as discussed in the . . . Amended Petition to Intervene").[10/]

The "form-type" affidavits of Nancy Faller, Albert Snow, and Deborah Beadle allege that each resides between 55 and 60 miles from WNP-2. These distances are neither within the geographical zone which might be affected by routine or accidental releases of fission products from WNP-2, nor within a distance recognized by the NRC in several cases to be sufficiently close to vest an interest in the proceeding. Indeed, the Licensing Board in Houston Lighting and Power Co. (South Texas Project, Units 1 and 2), Memorandum and Order (October 23, 1978), concluded recently that "insofar as we can ascertain, the longest distance heretofor determined to be within the zone which might be affected by a reactor incident is approximately 50 miles." Further, the expression of other "interest" by these three individuals lacks the requisite specificity to confer individual or representational standing. In any event, neither the affidavits nor the amended petition specifically address how each affiant's interest will be affected by plant operation. Accordingly, HCP cannot establish standing based on the asserted "interest" in this proceeding of these three individuals.

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10/ In view of the "boilerplate" nature of these affidavits, and the closeness of the dates of the affidavits and date on which the amended petition was filed, it is not at all clear that any of the affiants even read the amended petition before signing the affidavit.

The fourth "form-type" affidavit, submitted by Ruth C. Long, is legally deficient in that the assertion of interest--"home, garden, children, husband,"--certainly lacks the requisite specificity to confer standing. In addition, since this individual apparently joined HCP after the original petition was filed, this aspect of the amended petition fails to comply with the provisions of 10 CFR §2.714 in that no justification for non-timely filing is made. Accordingly, HCP should not be permitted to gain standing on the bases of Mrs. Long's affidavit.

The final member of HCP upon whose interest HCP would have this Board rely to support the representational standing of HCP is A. C. Roll. Mr. Roll's letter application for membership in HCP, dated November 7, 1978, and his affidavit dated November 8, 1978, asserting interest in this proceeding are attached to the amended petition. Again, to the extent that the amended petition relies upon the purported membership of this individual to support the amended petition to intervene, it should be treated as a non-timely filing requiring compliance with the provisions of 10 CFR §2.714.

In his affidavit, Mr. Roll asserts as his interest in this proceeding a concern about the affect of plant operations on the "health and safety and the condition of the environment," the value of property he owns (located approximately 15 miles from WNP-2), and the health and economic well-being of those who rent his property.[11/] It is clear that such generalized

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11/ Mr. Roll's affidavit does not include the "boilerplate" incorporation by reference of the amended petition as did the other four.

concerns about the environment are insufficient to confer standing. He has not alleged injury "that has occurred or will probably result from the action involved," and has thus failed to pass the test for standing set forth by the Commission. Pebble Springs, supra, 4 NRC at 613. Further, Mr. Roll cannot assert the rights or interests of those who rent his property. The interests of those living on and deriving economic benefit from use of this land are personal interests, and, as such, cannot be asserted by Mr. Roll here. Thus, these two allegations are insufficient to vest in Mr. Roll the type of interest necessary to support representational standing of HCP. Warth v. Seldin, 422 U.S. at 499; Detroit Edison Co. (Enrico Fermi Atomic Power Plant (Unit No. 2), ALAB-470, 7 NRC 473 (1978).

Finally, Mr. Roll's vague assertions relating to rental value of his property also are an insufficient basis to establish representational standing of HCP. He has not alleged an injury "that has or will probably occur," and thus has not demonstrated standing. In sum, as a resident of an area hundreds of miles from the plant site, Mr. Roll simply does not pass the "injury in fact" test upon which standing in this proceeding can be based. Mindful of the Appeal Board's admonition in Zimmer, supra, 3 NRC at 12, requiring a strong finding "that potential intervenors do have a real stake in the proceeding," this Board should conclude that the generalized assertions of interest by members of HCP are inadequate to support intervention..

In view of the foregoing, HCP has not established the requisite interest of at least one member upon which

representational standing can be based. Accordingly, the amended petition as it applies to HCP should be denied.

2. Petitioners Fail To Set Forth A Valid Contention

Applicant demonstrated in its answer to the original petition that petitioners had failed to set forth one valid contention as required by 10 CFR §2.714. In response thereto, petitioners in the amended petition apparently abandoned several proposed contentions, and attempted to supplement others. They also added several new proposed contentions.

In view of the fact that the Rules of Practice do not bind petitioners at this time to the purported bases for the proposed contentions, we see no purpose in providing another point-by-point response to each contention. In any event, since petitioners have failed to demonstrate the requisite interest to intervene, we believe that this Board need not reach the question of contentions.

Suffice it to say that we continue to believe that the petitioners fail to state one valid contention with supporting basis and the required degree of specificity as required by 10 CFR §2.714. Of course, we reserve the right to address all proposed contentions in detail at the appropriate time, as is contemplated by the new Rules of Practice. See Detroit Edison Co. (Enrico Fermi Atomic Power Plant, Unit 2), ASLB Memorandum (December 4, 1978).

B. Petitioners Should Not Be Granted Discretionary Intervention

The amended petition for leave to intervene contains little which warrants adding to Applicant's discussion of discretionary intervention as set forth in our answer to the original petition. With the following additional comments, Applicant's position in this regard is as stated in that answer, at pages 18-21.

Fundamental concepts of equity compel that discretionary intervention at the operating license stage "should not be allowed in the absence of some clear indication that the petitioner has a substantial contribution to make on a significant safety or environmental issue appropriate for consideration at the operating license stage". Watts Bar, supra, 5 NRC at 1422 (emphasis added). For example, the only environmental issues which might be appropriate for consideration at the operating license stage are issues which have materially changed from those reviewed at the construction permit stage, or which were not reviewed at that stage. The WNP-2 facility was the subject of a full NEPA review and administrative decision at the construction permit stage. 6 AEC 197 (1973), aff'd, ALAB-113, 6 AEC 251 (1973). Further, as the Appeal Board stated in Watts Bar, "before a hearing is triggered at the insistance of one who has not alleged any cognizable personal interest in the operation of the facility, there should be cause to believe that some discernible public interest will be served by the hearing." Id.

Neither the individual petitioners nor HCP have provided a "clear indication" that they could make a significant contribution. Petitioners Darby and Vozenilek both fail to allege

facts to demonstrate qualifications of either specialized education or pertinent experience. Petitioner Garrett's stated qualifications are hardly specialized or extensive enough to provide a "clear indication" that she has a substantial contribution to make. Further, in light of the fact that she flatly has no personal interest in this proceeding, an award to her of discretionary intervention would fly in the face of the Supreme Court warning in Sierra Club, supra, 405 U.S. at 740, against individuals "seeking to do no more than vindicate their own value preferences . . . ." Thus, petitioners have totally failed to demonstrate that they have a significant ability to contribute on substantial issues of law or fact which would not otherwise be properly raised or presented . . . ." Pebble Springs, supra, 4 NRC at 617.

Indeed, petitioners have not even raised any substantial issues. Their proposed contentions, based on unsubstantiated rumors and unfounded and general allegations, should not be the subject of a hearing at this stage, particularly since the concerns raised will be evaluated by the NRC Staff in the normal course of its review of the WNP-2 application. Finally, the granting of a hearing on these issues would obviously broaden and delay the licensing process without serving any discernible public interest, and the time which would be required to explore them is certainly not justified or justifiable. In fact, the true public interest in this proceeding lies in the prompt licensing of WNP-2 for operation

at the appropriate time (i.e., upon completion of the Staff's comprehensive review of the application), and not in granting a hearing which may result in significant cost and schedule penalties to the Applicant and ultimately to the retail purchasers of electric energy in the Northwest.

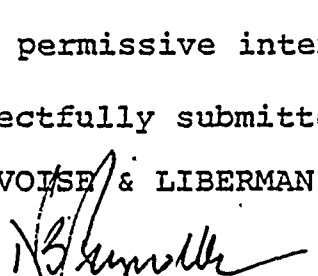
In conclusion, this OL proceeding is to date uncontested, and, as such, would not involve a hearing if petitioners are denied intervention. Mindful of the teachings in Zimmer, this Licensing Board should not grant this petition to intervene. Strict application of 10 CFR Section 2.714 and pertinent judicial precedent, as is mandated by Zimmer for OL cases, compels the conclusion that discretionary intervention not be granted.

## III. CONCLUSION

In view of the foregoing, the Licensing Board should deny the amended petition to intervene as a matter or right, and also should refuse to grant permissive intervention.

Respectfully submitted,

DEBEVOISE & LIBERMAN



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December 15, 1978

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

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| WASHINGTON PUBLIC POWER SUPPLY SYSTEM | ) | Docket No. 50-397-OL |
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| (WPPSS Nuclear Project No. 2) | ) | |

## CERTIFICATE OF SERVICE

I hereby certify that copies of "Applicants Answer In Opposition To Amended Petition For Leave To Intervene," dated December 15, 1978, in the captioned matter have been served upon the following by deposit in the United States mail this 15th day of December, 1978:

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