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March 16, 2011

VIA ELECTRONIC FILING

The Honorable Kimberly D. Bose
Secretary
Federal Energy Regulatory Commission
888 First Street, N.E.
Washington, DC 20426

**Re: Midwest Independent Transmission System Operator, Inc., Docket No.
ER11-1844-000; Opposition of New York Independent System Operator, Inc.
to Joint Motion For Adoption of Protective Order**

Dear Secretary Bose:

Transmitted electronically for filing in the referenced docket is the Opposition of the New York Independent System Operator, Inc. to the Joint Motion for Adoption of Protective Order.

If there are any questions concerning this filing, please call me at (202) 661-2205.

Very truly yours,

/s/

Howard H. Shafferman
Counsel for
New York Independent System Operator, Inc.

Enclosure

**UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION**

**Midwest Independent Transmission)
System Operator, Inc.)**

Docket No. ER11-1844-000

**OPPOSITION OF NEW YORK INDEPENDENT SYSTEM OPERATOR, INC.
TO JOINT MOTION FOR ADOPTION FOR PROTECTIVE ORDER**

**To: Honorable Curtis L. Wagner, Jr.
Chief Administrative Law Judge**

**Honorable John P. Dring
Settlement Judge**

The New York Independent System Operator, Inc. (the “NYISO”), pursuant to Rule 213 of the Commission’s Rules of Practice and Procedure, 18 C.F.R. § 385.213 (2010), hereby provides its brief answer to the referenced “joint” motion submitted by International Transmission Company (“ITC”) and the Midwest Independent Transmission System Operator, Inc. (“Midwest ISO”) in the above-captioned proceeding.

Midwest ISO and ITC (“Joint Movants”) circulated a draft of their proposed protective order to the parties at approximately 4:49 on Friday, March 11. NYISO indicated in a call with Joint Movants on the morning of March 15 that it would have edits to that draft order, which it provided at 4:22 in the afternoon of March 15—less than two business days after the Joint Movants first sent their draft motion out for comment. These edits were primarily designed to permit the NYISO to carry out its obligations under its tariff when responding to requests for data possessed by the NYISO. Changes to the model protective order were adopted for similar reasons in the recent proceeding in Docket Nos. EL09-47 and EL09-48. The NYISO also

proposed changes to more clearly delineate and limit the reviewing authority of competitive duty personnel participating in this proceeding.

The Joint Movants promptly rejected the NYISO's proposed revisions to the draft protective order by e-mail, based on the assertion that their proposed protective order would provide "sufficient protection" for prompt information exchange, and proceeded to file their proposed protective order shortly thereafter. The Joint Movants did not inquire in their e-mail whether, in light of their summary rejection of the NYISO's changes, the NYISO opposed the protective order, which Joint Movants mischaracterized in their Joint Motion as being unopposed.

By this answer, the NYISO indicates its opposition to the draft protective order that the Joint Movants submitted and respectfully requests that the Chief Judge provide additional time for the NYISO to circulate proposed revisions to the draft protective order so that the parties to this proceeding have the opportunity to consider the NYISO's proposed revisions. For

informational purposes only, the NYISO has attached a redlined draft of its proposed revisions to this pleading. The attached draft improves upon the more preliminary draft that the NYISO provided to ITC and Midwest ISO yesterday afternoon.

Respectfully submitted,

/s/
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March 16, 2011

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Midwest Independent Transmission
System Operator, Inc.

Docket No. ER11-1844-000

PROTECTIVE ORDER

(Issued _____, 2011)

1. This Protective Order shall govern the use of all Protected Materials produced by, or on behalf of, any Participant. Notwithstanding any order terminating this proceeding, this Protective Order shall remain in effect until specifically modified or terminated by the Presiding Administrative Law Judge (Presiding Judge) (which includes the Chief Administrative Law Judge) or the Federal Energy Regulatory Commission (Commission).
2. This Protective Order applies to the following two categories of materials: (A) A Participant may designate as protected those materials which customarily are treated by that Participant as sensitive or proprietary, which are not available to the public, and which, if disclosed freely, would subject that Participant or its customers to risk of competitive disadvantage or other business injury; and (B) A Participant shall designate as protected those materials which contain critical energy infrastructure information, as defined in 18 CFR§ 388.113(c)(1) ("Critical Energy Infrastructure Information").
3. Definitions -- For purposes of this Order:

(a) The term "~~Participant~~" ~~shall mean a Participant as defined in 18 CFR § 385.102(b).~~ "Competitive Duties" means the marketing or sale of electric power at wholesale; (ii) the purchase or sale of electric power at wholesale; (iii) the direct supervision of any employee with such responsibilities; or (iv) the provision of electricity marketing consulting services to entities engaged in the sale or purchase of electric power at wholesale.

(b) The term "Competitively Protected Materials" means Protected Materials that contains information that the disclosing Participant believes in good faith contains market sensitive information, public disclosure of which would competitively harm (i) the Participant or (ii) where the disclosing Participant is an RTO/ISO, a Market Participant.

(c) The term "Participant" shall mean a Participant as defined in 18 CFR § 385.102(b).

(d) (1) The term "Protected Materials" means (A) materials (including depositions) provided by a Participant in response to discovery requests and designated by such Participant as protected; (B) any information contained in or obtained from such designated materials; (C) any other materials which are made subject to this Protective Order by the Presiding Judge, by the Commission, by any court or other body having appropriate authority, or by agreement of the Participants; (D) notes of Protected Materials; and (E) copies of Protected Materials. ~~The Participant producing the Protected Materials shall physically mark them on each page as "PROTECTED MATERIALS" or with words of similar import as long as the term "Protected Materials" is included in that designation to indicate that they are Protected Materials. If the Protected Materials contain Critical Energy Infrastructure Information, the Participant producing such information shall additionally mark on each page containing such information the words "Contains Critical Energy Infrastructure Information - Do Not Release".~~

(2) The term "Notes of Protected Materials" means memoranda, handwritten notes, or any other form of information (including electronic form) which copies or discloses materials described in Paragraph ~~3(b)(4)(d)(1)~~. Notes of Protected Materials are subject to the same restrictions provided in this order for Protected Materials except as specifically provided in this order.

(3) Protected Materials shall not include (A) any information or document ~~that has been filed with and accepted into~~ contained in the public files of the Commission, or contained in the public files of any other federal or state agency, or any federal or state court, unless the information or document has been determined to be protected by such agency or court, or (B) information that is public knowledge, or which becomes public knowledge, other than through disclosure in violation of this Protective Order, or (C) any information or document labeled as "Non-Internet Public" by a Participant, in accordance with Paragraph 30 of FERC Order No. 630, FERC Stat. & Reg. ~~31,140~~ 31,140. Protected Materials do include any information or document contained in the files of the Commission that has been designated as Critical Energy Infrastructure Information.

(c) The term "Non-Disclosure Certificate" shall mean the ~~certificate~~ certificates annexed hereto by which Participants who have been granted access to Protected Materials shall certify their understanding that such access to Protected Materials is provided pursuant to the terms and restrictions of this Protective Order, and that such Participants have read the Protective Order and agree to be bound by it. All Non-

Disclosure Certificates shall be served on all parties on the official service list maintained by the Secretary in this proceeding.

(d) The term "Reviewing Representative" shall mean a person who has signed a Non-Disclosure Certificate and who is:

- (1) Commission Trial Staff designated as such in this proceeding;
- (2) an attorney who has made an appearance in this proceeding for a Participant;
- (3) attorneys, paralegals, and other employees associated for purposes of this case with an attorney described in Subparagraph (2);
- (4) an expert or an employee of an expert retained by a Participant for the purpose of advising, preparing for or testifying in this proceeding;
- (5) a person designated as a Reviewing Representative by order of the Presiding Judge or the Commission; or
- (6) employees or other representatives of Participants appearing in this proceeding with significant responsibility for this docket.

4. Protected Materials shall be made available under the terms of this Protective Order only to Participants and only through their Reviewing Representatives as provided in Paragraphs 7-9.

5. Protected Materials shall remain available to Participants until the later of the date that an order terminating this proceeding becomes no longer subject to judicial review, or the date that any other Commission proceeding relating to the Protected Material is concluded and no longer subject to judicial review. If requested to do so in writing after that date, the Participants shall, within fifteen days of such request, return the Protected Materials (excluding Notes of Protected Materials) to the Participant that produced them, or shall destroy the materials, except that copies of filings, official transcripts and exhibits in this proceeding that contain Protected Materials, and Notes of Protected Material may be retained, if they are maintained in accordance with Paragraph 6, below. Within such time period each Participant, if requested to do so, shall also submit to the producing Participant an affidavit stating that, to the best of its knowledge, all Protected Materials and all Notes of Protected Materials have been returned or have been destroyed or will be maintained in accordance with Paragraph 6. To the extent Protected Materials are not returned or destroyed, they shall remain subject to the Protective Order.

6. All Protected Materials shall be maintained by the Participant in a secure place. Access to those materials shall be limited to those Reviewing Representatives specifically authorized pursuant to Paragraphs 8-9. The Secretary shall place any Protected Materials filed with the Commission in a non-public file. By placing such documents in a non-public file, the Commission is not making a determination of any claim of privilege. The Commission retains the right to make determinations regarding any claim of privilege and the discretion to release information necessary to carry out its jurisdictional responsibilities. For documents submitted to Commission Trial Staff ("Staff"), Staff shall follow the notification procedures of 18 CFR § 388.112 before making public any Protected Materials.

7. Protected Materials shall be treated as confidential by each Participant and by the Reviewing Representative in accordance with the certificate executed pursuant to Paragraph 9. Protected Materials shall not be used except as necessary for the conduct of this proceeding, nor shall they be disclosed in any manner to any person except a Reviewing Representative who is engaged in the conduct of this proceeding and who needs to know the information in order to carry out that person's responsibilities in this proceeding. Reviewing Representatives may make copies of Protected Materials, but such copies become Protected Materials. Reviewing Representatives may make notes of Protected Materials, which shall be treated as Notes of Protected Materials if they disclose the contents of Protected Materials.

8. ~~(a) If a Reviewing Representative's scope of employment includes the marketing of energy, the direct supervision of any employee or employees whose duties include the marketing of energy, the provision of consulting services to any person whose duties include the marketing of energy, or the direct supervision of any employee or employees whose duties include the marketing of energy, such a~~ Reviewing Representative may not use information contained in any Protected Materials obtained through this proceeding to give any Participant or any competitor of any Participant a commercial advantage.

(b) In the event that a Participant wishes to designate as a Reviewing Representative a person not described in ~~Paragraph 3(d)~~ Paragraphs 3(d) above, the Participant shall seek agreement from the Participant providing the Protected Materials. If an agreement is reached that person shall be a Reviewing Representative pursuant to Paragraphs 3(d) above with respect to those materials. If no agreement is reached, the Participant shall submit the disputed designation to the Presiding Judge for resolution.

(c) Solely with respect to Competitively Protected Materials (and information derived therefrom), a Reviewing Representative may not include any person whose duties include Competitive Duties.

(d) If any person who has been a Reviewing Representative subsequently is assigned to perform any Competitive Duties, such person shall not have access to Competitively Protected Material (or information derived therefrom) and (i) shall immediately destroy such Competitively Protected Material or provide such Competitively Protected Material to another Reviewing Representative, and (ii) shall continue to comply with the requirements set forth in the Non-Disclosure Certificate and this Protective Order with respect to any Protected Materials to which such person previously had or continues to have access.

(e) Once materials are clearly and correctly labeled, compliance shall be the responsibility of the Reviewing Party.

9. (a) A Reviewing Representative shall not be permitted to inspect, participate in discussions regarding, or otherwise be permitted access to Protected Materials pursuant to this Protective Order unless that Reviewing Representative has first executed a Non-Disclosure Certificate; provided, that if an attorney qualified as a Reviewing Representative has executed such a certificate, the paralegals, secretarial and clerical personnel under the attorney's instruction, supervision or control need not do so. A copy of each Non-Disclosure Certificate shall be provided to counsel for the Participant asserting confidentiality prior to disclosure of any Protected Material to that Reviewing Representative.

(b) Attorneys qualified as Reviewing Representatives are responsible for ensuring that persons under their supervision or control comply with this order.

10. Any Reviewing Representative may disclose Protected Materials to any other Reviewing Representative as long as the disclosing Reviewing Representative and the receiving Reviewing Representative both have executed a Non-Disclosure Certificate. In the event that any Reviewing Representative to whom the Protected Materials are disclosed ceases to be engaged in these proceedings, or is employed or retained for a position whose occupant is not qualified to be a Reviewing Representative under Paragraph 3(d), access to Protected Materials by that person shall be terminated. Even if no longer engaged in this proceeding, every person who has executed a Non-Disclosure Certificate shall continue to be bound by the provisions of this Protective Order and the certification.

11. Subject to Paragraph 18, the Presiding Administrative Law Judge shall resolve any disputes arising under this Protective Order. Prior to presenting any dispute under this Protective Order to the Presiding Administrative Law Judge, the parties to the dispute shall use their best efforts to resolve it. Any ~~participant~~ Participant that contests the designation of materials as protected shall notify the ~~party~~ entity that provided the ~~protected materials~~ Protected Materials by specifying in writing the materials the designation of which is contested. For materials produced by an RTO/ISO in response

to discovery requests that were originally furnished by a third party, the Participant contesting the designation of such materials as protected may notify the relevant third party (the "Furnishing Entity"), whether or not it is a Participant to the proceeding, in addition to the pertinent RTO/ISO. This Protective Order shall automatically cease to apply to such materials five (5) business days after the notification is made unless the designator, within said 5-day period, files a motion with the Presiding Administrative Law Judge, with supporting affidavits, demonstrating that the materials should continue to be protected. In any challenge to the designation of materials as protected, all relevant FERC Rules of Practice and Procedure shall apply and the burden of proof shall be on the ~~partieipant~~ Participant seeking protection except in cases where a Participant has requested third-party materials from an RTO/ISO that are protected by its tariff provisions, as described in Paragraph 11.1, below. If the Presiding Administrative Law Judge finds that the materials at issue are not entitled to protection, the procedures of Paragraph 18 shall apply. The procedures described above shall not apply to protected materials designated by a Participant as Critical Energy Infrastructure Information. Materials so designated shall remain protected and subject to the provisions of this Protective Order, unless a Participant requests and obtains a determination from the Commission's Critical Energy Infrastructure Information Coordinator that such materials need not remain protected.

11.1 The procedures described in this paragraph will govern the process to follow when an RTO/ISO receives discovery requests seeking third-party information protected by its tariff provisions.

(a) Upon receipt of a data request seeking third-party information protected by its tariff, the RTO/ISO will be provided adequate time to notify the Furnishing Entity of the data request pursuant to the Information Policy. The RTO/ISO's notice shall also state its objection to providing the requested information until the Furnishing Entity has been provided time to submit an objection in response to the ISO or RTO's notice. Given the potential volume and complexity of potential discovery requests, the RTO/ISO will endeavor in good faith to provide such notification to Furnishing Entities within two (2) business days. If it is unable to do so, the RTO/ISO will endeavor in good faith to provide such notification as expeditiously as possible.

(b) The Furnishing Entity and the requesting Participant will have five business days after the RTO/ISO provided notification to the Furnishing Entity to resolve any issues with respect to release of any information, and to object in response to the RTO/ISO's written notice. Assuming the ISO/RTO has no objection to releasing the requested information, the Furnishing Entity will have the responsibility to specify the basis for its objection, as required in Rule 410(a)(2) and to argue for withholding of the requested information. The RTO/ISO will deem failure to object within the provided time period to constitute consent for the RTO/ISO to release the information as "Protected Material" or "Not Available to Competitive Duty Personnel" (as

appropriate) pursuant to the Protective Order. Any Furnishing Entity whose competitively sensitive information has been requested for production in this proceeding shall be entitled to intervene as a Participant in this proceeding for the purpose of protecting its information, and no Participant shall oppose such intervention.

(c) If, pursuant to this Paragraph 11.1, the RTO/ISO produces Protected Materials of a third party that is not a Participant and there is a subsequent undertaking pursuant to Paragraph 11, 13, 15 or 16 of this Protective Order to remove the designation of, or reduce the protections hereunder for, such Protected Materials, the Participant seeking to reduce or remove the protections for such information shall provide adequate time for the ISO/RTO to notify the applicable Furnishing Entity or Entities of the undertaking and for the Furnishing Entity to respond. Any time frame in this Protective Order for submitting pleadings in response to such undertakings shall begin to run from the date of the ISO/RTO's notice to the Furnishing Entity or Entities

12. (a) All copies of all documents reflecting Protected Materials, including the portion of the hearing testimony, exhibits, transcripts, briefs and other documents which refer to Protected Materials, shall be filed (when necessary) and served in sealed envelopes or other appropriate containers (including properly designated electronic means) endorsed to the effect that they are sealed pursuant to this Protective Order. Such documents shall be marked "PROTECTED MATERIALS" and shall be filed (when necessary) under seal and served under seal upon the Presiding Judge and all Reviewing Representatives who are on the service list. Alternatively, a Participant making available via secure website, CD, or DVD electronic files containing Protected Materials may indicate on the secure website, CD, or DVD that the documents contained therein include "PROTECTED MATERIALS" rather than physically marking each document.

(b) For Competitively Protected Material, the Participant producing such information shall instead mark on each page the words "CONTAINS PROTECTED MATERIAL NOT AVAILABLE TO COMPETITIVE DUTY PERSONNEL." Alternatively, a Participant making available via secure website, CD, or DVD electronic files containing Competitively Protected Materials may indicate on the secure website, CD, or DVD that the documents contained therein include "CONTAINS PROTECTED MATERIAL NOT AVAILABLE TO COMPETITIVE DUTY PERSONNEL" rather than physically marking each document.

Such documents containing (c) If the Protected Materials contain Critical Energy Infrastructure Information, the Participant producing such information shall be additionally marked-mark on each page containing such information the words "Contains Critical Energy Infrastructure Information Do Not Release". Alternatively, a Participant making available via secure website, CD, or DVD electronic files containing Protected Materials including Critical Energy Infrastructure Information may indicate

on the secure website, CD, or DVD that the documents contained therein "Contain Critical Energy Infrastructure Information - Do Not Release."

(d) For anything filed under seal, redacted versions or, where an entire document is protected, a letter indicating such, will also be filed with the Commission and served on all parties on the service list and the Presiding Judge. Counsel for the producing Participant shall provide to all Participants who request the same, a list of Reviewing Representatives who are entitled to receive such material. Counsel shall take all reasonable precautions necessary to assure that Protected Materials are not distributed to unauthorized persons.

13. If any Participant desires to include, utilize or refer to any Protected Materials or information derived therefrom in testimony or exhibits during the hearing in these proceedings in such a manner that might require disclosure of such material to persons other than ~~reviewing representatives~~Reviewing Representatives, such participant shall first notify both counsel for the disclosing ~~participant~~Participant and the Presiding Judge of such desire, identifying with particularity each of the Protected Materials, and, where appropriate, providing time for ISOs/RTOs to provide notice of such intended use to Furnishing Entities in accordance with Section 11.1(c) above. Thereafter, use of such Protected Material will be governed by procedures determined by the Presiding Judge.

14. Nothing in this Protective Order shall be construed as precluding any Participant from objecting to the use of Protected Materials on any legal grounds.

15. Nothing in this Protective Order shall preclude any Participant from requesting the Presiding Judge, the Commission, or any other body having appropriate authority, to find that this Protective Order should not apply to all or any materials previously designated as Protected Materials pursuant to this Protective Order. For Protected Materials of a third party that is not a Participant produced by an RTO/ISO, the requesting Participant must provide time for the ISO/RTO to notify the third party that furnished such materials to the RTO/ISO of any such request in accordance with Paragraph 11.1(c), and for such Furnishing Entity to respond to the request. The Presiding Judge may alter or amend this Protective Order as circumstances warrant at any time during the course of this proceeding.

16. Each party governed by this Protective Order has the right to seek changes in it as appropriate from the Presiding Judge or the Commission.

17. All Protected Materials filed with the Commission, the Presiding Judge, or any other judicial or administrative body, in support of, or as a part of, a motion, other pleading, brief, or other document, shall be filed and served in sealed envelopes or other (including properly designated electronic means) appropriate containers bearing

prominent markings indicating that the contents include Protected Materials subject to this Protective Order. Such documents containing Critical Energy Infrastructure Information shall be additionally marked “Contains Critical Energy Infrastructure Information – Do Not Release.” Such documents containing materials not available to competitive duty personnel shall be additionally marked "CONTAINS PROTECTED MATERIAL NOT AVAILABLE TO COMPETITIVE DUTY PERSONNEL."

18. If the Presiding Judge finds at any time in the course of this proceeding that all or part of the Protected Materials need not be protected, those materials shall, nevertheless, be subject to the protection afforded by this Protective Order for three (3) business days from the date of issuance of the Presiding Judge's determination/written order, and if ~~the Participant seeking protection files~~ an interlocutory appeal or ~~requests request~~ that the issue be certified to the Commission is filed, for an additional seven (7) business days. None of the Participants waives its rights to seek additional administrative or judicial remedies after the Presiding Judge's decision respecting Protected Materials or Reviewing Representatives, or the Commission's denial of any appeal thereof. The provisions of 18 CFR §§ 388.112 and 388.113 shall apply to any requests under the Freedom of Information Act. (5 U.S.C. § 552) for Protected Materials in the files of the Commission.

19. Nothing in this Protective Order shall be deemed to preclude any Participant from independently seeking through discovery in any other administrative or judicial proceeding information or materials produced in this proceeding under this Protective Order.

20. None of the Participants waives the right to pursue any other legal or equitable remedies that may be available in the event of actual or anticipated disclosure of Protected Materials.

21. The contents of Protected Materials or any other form of information that copies or discloses Protected Materials shall not be disclosed to anyone other than in accordance with this Protective Order and shall be used only in connection with this (these) proceeding(s). Any violation of this Protective Order and of any Non-Disclosure Certificate executed hereunder shall constitute a violation of an order of the Commission.

22. (a) In the event an entity receives a request to disclose Protected Materials pursuant to a request made under a public disclosure law, the Participant who received the request to disclose Protected Materials shall promptly and prior to any disclosure notify the Participant who provided the Protected Materials, as well as any other entity about whom information included in the Protected Materials is requested to be disclosed (collectively, the “Affected Participants”), so that the Affected Participants may seek to prevent the disclosure of the Protected Materials, at their own expense.

using any available remedy at law or equity. It shall not be a violation of this Protective Order for a Participant to disclose the Protected Materials when it is required by law to do so; provided, however, that where permissible by law, five days' prior notice shall be given prior to such disclosure to allow the Affected Participants an opportunity to prevent disclosure. No Participant shall oppose or otherwise interfere with an Affected Participant's efforts to maintain the confidentiality of the Protected Materials; provided, however, that this provision does not limit a Participant's rights under Paragraphs 11, 15 and 3(b)(3) of this Protective Order to challenge the designation of materials as Protected Materials.

(b) The terms of this Paragraph 22 shall not apply to the Commission. Instead, the Commission shall comply with the laws and regulations that apply to its disclosure of information that is alleged to be exempt from Freedom of Information Act disclosure.

23. All provisions of this Protective Order shall equally apply to any Protected Materials produced at the request of any Participant, whether such production is voluntary or in compliance with a subpoena, by any non-party to the Proceeding.

Curtis L. Wagner, Jr.
Chief Administrative Law Judge

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Midwest Independent Transmission
System Operator, Inc.

Docket No. ER11-1844-000

NON-DISCLOSURE CERTIFICATE

I hereby certify my understanding that access to Protected Materials is provided to me pursuant to the terms and restrictions of the Protective Order in this proceeding, that I have been given a copy of and have read the Protective Order, and that I agree to be bound by it. I understand that the contents of the Protected Materials, any notes or other memoranda, or any other form of information that copies or discloses Protected Materials shall not be disclosed to anyone other than in accordance with that Protective Order. I acknowledge that a violation of this certificate constitutes a violation of an order of the Federal Energy Regulatory Commission.

By: _____

Printed Name: _____

Title: _____

Representing: _____

Date: _____

| Competitive Duty Personnel (Y/N)?: _____

| _____

CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing document upon each person designated on the official service list compiled by the Secretary in these proceedings.

Dated at Washington, D.C. this 16th day of March, 2011.

/s/

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