

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

California Independent System Operator Corp. )	Docket No. ER04-445-005
Pacific Gas & Electric Company )	Docket No. ER04-443-004
San Diego Gas & Electric Company )	Docket No. ER04-441-004
Southern California Edison Company )	Docket No. ER04-435-008

**SOUTHERN CALIFORNIA EDISON COMPANY'S  
MOTION FOR LEAVE TO ANSWER AND ANSWER  
TO PROTESTS**

Pursuant to Rule 213 of the Federal Energy Regulatory Commission's ("Commission" or "FERC") Rules of Practice and Procedure (18 C.F.R. § 385.213(a) (2004)), Southern California Edison Company ("SCE") hereby submits this Motion for Leave to Answer and Answer to Motions to Intervene and Protests.

**I. BACKGROUND**

On February 9, 2004, the California Independent System Operator Corporation ("ISO"), Pacific Gas and Electric Company ("PG&E"), San Diego Gas & Electric Company ("SDG&E), and SCE (collectively, the "Filing Parties") jointly filed the Large Generator Interconnection Agreement ("LGIA") to comply with the Commission's Standardization of Generator Interconnection Agreements and Procedures ("Order No. 2003").<sup>1</sup> Although the Filing Parties retained the language of the *pro forma* LGIA adopted in Order No. 2003 to the extent possible, certain modifications were made

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<sup>1</sup> *Standardization of Generator Interconnection Agreements and Procedures*, Order No. 2003, 68 Fed. Reg. 49,845 (August 19, 2003); FERC Stats. & Regs. ¶ 31,146 (2003).

that were necessary to reflect regional differences, incorporate appropriate and justifiable variations in accordance with the “independent entity variation” standard, and/or incorporate necessary changes that are consistent with or superior to the *pro forma* LGIA adopted in Order No. 2003.

On July 30, 2004, the Commission rejected the Filing Parties’ LGIA filing, citing the ISO’s lack of independence as the only reason for the rejection.<sup>2</sup> The Commission did not address the substance of the Filing Parties’ LGIA’s variations from the *pro forma* LGIA; rather, the Commission stated that the Filing Parties had erroneously relied on the “independent entity variation” because it had found in a previous order that the ISO’s Board of Directors was not independent.<sup>3</sup> The Commission ordered the Filing Parties to submit another compliance filing that adopted the *pro forma* LGIA and to justify any proposed variations based on either the “consistent with or superior to” standard or the regional reliability standard permitted for non-independent entities.<sup>4</sup> The Commission, however, did not find that the ISO could not continue to operate as an independent system operator or void any of the orders in which the Commission approved the ISO.

To that end, on January 5, 2005, the Filing Parties submitted a compliance filing in compliance with the July 30 Order (“Joint LGIA”). Although the Joint LGIA

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<sup>2</sup> *Order Rejecting Order Nos. 2003 and 2003-A Compliance Filings*, 108 FERC ¶ 61,104 (2004) (“July 30 Order”).

<sup>3</sup> *Id.* at P 24.

<sup>4</sup> *Id.* at P 25.

closely mirrored the initial LGIA filing, the Filing Parties complied with the July 30 Order by justifying each change based on a “consistent with or superior to” standard or a “regional reliability” standard, while also urging the Commission to reconsider its position on the availability of the “independent entity” justification for the Joint LGIA filing. On January 14, 2005, the Commission issued a Notice of Filing, which established a January 26, 2005 due date for motions to intervene and/or protests to the Joint LGIA filing. Numerous parties filed protests to the Joint LGIA filing (collectively, the “Protests”).

## II. MOTION FOR LEAVE TO ANSWER

Rule 213(a)(2) of the Commission’s regulations normally prohibits answers to protests. However, the Commission has made it clear that it will waive this rule and allow answers when they ensure a complete and accurate record in the case.<sup>5</sup> The Commission also permits such responses where, as here, the information provided will aid in the Commission’s understanding and resolution of the issues raised by a protest.<sup>6</sup> Because SCE’s Answer will provide the Commission with a greater understanding of the

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<sup>5</sup> See, e.g., *Delmarva Power & Light Co.*, 93 FERC ¶61,098 at 61,259 (2000) (allowing answers to a protest in order to “insure a complete and accurate record”); *Northern Natural Gas Co.*, 91 FERC ¶ 61,212 at 61,767 (2000) (allowing an answer to a protest “to achieve a complete and accurate record”).

<sup>6</sup> See, e.g., *Carolina Power & Light Co.*, 94 FERC ¶ 61,032 at 61,068 (2000) (allowing an answer to protests where the answer would assist in the Commission’s “understanding and resolution of the issues raised”); *El Paso Natural Gas Co.*, 56 FERC ¶ 61,038, at 61,139 (1991) (explaining that the utility conceded “that the Commission in its discretion may accept an answer to a request for rehearing in order to have a more complete record on which to base its decision,” and allowing the answer because it “will not delay the proceeding or otherwise prejudice any party ....”). To the extent necessary, SCE requests waiver of Rules 213(a)(2) and 713(d)(1).

issues and clarify numerous points made in the Protests, SCE respectfully requests that the Commission consider this response to aid in its resolution of the controversy.

### III. ANSWER

#### A. **The Filing Parties Have Complied With The July 30 Order and Have Not Inappropriately Shifted the Balance of Benefits and Burdens.**

The Transmission Agency of Northern California (“TANC”) asserts that the Filing Parties have not complied with the July 30 Order because the Filing Parties “have generally proposed the same modifications” in the Joint LGIA as they did in the original filing.<sup>7</sup> To the contrary, the Filing Parties have justified each change made to the *pro forma* LGIA based on the “consistent with or superior to” standard, as required by the Commission. Because the Filing Parties’ respective rehearing requests of the July 30 Order have yet to be ruled upon, the Filing Parties have noted that they would prefer the Commission to analyze the Joint LGIA based on the “independent entity” standard for the reasons set forth in the respective rehearing requests, if the Commission grants such rehearing. No matter what standard of review the Commission utilizes, however, the fact remains that the Filing Parties are part of a FERC-approved independent system operator, and no Commission order has changed that fact. The *pro forma* LGIA, as written, cannot work within the California market regime which the Commission has authorized, and many of the changes are “consistent with or superior to” the *pro forma* LGIA for precisely that very reason – namely, to make the *pro forma* LGIA function properly in California. Thus, the Filing Parties have complied with the July 30 Order in its entirety.

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<sup>7</sup> TANC Protest at 3.

The Protest on Behalf of the Cities of Anaheim, Azusa, Banning, Colton, and Riverside, California (“Cities’ Protest”) selectively highlights several changes proposed by the Filing Parties to the *pro forma* LGIA to argue that the Filing Parties have “alter[ed] the balance of rights and obligations” contained in the *pro forma*.<sup>8</sup> Because the Filing Parties included a detailed change matrix with their filing, SCE will not repeat all of the reasons for the changes here. SCE does note, however, that several of the changes made by the Filing Parties are *for the benefit of the Interconnection Customer*, to clarify the rights and obligations of all parties to the contract, and to conform the *pro forma* LGIA to a workable contract that can be used for interconnections to the ISO Controlled Grid, where the ISO – whether considered independent or not – is the Transmission Provider and the Participating Transmission Owners (“Participating TOs”) are the Transmission Owners.

For example, numerous changes were included in order to clarify the Interconnection Customer’s rights, and the crediting provisions in Article 11.4 are more favorable to the Interconnection Customer than is the *pro forma* LGIA. Moreover, certain changes were necessary because of safety and reliability concerns. The Cities, for example, take issue with changes made to impose operational limitations on the Interconnection Customer. Those provisions simply require that the Interconnection Customer wait to commence initial parallel operation and Commercial Operation until the relevant Participating TO can provide sign-off that such operation is safe, and the

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<sup>8</sup> Cities’ Protest at 6-7.

Participating TO may not withhold its approval unreasonably. This provision protects *both* the Interconnection Customer and the Participating TO, as well as the ISO, which is not intimately involved in the day-to-day construction of the generator, the Interconnection Facilities, or Network Upgrades, but which has the ultimate authority and responsibility for reliably operating the grid. The Commission wrote the *pro forma* LGIA with the idea that the transmission system in question would be one system owned by one entity. Since this is not the case in California, that change is absolutely necessary to maintain the safety and reliability of both the ISO Controlled Grid, as well as the Participating TO's electrical system. Moreover, certain additional operational limitations are necessary in order to maintain the reliability and safety of the ISO Controlled Grid, and one agreement that applies nationally to all utilities cannot possibly anticipate the specific issues that each utility faces.<sup>9</sup> This is precisely why the Commission has allowed each Transmission Provider to propose specific changes that are "consistent with or superior to" the *pro forma* LGIA, and the Filing Parties have done that in their filing.

In sum, SCE urges the Commission to examine each change made by the Filing Parties to determine whether such change, based on the Filing Parties' explanation of the need for that variation within the context of the ISO Controlled Grid, is "consistent with or superior to" the *pro forma* LGIA. Contrary to the suggestion in the Cities' Protest, the Commission should not issue a wholesale rejection of all of the changes, but rather should review each change in the context of the specific reliability needs of

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<sup>9</sup> Again, because the Filing Parties justified each and every variation from the *pro forma* LGIA in the Joint LGIA Filing, SCE will not repeat each of those justifications here.

California, the ISO, the Participating TOs, and the California market. As mentioned above, each change has been justified under the “consistent with or superior to” standard in order to govern the distinct relationship among Transmission Owner, Transmission Provider, and Interconnection Customer in California, and the Commission should review the Joint LGIA accordingly.

**B. The Filing Parties’ Proposal to Require an Interconnection Customer to Post Additional Security is Consistent With The *Pro Forma* LGIA And Is Necessary In California.**

Constellation Generation Group, LLC (“Constellation”) argues that the Filing Parties’ proposal to require an Interconnection Customer to post additional security to cover operation and maintenance (“O&M”) expenses for a period of four (4) months, and the estimated costs to remove the Participating TO’s Interconnection Facilities upon termination of the Joint LGIA should be rejected by the Commission because it is not consistent with or superior to the *pro forma* LGIA.<sup>10</sup> This requirement appears in the interconnection agreements that SCE has executed with generators under both its Transmission Owner Tariff and its Wholesale Distribution Access Tariff, and such agreements have been accepted for filing by the FERC.<sup>11</sup>

There is a strong justification for varying from the *pro forma* LGIA by requiring such security. While Article 17.1.2 gives the Transmission Provider the right to terminate the LGIA in the event the Interconnection Customer fails to cure a default on

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<sup>10</sup> Constellation Protest at 14-15.

<sup>11</sup> SCE began requiring security for four months of O&M expenses and removal costs from interconnecting generators for the interconnection facilities, not the network upgrades, following the California energy crisis in 2001.

its payment responsibilities, the only way that the Participating TO can ever be assured of receiving any cash following termination would be through some form of credit instrument. Otherwise, the shareholders of the applicable Participating TO would be at risk for the Interconnection Customer's continued failure to make payment for the obligations that lead to termination as well as any subsequent termination costs. The Participating TOs' institution of a security requirement for the monthly operating and maintenance costs and removal costs therefore is consistent with the requirements of the *pro forma* LGIA.

Contrary to Constellation's assertion, the estimation of removal costs is not difficult or speculative. Constellation's example in their footnote 37 cites to removal of Network Upgrades which may not be removed upon termination of the LGIA. SCE would agree that the potential for removal of Network Upgrades would be speculative; hence the Joint LGIA does not obligate the Interconnection Customer to pay the costs for any removal of Network Upgrades. Rather, the obligation to pay removal cost is only associated with removal of the Participating TO's Interconnection Facilities. Consistent with Good Utility Practice and since such facilities are only used by the Interconnection Customer, the Participating TO would in all likelihood remove the facilities following termination. Estimated removal costs simply would be based on the cost of the labor to remove the facilities, which SCE's experience indicates is in proportion to installed labor cost, less any salvage value of the removed facilities, which can be estimated from accounting data for similar facilities.

Therefore, the requirement for security for O&M expenses and removal costs is consistent with the pro forma LGIA and is not burdensome. It simply protects the Participating TO's ratepayers and shareholders from the risk of default. For these reasons, as well as the reasons enunciated in the Filing Parties' Joint LGIA filing, this change to the pro forma LGIA should be adopted.

**C. Interconnection Customers Must Be Required to Comply With The Participating TOs' Interconnection Handbooks, And Such Handbooks Should Be Posted On The Participating TOs' Respective Websites.**

At least two of the Protests urge the Commission to require the Participating TOs to file their Interconnection Handbooks (and any subsequent changes thereto) with the Commission.<sup>12</sup> For example, TANC disputes the requirement in Article 5.10.4 of the LGIA that Interconnection Customers must comply with the requirements of the applicable Participating TO's Interconnection Handbook, since the Participating TOs have not filed such handbooks with the Commission. The Cities' Protest argues that the Commission needs to review each and every Interconnection Handbook and all changes thereto because they contain terms and conditions for service to Interconnection Customers.

SCE believes that it is crucial for the safety and reliability of the transmission system to retain Article 5.10.4. Although SCE does not oppose a requirement that its Interconnection Handbook be posted on its website and, in fact, has posted its Interconnection Handbook on its website for some time, the Protesters'

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<sup>12</sup> TANC Protest at 4; *see* Cities' Protest at 3-4.

suggestion that Interconnection Customers need not comply with the Participating TOs' Interconnection Handbooks if they are not filed with the Commission is completely without merit. Interconnection Customers have always been required to comply with the numerous technical interconnection standards established by the ISO and the Participating TOs, none of which are filed with the Commission. Each Participating TO's transmission system is a unique system that has been developed over numerous years by that particular Participating TO; thus, there necessarily are certain standards and protocols that must be followed with respect to the Participating TO's transmission system. In this way, the Participating TOs must be allowed to protect the safety and reliability of their own transmission systems by establishing policies and guidelines for the interconnection of new generation to such systems.

The Interconnection Handbooks contain the kind of detailed technical information which is simply not appropriate for filing with the Commission. Moreover, Interconnection Handbooks are likely to change frequently, as the system develops, additional safety and reliability concerns are discovered, and/or new technologies are implemented. The Commission has recognized this, and, in fact, in a case cited in the Cities' Protest, the Commission specifically noted that it was inappropriate for it to review the internal operating manuals of public utilities. *See Pacific Gas and Elec. Co.*, 81 FERC ¶ 61,320 at p. 62,471 (1997) ("Upon review of the Protocols, the Commission believes that, contrary to the earlier ISO and PX representations, the Protocols *are not similar to internal operating manuals of all public utilities, which contain the kind of detail that the Commission should not want to concern itself with.*") (emphasis added).

Any requirement to file the Interconnection Handbooks would be extremely burdensome for both the Commission and the Participating TOs, and the Commission does not have the resources, or the expertise, to determine whether particular pieces of hardware, operating procedures and safety requirements are appropriate for California's ISO Controlled Grid.

SCE believes that the posting of Interconnection Handbooks on the Participating TOs' respective websites strikes the appropriate balance between the Interconnection Customers' need to know what their requirements will be and the Transmission Providers' and Transmission Owners' need to maintain the system safely and reliably. This way, an Interconnection Customer could always file a complaint with the Commission if it believes that a requirement in the Interconnection Handbook is not just and reasonable. This approach would avoid the Commission having to review and approve each and every utility's Interconnection Handbook without specific and detailed knowledge of that utility's electrical system. *See Xcel Energy Operating Companies*, 107 FERC ¶ 61,313 at P 31 (2004) (wherein FERC accepted Xcel's inclusion of a reference to its Interconnection Guidelines, provided that it also state that Xcel's OATT controls in the event that there is a conflict between the Guidelines and the OATT.).

**D. It is Inappropriate for the Filing Parties to File a *Pro Forma* Reliability Management System Agreement.**

TANC proposes that the Filing Parties be required to file a *pro forma* Reliability Management System Agreement ("RMS Agreement"), but it has not opposed the underlying requirement in the Joint LGIA that an Interconnection Customer execute

an RMS Agreement. The RMS Agreement is a *pro forma* agreement that has already been filed with the Commission by the Western Electricity Coordinating Council (“WECC”) in Docket No. ER99-3396-000. The Commission has accepted the RMS Agreement in that docket, and the WECC must file any proposed changes to such agreement. It would be administratively inefficient and potentially confusing if the Filing Parties also were to file the *pro forma* RMS Agreement, and thus SCE does not support TANC’s proposal.

**E. The Commission Has Ruled that Distribution Upgrades Are Not Subject to Transmission Credits.**

Constellation’s claim that Distribution Upgrades to the Participating TO’s Distribution System should be subject to transmission credits is erroneous. The Commission specifically addressed this issue in Paragraph 7 of Order 2003-A, wherein the Commission “reaffirm[ed] that all Distribution Upgrades (upgrades to the Transmission Provider’s ‘distribution’ or lower voltage facilities that are subject to an OATT) are to be paid for by the Interconnection Customer (direct assignment).” Moreover, the Commission reflected this clear policy in Articles 11.2 and 11.3 of the *pro forma* LGIA. Article 11.3 specifically states that “[t]he Interconnection Customer shall be responsible for all costs related to Distribution Upgrades.” Thus, Constellation’s argument is completely without merit.

**F. Constellation’s Objections Concerning the Termination of Credits Upon the Termination of the LGIA Are Unfounded.**

Constellation’s objection to the proposal that the Interconnection Customer would no longer receive credits if the LGIA terminates within five years or if it fails to

achieve commercial operation is wholly misplaced, as the crediting policy proposed by the Filing Parties is *more* favorable to Interconnection Customers than the Commission's policy. Constellation has conveniently chosen to protest certain aspects of the Joint LGIA's changes to the *pro forma* LGIA, while acquiescing to those changes that are favorable. SCE urges the Commission to look at the changes to the crediting policy as a whole. If it does, it certainly will see that the crediting policy proposed is more efficient for the California market, in which the Transmission Provider is different from the Transmission Owner, as well as more favorable to the Interconnection Customer, on the whole.

In Order No. 2003-A, the Commission agreed that the Interconnection Customer no longer has a right to receive credits for transmission service that does not include the Generating Facility as the source of power transmitted.<sup>13</sup> The Commission also reversed its position that transmission credits had to be paid back within five years of the Commercial Operation Date.<sup>14</sup> Under the Filing Parties' current proposal, the Interconnection Customer will receive equalized payments over five years, on the assumption that it will be taking service over the ISO Controlled Grid (but without having to prove that such is the case). If an LGIA terminates or the Interconnection Customer never achieves Commercial Operation, however, the Interconnection Customer

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<sup>13</sup> Order No. 2003-A at ¶¶ 614-616.

<sup>14</sup> *Id.* at 616. In Order 2003-B, the Commission again revisited its policy on credits and determined that transmission credits should be paid back after 20 years regardless of use. That order is on rehearing and, more importantly, the Filing Parties have not yet submitted their compliance filing on that issue. The Filing Parties will address that issue in their Order 2003-B compliance filing, and therefore, this Answer does not address that provision.

cannot be taking service over the ISO Controlled Grid, and thus should not receive credits.

Constellation further objects to the Filing Parties' alteration to the *pro forma* LGIA to eliminate reimbursement if another Interconnection Customer makes use of the Network Upgrades at a later date. Again, SCE points out that Constellation's argument ignores the benefits the Interconnection Customers receive under the alternative crediting proposal put forth by the Filing Parties. Moreover, as explained in the change matrix, the change is consistent with or superior to the *pro forma* LGIA because the *pro forma* LGIA does not provide a workable method for administering the broad proposal, and the LGIA – which is supposed to be the entire contract among the parties – does not describe how such repayment would occur. For example, if a Large Generating Facility misses its proposed commercial operation date by, say, two months due to unforeseen difficulties and during that time another generator in the queue behind this Interconnection Customer begins commercial operation, FERC's policy is clear that the triggering entity (i.e., the first Interconnection Customer) should pay for the necessary facilities. Therefore, in this case, the later Interconnection Customer should not be obligated to pay. This is not clear under the current *pro forma* LGIA language. Notably, the Filing Parties' proposal would require a new generator who makes use and triggers the need for new facilities to pay for such new facilities, if the original Interconnection Customer actually withdraws its application for interconnection or it is deemed withdrawn. In this case, reimbursement from the second Interconnection Customer to the first is warranted, and would be provided for under the LGIA. In sum, the Filing Parties'

proposal for credits, when examined as a whole, is “consistent with or superior to” the *pro forma* LGIA, and SCE urges the Commission to accept it in its entirety.

**G. The Joint LGIA Properly Clarifies The Responsibility for Termination Costs.**

Constellation also takes issue with the Filing Parties’ clarification of which entity would be responsible for various costs in the event that the LGIA is terminated. As written, Article 2.4 essentially states that the Terminating Party is responsible to pay all costs “that are the responsibility of the Terminating Party under this LGIA.”<sup>15</sup> Because the remainder of the *pro forma* LGIA does not make it clear what costs would be the responsibility of the “Terminating Party,” which is not a defined term under the *pro forma* LGIA, the Filing Parties simply clarified, consistent with paragraph 318 of Order 2003 and paragraph 204 of Order 2003-A, that the Interconnection Customer would be responsible for paying all costs incurred or irrevocably committed to be incurred in the event of termination. In no event would the ISO or the Participating TO be responsible for paying the costs of such facilities, whether or not either of those entities were the “Terminating Party.” This rationale is supported even further when viewed with the fact that the ISO and the Participating TO can only terminate the LGIA under very limited circumstances where there is a breach by the Interconnection Customer. In sum, the Filing Parties did not intend to change any cost responsibility by the alterations to the language in Article 2.4; rather, since it is not laid out elsewhere in the *pro forma* LGIA, the Filing Parties simply intended to clarify that the Interconnection Customer is

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<sup>15</sup> *Pro forma* LGIA at Article 2.4.

responsible for paying for incomplete facilities in the event of a termination, which is consistent with current Commission policy.

**H. The Provision Concerning Indemnity for Subsequent Taxable Events is Appropriately Modified.**

Finally, Constellation opposes the Filing Parties' changes to Articles 5.17.3 and 5.17.6, which essentially require the Interconnection Customer to indemnify the Participating TOs for any subsequent taxable event, rather than limiting the indemnification to only ten years. Constellation does not dispute that a subsequent taxable event can occur more than ten years after the in-service date of the Interconnection Facilities, nor does Constellation dispute the underlying premise that if a utility is taxed for the failure of an Interconnection Customer ultimately to meet the safe harbor standards, the Interconnection Customer must indemnify the utility. In California, the fact that the risk of a subsequent taxable event extends well beyond ten years is recognized by the state regulatory commission, and appropriate relief is provided to utilities. The justification for this relief rests on the fundamental notion that a utility should never be responsible for tax obligations that are properly assignable to the Interconnection Customer. Consistent with the fundamental ratemaking principle that the party causing the tax must pay for such tax, it is appropriate to remove the ten year limitation with respect to tax indemnification on Interconnection Facilities.

#### IV. CONCLUSION

For the foregoing reasons, the Commission should accept SCE's Answer and adopt the Filing Parties' proposals set forth in the Joint LGIA filing.

Respectfully submitted,



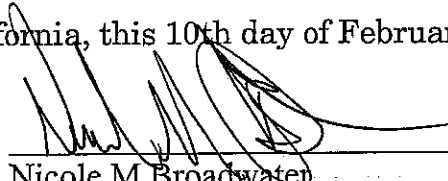
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**CERTIFICATE OF SERVICE**

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 this proceeding.

Dated at Rosemead, California, this 10th day of February, 2005.



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Nicole M Broadwater

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