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August 21, 2025

Ms. Lisa Felice
Executive Secretary
Michigan Public Service Commission
7109 W. Saginaw Highway
P.O. Box 30221
Lansing, MI 48909

Re: MPSC Case No. U-21859

Dear Ms. Felice:

Attached for electronic filing in the above-captioned matter, please find the *Initial Brief of the Michigan Energy Innovation Business Council, Institute for Energy Innovation and Advanced Energy United*, as well as a *Proof of Service* regarding same.

Thank you for your assistance in this matter.

Very truly yours,

VARNUM



Justin K. Ooms

JKO/nlw
Enclosures
c: All parties of record

STATE OF MICHIGAN
BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

In the Matter of the Application of **Consumers**)
Energy Company for Ex Parte Approval of)
Certain Amendments to Rate GPD.)

Case No. U-21859

INITIAL BRIEF
OF
THE MICHIGAN ENERGY INNOVATION BUSINESS COUNCIL,
INSTITUTE FOR ENERGY INNOVATION
AND
ADVANCED ENERGY UNITED

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including the reasonable protections that should be put in place due to the size of the data center customer's load and the impacts it could cause to the Company and its other customers.”

Consumers Motion in Limine, Case No. U-21859, Filing No. U-21859-0020 (“Motion in Limine”)

at 5. Consumers specifically requested that the following issues be excluded:

(1) whether Consumers Energy should serve data center load, (2) the development of a new rate for data centers, (3) the impact of data centers on other utility requirements (e.g., compliance with the renewable energy credit standard, the clean energy standard, etc.), and (4) the requirements for data centers to meet a Michigan sales tax exemption.

Id.

A schedule was set for this case at the prehearing held on April 16, 2025, by Administrative Law Judge (“ALJ”) Katherine E. Talbot. ALJ Talbot simultaneously granted Consumers’ Motion in Limine in part and denied it in part, finding that issue (1) should be excluded, that Consumers had conceded the appropriateness of including issue (2), and that “the two remaining issues involving the impact of data centers on other utility requirements [*e.g.*, the Renewable Portfolio Standard] and requirements for data centers to meet the Michigan sales tax exemption should not be excluded.” 1 Tr 50–51.

In compliance with the schedule set at the prehearing in this proceeding, the Michigan Energy Innovation Business Council (“Michigan EIBC”), the Institute for Energy Innovation (“IEI”) and Advanced Energy United (“United;” collectively with Michigan EIBC and IEI, “MEIU”) filed the direct testimony of Mr. John D. Albers on June 12, 2025. In his direct testimony, Mr. Albers recommends that “Consumers fully account[] for how it intends to satisfy both its obligations under Michigan law and the preferences of new customers for low-carbon or carbon-free resources.” 5 Tr 933.

As part of this overall recommendation, Mr. Albers promotes two general principles he argues should apply to any large-load tariff adopted in this case. First, he recommends that

customers 25 MW and larger qualify for the opportunities to be included in the large-load tariff Mr. Albers envisions. 5 Tr 937. Second, he emphasizes optionality and choice for such customers, recommending that “a large load tariff . . . generally provide for the customer’s ability to choose the type of resources desired, such as generation, transmission, or distribution resources that are sourced or supported via utility procurements, bilateral or trilateral contracting, behind-the-meter and/or front-of-meter collocation arrangements.” 5 Tr 938. MEIU thus envision any tariff emerging out of this case as fulfilling two purposes, each of which may involve differing size thresholds: (1) protecting other customers from stranded costs (an issue which MEIU broadly do not address) and (2) maximizing large load customers’ options and the efficiency with which their loads are served, consistent with Consumers’ obligations under Public Act 235 of 2023 and data centers’ interests under Public Acts 181 and 207 of 2024.

This Initial Brief is filed in accordance with the schedule set by ALJ Talbot and on behalf of MEIU¹ by their attorneys, Varnum LLP. Failure to address any issues or positions raised by other parties should not be taken as agreement with those issues or positions.

II. ARGUMENT

The necessary background for MEIU’s positions in this case is provided in several recently enacted statutes, specifically portions of Public Act 235 of 2023 and Public Acts 181 and 207 of 2024. Public Act 235 (i) contains modifications to utility integrated resource plan (“IRP”) requirements, (ii) imposes an increased renewable portfolio standard (“RPS”) and a new clean energy standard (“CES”) pursuant to which utilities must file amended renewable energy plans (“REPs”) and new clean energy plans (“CEPs”) going forward, and (iii) imposes an energy storage

¹ The positions expressed in this Initial Brief represent those of the Michigan Energy Innovation Business Council, the Institute for Energy Innovation and Advanced Energy United as organizations and not necessarily the views of individual members of these organizations with respect to any particular issue.

mandate based on a utility's proportional share of the state's peak load. See 5 Tr 934; see also MCL 460.6t; MCL 460.1022; MCL 460.1028; MCL 460.1051; MCL 460.1101. Public Acts 181 and 207 of 2024 granted sales and use tax exemptions to certain data centers meeting the requirements included within those statutes, among which is the requirement to certify that such data center(s) "have procured or will procure clean energy as that term is defined in section 51 of the clean and renewable energy and energy waste reduction act, 2008 PA 295, MCL 460.1051, equivalent to 90% of the facility's forecasted electricity usage on an annual basis." See, *e.g.*, MCL 205.54ee(10)(e)(ix). Public Acts 181 and 207 specifically envision such procurement to occur through "[s]elf-supply through on-site generation that meets the definition of renewable energy as that term is defined in section 11 of the clean and renewable energy and energy waste reduction act . . . ," a "[l]ong-term contract with the electric utility . . . serving the geographic area where the facility is located, which ensures no costs to serve the facility are passed onto other customers of the electric utility . . . ," or "[p]articipation in a voluntary green pricing program as set forth in section 61 of the clean and renewable energy and energy waste reduction act" MCL 205.54ee(10)(e)(ix)(A)–(C).

Based on these recently enacted statutory provisions, MEIU witness Albers concludes that "the size of the electrical loads Consumers is attempting to plan for will impact its IRP, renewable energy plan, and clean energy plan, particularly if the new load comes from a data center seeking to take advantage of the aforementioned tax exemptions." 5 Tr 935. Issues concerning resource procurement and the interrelationship between new large loads (including data centers seeking to avail themselves of the opportunities presented by Public Acts 181 and 207) and Consumers' plans for serving those loads are therefore important to address in this proceeding. Mr. Albers explains:

[I]t is evident that the potential load growth due to new large-load customers will impact the statutory energy planning requirements to which Consumers is subject.

Therefore, any tariff language the Commission approves to address the issues associated with serving new large-load customers should not only cover ratepayer protection provisions, as is the case with the proposed revisions to Rate GPD, but it should also address how the power will be sourced, particularly since some large-load customers, *i.e.*, data center facilities, will have a choice (from among three options identified in MCL 205.54ee(10)(e)(ix) and MCL 205.94cc(10)(e)(ix)) in how a significant portion of their load will be met if they plan to avail themselves of the tax exemptions under MCL 205.54ee and MCL 205.94cc.

5 Tr 936–37.

It is with the aim of maximizing the input large customers can have into the resources serving their loads and maximizing the efficiency with which these loads can be served that MEIU make their recommendations in this case.

A. All Customers Presenting New Load of 25 MW and Greater, Not Just Data Centers, Should Have Access to the Options Presented by MEIU.

As indicated above and in MEIU witness Albers' Rebuttal Testimony in particular, MEIU take no position on the threshold at which the customer protections proposed by Consumers in this case should apply. See 5 Tr 960–63. The threshold at which MEIU recommend customers have greater say in *how* they are served, however, should be set at most to 25 MW, and should not be limited to data center customers (even though, as a practical matter, those may be the most common customers whose load rises above this threshold).

Exhibits MEIU-4 and MEIU-6 collectively show that, of Consumers' existing customers, only four have billing demand in excess of 25 MW (two on Rate GPD and two on other rates), only three customers on Rate GPD have a billing demand between 20 and 25 MW, and only five customers on Rate GPD have a billing demand between 10 MW and 20 MW. See also 5 Tr 937–38; 5 Tr 959. Permitting greater optionality to and opportunity for input from customers as to how they are served beginning at 25 MW is unlikely to lead to an avalanche of new requests from individual customers to provide input into Consumers' resource acquisitions. Thus, any incremental administrative costs to Consumers of setting such a threshold for increased input and

optionality are not likely to be substantial compared to setting the threshold higher, *e.g.*, at 50 or 100 MW.²

The benefits to customers 25 MW and larger from a greater opportunity for input into resources used to serve them are, by contrast, significant. MEIU witness Albers explains,

[I]t is not uncommon for customers of this size to have ESG [environmental, social, and governance] goals that include consideration of the environmental attributes of the energy they use, as well as environmental justice issues. If Consumers must plan for obtaining renewable and clean energy under existing law, and the customer will be held responsible for the investments to serve the new load it is bringing to Consumers, it is reasonable to take into account, to the extent feasible, the new customer's preferences. Data center customers seeking to utilize the tax exemptions described above already have an option under state law to determine how their load will be served to meet a 90% clean energy standard.

5 Tr 938–39.

More than that, given that the goal of any tariff emerging from this proceeding and the goal of both MCL 205.54ee(10)(e)(ix)(B) and MCL 205.94cc(10)(e)(ix)(B) is to insulate existing customers from the cost of serving new large load, “allowing the new large-load customers more say in how their load is served is appropriate and reasonable.” 5 Tr 938. In other words, since large-load customers are effectively underwriting and backstopping the resources serving them, taking their opinions into account just makes sense. 5 Tr 939 (“If Consumers must plan for obtaining renewable and clean energy under existing law, and the customer will be held responsible for the investments to serve the new load it is bringing to Consumers, it is reasonable to take into account, to the extent feasible, the new customer's preferences.”)

As for why 25 MW specifically should be the threshold triggering such optionality, witness Albers first explains that his recommendation of a 25 MW threshold is by no means an outlier when compared to similar tariffs proposed or adopted in other jurisdictions. 5 Tr 958–59. He

² Witness Albers also committed MEIU to helping Consumers develop the menu of options to be available to large-load customers. 5 Tr 963–64.

acknowledges reasons why customer-protective terms might only be needed at the higher thresholds recommended by other parties to this case before recommending that the threshold for greater options and input be kept lower, at 25 MW. 5 Tr 960–62.

Witness Albers presents three reasons: First, “25 MW of new customer load is still substantial.” 5 Tr 961. Such customers therefore can contribute to creative and flexible solutions, and their contributions to these solutions can have a real impact to mitigate the incremental investments required to serve them. *Id.* at 961–62.

Second, “even the ‘smaller’ of the large customers (*i.e.*, those starting with 25 MW of load compared to those starting with 100 MW of load) may have . . . ESG goals that can be furthered by enabling them to influence how their service is provided.” 5 Tr 962. These ESG goals can affect a customer’s decision of where to locate, and, more than that, can even reduce the cost to Consumers of serving the customer:

In the absence of the optionality I describe, Consumers could simply decide on its own how to serve the new customer, which may or may not be the lowest cost option depending on what Consumers considers in its modeling and forecloses any possibility that a new customer may even be willing to pay more [for] certain options to achieve its ESG goals.

5 Tr 963.

Third, overall efficiency and flexibility: “[I]f more customers are enabled to utilize BTM programs and reduce their load on Consumers’ system as a result of more ‘large’ customers being able to contribute to (*i.e.*, expand) BTM programs, there will likely be less need to update Consumers’ integrated resource plan (“IRP”) and renewable energy plan (“REP”) to reflect new generation.” 5 Tr 963. In other words, if more customers have the opportunity to make creative use of other means of reducing their demand on the system, the ultimate impact on Consumers’ generation portfolio is going to be smaller.

B. Customer Options Under a Large-Load Tariff Should Include Co-Located Behind-the-Meter Options, Contributions to Support Demand-Side and Virtual Power Plant Resources, Distribution and Transmission System Improvements, and Voluntary Green Pricing Options.

MEIU witness Albers presents a flexible menu of potential options for new large load customers entering Consumers' service territory. He acknowledges that these options—even if a customer availed itself of all of them to some extent—would not enable Consumers to meet the new demand fully. 5 Tr 942. Nonetheless, these options, he explains, are intended to

offer new large load customers the opportunity to choose from among a suite of advanced energy technologies and solutions that can reduce the amount of new generation, and possibly new transmission and distribution facilities, that Consumers would otherwise have to construct and/or the amount of power that Consumers would otherwise have to purchase to serve the new large load customer.

5 Tr 942. They may also “enable the new customer to obtain the service it desires at a lower overall cost, which benefits not only the new customer but also all other existing customers by reducing the risk of stranded assets to the extent such risk is not fully ameliorated by the tariff.”

Id. To the extent they result in investments in other customers (*e.g.*, through energy waste reduction (“EWR”), demand response (“DR”), virtual power plants (“VPP”) or enabling other demand flexibility programs) or in broader transmission and distribution infrastructure, they would theoretically drive “stranded benefits” as well, as these investments would not be undone or wasted were the customer load fail to materialize or drop off the grid.

The first option witness Albers discusses is traditional behind-the-meter (“BTM”) resources located on a customer's site or on a contiguous parcel (*i.e.*, “self-service power,” see MCL 460.10a(4)). Although this is a pre-existing property right of the customer recognized under state law in Section 10a of Act 3 of 1939, as amended, and need not be specifically provided for as such in a utility tariff, it ought to be addressed in a large-load tariff as a recognized means for the customer to reduce its otherwise-applicable minimum billing demand under the tariff, to the

extent that such BTM resources could provide firm power. 5 Tr 939. Witness Albers also recommends that a customer be given the flexibility to add BTM resources to its site (or a contiguous site, as permitted under state law) to reduce its minimum billing demand without penalty *during* the ramp up period under the tariff, provided that Consumers had not yet “incur[red] irreversible costs to serve the full originally anticipated load.” 5 Tr 939–40.

Second, Mr. Albers recommends large-load customers be given the option to make “incremental monetary contributions to existing³ EWR, DR, VPP and demand flexibility programs that deliver broader grid benefits and create headroom that can lower the cost and increase the speed of connecting the new large loads.” 5 Tr 940. The principle underlying this recommendation is that, at this stage in the development of many of its EWR and DR programs in particular, Consumers most likely has a sense of what a given level of incremental investment is likely to “buy” in terms of load flexibility and peak load reduction, and that it is therefore possible to convert such benefits into incremental dollars of investment that prospective large-load customers could leverage. Mr. Albers continues:

By giving the new large load customer the option to help other customers reduce their impact on the grid through increased utilization of programs that reduce or shift energy usage, it should be easier for Consumers to serve the new large load customer. A new large load customer could also earmark its contributions toward programs aiding low-to-moderate income customers and/or establish new programs that enable DG as a resource, such as financially supporting the installation of BTM rooftop solar and battery energy storage systems.

5 Tr 940. Since such customer contributions would be intentional and voluntary and not collected from Consumers’ broader customer base, moreover, there is no need for a requirement that such

³ That is, existing as of the date the customer comes to Consumers. As such, MEIU do not suggest that each individual program available to a large-load customer must exist as of the date a tariff is approved in this proceeding. Rather, customers should be permitted to contribute to any program existing at the time the customer approaches Consumers for service.

programs “achieve cost-effectiveness equivalent to existing, approved, or historical utility programs.” *Id.*

Third, and moving beyond direct retail-customer-related options, witness Albers recommends large-load customers be able to explore, with Consumers’ and, in the case of transmission infrastructure, Michigan Electric Transmission Company’s assistance, potential investments in the distribution and transmission systems that would increase grid efficiency overall and enable Consumers to provide service to the customer both more quickly and more efficiently, depending on the circumstance. 5 Tr 941. Such investments/upgrades could include implementing dynamic transformer ratings, which can temporarily increase transformer capacity in certain circumstances, and grid enhancing technologies⁴ like dynamic transmission line ratings, “which involve[] calculating thermal limits of existing transmission lines based on real-time and forecasted weather conditions” and allow for “more energy [to] be safely transmitted across existing infrastructure.” *Id.* These investments can thus most directly serve to mitigate incremental distribution and transmission investments needed to serve the new load.

Although developing concrete proposals for individual customers incorporating the above demand-side, VPP and distribution and transmission improvement options may require some coordination and upfront work by Consumers in cooperation with the customer, enabling such customer contributions to Michigan’s broader electric grid aligns with both the state’s goals and with customers’ likely goals. 5 Tr 945. Witness Albers nonetheless recognizes that it might be reasonable to require customers to “reach a reasonable milestone” before becoming entitled to a full work-up of concrete options from Consumers based on the abstract set of options in the tariff.

⁴ Defined broadly by the Department of Energy to include sensors, power flow control devices, and analytical tools used to maximize the transmission of electricity across the existing electric system. 5 Tr 941.

Id. He suggests that Consumers might also be entitled to charge a modeling fee in addition to the \$100,000 application fee to cover modeling costs.

Fourth, and finally, in further recognition that large-load customers' demand cannot in all likelihood be fully served via the options presented to this point, MEIU witness Albers recommends that any large-load tariff emerging from this proceeding include clear reference to the External Power Purchase Agreement option within Consumers' existing Voluntary Green Pricing ("VGP") program tariff (see Section C10.6(H)). 5 Tr 943. This option will enable large-load customers to identify specific facilities already under development by third parties and bring these facilities to Consumers, potentially shortcutting the ordinary procurement process and speeding up customer interconnection. *Id.*

Including the options discussed above explicitly in the text of the tariff will maximize the input large customers can have into the resources serving their loads and maximize the efficiency with which these loads can be served, all while fitting within the fundamental principle that large-load customers fully cover their incremental costs. MEIU therefore commend them to the Commission for inclusion.

C. Procurements of Resources Other Than Those Brought to Consumers Through the "External Power Purchase Agreement" Option Should be Governed by the MPSC's Competitive Procurement Guidelines, Conducted by an Independent Administrator, and Split Between the Company and Third Parties.

MEIU witness Albers recognizes that "[r]egardless of whether or not the new large load customer chooses from a tariff any of the options . . . describe[d] above, it is likely that Consumers will still need to acquire additional capacity through either facility construction or power purchases." 5 Tr 943. He therefore recommends that "[a] tariff geared toward large load customers should provide that to satisfy the capacity not addressed through any of the other options, Consumers will issue a competitive all-source request for proposals ("RFP") open to both utility-

owned projects and third-party owned projects.” *Id.* These solicitations should be governed by the Commission’s Competitive Procurement Guidelines adopted in Case No. U-20852 (the “Guidelines”) and conducted by an independent administrator (as defined in the Guidelines). In a further nod to large-load-customer optionality, witness Albers also recommends that the customer be permitted to pay a premium for a preferred resource that would not otherwise have been selected through the RFP. 5 Tr 944. Given that “just one customer’s potential need would likely exceed the nameplate capacity of a typical natural gas combined cycle power plant,” and “operating under the premise that existing customers would be insulated from the cost of serving such new load,” it is reasonable for the customer to have this prerogative.

Notwithstanding this customer prerogative, MEIU recommend that the Commission require Consumers to target a 50/50 ownership split of incremental wind, solar and battery storage resources procured to serve large load under the tariff developed in this proceeding. 5 Tr 947–950. End customer costs remain important, whether resources are procured to serve many customers or just one. 5 Tr 948–949 (“Although the Commission may ultimately approve tariff language insulating, or limiting risk for, non-large load customers, the large load customer is also entitled to protection from unreasonable costs.”). And as MEIU witness Albers explains, such procurements have broader impacts on utility procurement looking farther into the future:

[B]eyond the near-term cost differences experienced in a particular RFP, the Commission also has an obligation to ensure that prices remain competitive for customers over the long-term. Ensuring a strong third-party market exists in Michigan will benefit not only large load customers but also all other customers whenever a Michigan utility seeks proposals to provide new capacity. As the Commission itself has noted, third-party developers can provide capacity at prices lower than the utility.⁵

Furthermore, without an obligation to procure at least half of any new capacity from third parties, *a utility will know that it need only undercut the competition long enough to discourage competitors until they move on to more competitive markets.*

⁵ Witness Albers also provided evidence showing similar realities in other jurisdictions. 5 Tr 950.

After which, when the utility is “safe” from competitors, it is free to provide capacity at a higher price and recover its costs from captive ratepayers. Given the inherent capital bias in the traditional utility ratemaking model, it is incumbent upon the Commission to consider this dynamic and protect customers both now and in the future by directing at least half of new renewable capacity be sourced from third parties. Failure to consider this market reality, or, more importantly, a failure to take steps to address it, will harm Michigan ratepayers.

5 Tr 949–50 (emphasis added). The Commission recognized a similar principle in its Limited Protest in the Federal Energy Regulatory Commission’s recent Expedited Resource Addition Study docket, noting:

Although the Michigan PSC is cognizant that the vast majority of MISO is utility owned and contracted, it remains true that projects developed by independent power producers continue to exist and provide value. In addition, much of Michigan’s processes are structured to encourage competitive bidding of projects, even those ultimately owned or under a PPA arrangement with an incumbent utility, and ERAS will further restrict the ability of developers to participate in utility procurement solicitations, limiting the projects able to be considered and likely increasing project costs, harming customers.

Notice of Intervention and Limited Protest of the Michigan Public Service Commission, FERC Docket ER25-1674-000 (April 7, 2025), at 12.

Staff witness Harlow filed testimony attempting to rebut witness Albers’ recommendations regarding an explicit ownership split, proffering evidence he represented as demonstrating that third-party projects and utility-owned projects take turns being the most cost-effective. See 5 Tr 1027. This testimony contradicts the Staff’s February 15, 2017 *Report on the Implementation and Cost 24 Effectiveness of the PA 295 Renewable Energy Standard*, which clearly states that “for each year in which there were both company-owned projects *and* purchased power agreements, the weighted average cost of the purchased power agreements was lower than the company-owned projects in that *respective* year.” See 5 Tr 948 (emphasis added). More than that, however, witness Harlow’s testimony as a whole simply ignores the hazards MEIU witness Albers identifies with

regard to the potential for utility underpricing that can discourage third-party participation in the long run and drive up costs once third parties have pulled up stakes.

For the foregoing reasons, therefore, the Commission should ensure that, here as well as elsewhere, Consumers' procurements for incremental solar, wind and battery storage resources be required to follow the Guidelines, be conducted by an Independent Administrator, and target a 50/50 ownership split between utility-owned projects and third-party-owned projects.

III. CONCLUSIONS AND PRAYER FOR RELIEF

WHEREFORE, the Michigan Energy Innovation Business Council, the Institute for Energy Innovation and Advanced Energy United respectfully request that the Commission:

- (a) Find that customers presenting new load of 25 MW and greater, and not just data centers, should have access to the options presented by MEIU on the record and in this brief;
- (b) Find that customer options under a large-load tariff should minimally include co-located behind-the-meter options, contributions to support demand-side and virtual power plant resources, distribution and transmission system improvements, and voluntary green pricing options;
- (c) Require that procurements of resources other than those brought to Consumers through the "External Power Purchase Agreement" option be governed by the MPSC's Competitive Procurement Guidelines, be conducted by an Independent Administrator, and be split between the Company and third parties; and
- (d) Grant such other relief as the Commission deems necessary, reasonable or prudent.

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Respectfully submitted,

VARNUM LLP

Attorneys for the Michigan Energy Innovation
Business Council, the Institute for Energy
Innovation and Advanced Energy United

August 21, 2022

By:  _____

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STATE OF MICHIGAN

BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

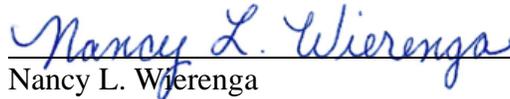
In the Matter of the Application of **Consumers**
Energy Company for Ex Parte Approval of
Certain Amendments to Rate GPD.

Case No. U-21859

PROOF OF SERVICE

STATE OF MICHIGAN)
) ss:
COUNTY OF KENT)

Nancy L. Wierenga, the undersigned, being first duly sworn, deposes, and says that she is a Legal Assistant with the law firm of Varnum LLP, and on, Thursday, August 21, 2025, she served *Initial Brief of the Michigan Energy Innovation Business Council, Institute for Energy Innovation and Advanced Energy United*, and a copy of this *Proof of Service* upon those individuals listed on the attached Service List via email at their last known addresses.



Nancy L. Wierenga

Administrative Law Judge

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