


HOUSE FLOOR SUBSTITUTE FOR
SENATE TAX, BUSINESS AND TRANSPORTATION
COMMITTEE SUBSTITUTE FOR
SENATE BILL 84

55TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2021



AN ACT

RELATING TO UTILITIES; ENACTING THE COMMUNITY RENEWABLE ENERGY
ACT; PRESCRIBING REQUIREMENTS FOR COMMUNITY RENEWABLE ENERGY
FACILITIES, SUBSCRIBER ORGANIZATIONS AND SUBSCRIPTIONS;
PRESCRIBING REQUIREMENTS FOR ADMINISTRATION OF A COMMUNITY
RENEWABLE ENERGY PROGRAM; PROVIDING THAT RENEWABLE ENERGY
CERTIFICATES ASSOCIATED WITH A COMMUNITY RENEWABLE ENERGY
FACILITY ARE THE PROPERTY OF THE QUALIFYING UTILITY; PROVIDING
EXCEPTIONS FOR NATIVE COMMUNITY RENEWABLE ENERGY PROJECTS;
DIRECTING THE PUBLIC REGULATION COMMISSION TO ADOPT RULES TO
IMPLEMENT A COMMUNITY RENEWABLE ENERGY PROGRAM; ALLOWING THE
COMMISSION TO ESTABLISH AND COLLECT FROM SUBSCRIBER
ORGANIZATIONS REASONABLE APPLICATION FEES.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

SECTION 1. [NEW MATERIAL] SHORT TITLE.--Sections 1

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1 through 8 of this act may be cited as the "Community Renewable
2 Energy Act".

3 SECTION 2. [NEW MATERIAL] DEFINITIONS.--As used in the
4 Community Renewable Energy Act:

5 A. "commission" means the public regulation
6 commission;

7 B. "community renewable energy bill credit" means
8 the credit value of the electricity generated by a community
9 renewable energy facility and allocated to a subscriber to
10 offset the subscriber's electricity bill on the qualifying
11 utility's monthly billing cycle as required by the Community
12 Renewable Energy Act;

13 C. "community renewable energy bill credit rate"
14 means the dollar-per-kilowatt-hour rate determined by the
15 commission that is used to calculate a subscriber's community
16 renewable energy bill credit;

17 D. "community renewable energy facility" means a
18 facility that generates electricity by means of a solar
19 photovoltaic device, wind turbine, biomass or other renewable
20 energy source and subscribers to the facility receive a bill
21 credit for the electricity generated in proportion to the
22 subscriber's share of the facility's kilowatt-hour output;

23 E. "community renewable energy program" or
24 "program" means the program created through the adoption of
25 rules by the commission that allows for the development of

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1 community renewable energy facilities and provides customers of
2 a qualifying utility with the option of accessing renewable
3 energy produced by a community renewable energy facility in
4 accordance with the Community Renewable Energy Act;

5 F. "Indian nation, tribe or pueblo" means a
6 federally recognized Indian nation, tribe or pueblo located
7 wholly or partially in New Mexico;

8 G. "low-income customer" means a residential
9 customer of a qualifying utility with an annual household
10 income at or below eighty percent of area median income, as
11 published by the United States department of housing and urban
12 development, or that is enrolled in a low-income program
13 facilitated by the state or a low-income energy program led by
14 the qualifying utility or as determined by the commission;

15 H. "low-income service organization" means an
16 organization that provides services, assistance or housing to
17 low-income customers and may include a local or central tribal
18 government, a chapter house or a tribally designated housing
19 entity;

20 I. "nameplate capacity" means the maximum rated
21 output of electric power production equipment that is commonly
22 indicated on a nameplate physically attached to the generator
23 and expressed in megawatts alternating current;

24 J. "native community renewable energy project"
25 means a community renewable energy facility that is sited in

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1 New Mexico on the land of an Indian nation, tribe or pueblo and
2 that is owned or operated by a subscriber organization that is
3 an Indian nation, tribe or pueblo or a tribal entity or in
4 partnership with a third-party entity;

5 K. "qualifying utility" means an investor-owned
6 electric public utility certified by the commission to provide
7 retail electric service in New Mexico pursuant to the Public
8 Utility Act or a rural electric distribution cooperative that
9 has opted in to the community renewable energy program;

10 L. "subscriber" means a retail customer of a
11 qualifying utility that owns a subscription to a community
12 renewable energy facility and that is by rate class a
13 residential retail customer or a small commercial retail
14 customer or, regardless of rate class, is a nonprofit
15 organization, a religious organization, an Indian nation, tribe
16 or pueblo or a political subdivision of an Indian nation, tribe
17 or pueblo or a governmental entity, including a state
18 educational institution, a public school, a public housing
19 authority or other political subdivision of the state or
20 agency, instrumentality or institution of a political
21 subdivision;

22 M. "subscriber organization" means an entity that
23 owns or operates a community renewable energy facility and may
24 include a qualifying utility, a municipality, a county, a for-
25 profit or nonprofit entity or organization, an Indian nation,

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1 tribe or pueblo, a local tribal governance structure or other
 2 tribal entity authorized to transact business in New Mexico;

3 N. "subscription" means a contract for a community
 4 renewable energy subscription entered into between a subscriber
 5 and a subscriber organization for a share of the nameplate
 6 capacity from a community renewable energy facility;

7 O. "total aggregate retail rate" means the total
 8 amount of a qualifying utility's demand, energy and other
 9 charges converted to a kilowatt-hour rate, including fuel and
 10 power cost adjustments, the value of renewable energy
 11 attributes and other charges of a qualifying utility's
 12 effective rate schedule applicable to a given customer rate
 13 class, but does not include charges described on a qualifying
 14 utility's rate schedule as minimum monthly charges, including
 15 customer or service availability charges, energy efficiency
 16 program riders or other charges not related to a qualifying
 17 utility's power production, transmission or distribution
 18 functions, as approved by the commission, franchise fees and
 19 tax charges on utility bills;

20 P. "tribal entity" means an enterprise, a nonprofit
 21 entity or organization or a political subdivision formed under
 22 the inherent sovereignty of an Indian nation, tribe or pueblo;
 23 and

24 Q. "unsubscribed electricity" means electricity,
 25 measured in kilowatt-hours, generated by a community renewable

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1 energy facility that is not allocated to a subscriber.

2 SECTION 3. [NEW MATERIAL] COMMUNITY RENEWABLE ENERGY
3 FACILITY REQUIREMENTS.--

4 A. A community renewable energy facility shall:

5 (1) have a nameplate capacity rating of five
6 megawatts alternating current or less;

7 (2) be located in the service territory of the
8 qualifying utility and be interconnected to the electric
9 distribution system of that qualifying utility;

10 (3) have at least ten subscribers;

11 (4) have the option to be co-located with
12 other energy resources, but shall not be co-located with other
13 community renewable energy facilities;

14 (5) not allow a single subscriber to be
15 allocated more than forty percent of the generating capacity of
16 the facility; and

17 (6) make at least forty percent of the total
18 generating capacity of a community renewable energy facility
19 available in subscriptions of twenty-five kilowatts or less.

20 B. The provisions of this section shall not apply
21 to a native community renewable energy project; provided that a
22 native community renewable energy project shall be located in
23 the service territory of a qualifying utility and be
24 interconnected to the electric distribution system of that
25 qualifying utility.

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1 SECTION 4. [NEW MATERIAL] OWNERSHIP OF COMMUNITY
2 RENEWABLE ENERGY FACILITIES.--

3 A. A community renewable energy facility shall be
4 owned or operated by a subscriber organization.

5 B. Third-party entities or subscriber organizations
6 developing projects on the land of an Indian nation, tribe or
7 pueblo are subject to tribal jurisdiction.

8 C. Notwithstanding any provision of the Public
9 Utility Act to the contrary, a person not otherwise a public
10 utility shall not be deemed to be a public utility subject to
11 the provisions of the Public Utility Act solely because the
12 person owns, controls or operates all or any part of a
13 community renewable energy facility.

14 SECTION 5. [NEW MATERIAL] SUBSCRIPTION REQUIREMENTS.--

15 A. A subscription shall be:

16 (1) sized to supply no more than one hundred
17 percent of the subscriber's average annual electricity
18 consumption; and

19 (2) transferable and portable within the
20 qualifying utility service territory.

21 B. The provisions of this section shall not apply
22 to a native community renewable energy project; provided that
23 subscriptions to a native community renewable energy project
24 shall be transferable and portable within the qualifying
25 utility service territory.

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1 SECTION 6. ~~[NEW MATERIAL]~~ COMMUNITY RENEWABLE ENERGY
2 PROGRAM ADMINISTRATION.--

3 A. A qualifying utility shall:

4 (1) acquire the entire output of a community
5 renewable energy facility connected to its distribution system;

6 (2) apply community renewable energy bill
7 credits to subscriber bills within one billing cycle following
8 the cycle during which the energy was generated by the
9 community renewable energy facility;

10 (3) provide community renewable energy bill
11 credits to a community renewable energy facility's subscribers
12 for not less than twenty-five years from the date the community
13 renewable energy facility is first interconnected;

14 (4) carry over any amount of a community
15 renewable energy bill credit that exceeds the subscriber's
16 monthly bill and apply it to the subscriber's next monthly bill
17 unless and until the subscriber cancels service with the
18 qualifying utility; and

19 (5) on a monthly basis and in a standardized
20 electronic format, provide to the subscriber organization a
21 report indicating the total value of community renewable energy
22 bill credits generated by the community renewable energy
23 facility in the prior month as well as the amount of the
24 community renewable energy bill credits applied to each
25 subscriber.

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1 B. A subscriber organization shall, on a monthly
2 basis and in a standardized electronic format, provide to the
3 qualifying utility a list indicating the kilowatt-hours of
4 generation attributable to each subscriber. Subscriber lists
5 may be updated monthly to reflect canceling subscribers and to
6 add new subscribers.

7 C. If a community renewable energy facility is not
8 fully subscribed in a given month, the unsubscribed energy may
9 be rolled forward on the community renewable energy facility
10 account for up to one year from its month of generation and
11 allocated by the subscriber organization to subscribers at any
12 time during that period. At the end of that period, any
13 undistributed bill credit shall be removed, and the
14 unsubscribed energy shall be purchased by the qualifying
15 utility at its applicable avoided cost of energy rate as
16 approved by the commission.

17 D. The environmental attributes, including
18 renewable energy certificates, associated with a community
19 renewable energy facility shall be owned by the qualifying
20 utility to whose electric distribution system the community
21 renewable energy facility is interconnected; provided that
22 environmental attributes associated with a native community
23 renewable energy project shall be owned by the owner of the
24 native community renewable energy project.

25 E. Nothing in the Community Renewable Energy Act
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1 shall preclude an Indian nation, tribe or pueblo from using
2 financial mechanisms other than subscription models, including
3 virtual and aggregate net-metering, for native community
4 renewable energy projects.

5 SECTION 7. [NEW MATERIAL] PUBLIC REGULATION COMMISSION--
6 RULEMAKING.--

7 A. The commission shall adopt rules to establish a
8 community renewable energy program by no later than April 1,
9 2022. The rules shall:

10 (1) provide an initial annual statewide
11 capacity program cap of one hundred megawatts alternating
12 current proportionally allocated to investor-owned utilities
13 until November 1, 2024. The annual statewide capacity program
14 cap shall exclude native community renewable energy projects
15 and rural electric distribution cooperatives;

16 (2) establish an annual statewide capacity
17 program cap to be in effect after November 1, 2024;

18 (3) require thirty percent of electricity
19 produced from each community renewable energy facility to be
20 reserved for low-income customers and low-income service
21 organizations. The commission shall issue guidelines to ensure
22 the carve-out is achieved each year and develop a list of low-
23 income service organizations and programs that may pre-qualify
24 low-income customers;

25 (4) establish a process for the selection of

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1 community renewable energy facility projects and allocation of
2 the statewide capacity program cap, consistent with Section
3 13-1-21 NMSA 1978 regarding resident business and resident
4 veteran business preferences;

5 (5) require a qualifying utility to file the
6 tariffs, agreement or forms necessary for implementation of the
7 community renewable energy program;

8 (6) establish reasonable, uniform, efficient
9 and non-discriminatory standards, fees and processes for the
10 interconnection of community renewable energy facilities that
11 are consistent with the commission's existing interconnection
12 rules and interconnection manual that allows a qualifying
13 utility to recover reasonable costs for administering the
14 community renewable energy program and interconnection costs
15 for each community renewable energy facility, such that a
16 qualifying utility and its non-subscribing customers do not
17 subsidize the costs attributable to the subscriber organization
18 pursuant to this paragraph;

19 (7) provide consumer protections for
20 subscribers, including a uniform disclosure form that
21 identifies the information that shall be provided by a
22 subscriber organization to a potential subscriber, in both
23 English and Spanish, and when appropriate, native or indigenous
24 languages, to ensure fair disclosure of future costs and
25 benefits of subscriptions, key contract terms, security

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1 interests and other relevant but reasonable information
2 pertaining to the subscription, as well as grievance and
3 enforcement procedures;

4 (8) provide a community renewable energy bill
5 credit rate mechanism for subscribers derived from the
6 qualifying utility's total aggregate retail rate on a per-
7 customer-class basis, less the commission-approved distribution
8 cost components, and identify all proposed rules, fees and
9 charges; provided that non-subscribers do not unduly subsidize
10 costs attributable to subscribers;

11 (9) reasonably allow for the creation,
12 financing and accessibility of community renewable energy
13 facilities; and

14 (10) provide requirements for the siting and
15 co-location of community renewable energy facilities with other
16 energy resources; provided that community renewable energy
17 facilities shall not be co-located with other community
18 renewable energy facilities.

19 B. The commission may through rule establish a
20 reasonable application fee for subscriber organizations that is
21 designed to cover a portion of the administrative costs of the
22 commission in carrying out the community renewable energy
23 program. Application fees collected by the commission shall be
24 remitted to the state treasurer no later than the day after
25 their receipt.

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1 C. The commission shall solicit input from relevant
2 state agencies, public utilities, low-income stakeholders,
3 disproportionately impacted communities, potential owners or
4 operators of community renewable energy facilities, Indian
5 nations, tribes and pueblos and other interested parties in its
6 rulemaking process.

7 D. By no later than November 1, 2024, the
8 commission shall provide to the appropriate interim legislative
9 committee a report on the status of the community renewable
10 energy program, including the development of community
11 renewable energy facilities, the participation of investor-
12 owned utilities and rural electric distribution cooperatives,
13 low-income participation, the adequacy of facility size,
14 proposals for alternative rate structures and bill credit
15 mechanisms, cross-subsidization issues, local developer project
16 selection and expansion of the local renewable energy industry,
17 community renewable energy facilities' effect on utility
18 compliance with the renewable portfolio standard and an
19 evaluation of the effectiveness of the commission's rules to
20 implement the Community Renewable Energy Act and any
21 recommended changes.

22 SECTION 8. [NEW MATERIAL] RURAL ELECTRIC DISTRIBUTION
23 COOPERATIVES.--A rural electric distribution cooperative may
24 opt in to the community renewable energy program and provide
25 interconnection and retail electric services to community

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1 renewable energy developments on a per-project or system-wide
2 basis within its service territory. The decision of a rural
3 electric distribution cooperative to opt in to the community
4 renewable energy program shall be in the sole discretion of the
5 cooperative's governing board.

6 SECTION 9. Section 62-15-35 NMSA 1978 (being Laws 2007,
7 Chapter 4, Section 2, as amended by Laws 2015, Chapter 64,
8 Section 1 and by Laws 2015, Chapter 71, Section 1) is amended
9 to read:

10 "62-15-35. RENEWABLE ENERGY CERTIFICATES--COMMISSION
11 DUTIES.--The public regulation commission shall establish:

12 A. a system of renewable energy certificates that
13 can be used by a distribution cooperative to establish
14 compliance with the renewable portfolio standard and that may
15 include certificates that are monitored, accounted for or
16 transferred by or through a regional system or trading program
17 for any region in which a rural electric cooperative is
18 located. The kilowatt-hour value of renewable energy
19 certificates may be varied by renewable energy resource or
20 technology; provided that:

21 (1) each renewable energy certificate shall
22 have a minimum value of one kilowatt-hour for purposes of
23 compliance with the renewable portfolio standard;

24 (2) three thousand four hundred twelve British
25 thermal units of useful thermal energy is equivalent to one

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1 kilowatt-hour for purposes of compliance with the renewable
2 portfolio standard; and

3 (3) the following equation shall be used to
4 calculate the annual renewable energy certificate value for a
5 geothermal heat pump system: (coefficient of performance of
6 heat pump unit - 1) X (ton rating of heat pump unit/.9) =
7 number of megawatt-hours of renewable energy certificates; and

8 B. requirements and procedures concerning renewable
9 energy certificates that include the provisions that:

10 (1) renewable energy certificates:

11 (a) are owned by the generator of the
12 renewable energy unless: 1) the renewable energy certificates
13 are transferred to the purchaser of the energy through specific
14 agreement with the generator; 2) the generator is a qualifying
15 facility, as defined by the federal Public Utility Regulatory
16 Policies Act of 1978, in which case the renewable energy
17 certificates are owned by the distribution cooperative
18 purchaser of the renewable energy unless retained by the
19 generator through specific agreement with the distribution
20 cooperative purchaser of the energy; ~~or~~ 3) a contract for the
21 purchase of renewable energy is in effect prior to January 1,
22 2004, in which case the renewable energy certificates are owned
23 by the purchaser of the energy for the term of such contract;
24 or 4) the generator is a community renewable energy facility,
25 excluding a native community renewable energy project, as those

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1 terms are defined in the Community Renewable Energy Act, in
2 which case the renewable energy certificates are owned by the
3 distribution cooperative to whose electric distribution system
4 the community renewable energy facility is interconnected;

5 (b) may be traded, sold or otherwise
6 transferred by their owner to any other party; provided that
7 the transfers and use of the certificate by a distribution
8 cooperative for compliance with the renewable energy portfolio
9 standard shall require the electric or useful thermal energy
10 represented by the certificate to be contracted for delivery or
11 consumed, or generated by an end-use customer of the
12 distribution cooperative in New Mexico unless the commission
13 determines that the distribution cooperative is participating
14 in a national or regional market for exchanging renewable
15 energy certificates;

16 (c) that are used for the purpose of
17 meeting the renewable portfolio standard shall be registered,
18 beginning January 1, 2008, with a renewable energy generation
19 information system that is designed to create and track
20 ownership of renewable energy certificates and that, through
21 the use of independently audited generation data, verifies the
22 generation and delivery of electricity or useful thermal energy
23 associated with each renewable energy certificate and protects
24 against multiple counting of the same renewable energy
25 certificate;

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1 (d) that are used once by a distribution
2 cooperative to satisfy the renewable portfolio standard and are
3 retired or that are traded, sold or otherwise transferred by
4 the distribution cooperative shall not be further used by the
5 distribution cooperative; and

6 (e) that are not used by a distribution
7 cooperative to satisfy the renewable portfolio standard or that
8 are not traded, sold or otherwise transferred by the
9 distribution cooperative may be carried forward for up to four
10 years from the date of issuance and, if not used by that time,
11 shall be retired by the distribution cooperative; and

12 (2) a distribution cooperative shall be
13 responsible for demonstrating that a renewable energy
14 certificate used for compliance with the renewable portfolio
15 standard is derived from eligible renewable energy resources
16 and has not been retired, traded, sold or otherwise transferred
17 to another party."

18 SECTION 10. Section 62-16-5 NMSA 1978 (being Laws 2004,
19 Chapter 65, Section 5, as amended) is amended to read:

20 "62-16-5. RENEWABLE ENERGY CERTIFICATES--COMMISSION
21 DUTIES.--

22 A. The commission shall establish:

23 (1) a system of renewable energy certificates
24 that can be used by a public utility to establish compliance
25 with the renewable portfolio standard and that may include

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1 certificates that are monitored, accounted for or transferred
2 by or through a regional system or trading program for any
3 region in which a public utility is located; and

4 (2) requirements and procedures concerning
5 requirements for renewable energy certificates pursuant to
6 Subsections B and C of this section.

7 B. Renewable energy certificates:

8 (1) are owned by the generator of the
9 renewable energy unless:

10 (a) the renewable energy certificates
11 are transferred to the purchaser of the electricity through
12 specific agreement with the generator;

13 (b) the generator is a qualifying
14 facility, as defined by the federal Public Utility Regulatory
15 Policies Act of 1978, in which case the renewable energy
16 certificates are owned by the public utility purchaser of the
17 renewable energy; ~~[or]~~

18 (c) a contract for the purchase of
19 renewable energy is in effect prior to July 1, 2019, in which
20 case the renewable energy certificates are owned by the
21 purchaser of the electricity for the term of such contract,
22 unless otherwise agreed to in a contract approved by the
23 commission; or

24 (d) the generator is a community
25 renewable energy facility, excluding a native community

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1 renewable energy project, as those terms are defined in the
 2 Community Renewable Energy Act, in which case the renewable
 3 energy certificates are owned by the public utility to whose
 4 electric distribution system the community renewable energy
 5 facility is interconnected;

6 (2) may be traded, sold or otherwise
 7 transferred by their owner, unless the certificates are from a
 8 rate-based public utility plant, in which case the entirety of
 9 the renewable energy certificates from that plant shall be
 10 retired by the utility on behalf of itself or its customers.
 11 Any contract to purchase renewable energy entered into by a
 12 public utility on or after July 1, 2019 shall include
 13 conveyance to the purchasing utility of all renewable energy
 14 certificates, and the entirety of those certificates shall be
 15 retired by that utility on behalf of itself or its customers or
 16 subsequently transferred to a retail customer for retirement
 17 under a voluntary program for purchasing renewable energy
 18 approved by the commission. A utility shall not claim that it
 19 is providing renewable energy from generation resources for
 20 which it has traded, sold or transferred the associated
 21 renewable energy certificates. The commission shall not
 22 disallow the recovery of the cost associated with any expired
 23 renewable energy certificate. The public utility shall
 24 annually file a report with the commission discussing:

25 (a) its use, sale, trading or transfer

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1 of renewable energy certificates; and

2 (b) whether and how its public claims of
3 renewable energy generation account for renewable energy
4 certificates that it has traded, sold or transferred;

5 (3) that are used for the purpose of meeting
6 the renewable portfolio standard shall be registered with a
7 renewable energy generation information system that is designed
8 to create and track ownership of renewable energy certificates
9 and that, through the use of independently audited generation
10 data, verifies the generation and delivery of electricity
11 associated with each renewable energy certificate and protects
12 against multiple counting of the same renewable energy
13 certificate; and

14 (4) may be carried forward for up to four
15 years from the date of issuance to establish compliance with
16 the renewable portfolio standard, after which they shall be
17 deemed retired by the public utility.

18 C. A public utility shall be responsible for
19 demonstrating that a renewable energy certificate used for
20 compliance with the renewable portfolio standard is derived
21 from eligible renewable energy resources."

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