

SANFORD LAW OFFICE, PLLC
Jo Anne Sanford, Attorney at Law

February 1, 2018

Ms. M. Lynn Jarvis, Chief Clerk
North Carolina Utilities Commission
4325 Mail Service Center
Raleigh, North Carolina 27699-4325

Via Electronic Delivery

Re: Carolina Water Service, Inc. of North Carolina
Docket No. M-100, Sub 148
Initial Comments Regarding the Federal Tax Cuts and Jobs Act

Dear Ms. Jarvis:

On January 3, 2018, the Chairman of the North Carolina Utilities Commission ("Commission" or "NCUC") entered an Order in Docket No. M-100, Sub 148 entitled "*Order Ruling that Certain Components of Certain Public Utility Rates Are Provisional as of January 1, 2018, Initiating a Generic Proceeding, and Requesting Comments.*"

Carolina Water Service, Inc. of North Carolina ("CWSNC" or "Company") was one of nine regulated public utilities in North Carolina who were specifically requested by the January 3, 2018 Order to file initial comments by February 1, 2018, and to include certain specified information in those comments.

CWSNC hereby files the Affidavit of Anthony Gray, the Company's Senior Financial and Regulatory Analyst, as its initial comments in response to the Commission's January 3, 2018 Order. In his Affidavit, Mr. Gray addresses the specific issues raised by the Commission.

Accordingly, CWSNC respectfully requests that the Commission give careful consideration to the Company's initial comments in determining the issues and procedures to be determined in this docket.

As always, we thank you and your staff for your assistance; please feel free to contact me if there are questions or if additional information is required.

Electronically Submitted

/s/Jo Anne Sanford
North Carolina State Bar No. 6831
**Attorney for Carolina Water Service, Inc. of
North Carolina**

cc: Parties of Record

AFFIDAVIT OF ANTHONY GRAY
BEFORE THE NORTH CAROLINA UTILITIES COMMISSION
DOCKET NO. M-100, SUB 148

Anthony Gray, the Senior Financial and Regulatory Analyst for Carolina Water Service, Inc. of North Carolina (“CWSNC” or “Company”), being duly sworn, hereby executes this Affidavit on behalf of CWSNC for filing in Docket No. M-100, Sub 148, a proceeding before the North Carolina Utilities Commission (“Commission” or “NCUC”).

A. On January 3, 2018, the Chairman of the Commission entered an Order in Docket No. M-100, Sub 148 entitled “*Order Ruling that Certain Components of Certain Public Utility Rates Are Provisional as of January 1, 2018, Initiating a Generic Proceeding, and Requesting Comments*” (“Order”). In support of its Order, the Commission noted that:

On December 22, 2017, President Donald J. Trump signed into law the Tax Cuts and Jobs Act (the Federal Tax Cuts and Jobs Act). Among other provisions that are contained in this tax reform are provisions that will upon implementation reduce the tax rate of most, if not all, investor-owned public utilities providing services in North Carolina. Specifically, the new federal legislation reduces the Federal corporate income tax rate from 35% to 21%, effective for taxable years beginning after December 31, 2017. This reduced tax rate when effectuated will have an immediate and favorable impact on the cost of providing the aforementioned public utility services to consumers in North Carolina.

B. CWSNC was one of nine regulated public utilities within North Carolina specifically requested by the Order to file with the Commission initial comments by February 1, 2018, and to include the following information in those comments:

1. the estimated annual cost-of-service effect, on an item-by-item basis, of the changes to the levels of income tax expenses expected due to the enactment of the Federal Tax Cuts and Jobs Act. Please show the amount of each change and the related levels of tax expense before and after each change. Such information is to be presented on an NCUC jurisdictional basis (e.g., on a NC retail or NC intrastate basis, as appropriate); and
2. a complete detailed narrative explanation of how the Utility proposes to account for and treat excess deferred income taxes that were accrued in earlier years under Federal corporate income tax rates that were in excess of those set forth in the Federal Tax Cuts and Jobs Act.

C. The Commission's Order further directed as follows in Decretal

Paragraph Nos. 1 and 2:

1. That effective January 1, 2018, the Federal corporate income tax component of the rates and charges of all electric and natural gas distribution companies and all water and wastewater companies with annual operating revenues in excess of \$250,000 subject to the jurisdiction of the Commission shall be, and hereby are, ordered to be billed and collected on a provisional rate basis pending final disposition of this matter by the Commission.

2. That effective January 1, 2018, each and every utility subject to the provisions of this Order shall place in a deferred account the difference between revenues billed under rates then in effect, including provisional components thereof, and revenues that would have been billed had the Commission in determining the attendant cost of service based the Federal corporate income tax component thereof on the Internal Revenue Code as now amended by the Federal Tax Cuts and Jobs Act, assuming all other parameters entering into the cost of service equation are held constant.

THE COMPANY'S INITIAL COMMENTS

D. Regarding the information requested in Paragraph No. 1 above, CWSNC offers the following comments:

On December 22, 2017, the Federal Tax Cuts and Jobs Act ("Act") was signed into law by President Trump. As a part of the Act, the Federal corporate

income tax rate applicable to investor-owned private utilities was reduced from 35% to 21%. The Company agrees that the Commission should consider the impact of the Federal corporate income tax change on the existing rates of utilities such as CWSNC. However, CWSNC believes that all aspects of the revenue requirement calculation need to be considered in this matter and that the new Federal corporate income tax rate should not be considered in isolation when determining the impact upon current utility rates.

The Company's current utility rates were set based upon rate base and operating expense levels, along with the Federal corporate income tax rate of 35%, which were in place at the time of the Company's last rate case in 2017. CWSNC believes that the impact upon utility rates cannot be analyzed by only looking at the impact due to the change in just one component of the Company's revenue requirement. If the true impact is going to be analyzed for the change in the Federal corporate income tax rate, then all other components of the Company's revenue requirement calculation need to be taken into consideration because it is likely that those other components have changed since the rates were last set by the Commission. For example, the Act now renders Contributions in Aid of Construction ("CIAC") for water and wastewater utilities taxable revenue, eliminating the exemption CIAC previously enjoyed. This could offset some of the savings from the reduced Federal corporate income tax rate.

Nevertheless, pursuant to the Commission's request in this docket, CWSNC has calculated the annual cost of service changes as a result of the Federal

corporate income tax rate change contained within the attached exhibit (Docket No. M-100, Sub 148, Exhibit 1).

E. Regarding the information requested in Paragraph No. 2 above dealing with the excess accumulated deferred income tax (“ADIT”) issue, CWSNC offers the following comments:

Although exact figures will not be available to the Company for at least 60 days, CWSNC has been collaborating with external tax professionals to assess the impact of the excess ADIT due to the change in the Federal corporate income tax rate. The Company’s proposed accounting treatment of this issue is described within in the attached exhibit (Docket No. M-100, Sub 148, Exhibit 2).

F. The Company recommends that the Commission also consider the impact of the Act upon CIAC. CWSNC offers the following comments:

The Act removes the tax exemption for CIAC. Thus, effective January 1, 2018, water and sewer utilities like CWSNC will have to begin paying income taxes on cash and property CIAC they receive. This change will negatively affect CWSNC’s opportunity to earn a reasonable return on its property used and useful in public service if the Company is not allowed to collect the appropriate tax on the CIAC received. CWSNC will immediately seek to collect from developers (and others) who transfer property and cash to the Company as CIAC based upon the new treatment under the Act; however, there may be some amounts that are not collected as a result of the timing of the tax reform change. CWSNC does not believe collection of this tax resulting from a change in the Federal tax law requires any modification to its tariff; however, if the Commission believes state law

mandates such a change, CWSNC requests clarification and immediate authorization to collect the taxes in the interim.

G. CWSNC further states that the Company will take the necessary actions to comply with Decretal Paragraph Nos. 1 and 2 of the Order.

H. Accordingly, CWSNC respectfully requests that the Commission consider the Company's initial comments in determining the issues and procedures to be determined in this docket.



Anthony Gray

Sworn to and subscribed before me this
the 1 day of February 2018.



Notary Public



My Commission Expires: 01/08/2019

Decrease of FIT Rate to 21%				
<u>Line No.</u>	<u>Item</u>	<u>W-354, Sub 356 Rate Case</u>	<u>Reflect 21% Federal Income Tax Rate</u>	<u>After Change</u>
	CWSNC Uniform -Water			
1	Operating revenues	17,486,892	17,486,892	16,820,518
2	Operating exp. excl. GRT, reg. fee & income taxes	11,870,953	11,870,953	11,870,953
3	Regulatory fee (L1*0.0014)	24,482	24,482	23,548.73
4	Gross receipts tax	-	-	-
5	Franchise tax	71,480	71,480	71,480
6	Interest expense	1,476,148	1,476,148	1,476,148
7	Taxable income (L1 - (Sum (L2 thru L6)))	4,043,829	4,043,829	3,378,388
8	State income tax (L7 * tax rate)	121,315	121,315	101,352
9	Federal income tax ((L7-L8) * tax rate)	1,333,655	823,728	688,178
10	Net income (L7 - L8 - L9)	2,588,859	3,098,786	2,588,858
11	Add back: interest expense (L6)	1,476,148	1,476,148	1,476,148
12	Net income for return (L10 + L11)	4,065,007	4,574,934	4,065,006
13	Cumulative change in net income for return		509,927	
14	Retention factor		0.765227	
15	Revenue impact of cumulative change		(666,374)	
16	Revenues after cumulative change		17,486,892	
17	Revenue adjustment factor		16,820,518	
			0.9619	

Decrease of FIT Rate to 21%				
<u>Line No.</u>	<u>Item</u>	<u>W-354, Sub 356 Rate Case</u>	<u>Reflect 21% Federal Income Tax Rate</u>	<u>After Change</u>
	CWSNC Uniform - Sewer			
18	Operating revenues	12,678,804	12,678,804	12,177,312
19	Operating exp. excl. GRT, reg. fee & income taxes	8,450,978	8,450,978	8,450,978
20	Regulatory fee (L1*0.0014)	17,750	17,750	17,048.24
21	Gross receipts tax	-	-	-
22	Franchise tax	55,912	55,912	55,912
23	Interest expense	1,110,903	1,110,903	1,110,903
24	Taxable income (L1 - (Sum (L2 thru L6)))	3,043,261	3,043,261	2,542,470
25	State income tax (L7 * tax rate)	91,298	91,298	76,274
26	Federal income tax ((L7-L8) * tax rate)	1,003,667	619,912	517,901
27	Net income (L7 - L8 - L9)	1,948,296	2,332,051	1,948,295
28	Add back: interest expense (L6)	1,110,903	1,110,903	1,110,903
29	Net income for return (L10 + L11)	3,059,199	3,442,954	3,059,198
30	Cumulative change in net income for return		383,755	
31	Retention factor		0.765227	
32	Revenue impact of cumulative change		(501,492)	
33	Revenues after cumulative change		12,678,804	
34	Revenue adjustment factor		12,177,312	
			0.9604	

Decrease of FIT Rate to 21%				
<u>Line No.</u>	<u>Bradfield Farms/Fairfield Harbour/Treasure Cove - Water</u>	<u>W-354, Sub 356 Rate Case</u>	<u>Reflect 21% Federal Income Tax Rate</u>	<u>After Change</u>
35	Operating revenues	979,776	979,776	956,252
36	Operating exp. excl. GRT, reg. fee & income taxes	778,500	778,500	778,500
37	Regulatory fee (L1*0.0014)	1,372	1,372	1,338.75
38	Gross receipts tax	-	-	-
39	Franchise tax	5,038	5,038	5,038
40	Interest expense	52,111	52,111	52,111
41	Taxable income (L1 - (Sum (L2 thru L6)))	142,755	142,755	119,264
42	State income tax (L7 * tax rate)	4,283	4,283	3,578
43	Federal income tax ((L7-L8) * tax rate)	47,080	29,079	24,294
44	Net income (L7 - L8 - L9)	91,392	109,393	91,392
45	Add back: interest expense (L6)	52,111	52,111	52,111
46	Net income for return (L10 + L11)	143,503	161,504	143,503
47	Cumulative change in net income for return		18,001	
48	Retention factor		0.765227	
49	Revenue impact of cumulative change		(23,524)	
50	Revenues after cumulative change		979,776	
51	Revenue adjustment factor		956,252	
			0.9760	

Decrease of FIT Rate to 21%				
<u>Line No.</u>	<u>Bradfield Farms/Fairfield Harbour/Treasure Cove - Sewer</u>	<u>W-354, Sub 356 Rate Case</u>	<u>Reflect 21% Federal Income Tax Rate</u>	<u>After Change</u>
52	Operating revenues	1,730,885	1,730,885	1,659,453
53	Operating exp. excl. GRT, reg. fee & income taxes	1,127,134	1,127,134	1,127,134
54	Regulatory fee (L1*0.0014)	2,423	2,423	2,323.23
55	Gross receipts tax	-	-	-
56	Franchise tax	9,600	9,600	9,600
57	Interest expense	158,239	158,239	158,239
58	Taxable income (L1 - (Sum (L2 thru L6)))	433,489	433,489	362,156
59	State income tax (L7 * tax rate)	13,005	13,005	10,865
60	Federal income tax ((L7-L8) * tax rate)	142,964	88,302	73,771
61	Net income (L7 - L8 - L9)	277,520	332,182	277,520
62	Add back: interest expense (L6)	158,239	158,239	158,239
63	Net income for return (L10 + L11)	435,759	490,421	435,759
64	Cumulative change in net income for return		54,662	
65	Retention factor		0.765227	
66	Revenue impact of cumulative change		(71,432)	
67	Revenues after cumulative change		1,730,885	
68	Revenue adjustment factor		1,659,453	
			0.9587	

Federal Tax Cut and Jobs Act Plan- Excess ADIT Computation

On December 22, 2017, President Donald Trump signed into law the Tax Cuts and Jobs Act of 2017 ("Act"). The Act impacts our business in three ways:

- 1) The Act reduces the corporate income tax rate by 14% from 35% to 21% thereby
 - a. reducing income tax, and
 - b. reducing the cost of service to customers due to the amortization of the excess Accumulated Deferred Income Taxes (ADIT).
- 2) Former contributed property or cash (CIAC) that was not taxable is now considered taxable.
- 3) Bonus depreciation is eliminated.

While the first point may potentially reduce rates from where they may otherwise have been calculated when taking in other expense increases, the second and third may increase the cost of service to customers and developers. This memo addresses only the amortization of excess ADIT (1b above) and assumes the customers' rates were determined using the statutory tax rates/normalization process and that there are no other expense changes.

Background

ADIT is the difference between the amount of tax recovered in rates and the amount of tax actually paid by the utility. Because of accelerated depreciation, the amount of tax paid by the utility is generally less than the taxes recovered from ratepayers in the early years of an asset's life. If the income tax rate remains the same in future years, then, over time, the process is reversed and the cumulative tax recovered from ratepayers (reflected in ADIT) and paid by the utility is generally equal over the course of an asset's life. Meanwhile, ratepayers receive a return on this ADIT until the utility pays these amounts to the federal government. In this manner, the ADIT balance is sometimes referred to as an 'interest free loan from the US Treasury.' The accelerated depreciation provisions in the Internal Revenue Code (IRC) are meant to provide incentives to taxpayers who can use the interest free loan for investment, construction, and other economy-stimulating activities.

To prevent state regulators from excluding deferred income tax expense as a cost in the ratemaking process, the IRC contains 'normalization provisions' for 'public utility property' that prevent state regulators from 'flowing through' the benefits of accelerated depreciation to ratepayers, which would be contrary to the rationale for allowing accelerated depreciation provisions. The normalization rules require that the resulting ADIT be used to reduce rate base or be treated as zero cost capital in the rate of return calculation, providing ratepayers the time value benefit of the interest free loan from the U.S. Treasury.

However, when the tax rate is lowered, a portion of the ADIT will never be paid to the federal government and excess deferred taxes are created. Excess deferred taxes mean that the utility charged consumers at a higher tax rate in the early years than the tax rate that will actually be paid by the utility in the future. Because the excess ADIT will never be paid to the federal government, it should be held in a regulatory liability account until it is determined whether a refund

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Exhibit 2
ADIT Impact of the Federal Tax Cut and Jobs Act

to the ratepayers is appropriate as discussed below. The normalization provisions contained in the IRC apply to accelerated depreciation, certain excess ADIT due to reductions in income tax rate, and to the investment tax credit.

Determining excess ADIT

Excess ADIT is defined as the excess of (i) the reserve for deferred taxes (as described in Section 168(i)(9)(A)(ii) of the IRC as in effect on the day before the date of the enactment of this Act – i.e. December 31, 2017), over (ii) the amount that would be the balance in such reserve if the amount of such reserve were determined by assuming that the corporate rate reductions provided in this Act were in effect for all prior periods.

The normalization provision requires excess deferred income taxes be amortized no faster than would occur as the book/tax difference reverses. Any amortization that is faster than this method would be a normalization violation. This method is referred to as the Average Rate Assumption Method (ARAM). An exception to ARAM is permitted if a utility does not depreciate on a group basis or if it does not have vintage records to support the reversal of book/tax differences. This exception is known as the Reverse South Georgia Method (RSGM) as outlined in Revenue Procedure 88-12. Regulated entities will need to first conclude whether they have sufficient records to use ARAM. Alternatively, if the requisite vintage detail is not available, then regulated entities may use the RSGM.

Example of ARAM and RSGM

Year	Book Depreciation	Tax Depreciation	Book/Tax Difference	ARAM			RSGM			
				Tax Rate	Deferred Tax Expense	ADIT	Tax Rate	Deferred Tax Expense	Amort [2]	EDIT ADIT
2017	100,000	600,000	500,000	35.00%	175,000	(175,000)	35.00%	175,000		(175,000)
2018	100,000	160,000	60,000	21.00%	12,600	(187,600)	21.00%	12,600	(7,778)	(179,822)
2019	100,000	96,000	(4,000)	33.50%	(1,340)	(186,260)	21.00%	(840)	(7,778)	(171,204)
2020	100,000	57,600	(42,400)	33.50%	(14,204)	(172,056)	21.00%	(8,904)	(7,778)	(154,522)
2021	100,000	57,600	(42,400)	33.50%	(14,204)	(157,852)	21.00%	(8,904)	(7,778)	(137,840)
2022	100,000	28,800	(71,200)	33.50%	(23,852)	(134,000)	21.00%	(14,952)	(7,778)	(115,110)
2023	100,000		(100,000)	33.50%	(33,500)	(100,500)	21.00%	(21,000)	(7,778)	(86,332)
2024	100,000		(100,000)	33.50%	(33,500)	(67,000)	21.00%	(21,000)	(7,778)	(57,554)
2025	100,000		(100,000)	33.50%	(33,500)	(33,500)	21.00%	(21,000)	(7,777)	(28,777)
2026	<u>100,000</u>		<u>(100,000)</u>	33.50%	<u>(33,500)</u>	0	21.00%	<u>(21,000)</u>	<u>(7,777)</u>	0
	1,000,000	1,000,000	0		0			70,000	(70,000)	

- Under ARAM, at the time of reversal, aggregate book/tax difference is \$560,000 and ADIT is \$187,600. The Average Rate at which the differences were accumulated is \$187,600/\$560,000 or 33.50%. This is the rate at which the ADIT are to reverse under ARAM. The difference between the ARAM deferred tax expense and the tax expense that would have resulted if the book/tax difference for the year was multiplied by the enacted tax rate for the year is a permanent difference in the effective income tax reconciliation.
- Under RSGM at the time of the rate change (2018), excess ADIT of \$70,000 exists - see calculation below. The estimated remaining book life of this asset is 9 years. Each year, an additional \$7,778 would be reversed, beginning in the year of the rate change. Under RSGM there are two components to the deferred tax calculation-the reversing book/tax difference times the enacted tax rate for the period plus the straight line reversal of the excess ADIT existing at the time of the rate change. The reversal of the excess ADIT is a permanent difference in the effective income tax rate reconciliation.

Calculate excess - GT D	500,000
Rate differential	<u>14.00%</u>
	70,000
Remaining book life	<u>9</u>
RSGM amort per year	7,778

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Note that the 5-year tax and 10-year book lives are used for illustration purposes only. In general, public utility property may be depreciated over various periods ranging from 5 to 25 years under Modified Accelerated Cost Recovery System (MACRS). For regulatory purposes, public utility property may, in certain cases, have a useful life of 30 years or more.

In the example, under both ARAM and RSGM, the excess deferred income tax is \$70,000. Thus, the entry to record the excess at the revenue requirement (gross-up level) would be:

DR. ADIT (70,000 x (1/(1-21%)))	\$88,607.59	
CR. Regulatory Liability		\$88,607.59

The gross-up factor is used to “gross-up” revenue in a rate case or filing that permits a return on equity to allow the utility to recover income taxes. At a 21% federal income tax rate, to earn \$100 of equity return, \$127 of revenue is required. The \$127 will be taxed at the 21% tax rate ($\$127 \times 21\% = \27), and the \$27 income tax expense will offset \$127 of revenue, thus producing the desired \$100 of return.

As can be seen from the example, ARAM does not begin until the timing difference reverses (i.e., when book depreciation is higher than tax depreciation). Thus, while an excess ADIT can be calculated at the time of the enactment of the rate change (in the above example, at the beginning of 2018), that excess would not begin to reverse until 2021 when book depreciation exceeds tax depreciation. Alternatively, under the RSGM, the excess would begin to reverse in 2018.

Excess ADIT – Protected versus unprotected

Either ARAM or the RSGM (if requisite vintage detail is not available) must be used to pass back the excess ADIT related to method/life depreciation differences protected by the normalization provisions of the IRC.

Book/tax differences other than method/life depreciation differences are not ‘protected’ by the normalization rules, and thus there may be diversity in how these unprotected book/tax differences are shared with customers.

CIAC property (which for ratemaking purposes the taxpayer-utility excludes from its rate-base; i.e., follows the “non-inclusion method”) is subject to the normalization rules. However, the normalization rules do not apply if all the following conditions are satisfied:

- (1) The CIAC is required to be included in gross income under Code Sec. 118(b).
- (2) The utility uses the non-inclusion method (see above) of accounting for the CIAC.
- (3) The federal income tax attributable to the receipt of the CIAC is not taken into account in determining cost of service for any person (other than, perhaps, the person from whom the CIAC is received, i.e., the “contributor”).
- (4) The contributor pays the utility an additional amount that is reasonably intended to indemnify or reimburse the utility for the prepayment of tax resulting from receipt of the CIAC (an “indemnification”).

In the case of a CIAC that satisfies these conditions (i.e., a “grossed-up” CIAC), neither the utility nor its ratepayers (other than the contributor) are affected by the prepayment of taxes that results from receipt of the CIAC. Thus, it is not necessary to normalize a grossed-up CIAC in order to carry out the purposes of the normalization rules.

When tax rates change, regulators may require any ‘excess’ ADIT on unprotected book/tax differences to be used to reduce revenue requirements in any manner that can be justified. For instance, excess ADIT on unprotected items may be reversed as the book/tax difference itself reverses (similar to an ARAM approach), or such excess may be quantified and used to reduce rates over an arbitrary period.

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For the initial moment, the protected and unprotected excess ADIT computed will remain parked in a regulatory liability account and will not be amortized until further instructed by each state PUC at the next rate case submission.

Summary

In closing, the Company is currently working with external tax and accounting professionals to determine the overall impact on Utilities, Inc.'s audited financials. This includes calculation of our excess ADIT, ARAM, RSGM and implications of ASC 980-740-25 regarding *Income Taxes Applicable to Regulated Entities*. The full impact of the 2017 Tax Reform Act will not be known or available until the end of the first quarter of 2018 or possibly the beginning of the second quarter. Additionally, this memo is not authoritative as it pertains to potential reduction to customers' rates. Any potential reduction to customers' rates is State or Commission specific, wherein other factors need to be considered, including, but not limited to, actual earned returns vs. authorized returns, operating margin vs. rate base rate of return rate setting, and whether deferred tax liabilities were included when setting customers' rates.

CERTIFICATE OF SERVICE

I hereby certify that I have served a copy of the foregoing **Initial Comments Regarding the Federal Tax Cuts and Jobs Act**, filed by Carolina Water Service, Inc. of North Carolina in Docket No. M-100, Sub 148, on the parties to the proceeding in accordance with North Carolina Utilities Commission Rule R1-39, either by United States mail, first class postage pre-paid; by hand delivery; or by means of electronic delivery upon agreement of the receiving party.

This the 1st day of February, 2018.

Electronically Submitted
/s/Jo Anne Sanford
North Carolina State Bar No. 6831

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