

BEFORE THE
ILLINOIS POLLUTION CONTROL BOARD

IN THE MATTER OF:)
)
NOx TRADING PROGRAM SUNSET)
PROVISIONS FOR NON-ELECTRIC) DOCKET R11-8
GENERATING UNITS: AMENDMENTS TO)
35 ILL. ADM. CODE PART 217,)
SUBPART U)

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Hearing held, pursuant to notice on Thursday
Pollution Control Board

December 9, 2010 at the hour of 11:00 a.m. at 1021
North Grand Avenue, Springfield, Illinois, before
CAROL WEBB, duly appointed Hearing Officer.

L.A. REPORTING SERVICE
(312) 419-9292

REPORTER: LAUREL A. PATKES, CSR #084-001340

1 BOARD MEMBERS:

2 GARY BLANKENSHIP
3 THOMAS E. JOHNSON

4 APPEARANCES:

5 RACHEL DOCTORS
6 Assistant Counsel

7 appearing on behalf of IEPA;

8 ALEC DAVIS
9 215 E. Adams Street.
Springfield, Illinois 62701

10 appearing on behalf of Illinois
Environment Regulatory Group

11 EPA STAFF:

12 ROBERT KALEEL
13 DAVID BLOOMBERG
JACQUELINE SIMMS

14 ALSO PRESENT:

15 ELIZABETH STEINHOOR
16 Weaver Boos Consultants

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1 HEARING OFFICER WEBB: Good
2 morning. My name is Carol Webb, and I'm filling in
3 today for Daniel Robertson in this hearing entitled
4 R11-8, In the Matter of Regulatory Proposal for NOx
5 Trading Program Sunset Provisions for Non-Electric
6 Generation Units: Amendments to 35 Illinois
7 Administrative Code Part 217, Subpart U.

8 With me today is the presiding
9 Board Member, Gary Blankenship, and Board Member Tom
10 Johnson.

11 Member Blankenship, would you
12 like to make any opening remarks?

13 MEMBER BLANKENSHIP: Just to say
14 thank you for attending. Try to get this done by 2,
15 okay?

16 HEARING OFFICER WEBB: Member
17 Johnson, would you like to make any opening remarks?

18 MEMBER JOHNSON: No.

19 HEARING OFFICER WEBB: Okay. The
20 Agency's proposal seeks to amend the Board's air
21 rules pursuant to general rulemaking provisions.
22 Environmental Protection Act and the Board's
23 procedural rules. The proposed amendments would
24 sunset the trading provisions of the nitrogen oxide

1 SIP Call Trading Program. The sole provisions to be
2 amended involve the holding and trading provisions
3 in Part 217, Subpart U.

4 At today's hearing, we will
5 hear prefiled testimony from the agency. The
6 testimony was filed on November 29th and is posted
7 on the Board's website. To date, no other testimony
8 has been filed.

9 I will note for the record
10 that we have two members of the public present, and
11 at this point, I would like to ask the Agency to
12 please make its appearances on the record.

13 MS. DOCTORS: My name is Rachel
14 Doctors, and I am representing Illinois EPA.

15 HEARING OFFICER WEBB: Thank you.

16 Would you like to make any
17 opening statement?

18 MS. DOCTORS: I just have something
19 very brief.

20 HEARING OFFICER WEBB: Okay.

21 MS. DOCTORS: It's my understanding
22 from the Board's order that they're going to admit
23 Yoginder Mahajan's testimony as if read.

24 HEARING OFFICER WEBB: Yes.

1 MS. DOCTORS: And second, I'd like
2 to indicate that we have a clarification to our
3 proposal. We noticed that there was a typographical
4 error in Section 217.451. In the fourth line, there
5 is the phrase "for the section listed above," and
6 that was confusing. It should be "for the sections
7 listed herein."

8 So we're striking the word
9 "above" out and putting "herein," and sections had
10 an "s" missing.

11 HEARING OFFICER WEBB: Okay.

12 MEMBER JOHNSON: That's the fourth
13 line down?

14 MS. DOCTORS: Yes.

15 And then also, we noticed that
16 in the following line, Subpart is missing the "t."

17 MEMBER JOHNSON: I hope it's not
18 subpar.

19 MS. DOCTORS: Yeah, subpart. It's
20 not subpar.

21 So those two things were
22 brought to the Agency's attention.

23 My witnesses are available for
24 any questions.

1 HEARING OFFICER WEBB: Thank you.

2 MS. DOCTORS: Thank you.

3 HEARING OFFICER WEBB: As we've
4 just discussed, we're going to admit the prefiled
5 testimony as if read if there's no objection to
6 that.

7 Now, are you going to have any
8 questions for the witness or should we go ahead and
9 call the witness?

10 It's my understanding that
11 Mr. Davis has some questions.

12 MS. DOCTORS: I believe he does,
13 but they're not for this particular witness. I
14 believe they're for the Agency in general.

15 HEARING OFFICER WEBB: Okay.

16 Do either of the board members
17 have any questions for the witness?

18 MEMBER BLANKENSHIP: No.

19 MEMBER JOHNSON: Okay. Well, then
20 if no one has any questions for the witness, I guess
21 there is no need to call him to the stand.

22 So do you have anything else
23 you'd like to present today?

24 MS. DOCTORS: No. Just thank you

1 for your attention to this matter and speedy...

2 HEARING OFFICER WEBB: Okay. All
3 right.

4 Then we will go ahead and take
5 questions.

6 I'll start with board members.
7 Do you have any questions you'd like to ask the
8 Agency.

9 MEMBER JOHNSON: We don't, and I
10 want to point out that our technical unit went over
11 this in detail and they felt everything was in
12 order.

13 HEARING OFFICER WEBB: Okay. So we
14 will now take public questions.

15 Mr. Davis, you indicated that
16 you had some questions.

17 MR. DAVIS: Yes, I do. Thank you.

18 HEARING OFFICER WEBB: And if you
19 could identify yourself.

20 MR. DAVIS: Good morning. My name
21 is Alec Davis, and I am here today representing the
22 Illinois Environmental Regulatory Group or IERG.

23 On behalf of IERG, I'd like to
24 thank the Board and the Agency for providing this

1 opportunity for us to be here today and ask some
2 questions and get some clarifications on some issues
3 that I think are helpful in understanding the impact
4 of this rulemaking on the universe of sources that
5 are subject to the current Subpart U.

6 I guess I'll start out here by
7 drawing attention to the statement of reasons that
8 the agency filed in the rulemaking accompanying its
9 proposal.

10 On pages 1 and 2 of the
11 statement of reasons under the subheading 1(a), the
12 Agency states that the emissions reductions of the
13 NOx trading program implemented by Subpart U held
14 that the two ozone non-attainment areas attain the
15 1997 eight-hour standard.

16 My question for the agency is
17 if the sunset proposal is adopted and goes into
18 effect, has the Agency determined what, if any,
19 impact it may have on emissions?

20 MS. DOCTORS: Rob, will you please
21 identify yourself for the record?

22 HEARING OFFICER WEBB: In fact, I
23 have a question because I don't do rulemaking
24 hearings very often.

1 Is it normal protocol to
2 answer questions under oath or no?

3 MS. DOCTORS: Yes.

4 HEARING OFFICER WEBB: Okay.

5 MS. DOCTORS: So Rob needs to be
6 sworn in.

7 HEARING OFFICER WEBB: All right.

8 MS. DOCTORS: First, can he
9 identify himself on the record?

10 HEARING OFFICER WEBB: Yes.

11 MR. KALEEL: My name is Robert
12 Kaleel. I'm with the Illinois Environmental
13 Protection Agency. I'm the manager of the Air
14 Quality Planning Section.

15 HEARING OFFICER WEBB: Okay. Would
16 the court reporter please swear in the witness?

17 (Whereupon the witness was sworn
18 by the reporter.)

19 HEARING OFFICER WEBB: You may
20 answer Mr. Davis's question.

21 MR. KALEEL: Okay. The intent of
22 our proposal is to sunset portions of the previous
23 requirements under the NOx SIP Call and, in
24 particular, the portions that relate to the holding

1 and maintaining of accounts, allowance accounts for
2 the subject emission units.

3 The NOx SIP Call also
4 established a budget that applied to the State of
5 Illinois; our budget being the number of tons of
6 nitrogen oxides that could be emitted during the
7 ozone season by affected units.

8 There were separate budgets
9 for what are called non-EGUs, EGUs being the EGUs
10 electric generating unit sector, and then the
11 non-EGUs are other large boilers in the state that
12 do not provide or prepare electricity for sale on
13 the grid.

14 The budget of NOx tons in the
15 summer season still applies to the State of
16 Illinois. We don't anticipate any changes in the
17 amount of emissions by the subject units.

18 Again, we're just trying to
19 remove the trading aspects or requirements on the
20 units that were previously subject to the NOx SIP
21 Call.

22 MR. DAVIS: Thank you.

23 Turning to pages 2 and 3 of
24 the statement of reasons, under subheading 1(b), the

1 Agency describes the history of the Clean Air
2 Interstate, or CAIR, Rule and the court ordered
3 remand of that rule.

4 Is the agency familiar with
5 the proposed replacement of that remanded CAIR rule
6 commonly known as the transport rule that was
7 published in the August 2, 2010 federal register?

8 MS. DOCTORS: I'm going to object.
9 The CAIR rulemaking is not relevant to this
10 particular rulemaking. It was just put in as a
11 piece of background, so I would object to too many
12 questions that have anything that talks
13 substantively about the CAIR rule at this point
14 because this is the NOx SIP Call rulemaking.

15 MR. DAVIS: I guess in support of
16 my question, I would just say that my concern is
17 with the entire suite of NOx regulations that, you
18 know, units are subject to, be it EGUs or non-EGUs,
19 and the existence of some rules may have impact on
20 the existence of others, and I'm trying to determine
21 for future planning what's being done in the case of
22 other types of units. It might provide some
23 perspective, and my question in the familiarity is
24 just so that I can get to some more developed

1 questions as to what may or may not be happening
2 down the road for the non-EGUs that are the type of
3 units that are subject to the provisions that are
4 being amended today in this proposal.

5 HEARING OFFICER WEBB: I will
6 sustain the objection for now. We have a second
7 hearing in February. If the Board disagrees with my
8 sustaining of the objection, the Board will reask
9 your question for you.

10 MR. DAVIS: Okay. I guess then
11 along that line, I will probably intend in
12 post-hearing comments to submit a series of
13 questions along this line of questioning so that the
14 Board can consider whether or not to allow those to
15 be responded to by the Agency.

16 HEARING OFFICER WEBB: Okay.

17 MR. DAVIS: Okay. Thank you.

18 Moving on then, the letter
19 from the USEPA dated September 24, 2009 included in
20 the Agency's regulatory submittal states that
21 Illinois will need to demonstrate that sufficient
22 restrictions on non-EGU emissions are in place to
23 assure the continued satisfaction of the emission
24 budget requirements under the NOx SIP Call.

1 MEMBER JOHNSON: Ask that again,
2 would you?

3 MR. DAVIS: Sure. The letter that
4 the agency included with its proposal was a letter
5 from the USEPA and in part included the statement
6 that Illinois will need to demonstrate that
7 sufficient restrictions on non-EGU emissions are in
8 place to assure the continued satisfaction of the
9 emission budget requirements under the NOx SIP Call,
10 and further, in the testimony prefiled today for
11 hearing, the Agency states that significant
12 restrictions are in place for non-EGUs as a result
13 of a combination of consent decrees, permit
14 restrictions, and NOx reasonably available control
15 technology regulations adopted by the Board.

16 My question is, is the
17 statement included in the prefiled testimony
18 intended to mean that the significant restrictions
19 are sufficient to satisfy the demonstration
20 requirement described by the USEPA in its letter?

21 MS. DOCTORS: Excuse me. I need
22 clarification. Which statement in the testimony?

23 MR. DAVIS: The statement that I
24 just read regarding the significant restrictions

1 that are in place, and then proceeded to describe
2 combination of consent decrees, permit restrictions,
3 and NOx reasonably available control technology
4 regulations.

5 MS. DOCTORS: Okay. Mr. Kaleel
6 will answer that question.

7 MR. KALEEL: I can answer it in
8 general.

9 We've not prepared a
10 unit-by-unit analysis of any permit or consent
11 decree limitations such that we can demonstrate or
12 compare it to the budget and show that all these
13 restrictions are going to be adequate for all time
14 to keep us below the budget.

15 We are aware of several
16 emission limitations that are currently either
17 enforceable by the state or USEPA or both, and those
18 are significant, and you listed some of those in
19 your question, the NOx RACT rule that applies to the
20 two non-attainment areas, certain consent decrees
21 and other permit-related restrictions, so we are
22 aware of those, and they do apply to some of our
23 larger boilers, but we have not prepared a
24 unit-by-unit demonstration to USEPA as may be

1 envisioned in this letter from USEPA.

2 MR. DAVIS: Along those lines --
3 thank you by the way.

4 Along those lines, are you
5 aware whether any discussion subsequent to this
6 letter, which is dated September 24, 2009, have been
7 had with USEPA regarding what it would accept as a
8 demonstration?

9 MS. DOCTORS: I'm going to object.
10 We're here to sunset certain provisions that are no
11 longer applicable regardless of what's going on with
12 the budget. Even if we keep this rule on the books,
13 USEPA, as indicated by this rulemaking and by this
14 letter, is no longer implementing it or giving out
15 allowances, so the questions concerning the budget
16 are irrelevant.

17 If we need to do additional
18 things, if the agency has an obligation to do
19 additional things concerning the budget, we have to
20 do it a separate format. This rulemaking does not
21 address those types of concerns. All it does is get
22 rid of a set of obsolete requirements.

23 So I'd like questions to be
24 confined to what the actual subject of this

1 rulemaking is which is what does it mean, what does
2 it mean to sunset particular requirements, and can
3 people comply, rather than policy issues.

4 MR. DAVIS: If I might support my
5 question.

6 My contention would be that
7 the program that we're discussing today enacted for
8 the very purpose of ensuring that NOx emissions fell
9 within this budget constraint, and so in sunsetting
10 this program, we're moving this existing constraint
11 on e missions, and so from the perspective of the
12 units that emit these NOx, they are concerned that
13 they face uncertainty regarding what it is that's
14 going to be put in place or whether or not the USEPA
15 is going to accept the lack of anything being in
16 place or whether or not what the agency has said is
17 going to be in place is going to be adequate for
18 them to ensure that their NOx emissions remained
19 within the state budget.

20 (Discussion held off the record
21 between Board Member Johnson and
22 the hearing officer.)

23 HEARING OFFICER WEBB: I'll allow
24 it.

1 MR. KALEEL: Okay. If you wouldn't
2 mind repeating your question.

3 MR. DAVIS: My question was just
4 whether or not you were aware of any discussions
5 with USEPA subsequent to this letter regarding the
6 demonstration requirements.

7 MR. KALEEL: I can only speak for
8 discussions that I've had. I'm not aware of
9 discussions that anyone else within the Agency has
10 had, but I am aware of some discussions with staff
11 people, not management people but staff people at
12 USEPA.

13 MR. DAVIS: And have those
14 discussions delivered any assurance from USEPA that
15 the significant restrictions described by yourself
16 in response to my first question would be an
17 acceptable demonstration?

18 MR. KALEEL: The discussions that
19 I've had with USEPA have kind of focused on a couple
20 of different things. One is a recognition that
21 basically all this proposal is doing is catching us
22 up to something that USEPA has already done. USEPA
23 has already acted in approving our Clean Air
24 Interstate Rules to remove non-EGUs from the budget

1 program.

2 The obligation to meet the
3 budget then falls on the State of Illinois, not on
4 the specific units to meet certain emission targets.

5 The other part of the
6 discussions that I've had with EPA is to point out
7 to them, I pointed out to them numerous times,
8 including most recently, that the affected units in
9 Illinois collectively are emitting NOx at rates that
10 are well below, maybe half of what the NOx SIP Call
11 budget was.

12 So given the emissions from
13 this group as a whole, not necessarily each
14 individual one but from the group as a whole, plus
15 the actions that USEPA initiated several years ago,
16 I think there's a general comfort level at Region 5
17 that this isn't an immediate concern for them.

18 That doesn't mean that at some
19 point we won't have to provide the kind of
20 demonstration that's discussed in this letter, but
21 right now they're not pushing us to do that.

22 MR. DAVIS: Okay. All right.

23 Well, thank you, Rob.

24 My last few questions are

1 specific to the proposed language or, more
2 specifically, to the existing language that will be
3 remaining after the operation of the sunset that's
4 being proposed.

5 The proposed Section 217.451,
6 that's actually within the proposal itself, I
7 apologize, and I will read it for the record, states
8 that, and I will read it as amended, "Except for
9 Sections 217.452, severability, 217.454,
10 applicability, and 217.456, Subsections (a), (c),
11 (e)(1)(b) through (d), and (e)(2), monitoring and
12 recordkeeping and reporting, the provisions of this
13 Subpart U shall not apply for any control period in
14 2009 or thereafter. Compliance for 2009 and after
15 is required for the sections listed herein.
16 Noncompliance with the provisions of this subpart
17 that occurred prior to 2009 is subject to the
18 applicable provisions of this subpart."

19 My questions regarding this
20 provision, is it correct to say that the only
21 remaining obligations on units that fall within the
22 applicability provisions of the Subpart U are the
23 various monitoring, recordkeeping, and reporting
24 provisions that are exempted from the proposed

1 sunset?

2 MR. KALEEL: I think that's
3 consistent with our intent. I guess I'm looking
4 back at the other sections listed herein. Clearly,
5 those would continue to apply, but again, I believe
6 our intent is to continue the requirements for
7 monitoring, recordkeeping, and reporting such that
8 we can continue to track overall state compliance
9 with the budget.

10 MR. DAVIS: So after operation of
11 the proposed sunset, would Subpart U subject any
12 remaining sources to emissions limitations?

13 MR. KALEEL: No.

14 MS. STEINOUR: Would it subject
15 any new sources to emission limitations?

16 HEARING OFFICER WEBB: Ma'am, if
17 you're going to speak, can I at least get your name
18 on the record, please?

19 MS. STEINOUR: I'm sorry. Beth
20 Steinhour.

21 HEARING OFFICER WEBB: And you're
22 with --

23 MS. STEINOUR: Weaver Boos
24 Consultants.

1 MR. KALEEL: This particular
2 subpart would not impose any new emission
3 requirements.

4 If there was a new source that
5 this section would be applicable to, then the other
6 parts that still remain would apply but not the
7 emission limitations.

8 We are just talking Subpart U.

9 MS. STEINHOOR: Right.

10 MR. KALEEL: Because, I mean,
11 clearly, there's a range of other emission
12 requirements that apply to emission sources in the
13 state.

14 MR. DAVIS: Okay. Thank you. And
15 thank you (referring to Ms. Steinhour).

16 Looking at Section 217.454(c)
17 which is a subsection within the applicability
18 section that is explicitly retained by the proposed
19 sunset language...

20 If you've got it handy, you
21 can let me know. If not, I can read it.

22 MR. KALEEL: What was the citation
23 again?

24 MS. DOCTORS: Monitoring

1 requirements.

2 MR. DAVIS: 217.454(c).

3 MS. DOCTORS: We're talking
4 about -- I'm sorry.

5 MR. DAVIS: Within applicability.

6 MS. DOCTORS: So that's the low
7 emitter provisions?

8 MR. DAVIS: Right.

9 MS. DOCTORS: By clarification,
10 he's referring to the low emitter provisions.

11 MR. DAVIS: My question is after
12 the operation of the proposed sunset, does the
13 Agency intend for any obligations to remain
14 applicable to those units that have elected to be
15 low emitters, and, if so, what?

16 MS. DOCTORS: We'd like to address
17 that particular question given that it's technical
18 in comment.

19 MR. DAVIS: That would be fine.

20 Thank you.

21 HEARING OFFICER WEBB: Okay.

22 MR. DAVIS: Similarly, could the
23 Agency please explain the purpose for the retention
24 of Section 217.454(d)?

1 MS. DOCTORS: Once again, the
2 Agency will address that particular question in
3 comment.

4 HEARING OFFICER WEBB: Okay.

5 MR. DAVIS: Turning our attention
6 to the compliance requirements contained in
7 Section 217.456, specifically, Subsection A states,
8 the requirements of the subpart and 40 CFR 96,
9 excluding 40 CFR 96.4(b), 96.55(c), and Subparts C,
10 E, and I as incorporated by reference in
11 Section 217.104 of this part, to the extent that
12 this subpart contains provisions which are
13 inconsistent with any provisions of 40 CFR 96, the
14 owner or operator of budget units subject to this
15 subpart shall comply with the provisions of this
16 subpart in lieu of those provisions which were
17 incorporated by reference.

18 My question regarding this
19 particular subsection is whether the Agency intends
20 for any other provisions of 40 CFR 96, other than
21 those contained in Subpart H which are explicitly
22 referenced in the monitoring, recordkeeping and
23 reporting provisions of Subpart U that are being
24 retained after operation of the sunset, whether the

1 Agency intends for any other provisions of 40 CFR 96
2 to remain applicable.

3 MS. DOCTORS: The Agency once again
4 will take a look at this. I believe that your
5 concern is this may be overly broad.

6 MR. DAVIS: Exactly.

7 MS. DOCTORS: And we'll take a look
8 to see if there's a conflict.

9 HEARING OFFICER WEBB: Okay.

10 MR. DAVIS: My final question has
11 to do with Section 217.456(e)(2), and that has to do
12 with reporting, and my question is, the Agency's
13 proposal removes the compliance certification
14 required by this subsection, and I would be
15 interested to know whether the Agency would also be
16 willing to consider removing the corresponding
17 reference to 40 CFR 96, Subpart D.

18 MS. DOCTORS: We will take a look
19 at whether our language needs to be amended in this
20 case.

21 HEARING OFFICER WEBB: Thank you.

22 MR. DAVIS: That's all that I have,
23 and thank you for your answering of my questions.

24 HEARING OFFICER WEBB: Okay.

1 Ms. Steinhour, did you have any further questions?

2 MS. STEINHOOR: I have one
3 question.

4 In the interim while this
5 rulemaking is pending, how are you going to be
6 handling sources, new sources that could potentially
7 be subject to this rule from the permitting
8 standpoint?

9 MEMBER JOHNSON: Other than the 54
10 that are identified in here?

11 MS. STEINHOOR: Right, yes, if
12 there's a new or modified...

13 MS. DOCTORS: Okay. David
14 Bloomberg would like to identify himself.

15 MR. BLOOMBERG: David Bloomberg
16 (B-l-o-o-m-b-e-r-g).

17 I'm the manager...

18 HEARING OFFICER WEBB: I'm sorry.
19 I was just going to ask the court reporter to swear
20 you in.

21 MR. BLOOMBERG: Okay. I'm the
22 manager of the compliance unit within the Bureau of
23 Air.

24

1 (Whereupon the witness was sworn
2 by the reporter.)

3 MR. BLOOMBERG: Let me make sure I
4 understand your question.

5 You're asking if a new source
6 comes in now that would meet the applicability as a
7 non-EGU?

8 MS. STEINHOOR: Right.

9 MR. BLOOMBERG: What would we --

10 MS. STEINHOOR: How are you going
11 to handle that?

12 MR. BLOOMBERG: How are we going to
13 handle that.

14 We haven't seen such new
15 sources, even while the program was active.

16 MS. STEINHOOR: Okay.

17 MR. BLOOMBERG: Currently, there is
18 no federal equivalent to this anymore. Therefore,
19 we would not do anything in terms of this regulation
20 in particular.

21 HEARING OFFICER WEBB: Is that it?

22 MS. STEINHOOR: That's it.

23 HEARING OFFICER WEBB: Okay. Does
24 anybody else in this room have anything more they

1 would like to add at this hearing today?

2 Okay. Well seeing none, I'll
3 just mention that a second hearing will be held on
4 February 3rd at 1 p.m. in Chicago. All prefiled
5 testimony will be due by January 20th and the Board
6 will address any questions that it may have based on
7 today's testimony at the second hearing.

8 I'd like to thank everyone for
9 attending today, and we are now adjourned.

10 (Ending time: 11:29 a.m.)

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CERTIFICATE

I, Laurel A. Patkes, Certified Shorthand Reporter in and for said County and State, do hereby certify that I reported in shorthand the foregoing proceedings and that the foregoing is a true and correct transcript of my shorthand notes so taken as aforesaid.

I further certify that I am in no way associated with or related to any of the parties or attorneys involved herein, nor am I financially interested in this action.

Dated December 13, 2010.

Laurel Patkes
Certified Shorthand Reporter

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