

**BEFORE THE STATE CORPORATION COMMISSION
OF THE STATE OF KANSAS**

In the Matter of the Petition of Evergy Kansas)
Central, Inc., Evergy Kansas South, Inc., and)
Evergy Metro, Inc. for Determination of the)
Ratemaking Principles and Treatment that Will) Docket No. 25-EKCE-207-PRE
Apply to the Recovery in Rates of the Cost to be)
Incurred for Certain Electric Generation Facilities)
under K.S.A. 66-1239.)

PETITION FOR RECONSIDERATION

COMES NOW Kansas Industrial Consumers Group, Inc. (“KIC”)¹ and the Kansas Agriculture Associations (“KAA”) (collectively “KIC”) and respectfully file their *Petition for Reconsideration* pursuant to K.S.A. 66-118b, K.S.A. 77-529, and K.A.R. 82-1-235, and any and all applicable Kansas statutes and regulations, and request the State Corporation Commission of the State of Kansas (“Commission” or “KCC”) reconsider and amend its Order to bring said Order into compliance with applicable Kansas law and clarify certain aspects of its Order Approving Unanimous Partial Settlement Agreement Regarding Solar Facility and Non-Unanimous Partial Settlement Agreement Regarding Natural Gas Facilities dated July 7, 2025 (the “Order”) as set forth hereafter.²

¹ KIC includes Kansas Industrial Consumers Group, Inc., Associated Purchasing Services, Cargill Incorporated, The Goodyear Tire and Rubber Company, Lawrence Paper Company, Occidental Chemical Corporation, Spirit AeroSystems, Inc. Also joining in this Petition is the Kansas Agriculture Group, including the Kansas Grain and Feed Association, the Kansas Agribusiness Retailers Association, and Renew Kansas Biofuels Association.

² See generally Order Approving Unanimous Partial Settlement Agreement Regarding Solar Facility and Non-Unanimous Partial Settlement Agreement Regarding Natural Gas Facilities, KCC Docket No. 25-EKCE-207-PRE (July 7, 2025) [hereinafter Order].

I. PROCEDURAL HISTORY

1. On November 6, 2024, Evergy³ filed its Petition for the Predetermination of Ratemaking Principles and Treatment pursuant to K.S.A. 66-1239 (the “Petition”).⁴ In its Petition, Evergy Kansas Central (“Evergy” or “EKC”) requested predetermination for projects it has denominated as (a) the “Viola Plant” – a 710 MW natural gas generation plant; (b) the “McNew Plant” – a 710 MW natural gas generation plant (often jointly referred to in this document as the “CCGTs” or the “natural gas projects”); and (c) the “Kansas Sky Solar Project” – a 200 MW_{DC} (159 MW_{AC}) solar generation facility.⁵

2. Evergy stated in its Petition and later in the Supplemental Testimony of witness Darrin Ives, that Evergy Kansas Central will acquire a 50 percent stake in the Viola Plant, as well as a 50 percent stake in the McNew Plant, with the remaining 50 percent interest in each plant to be acquired by Evergy Missouri West, Inc.⁶

4. On April 9 through April 11, 2025, the parties met for a Settlement Conference and discussions. Ultimately, the parties settled on the Kansas Sky solar project.⁷ However, a majority of the parties were unable to reach a settlement on the natural gas plants.⁸

³ Evergy is defined by KIC herein to include Evergy Kansas Central, Inc. (EKC) and Evergy Kansas South (EKS).

⁴ See Petition of Evergy Kansas Central, Inc., Evergy Kansas South, Inc., and Evergy Metro, Inc. for Determination of Ratemaking Principles and Treatment, ¶ 6, KCC Docket No. 25-EKCE-207-PRE (Nov. 6, 2024) [hereinafter Evergy Petition].

⁵ *Id.* at ¶ 6.

⁶ See *id.* See also Supplemental Direct Testimony of Darrin R. Ives, KCC Docket No. 25-EKCE-207-PRE, p. 2-3 (Feb. 14, 2025).

⁷ See Joint Motion for Approval of Unanimous Partial Settlement Agreement Regarding Solar Facility, KCC Docket No. 25-EKCE-207-PRE (Apr. 16, 2025).

⁸ See Joint Motion for Approval of Non-Unanimous Partial Settlement Agreement Regarding Natural Gas Facilities, KCC Docket No. 25-EKCE-207-PRE (Apr. 16, 2025).

5. The parties to enter into the Non-Unanimous Partial Settlement Agreement for the Viola and McNew plants were the Staff of the State Corporation Commission of the State of Kansas (“Staff”); Evergy; KPP Energy, Natural Resources Defense Council, Midwest Energy, Inc.; The Board of County Commissioners of Johnson County, Kansas; City of Lawrence, Kansas; Atmos Energy Corporation; HF Sinclair El Dorado Refining LLC; Kansas Municipal Energy Agency; and Kansas Gas Service, a division of ONE Gas, Inc.⁹

6. Twenty parties (representing 99%+ of all retail ratepayers) did not support the Non-Unanimous Settlement Agreement.¹⁰

7. The Commission held an Evidentiary Hearing on April 21 through April 23, 2025, in which many intervenors in this Docket were present. At the hearing, witnesses were provided by Evergy, Staff, KIC, New Energy Economics, Citizens Utility Ratepayer Board, and Kansas Gas Service. Other parties that provided written testimony included Atmos Energy, Johnson County Kansas, City of Lawrence, Kansas, Natural Resources Defense Council, Wichita Regional Chamber, Climate + Energy Project, and USD 259.

8. After the Evidentiary Hearing, the parties filed briefs addressing the issues within this Docket.

9. In accordance with the Procedural Schedule, the Commission filed its Order Approving Unanimous Partial Settlement Agreement Regarding Solar Facility and Non-Unanimous Partial Settlement Agreement Regarding Natural Gas Facilities on July 7, 2025.

⁹ *Id.*

¹⁰ For a complete list of these parties, *see* Post Hearing Brief of the Kansas Industrial Consumers Group, Inc. and the Kansas Agriculture Associations, May 28, 2025 [hereinafter KIC Post Hearing Brief].

II. GROUNDS FOR RECONSIDERATION

KIC requests the Commission to reconsider and amend its Order to bring such Order into compliance with applicable Kansas law and to clarify certain portions of its Order as set forth below.

A. The Commission has not decided an issue requiring resolution with respect to Evergy Missouri West's 50% interest in both the Viola and McNew plants and to reconcile the Commission's Order with the ultimate Order of the Missouri Public Service Commission in the pending proceedings in the Viola and McNew gas plants.

In its Order, the Commission grants predetermination for Evergy's interests in the Viola and McNew plants, including approval of Evergy's ability to implement a construction work in progress ("CWIP") rider 365 days after the start of construction. The fact that Evergy Kansas Central will only own 50% of the Viola and McNew gas plants requires the Commission to address in its Order on Reconsideration, the manner in which the Order will be affected and is dependent on the range of orders that the Missouri Public Service Commission ("MPSC") may issue in its consideration of the Viola and McNew gas plants.¹¹ The effects on retail ratepayers may differ substantially depending on the ultimate decision made by the MPSC. For example the Commission must consider the range of options before the MPSC:

1. Evergy Missouri West is not granted permission to acquire a 50% stake in each plant.
2. Evergy Missouri West does not receive an order that predetermined decisional prudence is ordered by the MPSC, and as such does not elect to acquire the 50% interest in each plant.

¹¹ See generally K.S.A. 77-621(3). This statute provision sets out the grounds for judicial review of administrative agency provisions and provides that agency decisions that fail to decide an issue requiring resolution may be subject to judicial review.

3. Evergy Missouri West elects to acquire the 50% interest in each gas plant, but with shareholder financing and incorporates the plants later into its rate base.
4. No Operating Agreement was submitted or approved, leaving all operations of 2 - gas plants with no Commission oversight, including such critical questions as the terms pursuant to which each interest holder may offer its gas plant capacity into SPP and under what conditions that unused capacity may be offered into the day ahead or real-time market of SPP, or sold under short- or long-term contracts.

During the Kansas proceeding, these issues were addressed, but were not the focus of the KCC proceeding, including the building of one gas plant for Evergy Central and a separate gas plant that would be subject to the laws of Missouri and the jurisdiction of the MPSC.¹²

MPSC Staff recommended in its Initial Brief¹³ and its Reply Brief¹⁴ that the MPSC grant Evergy Missouri West a Certificate of Convenience and Necessity (“CCN”). However, the MPSC Staff found that the projects lack “decisional prudence” due to “uncertainty that still exists with the costs of completing these Projects, the cost of natural gas pipeline infrastructure, ongoing costs of firm transportation of natural gas, and the unreliability of EMW’s projections of market revenue, as well as the inflationary and competitive forces regarding material and supply chain disruptions from tariffs on steel and aluminum.”¹⁵

MPSC Staff argued that it does not have enough information to determine that the projects are economically feasible.¹⁶ Additionally, MPSC Staff found that the economic advantages of the Viola and McNew plants may not be greater than the economic costs of the projects.¹⁷

¹² See generally Cross-Answering Testimony of Dorothy Barnett, KCC Docket No. 25-EKCE-207-PRE.

¹³ See generally Initial Brief of Staff, MPSC Case No. EA-2025-0075 (2025).

¹⁴ See generally Reply Brief of Staff, MPSC Case No. EA-2025-0075 (2025).

¹⁵ *Id.* at p. 7.

¹⁶ Initial Brief of Staff, MPSC Case No. EA-2025-0075 (2025) at p. 4.

¹⁷ *Id.* at p. 15.

It would be expected that the MPSC would carefully consider the positions advocated by its Staff.

In Missouri, the effect of granting a CCN, but not determining decisional prudence allows the Commission to “more thoroughly evaluate the prudence of [Evergy Missouri West’s] decision to pursue the Projects when EMW requests inclusion of costs in [its] rate base”.¹⁸ Stated differently, the financial burden remains on Evergy shareholders to protect retail ratepayers until decisional prudence is later determined.¹⁹ While this does not forego EMW’s ability to implement a CWIP rider in the future, MPSC Staff reserves its right to challenge such a rider in the Non-Unanimous Settlement Agreement in that case.²⁰

The Office of Public Counsel filed a similar position to MPSC Staff, asserting that the projects should receive a CCN but the MPSC should find that the projects lack decisional prudence.²¹

In the MPSC proceedings, Sierra Club and Renew Missouri both argued in their briefs that the MPSC should reject Evergy Missouri West’s request for the two natural gas plants.²² Sierra Club argued that Evergy Missouri West has not satisfied the evidentiary requirements for proving necessity, economic feasibility, and public interest.²³ As a result, Sierra Club stated that Evergy Missouri West should not be granted a CCN and the MPSC should postpone prudence review until a later rate case.²⁴

¹⁸ *Id.* at p. 28.

¹⁹ *Id.*

²⁰ *Id.* at 3. *See also* Non-Unanimous Stipulation and Agreement, Case No. EA-2025-0075 (2025) at ¶ 8.

²¹ *See generally* The Office of the Public Counsel’s Initial Brief, Case No. EA-2025-0075 (2025) (Jun. 24, 2025).

²² *See generally* Sierra Club’s Initial Post-Hearing Brief, Case No. EA-2025-0075 (2025) (Jun. 24, 2025) *and* Initial Brief of Renew Missouri, Case No. EA-2025-0075 (2025) (Jun. 24, 2025).

²³ *See generally* Sierra Club’s Initial Post-Hearing Brief.

²⁴ *Id.* at 10-11.

Similarly, Renew Missouri argued that Evergy Missouri West did not prove that the projects are economically feasible or in the public interest.²⁵ To support its conclusion, Renew Missouri relied on the price volatility of natural gas and are not cost effective compared to other generation types.²⁶

The MPSC has not yet issued a final decision.

The Commission's failure to address the partial Missouri ownership issue resonates throughout the KCC's Order. For example, the KCC Order requires that construction cannot begin until a firm gas transportation agreement is executed. Until the varying ownership issues between Kansas and Missouri are resolved, the amount of natural gas needed is not known.

If the MPSC finds that the lack of decisional prudence affects and delays EMW's ability to implement a CWIP rider, the ultimate financial burden on retail ratepayers in Kansas and Missouri will be different for the same projects. Under this situation, Kansas retail ratepayers will pay a CWIP rider, while Missouri retail ratepayers do not until a later date, or at all.

KIC recognizes that while Missouri law is not binding on Kansas, it is inherently inequitable for Kansas retail ratepayers to pay a CWIP, while Missouri ratepayers may not have to finance the preoperational activities of the gas plants.

Regardless of and apart from KIC's position, the Commission should issue guidance and clarification on these issues and plan to resolve any particular discrepancies between the future MPSC decision and its own, including the issues related to the implementation of a CWIP rider.

The Commissions' failure to address the bilateral, bi-state nature of the two gas plants is an omission that requires the Commission to reconsider.

²⁵ Initial Brief of Renew Missouri, at. 2, 8, 14.

²⁶ *Id.* at 6-7.

B. The Commission mischaracterizes the issues surrounding Evergy's coal fleet.

The Commission must reconsider and amend its Order to be in compliance with applicable Kansas law, regarding the Evergy coal fired generation fleet. Multiple portions of the Commission's analysis in its Order as related to Evergy's coal generation fleet are incorrect, unreasonable, arbitrary, and capricious.²⁷ As discussed in more detail below, the Commission (1) mischaracterizes the age of Evergy's coal fleet and its reliability and (2) fails to clarify the contradictory analyses as to Evergy's retirement of its coal generation fleet.

Therefore, KIC respectfully requests that the Commission reconsider and correct the portions of its Order that relate to these issues as set forth below.

1. The reliability of Evergy's coal units

In its Order, the Commission states that it agrees with Staff and Evergy's position that "it is prudent to commence planning for the modernization and diversification of [EKC's] thermal fleet"²⁸ and that "EKC's coal units are aging".²⁹ The Commission bases the reasonableness of these statements on the misguided assumption that "aging" equates to unreliable and non-useful. That is not the case.

Instead, reliability is most affected by good maintenance, parts replacement as necessary, and attention to good operating procedures. Retail ratepayers have provided hundreds of millions of dollars to Evergy to maintain the operation of the coal generation fleet to the highest standards in the utility industry. Evergy contends it meets these high standards.

The age of the coal plants are not determinative of their reliability, and any reliability issues that may exist are caused by Evergy's operation thereof and are not in any manner caused by retail

²⁷ See K.S.A. 77-621(8).

²⁸ Order, at p. 30.

²⁹ *Id.* at 25.

ratepayers. The existing useful depreciable life of the facilities highlights the incorrect analysis contained in the Commission's Order, which must be reconsidered and corrected.³⁰

The Commission's argument is not persuasive and is not supported by the facts, in that the Commission already approved the useful operating lives (depreciation schedules) for 1,337 MWs of coal generation until 2045.³¹ The Order does not offer further clarification nor justification as to why the retirement dates it approved in 2023 are suddenly wrong or questionable. This failure to justify such portion of the Order without evidentiary support is arbitrary and capricious and unlawful agency action.

Further, the Commission asserts that the retirement of a coal plant may be sudden and forced, citing the singular fire at Jeffrey Energy Center Unit 3 in October 2022.³² By citing this one-off event for its justification, the Commission cherry picks portions of Staff's position to assert that the coal units are unreliable and ignores the evidentiary record as a whole.

Additionally, no party in this Docket put forth any *substantial* evidence illustrating or proving that the coal generation units are unreliable and require possible retirement before the end of their useful lives. At the Hearing, Evergy asserted the complete opposite regarding the reliability of its coal generation fleet, stating that the plants have "certainly been maintained to all the appropriate utility standards."³³ The Commission should also take into account that retail ratepayers pay millions of dollars to Evergy every year with the expectation that Evergy is maintaining its coal fleet to the highest industry standards.³⁴

³⁰ For the approved depreciation dates of Evergy's coal generation fleet, *see* Direct Testimony of Michael Gorman, p. 13 (Mar. 14, 2025) [hereinafter Gorman Direct]; KCC Docket 23-EKCE-775-RTS, Lawrence 4, Jeffrey 1-3: Exhibit RMM-2, p.18-19; and La Cygne 1-2: Exhibit RMM-3 p.12-13; FERC Financial Report, FERC FORM No. 1, p. 336-337 (April 18, 2025).

³¹ KIC Post Hearing Brief, p. 31.

³² *Order*, at 32.

³³ Transcript, Vol. 1., p. 142, Lines 9-10.

³⁴ *See generally id.*

These errors in the Commission analysis fail to properly account for the complete evidentiary record and fail to allow the Commission to conduct a comprehensive analysis on whether the 2024 Integrated Resource Plan (“IRP”) is reasonable, reliable, and efficient. Therefore, KIC respectfully requests that the Commission reconsider this issue further.

2. Inconsistency with analysis surrounding coal retirements

The Commission claims that KIC argued that Evergy is requesting predetermination for the retirement of its coal units.³⁵ However, this incorrectly interprets KIC’s argument. KIC does not dispute that Evergy has not committed to firm retirement dates for its coal generation units. It is fully understood that Evergy was not requesting predetermination for the retirement of its coal units.

Instead, KIC highlights the “bait and switch” position of Evergy – including the planned retirement of coal plants in its IRP to support the building of two natural gas plants, and thereafter “changed its mind” and extend the operations of coal facilities.

KIC argued that Evergy’s 2024 *assumes* the retirement of coal units in its generation fleet and by doing so, it necessitates additional generation units to support its argument that the CCGTs are necessary and that the result of these assumptions are not economical for retail ratepayers.³⁶

KIC’s argument stems from the legal requirement that the Commission may decide if the 2024 IRP is reasonable, reliable, and efficient.³⁷ KIC asserts that it is not.³⁸ In fact, the Commission acknowledges that “early retirement may not be in customers’ best interests” and proceeds to approve the CCGTs anyway.

³⁵ *Order*, at 47.

³⁶ Gorman Direct at 3.

³⁷ K.S.A 66-1239(c)(3)

³⁸ *See generally* Gorman Direct.

The Commission justifies its approval for the natural gas plants due to the “eventual” retirement of the coal plants. However, this analysis is flawed because “eventual” retirement is not specific and only signifies that the retirements will occur at some later point in the future.³⁹ “Eventual” retirement does not support or justify that Evergy needs two new CCGTs by 2030.

Evergy’s lack of commitment to retirement dates is also concerning and detrimental to retail ratepayers when the consequences result in billion-dollar investments.

Evergy’s IRP process is absolutely based on assumed retirement dates that are later delayed.⁴⁰ Through the 2025 IRP, filed as KIC Exhibit 15, the Commission received uncontroverted evidence of this bait and switch tactic. As stated in KIC’s brief, the 2025 IRP changed the 2024 IRP materially by extending coal generation retirement dates, converting coal facilities to natural gas, reducing solar additions, adding wind energy, and adding 830 MW of additional natural gas generation.⁴¹

This recent update illustrates that once again Evergy utilizes retirement dates to justify additional generation, but then later changes the narrative to delay those retirement dates, offering a skewed illustration of when additional generation is actually needed.

Evergy’s inability to commit to coal generation retirement dates inhibit the Commission’s ability to conduct a comprehensive assessment of whether or not an IRP is reasonable, reliable and efficient.

Recently, KCC Staff responded to Evergy’s 2025 IRP in the KCC Docket No. 24-EKCE-387-CPL that “[t]he evaluations underpinning the selections of the respective Preferred Portfolios

³⁹ *Order*, at 44.

⁴⁰ *See e.g.* 2024 Kansas Integrated Resource Plan Update (May 17, 2024) <https://investors.evergy.com/static-files/78aae2b0-9c48-459e-89fe-79fd57205ee2>. [hereinafter 2024 IRP Update] *and* 2025 Integrated Resource Plan Update (May 2, 2025) <https://investors.evergy.com/2025IRPUpdate> (admitted into evidentiary record as Exhibit KIC 15, by Commission Order dated May 15, 2025) [hereinafter 2025 IRP Update – KIC Exhibit 15]

⁴¹ For discussion of these details, *see* KIC Post Hearing Brief, p. 12.

for EKC and EKM are incomplete in that they do not include a comprehensive assessment of potential alternatives for resource retirement dates and/or fuel conversion.”⁴²

Additionally, Staff recommended that “[a] more comprehensive assessment is required in advance of any definitive commitments for resource retirements or applications to build or acquire new thermal resources.”⁴³

The Commission Order focuses solely on the statutory requirements and overlooks the commonsense approach based on the real-life actions of Evergy’s generation fleet operations – relying incorrectly on an IRP with incorrect and flawed inputs as to available generation capacity. The Commission incorrectly chooses theoretical and hypothetical generation capacity over real life and actual use of available generation.

The Commission issues its analysis without giving additional thought or reasoning behind the policy implications at issue in this Docket. Because of the quasi-judicial nature of the Commission’s role, it is expected to not only ensure the CCGTs conform to the legal standards set forth in the statute, but also ensure that the CCGTs make sense in the context of the broader public policy of Kansas, which includes examination of Evergy’s actions as a utility overall.

KIC agrees with Staff’s analysis and recommendations in KCC Docket No. 24-EKCE-387-CPL as it aligns with KIC’s positions in this Docket regarding generation retirements. KIC believes the predetermination docket warrants an analysis consistent with the same. Additionally, KIC believes the Commission’s mischaracterization of the “aging” coal plants skews its analyses and results in a conclusion regarding their reliability that is unreasonable, arbitrary, and capricious.

⁴² KCC Staff Report and Recommendation, KCC Docket No. 24-EKCE-387-CPL (Jul. 2, 2025) at p. 4.

⁴³ *Id.*

KIC respectfully requests that the Commission provide further analysis or reconsider this issue as these analyses have been filed in tandem within a few weeks of each other and illustrate contradictory reasoning and analyses.

C. Construction requirements set forth in the Commission’s Order conflict with the facts set forth in the evidence.

The Order states that Evergy must submit “assurances” that it has contracted firm gas transportation and supply to the serve the new CCGTs “prior to construction.”⁴⁴ The Commission must reconsider this part of the Order, because failure to do so places Evergy in immediate violation of the Order.

The United States Environmental Protection Agency (“EPA”) defines “commencement of construction” as “an owner or operator has undertaken a continuous program of construction or modification or that an owner or operator has entered into a contractual obligation to undertake and complete, within a reasonable time, a continuous program of construction or modification.”⁴⁵

KIC requests that the Commission offer guidance and clarification on its definition of what constitutes commencing construction, since Evergy has already procured engineering services⁴⁶, purchased the J-Class turbine from Mitsubishi⁴⁷, and possesses real estate purchase options on the land in which the CCGT projects will be located.⁴⁸ Moreover, the Order does not clarify if Evergy must complete construction of Viola by January 1, 2029 and McNew by January 1, 2030.

Based on the EPA’s definition, Evergy has already commenced construction and is therefore in violation of the Commission’s Order as to the timeline in which it must have submitted

⁴⁴ *Order*, at p. 46.

⁴⁵ U.S. Environmental Protection Agency Applicability Determination Index, Control No. 0900067 (Jul. 3, 2008), <https://cfpub.epa.gov/adi/pdf/adi-nsp-0900067.pdf>.

⁴⁶ Evergy Initial Post Hearing Brief (May 14, 2025), p. 7.

⁴⁷ Direct Testimony of J Kyle Olson, Nov. 6, 2024, p. 15-19.

⁴⁸ *Id.*

evidence of a firm natural gas transportation and supply to the Commission. Therefore, the Commission should issue guidance on what definition of “commencement of construction” it is utilizing for purposes of its Order and the requirements set forth within.

III. CONCLUSION

WHEREFORE, KIC respectfully requests that the Commission accept its Petition for Reconsideration and issue a revised order consistent with recommendations set forth above or set the above matters for further proceedings on reconsideration.

Respectfully submitted,

/s/ James P. Zakoura

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VERIFICATION

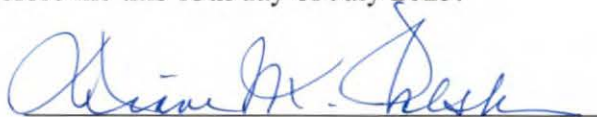
STATE OF KANSAS)
) ss:
COUNTY OF JOHNSON)

James P. Zakoura, being duly sworn upon his oath, deposes and states that he is the Attorney for Kansas Industrial Consumers Group, Inc., and its Participating Members, that he has read and is familiar with the foregoing *Petition for Reconsideration*, and that the statements therein are true to the best of his knowledge, information, and belief.



James P. Zakoura

SUBSCRIBED AND SWORN to before me this 15th day of July 2025.



Notary Public

My Appointment Expires:



CERTIFICATE OF SERVICE

I hereby certify that on this 16th day of July 2025, the above and foregoing was electronically filed with the Kansas Corporation Commission and that one copy was delivered electronically to all parties on the service list as follows:

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