

ORIGINAL

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Petition to Determine)
Need for an Electrical Power)
Plant in Martin County by Florida)
Power & Light Company)

DOCKET NO. 020263-EI

FILED: AUGUST 8, 2002

In Re: Petition to Determine Need)
for an Electrical Power Plant)
in Manatee County by Florida)
Power & Light Company)

DOCKET NO. 020263-EI

FILED: AUGUST 8, 2002

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COMMISSION CLERK

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AMENDED ISSUES OF MATERIAL FACT AND ULTIMATE FACTS
OF CALPINE ENERGY SERVICES, L.P., IN RESPONSE TO
AMENDED PETITIONS FOR DETERMINATION OF NEED

Calpine Energy Services, L.P. ("Calpine"), pursuant to Commission Rule 25-22.039, Florida Administrative Code ("F.A.C."), Rule 28-106.201, F.A.C., Rule 28-106.205, F.A.C., and Chapter 120, Florida Statutes, hereby files its amended Issues of Material Fact and Ultimate Facts alleged in the above-styled dockets in response to the Amended Petitions for Determination of Need filed by Florida Power & Light Company ("FPL").¹

In summary, Calpine is already an Intervenor in these

AUS _____
CAF _____
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CTR _____
GCL _____
OP _____
MMS _____
SEC 1 _____
OTH _____

¹By Order No. PSC-02-0550-PCO-EI, entered on April 23, 2002, Calpine was granted intervention in this docket, prior to FPL's issuance of its April 26th RFP. Because the Amended Petition for Determination of Need raises new and different issues, Calpine states corresponding issues and factual allegations herein that are intended to supersede the issues and facts raised and asserted by Calpine in its initial petition to intervene filed on April 11, 2002

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proceedings pursuant to Commission Rule 25-22.082(8), F.A.C.,² for the following reasons. First, Calpine was one of numerous wholesale independent power producers who responded, as "participants" within the meaning of Rule 25-22.082(1)(c), F.A.C., to FPL's new request for proposals ("RFP") issued on April 26, 2002 (the "April 26th RFP"). Second, FPL has now rejected all of the proposals, including several proposals submitted by Calpine. Third, FPL has instead selected two power plant projects to be self-built by FPL to meet FPL's need for power identified in its April 26th RFP. Finally, the two power plants that FPL has thus self-selected are the Martin 8 power plant ("Martin 8") and the Manatee 3 power plant ("Manatee 3") that are the subjects of these need determination proceedings.

The gravamen of these proceedings is the Commission's determination of how the needs of FPL's captive electric customers will best be served by a power plant, or by a combination of power plants. The plant or plants to be built to meet the needs of FPL's customers must be consistent with the specific criteria set forth in Section 403.519, Florida Statutes; consistent with the Commission's specific authority and "jurisdiction over the planning, development, and

²The Commission's substantive rule applicable to many of the issues identified herein is Rule 25-22.082, F.A.C., Selection of Generating Capacity, which is referred to for convenience herein as the "Bid Rule."

maintenance of a coordinated electric power grid throughout Florida to assure an adequate and reliable source of energy for operational and emergency purposes in Florida and the avoidance of further uneconomic duplication of generation, transmission, and distribution facilities," Fla. Stat. § 366.04(5); and consistent with the public interest.

Pursuant to its general statutory mandate to regulate in the public interest, and pursuant to its specific statutory powers and duties, the Commission has extensive authority to ensure that only the power plant or plants that will best satisfy the specific criteria enumerated in Section 403.519, Florida Statutes, that will best serve the needs of FPL's customers, and that will best serve the public interest, will be constructed and operated. The Commission has available to it a range of statutory powers to address the situation that FPL has created. The Commission's jurisdiction and specific authority would enable it to do one or more of the following:

- a. deny FPL's petitions for determination of need because FPL has failed to demonstrate that the proposed plants are needed, taking into account the factors and criteria listed in Section 403.519, Florida Statutes, including other relevant matters within the Commission's jurisdiction;
- b. deny FPL's petitions for determination of need because FPL has failed to demonstrate that its selection of Martin 8 and Manatee 3: (i) will produce the best result for FPL's customers; (ii) is the most cost effective alternative available; (iii) will produce fair just and reasonable rates for its ratepayers; or (iv) is in the best interests of its ratepayers; and

- c. conduct, on its own motion pursuant to the Commission's specific authority Section 403.519, Florida Statutes, a proceeding to determine which power plant or plants will best meet the needs of FPL's customers, and best serve the public interest of all Floridians, consistent with the criteria in Section 403.519, Florida Statutes, and with the Commission's general and specific jurisdiction, powers, and duties set forth in Chapter 366, Florida Statutes.

FACTUAL BACKGROUND - CALPINE'S SUBSTANTIAL INTERESTS
CONTINUE TO BE AFFECTED BY THE APRIL 26TH RFP

1. Calpine is a wholesale power supplier that sells electric capacity and energy, and other electric service products, at wholesale in Peninsular Florida and in other wholesale power markets in the United States. On May 24, 2002, Calpine submitted several proposals in response to FPL's April 26th RFP. Calpine's proposals conformed in all material respects to the scheduling and informational requirements of FPL's April 26th RFP. Accordingly, Calpine was and is a "participant" in FPL's April 26th RFP process within the meaning of the Commission's Bid Rule. Rule 25-22.082(1)(c), F.A.C. Calpine had paid the requisite application fee and also had paid FPL a significant additional sum to evaluate additional combinations of power supply alternatives that were available to FPL pursuant to Calpine's offer. In its response to FPL's April 26th RFP, Calpine indicated that it was prepared to negotiate toward a definitive power purchase agreement (or agreements) ("PPA" or "PPAs") with FPL, using its response as a starting point for those negotiations.

2. Calpine's ability to carry out its fundamental

business purposes will be substantially foreclosed if FPL's self-selection of its own projects to meet those needs were to be approved by the Commission in these proceedings. Moreover, Calpine's ability to have its proposal to FPL fairly considered by FPL in FPL's RFP process has been effectively denied by the substantial and material defects in FPL's RFP process. Accordingly, Calpine's substantial interests in a fair selection process, as provided for by the Commission's Bid Rule, have been violated and impaired, and these interests warrant rectification by the Commission, most importantly to protect the interests of FPL's captive electric customers who will be adversely affected by FPL's self-selection decision, as well as to protect Calpine's substantial interests.

**FACTUAL BACKGROUND - FPL'S APRIL 26TH REQUEST FOR PROPOSALS
AND AMENDED PETITION FOR DETERMINATION OF NEED**

3. FPL's April 26th RFP contained provisions that imposed differential and prejudicial requirements on respondents that are more onerous than those that would be applied to FPL and its self-build options. FPL imposed biased and onerous completion guaranty provisions, long-term binding price restrictions, and other provisions on bidders that are significantly different from the treatment that would be afforded FPL for the same items. These provisions are more beneficial and valuable to FPL's customers than the corresponding treatment of FPL's self-build options, but FPL would not and did not give credit for these values in evaluating respondents' proposals.

4. Moreover, FPL's evaluation process failed to take

account of the significant risk-avoidance benefits and values available to FPL's customers via PPAs with respondents. Perhaps most significantly, FPL's evaluation failed to address the facts that, with PPAs with respondents, FPL's captive customers would not be exposed to the risks of construction cost overruns, unexpected maintenance and repair costs, and long-term market risks to which the customers would and, if FPL is allowed to proceed with its proposed Martin 8 and Manatee 3 plants, will be exposed.

5. Calpine timely submitted its response to FPL's April 26th RFP on May 24, 2002. Calpine's response offered a range of contract terms from ten years to twenty-five years, plus a turnkey option, consistent with the terms requested in FPL's RFP.

6. Calpine's proposals, which were submitted in response to FPL's April 26th RFP, were binding offers that FPL could have accepted on an "as is" basis.

7. On June 18, 2002, FPL announced its short list consisting of only El Paso Merchant Energy ("El Paso") and Florida Power Corporation ("FPC"). However, FPL applied inappropriate factors and cost adjustments, including an equity penalty, which caused FPL's evaluation and short list selection process to be fatally flawed, to the detriment of FPL's customers, in that it excluded expansion plans that were otherwise cost effective.

8. FPL's decision to negotiate only with El Paso and FPC adversely affected the interests of FPL's ratepayers and the

Commission in having appropriate assurance that FPL obtained the best available alternative for additional power. Moreover, FPL's decision to negotiate only with El Paso and FPC ensured, systematically, that FPL cannot have known all the options that were available to it through such negotiations and thus that FPL cannot know, or represent to the Commission, that it has adequately evaluated all available alternatives in its Bid Rule-required quest to find the most cost-effective alternative to meet its customers' needs.

9. FPL's decision to negotiate only with El Paso and FPC is particularly significant because it ignores opportunities that were available to FPL. By ignoring such opportunities, FPL cannot have validly concluded that it had selected the most cost-effective option for its captive customers.

10. FPL filed its amended need determination petitions for the Martin 8 and Manatee 3 plants on July 16, 2002.

DISPUTED ISSUES OF MATERIAL FACT

11. Calpine believes that the following material issues of fact are likely to be in dispute in this proceeding related to the amended need determination petitions:

- a. Did FPL's evaluation process accurately and appropriately evaluate all proposals with respect to all reasonable and appropriate evaluation factors or variables?
- b. Did FPL select the most reliable combination of power supply options to meet its identified need for additional power supply resources?
- c. Did FPL select the most cost-effective combination of power supply options to meet its identified need?

- d. Did FPL design its April 26th RFP to improperly favor FPL's self-build plant options in the evaluation process?
- e. Did FPL commit any acts or omissions in its review of responses to its April 26th RFP that constitute violations of the Bid Rule?
- f. Did FPL accurately and appropriately account for transmission interconnection and integration costs in evaluating its proposed Martin 8 and Manatee 3 plants and in evaluating the proposals submitted in response to the April 26th RFP?
- g. Is an "equity penalty" such as that FPL applied to the proposals of the April 26th RFP respondents justified by real impacts on FPL's capital costs, and if so, was any such "equity penalty" appropriately calculated?
- h. Was the "residual value" that FPL awarded or assigned to its self-build options justified?
- i. Was FPL's modeling of the IPPs' proposals accurate and appropriate?
- j. What non-price factors did FPL consider in evaluating the proposals submitted by respondents to FPL's April 26th RFP, and was such consideration appropriate?
- k. What is the proper methodology to be used in evaluating power purchase proposals of varying terms against FPL's self-build options that will be placed in rate base?
- l. Did FPL's evaluation of its proposed Martin 8 unit and of proposals submitted in response to FPL's April 26th RFP accurately identify and account for the various market, technology, operating, and other risks that would, and that would not, be imposed on FPL's customers with respect to each alternative?
- m. Did FPL's evaluation of its proposed Martin 8 unit and of proposals submitted in response to FPL's April 26th RFP accurately identify and account for the differences in operational flexibility and efficiencies available from its proposed Martin 8 unit as compared to the proposals submitted in response to FPL's April 26th RFP?
- n. Is FPL's estimate of the estimated total installed cost of

the proposed Martin 8 unit accurate, particularly in light of FPL's recent construction cost experiences at other units?

- o. Did FPL accurately and appropriately incorporate all costs attributable to its proposed Martin 8 unit into the evaluations and cost-effectiveness analyses of the proposed Martin 8 unit and the proposals submitted in response to FPL's April 26th RFP?
- p. Does FPL's estimate of the estimated total installed cost of the proposed Martin 8 unit provide for an apples-to-apples comparison with respect to the proposals submitted by respondents to FPL's April 26th RFP?
- q. Is FPL's proposed Martin 8 unit needed, taking into account the need of FPL's customers for adequate electricity at a reasonable cost?
- r. Is FPL's proposed Martin 8 unit needed, taking into account the need of Peninsular Florida for adequate electricity at a reasonable cost?
- s. Are FPL's practices with respect to its selection of its proposed Martin 8 unit likely to result in fair, just, and reasonable rates to FPL's customers, and have those practices produced a decision by FPL in this case that is likely to result in fair, just, and reasonable rates to FPL's customers?
- t. Are FPL's practices with respect to its selection of its proposed Martin 8 unit likely to produce the selection of additional generating resources that are in the best interests of FPL's customers?
- u. Is the proposed Martin 8 unit the most cost-effective alternative available to meet the needs of FPL's customers that it is proposed to serve?
- v. Does the proposed Martin 8 unit provide significant non-price advantages to FPL's customers over any or all of the proposals submitted in response to FPL's April 26th RFP?
- w. Did FPL's evaluation of its proposed Manatee 3 unit and of proposals submitted in response to FPL's April 26th RFP accurately identify and account for the various market, technology, operating, and other risks that would, and that

would not, be imposed on FPL's customers with respect to each alternative?

- x. Did FPL's evaluation of its proposed Manatee 3 unit and of proposals submitted in response to FPL's April 26th RFP accurately identify and account for the differences in operational flexibility and efficiencies available from its proposed Manatee 3 unit as compared to the proposals submitted in response to FPL's April 26th RFP?
- y. Is FPL's estimate of the estimated total installed cost of the proposed Manatee 3 unit accurate, particularly in light of FPL's recent construction cost experiences at other units?
- z. Did FPL accurately and appropriately incorporate all costs attributable to its proposed Manatee 3 unit into the evaluations and cost-effectiveness analyses of the proposed Manatee 3 unit and the proposals submitted in response to FPL's April 26th RFP?
- aa. Does FPL's estimate of the incremental installed cost of the proposed Manatee 3 unit provide for an apples-to-apples comparison with respect to the proposals submitted in response to FPL's April 26th RFP?
- ab. Is FPL's proposed Manatee 3 unit needed, taking into account the need of FPL's customers for adequate electricity at a reasonable cost?
- ac. Is FPL's proposed Manatee 3 unit needed, taking into account the need of Peninsular Florida for adequate electricity at a reasonable cost?
- ad. Are FPL's practices with respect to its selection of its proposed Manatee 3 unit likely to result in fair, just, and reasonable rates to FPL's customers, and have those practices produced a decision by FPL in this case that is likely to result in fair, just, and reasonable rates to FPL's customers?
- ae. Are FPL's practices with respect to its selection of its proposed Manatee 3 unit likely to produce the selection of additional generating resources that are in the best interests of FPL's customers?
- af. Is the proposed Manatee 3 unit the most cost-effective

alternative available to meet the needs of FPL's customers that it is proposed to serve?

- ag. Does the proposed Manatee 3 unit provide significant non-price advantages to FPL's customers over any or all of the proposals submitted in response to FPL's April 26th RFP?
- ah. Did FPL comply with all applicable requirements of the Bid Rule?
- ai. If the Commission decides to grant an affirmative determination of need for either the Martin 8 plant or the Manatee 3 plant, or for both plants, should the Commission include in its order a provision that FPL may not seek to recover revenue requirements associated with any such plant greater than the revenue requirements that FPL has represented to the Commission are the revenue requirements associated with the winning proposal in this case, and upon which the Commission must base its decision as to the cost-effectiveness of the proposed plants?
- aj. If FPL violated the Bid Rule, what action or actions can the Commission take?
- ak. Should the Commission commence and conduct, on its own motion pursuant to its specific authority under Section 403.519, Florida Statutes, a proceeding to determine which power plant or plants, from all available alternatives, will best meet the needs of FPL's customers and best serve the public interest of all Floridians, consistent with the Commission's general and specific jurisdiction, powers, and duties set forth in Chapter 366, Florida Statutes?

Calpine reserves its rights to raise such additional issues as may be identified through Calpine's ongoing review of the materials filed by FPL in this case and in the discovery process as this case progresses.

ULTIMATE FACTS ALLEGED

12. Calpine alleges the following ultimate facts that entitle Calpine to relief as prayed herein.

- a. Calpine was a valid participant in FPL's April 26th RFP process.
- b. Calpine submitted a responsive proposal to FPL in conformance with the schedule and procedural requirements of FPL's April 26th RFP.
- c. FPL acted contrary to the best interests of FPL's captive customers and also contrary to the public interest by failing to adequately consider the flexibility and economic benefits available to FPL and its captive customers via responses to FPL's April 26th RFP.
- d. FPL acted contrary to the best interests of its captive customers and also contrary to the public interest by applying inappropriate factors and cost adjustments, including an equity penalty, which caused FPL's evaluation and short list selection process to be fatally flawed.
- e. FPL willfully ignored additional potential price and non-price benefits that could have been realized by negotiating with a larger population of "short-listed" finalists.
- f. The proposed Martin 8 and Manatee 3 plants are not needed, taking into account FPL's need for adequate electricity at a reasonable cost.
- g. The proposed Martin 8 and Manatee 3 plants are not needed, taking into account Peninsular Florida's need for adequate electricity at a reasonable cost.
- h. The proposed Martin 8 and Manatee 3 plants are not the most cost-effective alternative to meet the need for additional electric capacity and energy identified by FPL in this proceeding.
- i. The proposed Martin 8 and Manatee 3 plants are not the most cost-effective alternative for supplying needed electric capacity and energy in Peninsular Florida.
- j. FPL did not adequately, accurately, or properly evaluate the proposals submitted in response to its RFP with respect to all reasonable and appropriate evaluation factors or variables.
- k. FPL's evaluation of its proposed Martin 8 and Manatee 3 units and of proposals submitted in response to FPL's April

26th RFP did not accurately identify and account for the various market, technology, operating, and other risks that would, and that would not, be imposed on FPL's customers with respect to each alternative.

- l. FPL's evaluation of its proposed Martin 8 and Manatee 3 units and of proposals submitted in response to FPL's April 26th RFP improperly included an "equity penalty" applied to the proposals submitted by IPPs, and FPL's evaluations further failed to adequately or accurately account for the optionality value available through PPAs.
- m. FPL's evaluation of its own self-selected proposed Martin 8 and Manatee 3 units and of proposals submitted in response to FPL's April 26th RFP did not accurately identify and account for the differences in operational flexibility and efficiencies available from its proposed Martin 8 and Manatee 3 units as compared to the proposals submitted in response to FPL's April 26th RFP.
- n. FPL's estimate of \$439 million as the estimated total installed cost of the proposed Martin 8 unit is not accurate, particularly in light of FPL's recent construction cost experiences at its repowering projects.
- o. FPL's estimate of \$439 million as the estimated total installed cost of the proposed Martin 8 unit does not provide for, and is not consistent with, a fair, appropriate, apples-to-apples comparison with respect to the proposals submitted in response to FPL's April 26th RFP.
- p. FPL's estimate of \$551 million as the estimated total installed cost of the proposed Manatee 3 unit is not accurate, particularly in light of FPL's recent construction cost experiences at its repowering projects.
- q. FPL's estimate of \$551 million as the estimated total installed cost of the proposed Manatee 3 unit does not provide for, and is not consistent with, a fair, appropriate, apples-to-apples comparison with respect to the proposals submitted in response to FPL's April 26th RFP.
- r. It was not appropriate for FPL and its "independent evaluator" to supplement their economic analyses of FPL's available power supply options, including its proposed Martin 8 and Manatee 3 power plants and the proposals submitted in response to FPL's April 26th RFP, by adding

certain cost items (including, without limitation, generator startup costs, transmission integration costs, and equity penalty costs) onto the costs of the respondents' proposals.

- s. FPL did not select the most reliable combination of power supply options to meet its identified need for additional power supply resources.
- t. FPL's self-selected proposed Martin 8 and Manatee 3 units are not needed, taking into account the need of Peninsular Florida for adequate electricity at a reasonable cost.
- u. FPL's practices with respect to its self-selection of its proposed Martin 8 and Manatee 3 units (i) are not likely to result in fair, just, and reasonable rates to FPL's customers, and (ii) have not produced a decision by FPL in this case that is likely to result in fair, just, and reasonable rates to FPL's customers.
- v. FPL's practices with respect to its self-selection of its proposed Martin 8 and Manatee 3 units have not produced the selection of additional generating resources that are in the best interests of FPL's customers.
- w. The proposed Martin 8 and Manatee 3 units are not the most cost-effective alternatives available to meet the needs of FPL's customers that they are proposed to serve.
- x. FPL has not selected the most cost-effective combination of power supply options to meet its identified need.
- y. The proposed Martin 8 and Manatee 3 units do not provide significant non-price advantages to FPL's over any or all of the proposals submitted in response to FPL's April 26th RFP.
- z. FPL designed its April 26th RFP to improperly favor FPL's self-build plant options in the evaluation process.
- aa. FPL's proposed self-build options, Martin 8 and Manatee 3, will not adequately protect FPL's customers from numerous financial and operating risks associated with owning and operating those units.
- ab. FPL committed other acts or omissions in its review of responses to its April 26th RFP that are contrary to the

best interests of FPL's customers and contrary to the public interest of all Floridians.

RELIEF REQUESTED

13. Calpine seeks timely relief that both protects Calpine's substantial interests and serves the best interests of FPL's captive customers and the public interest of Florida generally. Here, this means that the Commission must act to ensure that the power plants that best meet the needs of FPL's captive customers, that best meet the needs of Peninsular Florida, that best satisfy the criteria enumerated in Section 403.519, Florida Statutes, and that best serve the public interest, are in fact the power plants that are built and operated.

14. Pursuant to its general statutory mandate to regulate in the public interest, and pursuant to its specific statutory powers and duties, the Commission has extensive specific authority to achieve these purposes. The Commission's jurisdiction and specific authority enable it to do one or more of the following:

- a. deny FPL's petitions for determination of need because FPL has failed to demonstrate that its proposed Martin 8 and Manatee 3 plants are needed, taking into account the factors and criteria listed in Section 403.519, Florida Statutes, including other relevant matters within the Commission's jurisdiction;
- b. deny FPL's petitions for determination of need because FPL has failed to demonstrate that its selection of Martin 8 and Manatee 3 will produce the best result for FPL's customers, is the most cost-effective alternative available to it, will produce fair, just, and reasonable rates for

its ratepayers, or is in the best interests of its ratepayers; and

- c. conduct, on its own motion pursuant to its specific authority under Section 403.519, Florida Statutes, a separate proceeding to which power plant or plants, from all available alternatives, will best meet the needs of FPL's customers and best serve the public interest of all Floridians, consistent with the criteria in Section 403.519, Florida Statutes, and with the Commission's general and specific jurisdiction, powers, and duties set forth in Chapter 366, Florida Statutes.

15. Calpine respectfully petitions the Commission to select the combination of relief that will best serve the interests of FPL's captive customers and best serve the public interest of Florida.

CONCLUSION

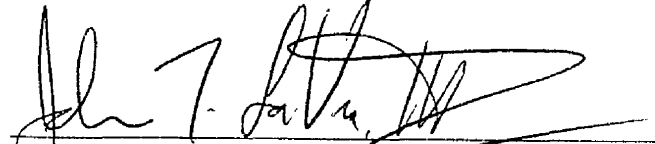
WHEREFORE, for the reasons set forth above, Calpine Energy Services, L.P., respectfully asks the Commission:

1. deny FPL's petitions for determination of need because FPL has failed to demonstrate that its proposed Martin 8 and Manatee 3 plants are needed, taking into account the factors and criteria listed in Section 403.519, Florida Statutes, including other relevant matters within the Commission's jurisdiction;
2. deny FPL's petitions for determination of need because FPL has failed to demonstrate that its selection of Martin 8 and Manatee 3 will produce the best result for FPL's customers, is the most cost-effective alternative available to it, will produce fair, just, and reasonable rates for its ratepayers, or is in the best interests of its ratepayers;
3. conduct, on its own motion pursuant to its specific authority under Section 403.519, Florida Statutes, a separate proceeding to determine which power plant or plants, from all available alternatives, will best meet the needs of FPL's customers, and best serve the public interest of all Floridians, consistent with the criteria in Section 403.519, Florida Statutes, and with the

Commission's general and specific jurisdiction, powers, and duties set forth in Chapter 366; and

4. to order such other relief as the Commission deems appropriate.

Respectfully submitted this 8th day of August, 2002.



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CERTIFICATE OF SERVICE

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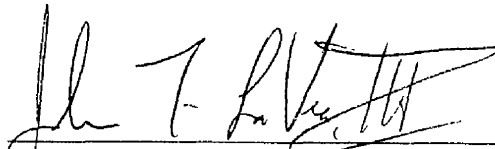
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