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HOUSE OF REPRESENTATIVES

RENEWABLE ENERGY (ELECTRICITY) AMENDMENT BILL 2015

EXPLANATORY MEMORANDUM

(Circulated by the authority of the
Minister for the Environment, the Hon Greg Hunt MP)

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Glossary

The following abbreviations and acronyms are used throughout this explanatory memorandum.

<i>Abbreviation</i>	<i>Definition</i>
The Authority	The Climate Change Authority
The Bill	Renewable Energy (Electricity) Amendment Bill 2015
CCA Act	<i>The Climate Change Authority Act 2011</i>
EITE	Emissions-Intensive Trade-Exposed
GWh	Gigawatt-hours
LRET	Large-scale Renewable Energy Target
MWh	Megawatt-hours
PEC	Partial Exemption Certificate
REE Act	<i>The Renewable Energy (Electricity) Act 2000</i>
REE Regulations	<i>The Renewable Energy (Electricity) Regulations 2001</i>
The Regulator	The Clean Energy Regulator
RET	Renewable Energy Target scheme
SRES	Small-scale Renewable Energy Scheme

General outline and financial impact

Purpose and objective

The Renewable Energy (Electricity) Amendment Bill 2015 (the Bill) amends the *Renewable Energy (Electricity) Act 2000* (the REE Act) and the *Renewable Energy (Electricity) Regulations 2001* (the REE Regulations) and makes consequential amendments to the *Climate Change Authority Act 2011* (the CCA Act). These amendments make changes to the Renewable Energy Target (RET) scheme to better reflect electricity market conditions, provide much-needed certainty to the renewable energy industry and enable sustainable growth in renewable electricity generation.

Background

The RET scheme

The RET allows renewable energy power stations and owners of small-scale renewable energy systems to create certificates for each megawatt-hour (MWh) of eligible renewable electricity they produce. Liable entities (mainly electricity retailers) are obligated to purchase certificates created by renewable electricity generators such as wind farms, solar farms, hydroelectric power stations, rooftop solar panels and solar water heaters. Certificates are surrendered annually to the Regulator to demonstrate compliance with the RET and avoid payment of a shortfall charge. This creates a market which provides financial incentives to increase the generation of renewable electricity.

As stated in the REE Act, the objectives of the RET are to:

- encourage the additional generation of electricity from renewable sources;
- reduce greenhouse gas emissions in the electricity sector; and
- ensure that renewable energy sources are ecologically sustainable.

History of the RET

The RET has been operating in various forms since it commenced in 2001. It was originally intended to achieve an additional two per cent of renewable energy in the electricity generation mix by 2010. This was

expressed in the REE Act as a target of 9,500 gigawatt-hours (GWh) in 2010.

Commencing in 2010, the RET was expanded to ensure at least 20 per cent of Australia's electricity comes from renewable sources by 2020. To achieve this, annual targets were increased to peak at 45,000 GWh in 2020. The Solar Credits multiplier was introduced to boost support for small-scale solar photovoltaic systems; and Partial Exemption Certificates were introduced to provide assistance to Emissions Intensive Trade Exposed (EITE) industries for the cost impact of the RET.

Since the beginning of 2011, the RET has separately supported large scale renewable electricity projects such as wind and solar farms (the Large-scale Renewable Energy Target (LRET)) and installations of small-scale renewable energy systems such as rooftop solar (the Small-scale Renewable Energy Scheme (SRES)). The annual targets under the LRET were amended to rise to 41,000 GWh in 2020 and the uncapped SRES was forecast to deliver at least 4,000 GWh by 2020.

2014 Expert Panel Review of the RET

In 2014, an independent expert panel chaired by Mr Dick Warburton AO LVO, undertook a review of the operation, costs and benefits of the RET. The panel's report reached several key conclusions:

- The RET had encouraged significant new renewable electricity generation, which had almost doubled as a result of the scheme;
- The economic landscape had changed significantly since the expanded RET commenced in 2010. In particular, electricity demand had been declining and forecasts for electricity demand in 2020 were much lower. As a result, the RET was contributing to a large surplus of electricity generation capacity;
- The main rationale for the RET is to contribute to the Government's emissions reductions targets in a cost-effective manner, however the RET provides relatively high cost emissions reductions; and
- The renewable energy sector would benefit from a \$22 billion cross-subsidy from 2014 until the end of the scheme, on top of the \$9.4 billion cross-subsidy received from 2001 to 2013.

The expert panel recommended that the RET should be scaled back and provided the Government with options to amend the LRET and the SRES.

Following its consideration of the expert panel's report and subsequent negotiations with the Opposition and cross bench senators, the

Government has decided to make changes to the RET scheme to better reflect market conditions and to ensure renewable energy continues to play a significant role in Australia's energy mix and in achieving Australia's 2020 emissions target.

The changes include:

- Reducing the profile of annual targets under the Large scale Renewable Energy Target (LRET) so that the 2020 target becomes 33,000 GWh of renewable electricity.
- Introducing a full exemption for the electricity used in emissions-intensive trade-exposed (EITE) activities to replace the current partial exemption;
- Removing the requirement for legislated biennial reviews of the RET; and
- Reinstating biomass from native forest wood waste as an eligible source of renewable energy.

Outline of the Bill

This Bill amends the REE Act and REE Regulations and makes consequential amendments to the CCA Act to implement the Government's proposed changes to the RET. The Bill is set out in four parts.

- Part 1 amends the required amount of renewable source electricity (the annual legislated targets under the large-scale component of the RET scheme) for each year until 2030.
- Part 2 amends the framework of partial exemptions (from RET liability) for electricity used in undertaking EITE activities to provide a clear power for the REE Regulations to provide full exemptions for this electricity.
- Part 3 repeals the requirement for periodic reviews of the operation of the Act. It includes a consequential amendment to the CCA Act.
- Part 4 amends the REE Regulations to reinstate native forest wood waste as an eligible renewable source, under the same conditions that existed prior to its removal from eligibility in 2011.

Date of effect

The Bill will commence on the day after the Bill receives the Royal Assent.

Proposal announced

On 22 October 2014, following Government consideration of the findings of the 2014 Expert Panel Review, the Minister for the Environment, the Hon Greg Hunt MP and the Minister for Industry and Science, the Hon Ian Macfarlane MP jointly announced the Government's proposal to reform the RET scheme. Negotiations with the Opposition commenced at this point and an agreed position was jointly announced on 18 May 2015.

Financial impact

The financial impacts of the reforms to the RET scheme have not yet been finalised, but are expected to be minor.

Human rights implications

The Bill does not raise any human rights issue. See Statement of Compatibility with Human Rights (see Chapter 5).

Summary of regulation impact statement

The report of the 2014 Expert Panel Review of the RET scheme, entitled *Renewable Energy Target Scheme – Report of the Expert Panel*, has been certified as meeting the requirements of a Regulation Impact Statement for the purposes of the Bill. The Office of Best Practice Regulation reference is 16961.

Compliance cost impact

The Department of the Environment has assessed that the amendments in the Bill will result in an average of \$519.6 million per annum in regulatory cost savings as indicated in the table below.

Change in average annual regulatory costs (from business as usual)				
Change in costs (\$million)	Business	Individuals	Community Organisations	Total change (\$million)
Total, by sector	(\$519.6)	\$0	\$0	(\$519.6)

Chapter 1

Annual legislated targets under the large-scale component of the RET scheme

Summary of new law

1.1 Part 1 of Schedule 1 of the Bill amends the profile of annual targets under the large-scale component of the RET scheme to include a 33,000 GWh target for 2020, and to remove now redundant provisions relating to target allocations for electricity generation using waste coal mine gas.

Context of amendments

1.2 The large-scale component of the RET scheme features a profile of legislated annual targets out to 2030 for additional renewables-based electricity (section 40 of the REE Act). These targets increase to 41,000 GWh in 2020 and are maintained at this level until the scheme ends in 2030.

1.3 The REE Act places a legal obligation on liable entities to collectively purchase and surrender sufficient large-scale generation certificates (each worth one MWh) to meet these annual targets. The task of meeting the targets is shared across all liable entities in proportion to their purchases of RET-liable wholesale electricity.

1.4 The revenue from the sale of these certificates to liable entities helps make new renewable energy projects viable. Liable entities pass on the costs of purchasing these certificates to households and businesses through higher electricity bills.

1.5 The Government has decided to amend the target profile to be based on a 2020 target of 33,000 GWh rather than 41,000 GWh to better reflect electricity market conditions, while continuing to support the uptake of large-scale renewable electricity.

1.6 Since 2012, the annual legislated targets have also included a small allocation of non-renewable generation using waste coal mine gas. The total allocation is capped at 850 GWh per year and only applies until 2020. The annual targets are effectively increased by 850 GWh to accommodate waste coal mine gas fired generation without displacing renewable energy under the RET.

1.7 Prior to commencement of this Bill, the table in subsection 40(1) has included the annual renewable energy target profile, while subsections 40(2) to 40(5) have established the additional target allocation able to be met by generation using waste coal mine gas.

Detailed explanation of new law

1.8 The Bill adjust the required GWh of renewable source electricity in each year from 2016 to 2030, providing a new set of annual targets which provide a smooth transition to 33,000 GWh of renewable source electricity in 2020. This level is maintained until 2030. *[Schedule 1, items 1 and 2]*

1.9 The Bill repeals subsections 40(2) to 40(5) which are redundant as the adjustments they make to the legislated targets from 2012 to 2020 to include the waste coal mine gas allocation have now been incorporated into the table in subsection 40(1). For example, the amended target for 2020 in the table is 33,850 GWh, including 850 GWh for generation using waste coal mine gas. *[Schedule 1, item 3]*

1.10 The Bill also repeals subsections 40(1A) and (1B), which redistributed pre-2020 targets to reduce surplus certificates, as they are now redundant. The targets for 2012 and 2013 were amended as required and the Government's decision to amend the targets has rendered the previous requirement to adjust the future targets for 2016 to 2019 redundant. *[Schedule 1, item 3]*

1.11 A note in the Bill indicates that in the interests of completeness, the required GWh amounts for 2012 to 2015 in the table in subsection 40(1) reflect the adjusting effects of the waste coal mine gas allocation and redistribution of pre-2020 targets to reduce the certificate surplus. *[Schedule 1, item 3]*

Chapter 2

Exemption certificates

Outline of chapter

2.1 Part 2 of Schedule 1 to the Bill would amend the REE Act to provide for full exemptions from RET liability in respect of electricity used in carrying out the activities prescribed as EITE in the REE Regulations.

Context of amendments

2.2 The REE Act provides the legislative framework for the provision of partial exemptions from RET liability, while the REE Regulations prescribe the eligible activities and processes for applying for, issuing and amending partial exemptions, including the methodology for calculating the amounts of these partial exemptions.

2.3 Under the REE Act, partial exemption is provided in the form of a PEC issued by the CER to a business conducting a prescribed EITE activity. Each PEC represents an amount of electricity, in MWh, to which RET liability will not apply in a given year. An EITE business can exchange this PEC with its RET-liable electricity retailer in return for partial relief from the pass-through of RET costs.

2.4 Each February, as part of the annual reporting and surrender process, the RET-liable retailer reduces its liability by surrendering (to the Regulator) the PECs it received from its EITE electricity customers for the prior year's electricity supply.

2.5 The REE Regulations currently stipulate that electricity used in activities defined as 'highly emission-intensive' is exempted at a 90 per cent rate whereas electricity used in activities defined as 'moderately emissions-intensive' is exempted at a 60 per cent rate.

2.6 These rates of partial exemption only apply to the additional RET liability flowing from the expansion of the scheme in 2009, effectively reducing the actual level of partial exemption below the 60 per cent or 90 per cent levels. For example, in 2013 the actual exemption level was around 75 per cent for a highly emissions-intensive activity and around 50 per cent for a moderately emissions-intensive activity.

2.7 For administrative simplicity – in particular, to streamline reporting requirements across climate policy measures – the REE Regulations base the amount of exemption on a business's reported annual

production of the activity output (for example tonnes of aluminium) and the electricity intensity baseline (in megawatt-hours of electricity consumed per unit of activity output). A single electricity intensity baseline is set for each activity which represents the average across all of the individual instances of that activity. This means that in reality most businesses will receive either more or less than the calculated (theoretical) percentage level of partial exemption.

2.8 To ease pressure on businesses undertaking EITE activities and improve the competitiveness of Australian industry, the Government has decided to increase the rate of exemption for all EITE activities, whether highly or moderately emissions-intensive, to 100 per cent as applied to the total RET liability.

Summary of new law

2.9 The new law will empower the REE Regulations to prescribe full exemptions by removing the word 'partial' wherever it appears in the REE Act.

2.10 It is intended that as soon as practicable following passage of the Bill the REE Regulations will be amended to complete implementation of 100 per cent exemptions for all EITE activities.

2.11 The Bill provides for full exemptions to apply in respect of the whole of the current compliance year (2015) as well as for all subsequent years.

2.12 The averaging process described above for establishing the electricity intensity baseline for an EITE activity was based on data from July 2006 to June 2008 and there have been changes in industry structure and operation since that time. While not a significant issue in the current context of partial exemptions, these factors mean that with full exemptions there is a risk of some EITE firms receiving assistance that exceeds the cost impact of the RET on these EITE activities. The Government will consult on the detail of regulations to address this risk.

2.13 Consequently, the Bill provides for the REE Regulations to be more flexible than is currently the case in terms of how they may characterise or describe the amount of an exemption certificate.

2.14 As the Regulator is expected to have issued many, if not all, of the PECs for the 2015 compliance year by the time passage of the Bill is complete, the Bill includes transitional provisions to require the CER to revoke and reissue the 2015 PECs (which become exemption certificates) in accordance with the amended REE Regulations.

2.15 As a result of increasing exemptions for EITE activities, there will be fewer LGCs surrendered to meet the 2015 target than would otherwise have been required, putting upward pressure on the surplus of

LGCs in the market. However, this difference will be taken into account under paragraph 39(3)(c) and subparagraph 40A(3)(d)(iii) in setting the 2016 obligations.

Detailed explanation of new law

2.16 The Bill makes amendments to omit the word ‘partial’, thereby providing a clear power for the REE Regulations to provide full exemptions from RET liability for the electricity used in undertaking the prescribed EITE activities. *[Schedule 1, items 4, 9 to 12, 14 to 26, and 29 to 36]*

2.17 The Bill amends subsection 5(1) of the REE Act to remove redundant references to the Carbon Pollution Reduction Scheme and the associated EITE assistance program, and to clarify that an emissions-intensive trade-exposed activity is an activity prescribed by regulations made for the purposes of this definition. *[Schedule 1, items 5 to 6]*

2.18 The Bill amends subsection 5(1) of the REE Act to remove ‘partial exemption’ and ‘partial exemption certificate’ as definitions under the REE Act and instead define ‘exemption’ and ‘exemption certificate’ in the same terms as formerly used for ‘partial exemption’ and ‘partial exemption certificate’, to clarify that a full exemption can be provided. *[Schedule 1, items 7 to 8]*

2.19 The Bill amends sections 38A and 38B of the Act to omit the word ‘partial’, enabling full exemptions to be provided. This item also defines an exemption amount in an exemption certificate as the amount specified or described in the certificate as being the amount of the liable entity’s exemption. This definition works with items 27 and 28 to provide the flexibility for an exemption certificate to specify either a quantitative amount of exemption in MWh or to describe a method for quantifying the exemption. *[Schedule 1, item 13]*

2.20 The Bill amends the effect of section 46B (which deals with the supply of exemption certificates) by removing the word ‘partial’ wherever it occurs. These items also extend the way in which the amount of an exemption can be represented on an exemption certificate. In particular, paragraph (b) of new subsection 46B(4) prescribes that an exemption certificate may either directly quantify the amount of an exemption or alternatively describe the amount in some other manner, for example by setting out a method for quantifying the amount. *[Schedule 1, items 27 to 28]*

2.21 It is intended that this additional flexibility would empower regulations to effectively limit the potential for an exemption to be provided in respect of a particular EITE activity (at a particular site) that exceeds the amount of electricity consumed in undertaking that activity.

2.22 Item 18 removes the references to ‘partial’ in the provisions which relate to the calculation of the renewable power percentage and

small-scale technology percentage. These changes allow the additional total amount of exemptions provided in 2015 to be taken into account in determining the 2016 renewable power percentage and small-scale technology percentage. *[Schedule 1, item 18]*

Application and transitional provisions

2.23 The Bill includes transitional provisions to ensure that full exemptions from RET liability can be provided for all electricity consumed in undertaking EITE activities in 2015. The Bill requires that the Regulator must amend all PECs already issued for the current (2015) compliance year in accordance with the REE Regulations as amended to complete the implementation of full exemptions for EITE activities. To make this amendment, the Regulator will revoke the PECs and reissue exemption certificates providing full exemptions as soon as practicable after the necessary regulatory amendments are put in place to the prescribed person to whom the original partial exemption certificate was issued. If the prescribed person is not the liable entity, they will need to provide the reissued exemption certificate to the relevant liable entity for that entity to include a copy in its annual energy acquisition statement. *[Schedule 1, item 37]*

2.24 The Bill also ensures that neither the provisions of the Bill, nor the follow-on regulations to complete the implementation of full exemptions, can affect the validity nor effectiveness of the PECs issued before the commencement of the follow-on regulations. However, this provision is subject to the revocation and reissue of the exemption certificates in item 37(2) described above. *[Schedule 1, item 37]*

2.25 The Bill includes saving provisions to ensure that regulations in force immediately before the commencement of particular amendments made by the Bill operate after that commencement as if they had been made for the purpose of the respective provision as amended. These particular amendments relate to: the definition of the meaning of an EITE activity (subsection 5(1)); the specification of the amount of a liable entity's exemption (paragraph 46B(1)(a)); and the prescription of other information that must be on an exemption certificate (paragraph 46B(1)(b)). *[Schedule 1, item 38]*

Chapter 3

Removal of requirement for periodic reviews of renewable energy legislation

Outline of chapter

3.1 Part 3 of Schedule 1 to the Bill removes the requirement for periodic reviews of the operation of the REE Act and subordinate legislation that establish the RET scheme.

Context of amendments

3.2 A legislative requirement has existed for the Climate Change Authority (the Authority) to conduct a review of the operation of the REE Act and subordinate legislation every two years.

3.3 The Authority has complied with this requirement by undertaking reviews in 2012 and 2014.

3.4 To provide greater certainty for project developers, investors and energy users, regular reviews of the operation of the REE Act are being abolished.

3.5 A lack of timely investment in renewable energy capacity to meet the new targets could impose additional costs on electricity users. To help to manage this risk, the Regulator will prepare an annual statement on the progress of the RET scheme towards meeting the new targets and the impact it is having on household electricity bills.

Detailed explanation of new law

3.6 The Bill repeals section 162 of the REE Act, removing the obligation for the Authority to conduct periodic reviews of the REE Act and subordinate legislation. *[Schedule 1, item 39]*

Consequential amendments

3.7 The Bill removes references to the REE Act from the CCA Act, rescinding the Authority's obligation to perform a periodic review of the operation of the REE Act and subordinate legislation. *[Schedule 1, items 40 to 41]*

Application and transitional provisions

3.8 The Bill rescinds the obligation for the Climate Change Minister to ensure directions given to the Authority have regard to the objects of the REE Act. *[Schedule 1, items 42 to 43]*

3.9 The Bill removes the limited exemption from liability for damages for the Authority and related persons in regard to damages occurring, or purported to occur, as a result of a RET review or related matter done, or omitted to be done, in good faith and consistent with the requirement to conduct periodic reviews of the operation of renewable energy legislation. *[Schedule 1, items 44 to 45]*

3.10 The Bill allows any review or related matter done, or omitted to be done, by the Authority before the enactment of the Bill, in good faith and consistent with the previous requirement to conduct reviews of the operation of the RET legislation, to continue to be exempt from liability for damages. *[Schedule 1, item 46]*

Chapter 4

Wood waste

Outline of chapter

4.1 Part 4 of Schedule 1 to the Bill amends the REE Regulations to allow certain native forest wood waste to be an eligible renewable energy source, consistent with requirements in place before November 2011.

Context of amendments

4.2 Wood waste has been an eligible renewable energy source under the REE Act since it was first passed by Parliament. The first regulations under the REE Act set out a number of tests relating to native forest wood waste to limit the risk of the REE Act having adverse impacts on our native forests. These tests were refined in 2007, but retained their original focus to ensure that eligibility under the RET did not lead to additional logging of native forests.

4.3 In 2011, the REE Regulations were amended to remove the eligibility of native forest wood waste, with some transitional arrangements put in place for existing power stations using native forest wood waste.

4.4 The amendments in Part 4 of Schedule 1 of the Bill reinstate native forest wood waste as an eligible renewable energy source with the constraints that operated under the scheme up until November 2011.

Summary of new law

4.5 The REE Regulations will no longer exclude native forest biomass from sawmill residue, manufacturing operations or harvesting which meets a number of integrity requirements. In particular, the harvesting must not be primarily for electricity generation; the biomass must be a genuine by-product or waste product of a legal operation; and relevant regional forest agreement requirements must be met.

4.6 Wood waste meeting these requirements will be an eligible energy source, enabling large-scale generation certificates to be created under the Act for electricity generated using this source.

Detailed explanation of new law

4.7 The Bill amends paragraph 8(b) of the REE Regulations so that it no longer excludes native forest wood waste, consistent with the operation of this paragraph before November 2011. Accordingly, a manufactured wood product or by-product of a manufacturing process which originally came from a native forest is an eligible renewable energy source. *[Schedule 1, item 48]*

4.8 The Bill amends paragraph 8(d) of the REE Regulations so that it no longer excludes native forest wood waste, consistent with the operation of this paragraph before November 2011. Accordingly, sawmill residue which originally came from a native forest is an eligible renewable energy source. *[Schedule 1, item 49]*

4.9 The Bill reintroduces a general provision to include as an eligible energy source wood waste biomass from native forests consistent with the protections previously provided in the REE Regulations as they existed before November 2011 *[Schedule 1, items 50 to 51]*. Importantly:

- the biomass must have been harvested primarily for a purpose other than biomass for energy production;
- the biomass must either be a by-product or waste product of the harvesting operation approved under relevant Commonwealth, State or Territory planning and approval processes that meets the high-value test or a by-product (including thinnings and coppicing) of a harvesting operation that is carried out in accordance with ecologically sustainable forest management principles; and
- the biomass must meet ecologically sustainable forest management principles in a regional forest agreement, or if no regional forest agreement is in place, meet equivalent principles to the satisfaction of the Minister.

4.10 The high-value test ensures that the primary purpose of the operation is production of sawlogs, veneer, poles, piles, girders, wood for carpentry or craft uses, or oil products such that the financial value of these products is higher than the total financial value of other products of the harvesting operation.

4.11 As a result of these amendments, the text of REE Regulation 8 will be exactly the same as the text that was in force before November 2011 and is intended to be interpreted consistently with its previous operation.

4.12 The Bill inserts a “(1)” in front of regulation 8 so that it becomes subsection (1) of the amended regulation 8. *[Schedule 1, item 47]*

Application and transitional provisions

4.13 This revised definition will apply to all electricity generation which occurs after the commencement of the Bill. This includes electricity generators subject to the transitional provisions of the regulations made in November 2011. *[Schedule 1, item 52]*

Chapter 5

Statement of compatibility with human rights

Prepared in accordance with Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011

Renewable Energy (Electricity) Amendment Bill 2015

The Bill is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

Overview of the Bill

The Bill amends the REE Act and makes consequential amendments to the CCA Act to recalibrate and reform the RET to better reflect electricity market conditions, provide certainty to industry and enable sustainable growth in renewable electricity generation.

In particular, the Bill will adjust the profile of annual renewable generation targets so that the target reaches 33,000 GWh in 2020 and is maintained at 33,000 GWh from 2021 to 2030. It will also: increase assistance for emissions-intensive trade-exposed activities to a full exemption for the electricity used in these activities; reinstate native forest wood waste as an eligible source of renewable energy, subject to conditions; and, remove the statutory requirement for biennial reviews of the RET by the Climate Change Authority.

Human rights implications

The Bill does not engage any of the applicable rights or freedoms.

Conclusion

The Bill is compatible with human rights as it does not raise any human rights issues.

Minister for the Environment, the Hon Greg Hunt MP

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**Schedule 1: Renewable Energy (Electricity) Amendment Bill
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