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1 P R O C E E D I N G S

2 JUDGE MOSS: Good morning, everybody. My  
3 name is Dennis Moss. I'm an administrative law judge  
4 with the Washington Utilities and Transportation  
5 Commission. We are convened in a prehearing  
6 conference, consolidated dockets styled, Washington  
7 Utilities and Transportation Commission against  
8 Northwest Natural Gas Company in Docket UG-080519, and  
9 the second proceeding is captioned, In the matter of  
10 the petition of Northwest Natural Gas Company for an  
11 accounting order authorizing deferred accounting  
12 treatment of certain costs associated with the Smart  
13 Energy Program, and that's Docket UG-080530.

14 Our first item of business will be to take  
15 appearances, and we will start with the Company;  
16 Ms. Rackner?

17 MS. RACKNER: Lisa Rackner for Northwest  
18 Natural.

19 JUDGE MOSS: We will need your address and  
20 your telephone number and your fax number and your  
21 e-mail for the record on this first appearance. After  
22 this, we will use the short form.

23 MS. RACKNER: My address is 520 Southwest  
24 Sixth, Portland, Oregon, 97204. My phone number is  
25 (503) 595-3925. My fax number is (503) 595-3928, and

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1 my e-mail is lisa@mcd-law.com.

2 JUDGE MOSS: And I have you down  
3 as Suite 830?

4 MS. RACKNER: I'm there.

5 JUDGE MOSS: Ms. Hirsh, were you going to  
6 enter an appearance today for the Northwest Energy  
7 Coalition?

8 MS. HIRSH: Yes. Nancy Hirsh, Northwest  
9 Energy Coalition. Our address is 811 First Avenue,  
10 Suite 305, Seattle, Washington, 98104. Our phone  
11 number is (206) 621-0094. Fax is (206) 621-0097.

12 JUDGE MOSS: I understand Ms. Dixon will also  
13 be participating?

14 MS. HIRSH: Yes.

15 JUDGE MOSS: Contact information for her  
16 would be the same?

17 MS. HIRSH: Yes, it is.

18 JUDGE MOSS: With the exception of I have her  
19 e-mail as danielle@nwenergy.org.

20 MS. HIRSH: Right, and mine is  
21 nancy@nwenergy.org.

22 JUDGE MOSS: Public Counsel?

23 MS. SHIFLEY: Sarah Shifley for Public  
24 Counsel. My mailing address is 800 Fifth Avenue, Suite  
25 2000, Mail Stop TV-14, Seattle, Washington, 98104-3188.

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1 My direct phone number is area code (206) 464-6595. My  
2 fax is area code (206) 464-6451. My e-mail is  
3 sarahs5@atg.wa.gov.

4 JUDGE MOSS: Is Mr. ffitch entering an  
5 appearance in this proceeding?

6 MS. SHIFLEY: No.

7 JUDGE MOSS: I will scratch him off the list.  
8 For staff, Mr. Thompson?

9 MR. THOMPSON: Jonathan Thompson representing  
10 Commission staff. My mailing address is 1400 South  
11 Evergreen Park Drive Southwest, 98504. My telephone  
12 number is (360) 664-1225. Fax is 586-5522, and my  
13 e-mail is jonat@atg.wa.gov.

14 JUDGE MOSS: I have an e-mail for you at the  
15 UTC as well. Is that still effective?

16 MR. THOMPSON: It is.

17 JUDGE MOSS: Is there any other person who  
18 wishes to enter an appearance today in either of these  
19 dockets or both of them? Apparently not. We will go  
20 ahead and take up then the Northwest Energy Coalition  
21 did file a petition to intervene. Is there any  
22 objection? Hearing none, the petition is granted.  
23 Ms. Hirsh, you are now a party.

24 MS. HIRSH: Thank you very much.

25 JUDGE MOSS: You are welcome. Another matter

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1 that we have pending is Public Counsel's motion to  
2 consolidate these proceedings. Before I get to that,  
3 let me ask if the parties perceive any need for  
4 discovery in this proceeding?

5 MS. SHIFLEY: I believe that Public Counsel  
6 would request the discovery rule be invoked, Your  
7 Honor.

8 JUDGE MOSS: We will do that. Perhaps we  
9 will discuss a little bit later whether that is going  
10 to be a set of rules that we will actually need, and  
11 what about a protective order? Is there any request  
12 for that in this proceeding?

13 MS. RACKNER: Yes. The Company would like a  
14 protective order entered, and I would note that Public  
15 Counsel has already issued data requests to the  
16 Company.

17 JUDGE MOSS: So the Commission's standard  
18 form of protective order would be satisfactory?

19 MS. RACKNER: Yes, it will.

20 JUDGE MOSS: About this motion to  
21 consolidate, I have the motion, of course. I have the  
22 Company's answer. I have Staff's answer. I have read  
23 all three. I will give you the opportunity if you have  
24 something that's not committed to paper, if you to wish  
25 to add something; Ms. Shifley?

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1 MS. SHIFLEY: Your Honor, I guess I would  
2 just like to take this opportunity to point out that  
3 approval of the Smart Energy service offering is not a  
4 sure thing. It seems in Northwest Natural's response  
5 that it has been treated as so, but I just wanted to  
6 bring to your attention again that the Commission did  
7 not choose to approve or allow the tariff to go into  
8 effect despite Staff's recommendation to do so, and  
9 Northwest Natural does still have the burden of showing  
10 that its assertive offering would result in fair, just,  
11 and reasonable rates.

12 Then I would also like to point out that  
13 again, unlike Northwest Natural's assertion in its  
14 response to the motion, there aren't any parties who  
15 are participating in the Smart Energy filing these  
16 dockets that are not also parties to the rate case.

17 JUDGE MOSS: Thank you. Mr. Thompson, do you  
18 have anything to add to your answer?

19 MR. THOMPSON: No, I don't have anything to  
20 add to our written response.

21 JUDGE MOSS: The Company?

22 MS. RACKNER: I just wanted to respond to  
23 Ms. Shifley's comment with respect to the fact that the  
24 tariff filing hasn't been approved, and we agree it  
25 hasn't been approved. At the time of the open meeting,

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1 the Company actually requested that the tariff file and  
2 the petition for deferral be considered together. The  
3 Company did not want the tariff filing approved prior  
4 to the petition being decided.

5 That said, we certainly aren't going to argue  
6 what the Commission would have done had the Commission  
7 asked for it to be considered.

8 JUDGE MOSS: And, of course, we are here on  
9 these consolidated dockets, which is why I'm here  
10 today. You raise an interesting point, Ms. Shifley, in  
11 terms of the Commission's determination of fair, just,  
12 and reasonable rates. Are we asked to do that in this  
13 proceeding?

14 MS. SHIFLEY: That's my interpretation from  
15 the consolidation order in order setting for hearing in  
16 which the Commission stated that Northwest Natural does  
17 still the burden of showing exactly that in its tariff  
18 filing.

19 JUDGE MOSS: This is a voluntary program;  
20 right?

21 MS. SHIFLEY: That's correct.

22 JUDGE MOSS: Does that have any implications  
23 in terms of what rate is set?

24 MS. SHIFLEY: My understanding is that if  
25 it's going to be a tariff that it would still have to



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1 be approved as a fair, just, and reasonable tariff.

2 JUDGE MOSS: Which raises an interesting  
3 question that occurred to me as I was thinking about  
4 this case yesterday. Does this really need to be a  
5 matter of tariff if it's a voluntary thing? I know on  
6 my PSE bill, for example, I get the opportunity to  
7 donate money if I want to. It's not a matter of  
8 tariff.

9 MS. RACKNER: Well, Your Honor has raised a  
10 good question, and I have a couple of responses. The  
11 first one is I don't know for certain with respect to  
12 its voluntariness, but there is an aspect of this  
13 program which does affect rates of all customers.  
14 Specifically with respect to the petition for deferral,  
15 the Company has asked that certain limited start-up  
16 costs associated be included in the rates of all  
17 customers.

18 So while the bulk of the costs of the program  
19 are paid for by the participants, again, certain  
20 limited start-up costs the Company is asking be  
21 deferred and be considered to be included in all rates,  
22 which is really the basis of Staff's questions and  
23 objections to the tariff originally.

24 So whether or not a purely volunteer program  
25 needs to be included as a tariff, and I suspect that

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1 this one does, the Commission still will ultimately  
2 have to make a determination as to whether the start-up  
3 costs that are included in rates are prudent, and  
4 again, that said, that needn't be decided and can't be  
5 decided either with respect to approval of the tariff  
6 filing or the petition for deferral. That would be  
7 decided at the point after the costs have already been  
8 incurred before they are amortized into rates.

9           And that's really the crux of our  
10 disagreement with Public Counsel's position in this  
11 case. They seem to be jumping the gun. They are  
12 arguing that the case to be consolidated because our  
13 petition is really about the prudence of these costs,  
14 and that's not the case. What this case is about is  
15 whether the tariff is one that the Commission wants to  
16 approve by itself and whether these are the types of  
17 costs for which the Company can open a deferred account  
18 for. Whether or not they are prudently incurred is  
19 something that would be decided at a later date.

20           JUDGE MOSS: So not only their prudence, but  
21 if they are to be recovered at all, how and from whom.  
22 Those questions would also be before the Commission in  
23 the future, wouldn't they?

24           MS. RACKNER: To the extent the Company is  
25 opening a deferred account and accounting for them as a

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1 regulatory asset, I believe that the assumption at that  
2 point is that they will be included in customer rates.

3 JUDGE MOSS: Really. Well, the Commission  
4 has repeatedly said that's not so. All we do if we  
5 issue an accounting order is say you can defer these  
6 costs. We will consider later whether they can be  
7 included in rates, and if so, how they will be  
8 recovered and from whom.

9 MS. RACKNER: I don't think we have a  
10 disagreement on that.

11 JUDGE MOSS: I want to be clear about that  
12 because it's an important consideration as we go  
13 forward here.

14 MS. HIRSH: Judge Moss?

15 JUDGE MOSS: Yes?

16 MS. HIRSH: I want to enter that the  
17 Northwest Energy Coalition motion filed by Public  
18 Counsel but agrees with Commission staff's response to  
19 that motion and supports moving ahead in kind of a  
20 combining the legal and policy arguments.

21 JUDGE MOSS: I'm trying to gain a better  
22 understanding of what the legal and policy arguments  
23 are that are going to be involved in this case so that  
24 we have a thorough understanding in terms of ruling on  
25 this motion.

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1           MR. THOMPSON: Judge Moss, I might add from  
2 Staff's perspective, I think our view is that we don't  
3 think this offering necessarily has to be set forth in  
4 tariff. It could be offered outside of tariff, but  
5 since there are charges being collected from customers,  
6 it's probably a good idea that it be included in  
7 tariff, so that is sort of our perspective on this.

8           JUDGE MOSS: Staff shares the view, I  
9 imagine, that I express that all we are deciding here  
10 is whether these costs can be set aside in a deferral  
11 account, and we'll later determine whether they can be  
12 recovered, and if so, from whom.

13           MR. THOMPSON: Correct. This would not  
14 prejudice the ability to recover the costs in rates.

15           JUDGE MOSS: Let me ask if Staff perceives an  
16 issue in this case as to whether the Commission has the  
17 legal authority to approve this tariff. Does Staff  
18 perceive that as an issue?

19           MR. THOMPSON: Well, we perceive that issue.  
20 I guess the issue would be whether this is a properly  
21 tariffed utility service.

22           JUDGE MOSS: You catch my drift.

23           MR. THOMPSON: I think that could be an  
24 issue. The question, I think, boils down to whether  
25 there is a sufficient nexus to the provision of gas

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1 distribution service, and so I think it's a matter of  
2 degree, and I think Staff's view is that it's probably  
3 close enough to meet that requirement.

4 JUDGE MOSS: I'm curious whether we are going  
5 to be considering that or not in this case. I was  
6 reading this with some interest yesterday. There are  
7 actually a couple of cases in the style of Okeson  
8 against the City of Seattle, one of which concerns  
9 greenhouse gases and one of which concerns lighting,  
10 and while those cases turn on principles of municipal  
11 law and government powers and perhaps have no direct  
12 applicability here, they are at least suggestive, and I  
13 was wondering if we might be dealing with similar  
14 issues in this case.

15 MR. THOMPSON: I think it's certainly  
16 possible. I looked at that Okeson case, and it  
17 concerned Seattle City Light's authority as a municipal  
18 utility to take its rate-payers' money and go purchase  
19 greenhouse gas offsets, and the Court in that case  
20 concluded that it was not within -- there wasn't a  
21 sufficient nexus with the statutory authority of the  
22 municipal utility to do that. The legislature  
23 responded about a month later amending the authority to  
24 state that it is within the utility purpose to do that  
25 sort of thing.

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1           So I could see that being an issue here. The  
2 legislature didn't amend the investor-owned utility  
3 statutes. Whether it thought it might need to or not  
4 is another question. So that's some unique Washington  
5 law that would play into this.

6           JUDGE MOSS: It's interesting at least. The  
7 reason I'm exploring all this is that the suggestion,  
8 and I believe in your answer, Mr. Thompson, is that  
9 this is a case that most likely can be resolved in what  
10 I would think of as cross-motions for summary  
11 determination. You mentioned the use of comments  
12 similar to something that was done in a Qwest  
13 proceeding recently. I don't suppose it really matters  
14 so much what we call it, but basically, what you are  
15 talking about is that this case is one that might be  
16 resolved, both dockets, without the necessity of  
17 resolving any fact issues. Ms. Shifley, do you have a  
18 perspective on that?

19           MS. SHIFLEY: I don't think that we will be  
20 opposed to handling some of the initial legal and  
21 policy issues in that matter but would wonder if  
22 perhaps leaving the option open for further factual  
23 consideration if those issues were resolved in a way  
24 that necessitated more factual investigation.

25           JUDGE MOSS: Do you see any fact issues at

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1 this juncture?

2 MS. SHIFLEY: It seems like the major issues  
3 at this point are legal and policy issues that need to  
4 be resolved before any sort of factual consideration  
5 does take place.

6 JUDGE MOSS: It does seem to me that is the  
7 nature of the case. It's essentially legal and policy  
8 in nature, and one of the things we are going to  
9 discuss today is a procedural schedule, and in that  
10 context, I have to have a good sense of what process we  
11 are going to follow, and my thinking initially, and  
12 it's been somewhat corroborated by what I'm hearing  
13 today, is that this is a case we can probably resolve  
14 fairly quickly in terms of having the parties brief the  
15 issue and present them to me for an initial decision  
16 and then whatever process may follow.

17 So considering that and considering the other  
18 arguments that I've heard on the questions related to  
19 consolidation, we are going to deny the motion, and we  
20 will proceed separately in this docket or these  
21 dockets, I should say. So that takes care of that  
22 piece of business.

23 That does bring us to the question of process  
24 and procedural schedule, and as I've probably made  
25 clear by now, we will go forward, at least initially,

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1 without any schedule other than one for some briefing.  
2 So I have my calendar handy if the parties wanted to  
3 take a few minutes off the record to discuss among  
4 themselves a schedule for briefing, or have you already  
5 done so?

6 MS. RACKNER: We haven't.

7 JUDGE MOSS: We will go off the record. Do  
8 you think ten minutes will be sufficient? Let's do  
9 that, and I'll come back about five after the hour.

10 MS. HIRSH: Judge Moss, is your schedule on  
11 the Web that you presented? Is it on the Web?

12 JUDGE MOSS: Don't worry about my schedule.  
13 If I don't have to be sitting here for a hearing, my  
14 schedule doesn't really matter.

15 MS. HIRSH: No. I meant a schedule proposed.

16 JUDGE MOSS: There is no proposed schedule at  
17 this point. The parties are going to discuss that, and  
18 you will be included in that. We will be off the  
19 record.

20 (Discussion off the record.)

21 JUDGE MOSS: The parties have been discussing  
22 among themselves for the past 30 minutes a schedule  
23 for -- apparently they want to have two rounds of  
24 briefing in this, or I should say, cross-motions and  
25 then an opportunity for response. I think in order to



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1 expedite our proceedings this morning, we are going to  
2 stay on the record and I'm going to help you.

3           Today is the 13th of June. It does strike me  
4 that there is very little need for discovery in this  
5 case and that there are ways to expedite discovery. If  
6 you have some questions about the program, there is no  
7 doubt someone at the Company who the expert can contact  
8 and have a conversation with. We've agreed that there  
9 are not material facts in dispute that we need to  
10 resolve through any sort of evidentiary presentation,  
11 so it seems to me that the discovery could be handled  
12 very expeditiously such as it is. I don't know that  
13 there is even a need for formal discovery at this  
14 stage. If the Public Counsel has some questions about  
15 the program, can the Company make someone available or  
16 some set of persons available for informal exchange of  
17 information that can fully inform Public Counsel's  
18 expert about this program.

19           MS. RACKNER: We would be happy to make folks  
20 available.

21           JUDGE MOSS: Just pick up the telephone or  
22 drive down to Portland or whatever and take care of it  
23 that way, because I don't want to spend two months  
24 briefing this thing around our other business.

25           The book of business at the Commission is

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1 very full. My own calendar is very full. I'm doing  
2 both of those PSE hearings. I would like to be able to  
3 handle this matter within the same time frame. I don't  
4 see any reason to put this off until I'm finished  
5 processing these evidentiary hearings and reading  
6 briefs and helping the commissioners write orders and  
7 all of that sort of thing, and if I can do all that,  
8 then you can do your briefing in this same time frame  
9 too.

10           The times I've heard suggested for briefing,  
11 July 18th and 25th have been suggested, it seems to me  
12 that a month is quite adequate to get your initial  
13 briefs done. I realize there is other settlement  
14 conferences and so on and so forth. Go ahead.

15           MS. SHIFLEY: I think that the Company's  
16 suggested date of July 18th would work.

17           JUDGE MOSS: We'll have initial briefing, and  
18 call it cross-motions, whatever you want to call it. I  
19 will probably call it cross-motions for summary  
20 determination in the procedural schedule, and we will  
21 make that on July 18th.

22           Now, we do have the PSE merger hearing the  
23 week of the 28th. I can't really expect people to be  
24 writing a brief at the same time. However, the week  
25 after the hearing is a time, something of a hiatus

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1 usually in counsels' intensive efforts in cases, so I  
2 don't see any reason why we can't have the reply briefs  
3 on August 8th. Is there any reason we can't do that?

4 MS. RACKNER: No, that's fine.

5 JUDGE MOSS: I'm not hearing any expression  
6 of concern so that's what we will do. If circumstances  
7 change, if any great, pressing matters come to light  
8 that cause us to want to change the procedural  
9 schedule, we can always entertain a motion. If the  
10 parties agree among themselves to some change in dates,  
11 then certainly you can present that as an agreed matter  
12 and it will be granted routinely.

13 If one or more of you has a problem and  
14 cannot achieve agreement with the other parties, then  
15 you bring me a motion, and I will promise you, as  
16 always, that I will treat you fairly and not compromise  
17 your ability to fully represent the interests that you  
18 do represent, but it seems to me that we are going to  
19 have to bear down and try to fit this in between all  
20 these other cases. Otherwise, we will be into next  
21 year before we can actually say, Oh, the calendar looks  
22 clear, because this is an unusual year and we have a  
23 lot going on.

24 So there we are. July 18th for the initial  
25 rounds, and August 8th -- and I'll say that the second

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1 round probably doesn't require very much. You know  
2 your arguments. You will, I think, be able to lay them  
3 out pretty fully the first time. Often there isn't  
4 even a need for the second round, but we will go ahead  
5 and set the date so you will have the opportunity.

6 I don't think we need any other procedural  
7 dates, do we? Everything else depends on when I can  
8 get to it. Looking at that, just to give you all some  
9 sense, the PSE general rate case hearing begins on the  
10 25th. The briefs are due in the PSE merger proceeding  
11 on August 13th. So I can see that I'm going to be very  
12 busy between August 8th and August 13th, but I expect  
13 to have this done by the end of August.

14 MS. RACKNER: That would be wonderful.

15 JUDGE MOSS: That would be my own  
16 expectation. Now, having said that, I will caution you  
17 that my dates are always aspirational. Given the  
18 tightness of time, considering other matters that we  
19 are all involved in, I think we will allow for  
20 electronic submission of your briefs on those dates  
21 that we've indicated with the service and filing of the  
22 paper copy the following day, and that, of course, is  
23 the official filing and service because of the way the  
24 statutes work. Actually, the parties can waive service  
25 of the paper if they want to, but you have to do that

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1 in writing. You have to send something to the  
2 Commission secretary saying that you waive that; that  
3 it's your choice.

4           When you do your electronic submissions, I  
5 ask that you send a courtesy copy to me. I get it a  
6 little quicker that way, and my e-mail address is  
7 dmoss@utc.wa.gov, and I also ask that regardless of  
8 whether you decide to file it in "dot pdf" format or  
9 something other than "dot doc" format that you send my  
10 copy in "dot doc" format. That is so that I can cut  
11 and paste your brilliant words into my order. It saves  
12 me a lot of typing.

13           We are going to need an original and nine  
14 copies, paper copies, in this case for internal  
15 distribution at the Commission. If you find that there  
16 is something confidential that you need to include in  
17 your brief, and I would discourage that, but if you do,  
18 you file the original and nine copies of the fully  
19 unredacted version because everybody here who gets it  
20 is privileged to see the confidential information, and  
21 I don't want you to have to file unnecessary paper. So  
22 if you have anything confidential, just file that, and  
23 file an original and one copy of the redacted version.  
24 We have to have that for our files that we make  
25 available to the public and that we also preserve in

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1 the records center.

2           And of course you all know from long  
3 experience that you make your filings to the Commission  
4 secretary through the records center, and there is this  
5 Web portal. I don't know how it works but I'm sure you  
6 do. You all know the Commission's address so I'm not  
7 going to put that on the record. Is there any other  
8 business we need to conduct?

9           MS. SHIFLEY: Your Honor, do you see any need  
10 for an electronic service list?

11           JUDGE MOSS: I'm not sure what you mean. Do  
12 you want me to produce an electronic service list for  
13 you? You have the electronic contact information.

14           MS. SHIFLEY: I just know that in prior  
15 prehearings that there has been a published courtesy  
16 electronic service list.

17           JUDGE MOSS: We've been doing that in the  
18 rate proceedings. In the case of PSE, for example, we  
19 are now up to something like 40 witnesses, many of whom  
20 like to be on the courtesy list. In that case we do  
21 that. I think in a small case like this if somebody  
22 wants someone else to get service, just let each other  
23 know and handle it informally. I won't do that at this  
24 time.

25           MS. SHIFLEY: Thank you.

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1                   JUDGE MOSS: I will produce a prehearing  
2 conference order, and that will include representatives  
3 and their contact information, so far as I know it.  
4 Anything else? Thank you all for being here this  
5 morning, and I look forward to working with you to  
6 resolve the issues in these two dockets.

7                   (Prehearing adjourned at 10:30 a.m.)

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