



1 argue that the petition is not complete or that it would be premature for the Commission to  
2 render a decision on the petition at this time. Staff does not concur with these claims.

3 Intervenor Greg Larkin raises a couple of procedural arguments concerning the adequacy  
4 of the CPCN petition. First, Mr. Larkin argues the CPCN petition is incomplete because both  
5 PacifiCorp and Idaho Power need to apply for a CPCN, based on the text of ORS 758.015.<sup>2</sup> This  
6 statute provides that when a person providing electric utility service “proposes to construct an  
7 overhead transmission line” for which condemnation is required, that person must petition for a  
8 CPCN. While PacifiCorp will have an ownership interest, it is Idaho Power that will construct,  
9 operate and maintain the B2H transmission line.<sup>3</sup> Idaho Power was the appropriate party to  
10 petition for a CPCN.

11 Second, Mr. Larkin argues that both the OPUC and Oregon Department of Energy  
12 (ODOE) did not provide the required notice to landowners under ORS 183.415.<sup>4</sup> This  
13 proceeding is being conducted under ORS 758.015, OAR 860-025-0030-40 and the procedural  
14 rules of the OPUC. ODOE does not have jurisdiction to issue a CPCN and is not a party to this  
15 proceeding. It had no obligation to issue notice of the hearing proposed in this docket. With  
16 respect to the OPUC, ORS 183.415 does not apply to the OPUC, as specified in ORS  
17 183.315(6). Nonetheless, the OPUC, consistent with the requirements of ORS 758.015,  
18 conducted two public comment hearings and a contested case hearing in this proceeding, all of  
19 which were properly noticed.

20 Intervenor Stop B2H argues that approval would be premature because all of the  
21 conditions of the EFSC site certificate have not been met, additional approvals are needed as  
22 well as “landowner contacts and negotiations.”<sup>5</sup> Intervenor Greg Larkin argues cost information

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24 <sup>2</sup> Greg Larkin Opening Brief at 27.

25 <sup>3</sup> Staff/100, Pal/11.

26 <sup>4</sup> Greg Larkin Opening Brief at 43-44, 64.

<sup>5</sup> Stop B2H Opening Brief at 5.

1 in the petition is incomplete.<sup>6</sup> Intervenor John Williams also alleges approval is premature  
2 because the process for identifying, addressing historic properties is not complete.<sup>7</sup> Staff  
3 recognizes there are additional approvals that Idaho Power must obtain and additional conditions  
4 to meet on a continuing basis. OAR 860-025-0030(2)(p) recognizes that all permits and  
5 approvals may not be issued when a CPCN petition is filed, requiring instead that the petitioner  
6 identify outstanding permits and approvals, the status, and explain why they were not acquired  
7 before filing. Idaho Power has met this requirement, and provided updated information during  
8 the proceeding.<sup>8</sup> The practicality of proceeding with the CPCN is discussed further below.  
9 Similarly, landowner negotiations are not required to be complete prior to filing a petition for a  
10 CPCN. Under ORS 758.015(2), the purpose of this proceeding is to allow for the use of the  
11 CPCN as evidence in a proceeding for condemnation. If landowner negotiations were entirely  
12 successful, there would be no need for the CPCN petition to be filed, let alone a condemnation  
13 proceeding.

14 Stop B2H alleges the petition did not comply with OAR 860-025-0030(2)(f), which  
15 requires the petition to include information concerning the parcels of land for which  
16 condemnation is assumed to be necessary because “STOP has not heard of any landowner  
17 getting this.”<sup>9</sup> The first sentence in OAR 860-025-0030(2) identifies information that must be  
18 included with the petition that is filed with OPUC. The only information required to be mailed  
19 to persons with interests in land to be condemned is a notice of the petition, as specified in the  
20 second sentence of the rule. Idaho Power filed this certification on September 30, 2022.<sup>10</sup>

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23 <sup>6</sup> Greg Larkin Opening Brief at 50-561.

24 <sup>7</sup> John Williams Opening Brief at 5-6.

25 <sup>8</sup> Exhibits Idaho Power/1601, 1602.

26 <sup>9</sup> Stop B2H Opening Brief at 6.

<sup>10</sup> Idaho Power’s Notice of Petition for Certificate of Public Convenience and Necessity, Docket PCN 5 (September 30, 2022).

1 Stop B2H also alleges that cost information in the petition is not sufficient to comply  
2 with the requirements of OAR 860-025-0030(2)(d)(A), (B) or (C). Stop B2H further alleges the  
3 budget data provided is premature and that the CPCN petition should not be considered until a  
4 verified cost estimate is in place that can be used for prudence review in ratemaking.<sup>11</sup> Staff had  
5 initial concerns that cost data provided with the petition was not sufficient to meet the  
6 requirements of OAR 860-025-0030(2)(d). However, the Company did provide this information  
7 in response to data requests and in reply testimony, which allowed for review in this  
8 proceeding.<sup>12</sup> Though there is a pending Request for Amendment with EFSC, the amendment, if  
9 approved, will not require condemnation of additional parcels, and if it is not approved, with  
10 construction will proceed based on the existing EFSC approval.<sup>13</sup> The cost data supporting a  
11 petition for a CPCN will likely differ from the data a regulated utility like Idaho Power may use  
12 if it seeks to recover its transmission line investment in customer rates. The CPCN petition must  
13 be filed prior to construction of the transmission line, and rates may not include the cost of  
14 construction until the line has been placed in service.<sup>14</sup> This potential difference is  
15 acknowledged in OAR 860-025-0030(2)(j), which states that the revenue requirement estimate  
16 included in a CPCN petition may be used solely for the purpose of evaluating the petition.

17 For these reasons, Staff is satisfied the Company has complied with the filing  
18 requirements, and provided an estimate of costs already incurred and forecasted costs for  
19 developing the transmission line.

20 *2. Staff continues to support a finding that the proposed transmission line is a necessity.*

21 Staff recommends the Commission find the proposed line is necessary in the public  
22 interest to fill Idaho Power's need for additional capacity. Staff recognizes that the Commission  
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24 <sup>11</sup> Stop B2H Opening Brief at 5-13.

25 <sup>12</sup> Staff/400, Pal/7.

26 <sup>13</sup> Staff/100, Pal/68-69; Idaho Power/1600, Baretto/29.

<sup>14</sup> See ORS 758.15 and ORS 757.355.

1 may also find the proposed line is necessary, given the enhanced reliability, transfer capacity and  
2 flexibility that the B2H project will offer.

3 Idaho Power continues to assert that it also has a need for improved system reliability in  
4 order to provide adequate and reliable electric service.<sup>15</sup> However, the record does not support  
5 its position. To support its position, Idaho Power refers to its loss of load expectation analysis  
6 (LOLE) from the 2021 Integrated Resource Plan. It explains that the LOLE analysis  
7 “demonstrates the need for the capacity that B2H will provide” and “that B2H is the best  
8 resource to fill this capacity need.” Idaho Power then reasons that if B2H were not included in  
9 the 2021 IRP preferred portfolio, other resources would be needed to maintain reliability.<sup>16</sup>  
10 Idaho Power is thus unable to separate its need for additional capacity from the identification of a  
11 need for improved system reliability. In its Opening Brief, Idaho Power also refers to the  
12 NorthernGrid Regional Transmission Plan as supporting a need for reliability.<sup>17</sup> A regional  
13 transmission plan developed using a public stakeholder process to evaluate transmission needs<sup>18</sup>  
14 does not provide an objective analysis of the adequacy of Idaho Power’s system. The record  
15 simply does not contain engineering analysis of the current system, without B2H, that indicate  
16 Idaho Power has a system reliability need.

17 Intervenor Stop B2H takes the position that the proposed transmission project is not  
18 necessary. Stop B2H agrees with Staff that there is not a need for improved system reliability,  
19 and further questions the need for additional capacity, given the possibility that coal plants may  
20 be converted to natural gas resources.<sup>19</sup> Staff does not concur with the argument that Idaho  
21 Power does not have a need for additional capacity in light of the potential conversion of a coal  
22 plant. As explained in Staff’s Opening Brief, Idaho Power has demonstrated a need for

23 \_\_\_\_\_  
<sup>15</sup> Idaho Power Opening Brief at 32-33.

24 <sup>16</sup> Idaho Power Opening Brief at 29 (citation omitted).

25 <sup>17</sup> Idaho Power Opening Brief at 33.

26 <sup>18</sup> Staff/107, Pal/26.

<sup>19</sup> Stop B2H Opening Brief at 33-34.

1 additional capacity, and, if the Company were to exit from certain coal plant units, that would  
2 add to the company's need.<sup>20</sup> Conversion of the units would not alleviate the underlying need  
3 for additional capacity.

4 Some of the Intervenors express concern that Idaho Power has other options that may  
5 better address its needs.<sup>21</sup> These concerns do not directly challenge a finding of necessity based  
6 on additional capacity or other need. Staff finds these concerns more appropriate to the  
7 discussion below concerning the justification of the project, where it remains Staff's position that  
8 that the B2H project is justified in the public interest.

9 *3. Staff continues to support a finding that the proposed transmission line provides for safety.*

10 Staff recommends the OPUC find the proposed line is safe because it will be constructed,  
11 operated, and maintained in a safe manner and in conformance with applicable OPUC rules, and  
12 other applicable safety standards and best industry practices. Several Intervenors allege safety  
13 concerns related to design standards, wildfire and corona noise. Staff does not concur.

14 Intervenor Sam Myers alleges the project design does not apply sufficiently stringent  
15 design standards, given local wind speeds, lightning, seismic hazards and extreme weather.<sup>22</sup> To  
16 the contrary, Staff reviewed the safety standards applied by Idaho Power in designing the  
17 transmission line, including the National Electric Safety Code, with which the Company is  
18 required to comply,<sup>23</sup> and finds they are appropriate and standard in the industry for high-voltage  
19 transmission. Meeting or exceeding these standards will provide a reliable project design. The  
20 Company will use shield wire and grounding to dissipate lightning, EFSC's Final Order imposes  
21 conditions that include requiring the Company to design, engineer and construct the line to  
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24 <sup>20</sup> Staff's Opening Brief at 5.

25 <sup>21</sup> Greg Larkin Opening Brief at 41-42; Susan Greer Opening Brief at 12; Stop B2H at 17-18, 33-  
26 34.

<sup>22</sup> Sam Myers Opening Brief at 7-17.

<sup>23</sup> OAR 860-024-0010.

1 address seismic hazards.<sup>24</sup> Mr. Myers’ Opening Brief does not cite to industry standards or other  
2 evidence that compels the use of a different design or standard by the project’s engineers.

3 Mr. Myers also alleges wildfire risks have not been adequately assessed and presents a  
4 safety hazard.<sup>25</sup> Wendy King alleges the wildfire risk has not been adequately assessed for  
5 dryland farming.<sup>26</sup> And Stop B2H alleges Idaho Power’s Wildfire Mitigation Plan (WMP) does  
6 not address the B2H line, high-risk areas exist along the route that were not properly classified,  
7 and dryland farming was not appropriately considered.<sup>27</sup>

8 Idaho Power is required to develop a WMP and update its WMP on an annual basis.<sup>28</sup>  
9 The WMP is a “risk-based plan designed to protect public safety, reduce the risk of utility  
10 facilities causing wildfires, reduce risk to utility customers, and promote electrical system  
11 resilience to wildfire damage.”<sup>29</sup> The WMP must include a risk analysis that covers a utility’s  
12 service territory and its right of way for generation and transmission assets.<sup>30</sup> Idaho Power’s  
13 WMP, together with the Fire Prevention and Suppression Plan that is required for the B2H  
14 project under the EFSC Final Order,<sup>31</sup> provide a reasonable means to mitigate the potential  
15 hazard of wildfire.<sup>32</sup> Because a utility’s WMP is subject to regular updates, Intervenor concerns  
16 with the treatment of the B2H transmission line in the WMP may be raised in the annual review  
17 of each updated plan in OPUC Docket UM 2209.

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20 <sup>24</sup> Staff Opening Brief at 9.

21 <sup>25</sup> Same Myers Opening Brief at 7-10.

22 <sup>26</sup> Wendy King Opening Brief at 3-15.

23 <sup>27</sup> Stop B2H Opening Brief at 22-28.

24 <sup>28</sup> OAR 860-0300-0020(2).

25 <sup>29</sup> OAR 860-0300-0010(11).

26 <sup>30</sup> OAR 860-0300-0030(1).

<sup>31</sup> Docket PCN 5, Supplement to Petition to for CPCN, Attachment 1 at 10523, Filing 16 of 16, Final  
Order on Application for Site Certificate, November 9, 2022.

<sup>32</sup> Staff/200/Rashid/17-18; Staff/500, Rashid/7-8.

1           Regarding corona noise, Intervenor Greg Larkin alleges the project’s corona noise  
2 presents a safety hazard that is not sufficiently mitigated.<sup>33</sup> Stop B2H alleges the corona noise  
3 effects associated with B2H present a safety risk and urges OPUC to require Idaho Power to take  
4 additional actions to expand the mitigation requirements adopted in the EFSC Final Order,  
5 specifically additional monitoring and an expanded list of sites eligible for mitigation.<sup>34</sup>

6           The relevant criteria for consideration of corona noise is OAR 860-0035(1)(b):

7           (b) Whether the petitioner has demonstrated that it will ensure the transmission  
8 line is constructed, operated, and maintained in a manner that protects the public  
9 from danger and conforms with applicable Commission rules, and other  
applicable safety standards and best industry practices.

10 Intervenor Greg Larkin argues that under ORS 467.010, noise exceedances are a safety hazard.  
11 However, ORS 467.010 is simply a statement of legislative policy that “the increasing incidence  
12 of noise emissions in this state at unreasonable levels is as much a threat to the environmental  
13 quality of life in this state and the health, safety and welfare of the people of this state as is  
14 pollution of the air and waters of this state.” The EFSC Final Order addresses noise standard  
15 issues for the project, supporting construction and operation of the line, and this order was  
16 affirmed on appeal.<sup>35</sup> The corona noise produced by the B2H transmission line will not present a  
17 risk to human health or safety, and will be below a level that would create a concern for hearing  
18 loss.<sup>36</sup> While corona noise does not present a danger to the public, it can be perceived as a  
19 negative effect. Staff does not consider this issue relevant to the safety of the project, but  
20 included noise as a consideration in evaluating the justification of the project.

21           In conclusion, Staff finds that safety concerns have been appropriately reviewed and  
22 addressed during this proceeding and in the EFSC Final Order granting a site certificate. Staff  
23 supports a finding of safety.

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24 <sup>33</sup> Greg Larkin Opening Brief at 30-35, 41.

25 <sup>34</sup> Stop B2H Opening Brief at 28-32.

26 <sup>35</sup> Staff/400, Pal/16.

<sup>36</sup> Staff Opening Brief at 17.

1 4. *Staff continues to support a finding that the proposed transmission line is practicable.*

2 Staff supports a finding that the transmission line is practicable. The proposed route is  
3 appropriate, the project is feasible and it can be effectively and efficiently constructed. Several  
4 intervenors question Idaho Power's route choice in a number of ways. Staff does not concur.

5 In evaluating the proposed route, OPUC considers whether it is practicable and feasible.<sup>37</sup>  
6 In the Opening Brief filed by Susan Greer, she argues that ORS 35.235 governs OPUC's  
7 consideration of the proposed route in a CPCN petition. It does not. The text of ORS 35.235(1)  
8 expressly states that its provisions are "subject to ORS 758.015" and that is the statute that  
9 controls here. OPUC is not a public condemner seeking to provide "presumptive evidence" of  
10 public necessity under ORS 35.235(2). If OPUC issues a CPCN under ORS 758.015, the order  
11 is "conclusive evidence" that the transmission line is a public use and necessary for public  
12 convenience.

13 The Opening Briefs of Susan Greer and Stop B2H argue that the route segment referred  
14 to as Morgan Lake is not the optimal choice, given environmental impacts.<sup>38</sup> The Opening  
15 Briefs of Sam Myers, Wendy King, and Stop B2H advocate for consideration of an alternate  
16 route that avoids the Myers and Morter parcels, which are farmland.<sup>39</sup> Stop B2H further  
17 advocates for consideration of a route south from Boardman to connect to a separate corridor.<sup>40</sup>

18 Staff continues to find that the route selected by Idaho Power is the result of a thorough  
19 planning process that supports its selection of a route that is practicable and feasible. Idaho  
20 Power has selected a reasonable, practical route for the transmission line. As between the  
21 Morgan Lake segment, as opposed to a Glass Hill segment or Mill Creek, the potential for  
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24 <sup>37</sup> OAR 860-025-0035(1)(c).

25 <sup>38</sup> Susan Greer Opening Brief at 15-18; Stop B2H Opening Brief at 19-22.

26 <sup>39</sup> Sam Myers Opening Brief at 22; Wendy King Opening Brief at 19-25; Stop B2H Opening  
Brief at 19-22.

<sup>40</sup> Stop B2H Opening Brief at 19-22.

1 adverse environmental effects along the proposed route are similar to the alternate routes.<sup>41</sup> The  
2 Company used a community advisory process to provide input on route selection and identify  
3 community issues of concern and this review supports the proposed route. With respect to  
4 alternate routes not previously considered by Idaho Power, the Company points out in its  
5 Opening Brief, that such changes would affect a potentially larger number of landowners and  
6 require significant additional process.<sup>42</sup>

7 On review, Staff continues to support a finding of practicality.

8 *5. Staff continues to support a finding that the proposed transmission line is justified.*

9 Staff continues to endorse a finding that the project is justified in the public interest.

10 A number of Intervenors argue that feasible alternatives exist to meet Idaho Power's need  
11 for additional capacity. These include: 1) increasing energy efficiency targets, increasing smart  
12 grid technology, constructing renewable generation closer to Idaho Power's service territory,<sup>43</sup> 2)  
13 upgrading existing 230kV lines,<sup>44</sup> 3) undergrounding all or a segment of the proposed line,<sup>45</sup> 4)  
14 micro-grids.<sup>46</sup>

15 For a utility such as Idaho Power, the utility's Integrated Resource Plan (IRP) is the best  
16 available methodology to explore alternative resources to meet the utility's needs. An IRP  
17 evaluates all known resources for meeting a utility's load, both supply resources and demand-  
18 side options that consider conservation and demand-response.<sup>47</sup> Idaho Power's 2021 IRP selected  
19 the B2H transmission line as the least cost, least risk resource when compared to feasible  
20 alternatives to meeting Idaho Power's capacity need. B2H remained the least-cost, least-risk

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21 <sup>41</sup> *Stop B2H Coal. v. Bureau of Land Management*, 552 F Supp 3rd 1101, 1142-43 (D Or 2021).

22 <sup>42</sup> Idaho Power Opening Brief at 76-77.

23 <sup>43</sup> Stop B2H Opening Brief at 13-14; Greg Larkin Opening Brief at 41-42

24 <sup>44</sup> Stop B2H Opening Brief at 13-14.

25 <sup>45</sup> Stop B2H Opening Brief at 18, 22; Susan Greer Opening Brief at 12; Greg Larkin Opening  
26 Brief at 41-42

<sup>46</sup> Susan Greer Opening Brief at 12.

<sup>47</sup> OAR 860-027-0400(1); Docket UM 1056, Order Nos. 07-002, 07-047.

1 alternative using the updated cost data provided in this docket.<sup>48</sup> In addition, the available  
2 alternatives may not provide the same regional benefits or benefit PacifiCorp and BPA in the  
3 same manner as B2H.<sup>49</sup> With respect to undergrounding the transmission line, the construction  
4 work involved requires more significant excavation and surface impacts than construction of an  
5 overhead transmission line, potentially having greater impacts on the natural environment.<sup>50</sup>  
6 Underground construction of a transmission line is also much more expensive and potentially  
7 less reliable.<sup>51</sup>

8 More generally, several Intervenors argue that the intangible costs of constructing the  
9 transmission line – in terms of its impacts on landowners, on nearby residents, on farmland, on  
10 the natural environment (including plantlife, avian species, fish and other wildlife and their  
11 associated habitats), and on cultural and historic properties – outweigh the benefits of the  
12 transmission line project.<sup>52</sup> Each of these Intervenors presents extensive briefing on the impacts  
13 they anticipate from the project. Staff, in its Opening Brief, summarized many of the potential  
14 impacts and further addressed the effects of this project on environmental justice communities.

15 Staff set forth its methodology for evaluating whether the proposed transmission line is  
16 justified in its Opening Brief, concluding that the monetary and non-monetary benefits of the  
17 project to Idaho Power customers, Oregonians and the Northwest region outweigh the monetary  
18 and nonmonetary costs that will result.<sup>53</sup> Staff acknowledges that the project may have negative  
19 impacts, however, the EFSC Final Order imposes a number of conditions on Idaho Power that  
20 are intended to avoid, minimize and mitigate those impacts. In fulfilling those conditions, Staff

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22 <sup>48</sup> Staff/100, Pal/28.

23 <sup>49</sup> Staff/100, Pal/38-39.

24 <sup>50</sup> Staff/100, Pal/60-61; *Stop B2H Coal. v. BLM*, 552 F Supp 3d at 1140.

25 <sup>51</sup> Staff/100, Pal/60-61; *Stop B2H Coal. v. BLM*, 552 F Supp 3d at 1140.

26 <sup>52</sup> Stop B2H Opening Brief at 16, 33-34; Susan Greer Opening Brief at 1-12; Wendy King  
Opening Brief at 26-36; Greg Larkin Opening Brief at 47-50.

<sup>53</sup> Staff Opening Brief at 14-21.

1 expects Idaho Power to employ its best efforts to avoid and address negative impacts,  
2 particularly where there is a potential for cumulative impacts to have an adverse effect. Overall,  
3 on consideration of the significant benefits provided by the project, Staff continues to support a  
4 finding that the project is justified in the public interest to support issuance of a Certificate for  
5 condemnation purposes.

6 *6. Staff continues to support adoption of the land use Findings in the EFSC Final Order.*

7 Intervenor Wendy King references land use siting concerns relative to farmland in her  
8 Opening Brief.<sup>54</sup> To the extent these arguments are intended to challenge the applicable land use  
9 findings, and are not limited to concerns with route selection, we note that the OPUC cannot  
10 consider such arguments. With respect to the land use findings in the EFSC Final Order issuing  
11 a site certificate, the Commission is without discretion and “will adopt the findings made as a  
12 part of the EFSC-issued site certificate.”<sup>55</sup>

13 **III. CONCLUSION**

14 For the foregoing reasons, Staff’s continued recommendation is that OPUC find Idaho  
15 Power’s Petition for a Certificate of Public Convenience and Necessity is supported by the  
16 necessity, safety, practicability and justification in the public interest of the project. Staff further

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26 <sup>54</sup> Wendy King Opening Brief at 27-32.

<sup>55</sup> OAR 860-025-0040(7).

1 recommends that OPUC adopt EFSC’s land use findings, and issue an order granting the  
2 Petition.

3 DATED this 30<sup>th</sup> day of May 2023.

4 Respectfully submitted,

5 ELLEN F. ROSENBLUM  
6 Attorney General

7 */s/ Johanna M. Riemenschneider*

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Johanna M. Riemenschneider, OSB No. 990083  
9 Sr. Assistant Attorney General  
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11 Commission of Oregon  
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**DOCKET PCN 5 - CERTIFICATE OF SERVICE**

I hereby certify that on May 30, 2023, **STAFF'S REPLY BRIEF** was served by USPS

First Class Mail to said person at his last known address as indicated below:

John C. Williams  
P.O. Box 1384  
La Grande, OR 97850

DATED this 30<sup>th</sup> day of May 2023.

*/s/ Johanna Riemenschneider*

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